

GONZALO CASTRO DE LA MATA
Chairman
The Inspection Panel

IPN REQUEST RQ 16/05

September 06, 2016

NOTICE OF REGISTRATION

Request for Inspection

REPUBLIC OF UGANDA: Private Power Generation (Bujagali) Project (P089659); Water Management and Development Project (P123204); and Energy for Rural Transformation Phase III Project (P133312)

Summary

1. On June 20, 2016, the Inspection Panel (“the Panel”) received a Request for Inspection (“the Request”) relating to the flooding of the Kalagala Offset Area in Uganda. Three projects are related to this complaint: the Private Power Generation (Bujagali) Project (P089659); the Water Management and Development Project (P123204); and, the Energy for Rural Transformation Phase III Project (P133312). The Request claims that the residents in the Kalagala Offset Area are likely to suffer environmental and social harm as a result of the filling of the reservoir of the Isimba dam. Although the Isimba dam itself is not financed by the World Bank, the Request claims its reservoir will undermine the management of protected natural resources in the area, required by an Indemnity Agreement signed between the Government of Uganda and the International Development Association (“IDA”) for the Private Power Generation (Bujagali) Project.
2. Subsequently, the Panel received letters from additional Requesters who elaborated on the livelihood related impacts they and other members of the community are expected to suffer as a result of the flooding of the Kalagala Offset Area. The Requesters asked for confidentiality.

The Projects

3. The Private Power Generation (“Bujagali”) Project was approved on April 26, 2007, and supported through an IDA Partial Risk Guarantee of up to US\$115 million (out of a total Project-cost of US\$750 million). The World Bank Group’s International Finance Corporation and Multilateral Investment Guarantee Agency also provided financing for the operations. As part of the Bujagali Project, the Government of Uganda and IDA entered into an Indemnity Agreement, which requires the Government to protect the natural habitat and environmental and spiritual values of the Kalagala Offset Area.¹ The Kalagala Offset Area encompasses about 10 km of free-flowing Nile River, along with nearby land areas including the entire Kalagala Central Forest Reserve (CFR) and Nile Bank CFR. This area was selected as a conservation offset, to compensate for the flooding of another free-flowing segment of the Nile by the now operational Bujagali Project. The

¹ Indemnity Agreement, Partial Risk Guarantee for the Private Power Generation (Bujagali) Project, between International Development Association and Republic of Uganda, dated July 18, 2007.

Indemnity Agreement specifies that without prior agreement from the World Bank, Uganda will not develop any power generation that could adversely affect the protection of the Kalagala Offset Area.

4. The Indemnity Agreement states that the Government of Uganda shall “*set aside the Kalagala Falls Site exclusively to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association. Any tourism development at the Kalagala Falls Site will be carried out only in a manner acceptable to the Association and in accordance with the aforementioned standards. Uganda also agrees that it will not develop power generation that could adversely affect the ability to maintain the above stated protection at the Kalagala Falls Site without the prior agreement of the Association.*”²

5. The Water Management and Development Project (the “WMDP”) was approved for an amount of \$135 million equivalent on June 26, 2012. The WMDP is a Category B project for which several safeguard policies were triggered. At the time of receipt of the Request the WMDP was 38.29% disbursed.

6. The WMDP aims to “*improve (i) integrated water resources planning, management and development; and (ii) access to water and sanitation services in priority urban areas.*”³ The Kalagala Offset Sustainable Management Plan sub-component of the Project, relates directly to the Request and seeks to “*support priority investments related to the implementation of the environmental offset that complements the Bujagali Hydropower Project.*”⁴

7. The Energy for Rural Transformation Phase III Project (ERT-III) was approved on June 5, 2015, for an amount of US\$135 million equivalent. This project aims to increase access to electricity in rural areas of Uganda. The Panel understands that Bank Management is supporting the preparation of an Addendum to the Environmental and Social Impact Assessment (ESIA Addendum) of the non-Bank financed Isimba Hydropower Project under the ERT-III. The ESIA Addendum would cover the main environmental and social impacts of the Isimba Hydropower Project on the Kalagala Offset Area and corresponding mitigation measures.

Concerns Raised in the Request

8. The Requesters argue that the residents in the Kalagala Offset Area are likely to suffer social and environmental harms from the failure to ensure adherence to the Indemnity Agreement and Bank Policies, including Environmental Assessment (OP/BP 4.01); Forests (OP/BP 4.36);

² In addition, under this provision the Government of Uganda “*undertakes to conserve through a sustainable management program and budget mutually agreed by the Government and the Association (no later than expiration of the prevailing sustainable management program or such later date as the Association may agree), the present ecosystem of the Mabira Central Forest Reserve, as well as the Kalagala Central Forest Reserve and the Nile Bank Central Forest Reserve on the banks of Kalagala Falls (as such Reserves are included within the Kalagala Falls Site). Upon receiving the Association’s notice of a termination (or prospective termination) of the IDA Guarantee Agreement (whether by the Association’s payment thereunder or otherwise) which in turn may lead to a termination of the Project or this Agreement, Uganda will enter into discussions with the Association regarding an extension (and the terms of any extension) of the aforementioned setting aside of and undertakings in respect of the Kalagala Falls Site (including the Kalagala Central Forest and the Mabira Central Forest Reserve.*” Ibid, p. 9, Section 3.06(a).

³ Project Appraisal Document (“PAD”), Water Management and Development Project, June 1, 2012, p. 4.

⁴ PAD, page 7.

Safety of Dams (OP/BP 4.37); Natural Habitats (OP/BP 4.04) and Physical Cultural Resources (OP/BP 4.11).

9. They argue that if the Kalagala Offset Area were to be inundated during the filling of the reservoir for the Isimba dam, numerous impacts on the environment and people from the Bujagali dam would not be mitigated. They argue that additional impacts will be suffered by the environment and people of the Kalagala Offset Area.

10. The Requesters state that the impact on the tourism industry along the Nile River that sustains the livelihoods of many of the community members will suffer greatly and as a result many people will be displaced. The Kalagala Offset Area has waterfalls and rapids used for rafting, kayaking and other tourism related services and activities. These activities are the primary and distinctive attractions of the tourism industry in Uganda, which is the highest foreign earner exchange to the economy of the country. They also state that the tourism industry attracts over 12,000 visitors a year and has greatly contributed to the local economy of the Butagaya Sub-county.

11. They also argue that the management of the Kalagala Offset Area and the benefits from the wider socio-economic development will be undermined with the filling of the Isimba dam reservoir, including the forest reserves mentioned in the Indemnity Agreement, the river banks and wetlands.

Panel Review

12. After receipt of the Request, the Panel conducted its initial due diligence and verified that the Request was submitted by two or more people as required under the Panel's Operating Procedures. Furthermore, the Panel notes that the issues have been brought to the attention of the Bank in September and December of 2014, respectively.

13. The Panel also verified that the Request meets the requirements for registration. The Request is not frivolous, absurd or anonymous. The Bank supports the protection and management of the Kalagala Offset Area. The Bujagali Project, the WMDP, and the Energy for Rural Transformation Phase III Project, can all be plausibly linked to the alleged harm. The Bank's financing of the WMDP and the Energy for Rural Transformation Phase III Project are both less than 95 percent disbursed, and the Bank continues to monitor the Private Power Generation ("Bujagali") Project.⁵ The subject matter of the Request does not concern issues of procurement. Finally, the Request is not the same as a previous Request on which the Panel has already made a recommendation.⁶

14. In its meeting with the Panel on July 21, 2016, and in subsequent correspondence, Bank Management noted that although the Bujagali project underlying the Bank guarantee provided by the Bank through the Private Power Generation ("Bujagali") Project was completed in 2012, the Bank is seriously considering the issues raised by the Requesters and taking proactive actions to ensure compliance under the Indemnity Agreement. Management added that it was still premature to assume that the Indemnity Agreement will be violated with the filling of the reservoir of the Isimba dam. Management further noted that in order to consider whether or not the Indemnity

⁵ At the time of receipt of the Request, the WMDP was 38.29 percent disbursed and the Energy for Rural Transformation Project was less than 1 percent disbursed.

⁶ On August 29, 2008, the Panel issued the investigation report regarding the Uganda Private Power Generation (Bujagali) Project. However, none of the issues raised in the context of that investigation relates to the Kalagala Offset Area.

Agreement will be violated, the Bank will review studies, including the Environmental and Social Impact Assessment Addendum of the Isimba dam to assess the nature and scope of potential impacts on the Kalagala Offset Area, and the discussion of possible mitigation measures for potential impacts. Management informed the Panel that these studies will be available to the Bank by the end of 2016.

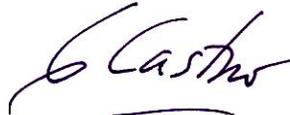
Registration of the Request

15. As provided in paragraph 17 of the IDA Resolution (“the Resolution”) that established the Panel, *“the Chairperson of the Panel shall inform the Executive Directors and the President of the Bank promptly upon receiving a request for inspection.”* With this notice, I am notifying you that I have, on September 6, 2016, which is also the date of this notice, registered this Request.

16. The Panel’s registration implies no judgment whatsoever concerning the merits of a Request for Inspection. As provided in paragraph 18 of the Resolution, and paragraphs 2 and 8 of the *“Conclusions of the Board’s Second Review of the Inspection Panel”* (the 1999 Clarification), Bank management must provide the Panel within 21 business days, by October 5, 2016, a response to the issues raised in the Request for Inspection. The subject matter that Management must deal with in the response to the Request is set out in paragraphs 3 and 4 of the 1999 Clarification.

17. After receiving the Management Response, the Panel will, as outlined in the 1999 Clarification and as provided by paragraph 19 of the Resolution, *“determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and shall make a recommendation to the Executive Directors as to whether the matter should be investigated.”* The Request has been assigned IPN Request Number RQ 16/05.

Yours sincerely,



Gonzalo Castro de la Mata
Chairman

Attachments

Mr. Jim Yong Kim, President
International Development Association

The Executive Directors and Alternates
International Development Association