

**INDEPENDENT REVIEW MECHANISM
AFRICAN DEVELOPMENT BANK GROUP**



**Eligibility Report for Compliance Review
Bujagali Hydropower Project/ Bujagali Interconnection
Project**

Country: Uganda

Compliance Review Request No.: RQ2007/1

24 August, 2007

**Report Prepared by:
Compliance Review and Mediation Unit (CRMU)**

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ACRONYMS

ADF	African Development Fund
AfDB	African Development Bank
IDA	International Development Association's
AESNP	AES Nile Power
APRAP	Assessment of Past Resettlement Activities and Action Plan
BEL	Bujagali Energy Ltd.
BIU	Bujagali Implementation Unit
BDSP	Bujagali Dam Safety Panel
CRMU	Compliance Review and Mediation Unit
DSP	Dam Safety Panel
DWD	Directorate of Water Development
EIA	Environmental Impact Assessment
ERA	Uganda Electricity Regulatory Authority
GoU	Government of Uganda
IESIA	Integrated Environmental and Social Impact Assessment
IRM	Independent Review Mechanism
PPA	Power Purchasing Agreement
PCDP	Public Consultation and Disclosure Plan
RAP	Resettlement Action Plan
RCDAP	Resettlement and Community Development Action Plan
SEA	Social and Environment Assessment
SMEs	Small and Medium Enterprises
UA	Unit of Account
UETCL	Uganda Electricity Transmission Company Ltd
WASP	Wien Automatic System Planning

Date: 24 August, 2007

Eligibility Report

**Re.: Request for Compliance Review
Request No.: RQ2007/1
Country: Uganda**

Bujagali Hydropower Project/ Bujagali Interconnection Project

The objective of this Eligibility Report is to assess the eligibility of the Request received by the Compliance Review and Mediation Unit (CRMU) on 16 May 2007 from the Ugandan National Association of Professional Environmentalists (NAPE), other local organizations and individuals, including those who submitted official requests to CRMU during its fact-finding mission in Uganda, [hereinafter the “Requestors”]¹; as well as to recommend to the Boards of Directors of the African Development Bank Group [hereinafter the “ADB Group” or the “Bank Group”] whether or not to undertake a compliance review of the Bujagali Hydropower Project and the Bujagali Interconnection Project.

I. THE PROJECTS

The Bujagali Hydropower Project, which was approved by the Boards of Directors of the ADB Group on 2 May 2007, will be developed by the private company Bujagali Energy Ltd. (BEL) to construct a 250MVA run-of-the-river power plant on a Build-Own-Operate-Transfer basis at the Bujagali Falls on the Nile River near Jinja, (about 8 km downstream from the existing Nalubaale and Kiira hydropower stations).

The construction will involve the development of a quarry to produce the necessary aggregate and rock fill material for a dam; a batching plant for the on-site production of concrete; and a coffer to divert water during the construction of the permanent dam. The total project cost is estimated at US\$ 750 million. The ADB provides a loan of US\$ 110 million (UA 73.8 million equivalent²), approximately 15% of the total cost of the project.

According to the Investment Proposal, the project has a strong development impact. It will help Uganda to develop its abundant hydrological resources to produce least-cost

¹ The meetings with the Requestors in Uganda were attended by more NGOs and individuals than had signed the original Request for compliance review. Following the first meeting with the Requestors, seven additional NGOs submitted letters to the Director of CRMU requesting to be registered as Requestors for the claim submitted to CRMU by NAPE. The new signatories of the Request have been determined by CRMU to be eligible and recorded as Requestors in the register of the IRM.

² 1 UA = US\$ 1.49015 (as of February, 2007)

power for domestic use and export to neighboring countries. It is expected that the project will generate direct employment of 650 to 1,100 people during construction and 50 full-time jobs during operations. The Proposal also asserts that the project will create opportunities for local small and medium enterprises (SMEs) and will yield significant fiscal benefits for the Government of Uganda (GoU).

The Bujagali Interconnection Project is closely associated with the Bujagali Hydropower Project. It was approved by the Boards of Directors of the African Development Fund (ADF) on 28 June 2007. The project will provide the transmission infrastructure to interconnect the new Bujagali hydropower station to the national electricity grid. Its major components include: the construction of about 100 km long transmission lines, a switchyard at the project site, and a new substation at Kawanda located north of Kampala. The transmission facilities will be constructed and operated by Uganda Electricity Transmission Company Ltd. (UETCL), a state- owned utility.

The total cost of the Interconnection project is estimated at UA 50.13 (US\$ 74.7 million equivalent). The ADF loan, of UA 19.21 million (US\$ 28.6 million equivalent), represents approximately 38.3% of the total cost of the project.

The overall goal of the two Bujagali projects, as stated in the project proposals, is to meet the energy needs of Uganda's population for social and economic development in an environmentally sustainable manner.

II. The Regulatory Framework of Compliance Review

The Compliance Review process is governed by Paragraphs 44 – 49 of the IRM Operating Rules and Procedures [hereinafter “IRM Rules”].

In line with the IRM Rules, CRMU:

- Registered the Request on 4 June 2007 in the Register of Request of the Independent Review Mechanism for a Compliance Review, and subsequently informed the Requestors, the President and the Boards of Directors;
- Notified the Bank Group's Management [hereinafter, “the Management”] of the Request, and received the Management's Response on 28 June 2007, followed by additional technical clarifications on 6 July 2007;
- Conducted a mission to Uganda, from July 16 – 23, during which the CRMU's Director and Principal Compliance Officer met with different stakeholders in the Bujagali projects, including the Requestors, affected communities, Government officials, parliamentarians, the project developers, and the Bank Group's representative in Uganda. This is in order to collect situational facts to assess the eligibility of the Request;

- Prepared this eligibility report, under the guidance of paragraph 44 of IRM Rules which authorizes the Director of the CRMU to determine whether or not there is a *prima facie* evidence of harm or threat of harm to the people living in the areas of the projects financed by the Bank Group; and whether such harm or threat of harm is caused by the act or omission of the Bank Group's Staff and Management to comply with the Bank Group's relevant policies and procedures.

If such *prima facie* evidence is concluded on the basis of collected information, the Director of CRMU should recommend to the Boards or Directors of the ADB Group to approve: a compliance review; the Terms of Reference of the Compliance Review Panel, which under the IRM Rules should consist of two Experts from the Roster of Experts of the Independent Review Mechanism and the Director of CRMU [hereinafter, "the Review Panel"]; and the estimated budget to conduct such a review.

Under Paragraphs 52 of the IRM Rules, the Review Panel shall assess whether or not any action by the Bank Group, or failure to act, has involved one or more material violations of policies or procedures. On the basis of its findings, the Review Panel may provide the Bank Group with recommendations on (i) remedial changes to systems or procedures within the Bank Group to avoid the recurrence of such or similar violation, (ii) any remedial changes in the scope or implementation of the Bank Group-financed project, and (iii) any steps to be taken to monitor the implementation of the changes referred to in (i) and (ii) above.

In the case of public sector projects, all Bank Group's policies will be subject to compliance review, whereas for private sector projects, the Review Panel will focus on compliance with the Bank Group's policies and procedures in relation to the social and environmental aspects of these projects, but not excluding relevant policies as described in paragraph 2 (xi) of the IRM Rules.

III. Eligibility Assessment

In light of paragraphs 2, 20 and 25 of the IRM Rules, and before registering the Request on 4 June 2007, the Director of CRMU made a preliminary review to: determine whether the Request falls within the mandate of the Independent Review Mechanism and whether the request contains a *bona fide* allegation of harm arising from the projects that provoked the complaint. As the Request fulfilled these conditions, it was registered on 4 June, 2007.

To assess the eligibility of the Request, the Director of CRMU has examined the allegations made in the Request in light of the Projects' Investment Proposal and Appraisal Report, the Response of the Management, and the information gathered by the CRMU mission to Uganda during July 16-23, 2007.

The Director of CRMU has taken notice of the Management's arguments and justifications for the Bank Group to finance the two Bujagali projects, whose immediate

objective is to secure Uganda's urgent energy needs through developing one of the country's renewable energy sources. The Director has also observed that Uganda is currently extending its electricity production by thermal power plants to meet the increasing demand for electricity.

Likewise, the Director of CRMU has recognized the concerns raised by the Requestors with respect to the Bank Group's support of these projects and, *inter alia* questioning the assessments made with respect to: hydrological risks, climate change and the cumulative impact of building more dams on the Nile River; economics, alternatives and affordability; dam safety; indigenous peoples cultural and spiritual issues; and the resettlements and compensation to affected people.

The Requestors allege violation of eleven (11) Bank Group policies or procedures, although in some instances they have not referred to the relevant policies or procedures under their correct names.

The Bank Group's Management rejects most of the Requestors' allegations in its Response. They refer to only eight (8) policies or procedures, and highlights that the Bank Group does not have specific policies on some of the issues raised by the Requestors. For some issues the Management also makes reference to the policies of the World Bank, one of the co-financiers of the Bujagali Hydropower Project.

On the basis of paragraph 44 of the IRM Rules, the collected information along with what has been retrieved by the CRMU mission to Uganda, it is apparent that **there is a *prima facie* evidence that direct harm can be caused** to people living in the immediate project areas as well as in adjacent areas. The extent of the likelihood of harm occurring as a result of violation of the Bank Group's policies and procedures is outside the scope of this eligibility report; but would be examined if a compliance review is undertaken.

Each of the following subsections describes the issues raised by the Requestors in the order presented in the Request, the related responses of the Management of the Bank Group, followed by the CRMU Director's comments in the view of assessing the eligibility of the Request for compliance review:

1. Hydrological Risks, Climate Change, Cumulative Impact Assessment and Kalagala Off-set

The Requestors question the projects' economic viability. They believe that the long-term energy output assessment for Bujagali is no longer valid as a result of the lower water levels of Lake Victoria. They allege that the Kiira power plant has contributed to the over-draining of the Lake and that the Agreed Curve³ is no longer respected.

³ The Agreed Curve – a formula agreed upon in 1954 by the Government of Uganda, Egypt and Sudan as an operational rule for releasing water through the power stations on the Nile River to ensure that the water released remains consistent with what would have occurred under natural conditions.

Moreover, they claim that these issues have not been properly addressed in the documents they have seen for the projects. According to the Requestors, BEL's Social and Environment Assessment (SEA) "*does not address the overall issue of Lake Victoria's long term health, other than to assert that Bujagali Dam could lead to more sustainable flows out of the lake as it will make use of the same water released by the existing dams*". The Requestors refer to studies made on the effects on the Lake levels by climate change, *inter alia* quoting from a 2005 report prepared by Water Resources and Energy Management International Inc. that "*Lake evaporation shows a steadily increasing trend, a direct consequence of temperature increase. From 2025 on, lake evaporation becomes consistently higher than lake rainfall with this deficit exceeding 20 billion cubic meters per year toward the end of the century. It thus appears inevitable that, if the rainfall process remains stationary, climate warming will disturb the historical balance of lake rainfall and evaporation, and will create serious deficits*".

The Requestors furthermore question the appropriateness of the data used in the SEA, which are lake-level observations over the last 100 years, instead of using more recent data, suggesting that likely lake-levels projections over the next 30 or more years-scenario would be more appropriate.

The Management on the other hand argues that "*the hydrology of the Victoria Nile is complex due to meteorological influences, the rainfall-runoff process, the scale of the evaporation losses, and the interaction between rainfall and evaporation within the watershed*". They argue that the hydrological risk for energy generation is considered to be definable from the available set of 106 years of data. They acknowledge that "*because of the regional drought over the past several years coupled with the lack of needed generation investments and a growth in demand of about 8% since 2003 the Government of Uganda over-abstracted water for power generation*". However, they further explain that "*since 2005, the GoU has steadily decreased hydropower generation in an effort to return to the Agreed Curve operating regime*". The Management also argues that "*If the Bujagali power plant was currently in operation, the consequences of this exceptionally dry period, in terms of over-abstraction for power generation, could have been substantially eliminated*".

With regard to the cumulative impact of building more dams and power plants on the Nile River basin, **the Requestors** allege that this has been an issue since 2001 when the first Bujagali project was being prepared, and argue that the issue remains unresolved. They quote the World Bank Inspection Panel's report of 2002 which *inter alia* states: "*The Panel consequently concludes that the issues of cumulative effects, addressed by Management and raised by the Requestors, is of real significance and is deserving of greater attention*". Likewise with the Kalagala Off-set, the Requestors claim that the agreement between the GoU and the World Bank is not binding, and refer to the legal interpretation of this agreement used in the Inspection Panel report of 2002.

The Management's Response states that "*the Strategical/Sectoral Environment Assessment for the Nile Equatorial Lakes describes the criteria for assessing the social and environmental appropriateness of future hydropower developments on the Nile River*

in Uganda and the entire East Africa region”. Likewise, they say that “BEL’s SEA examines the cumulative impacts of Bujagali, the hydropower plants at Nalubaale, Kiira and Karuma along with the transmission facilities therewith on the Victoria Nile in Uganda”. On the Kalagala Off-set, Management agrees that the development of Kalagala could have an adverse impact on the aesthetic value of the Kalagala Falls. For these reasons, they state that “long term protection of Kalagala Falls by ensuring that its hydropower potential is not exploited is a necessary condition of World Bank and the AfDB Groups participation in the Bujagali project”. They further state that “The offset provisions for Kalagala Falls and the adjacent natural habitat will be included as a GoU obligation in the IDA Indemnity Agreement for the Bujagali project, and will be binding throughout the life of the Indemnity”.

CRMU observes that the Requestors’ claim and the corresponding response from the Management contain substantial contradicting views on the hydrological risks, the possible effects caused by climate change, and the capacity of Lake Victoria and the Nile River to generate power. The Requestors and the Management also have different views on how well the cumulative impacts have been addressed, including the obligation of the Kalagala Off-set Indemnity Agreement. The World Bank Inspection Panel in its current Eligibility Report (issued on 3 May 2007) for inspection of the Bujagali Hydropower Project, highlights some uncertainties regarding the Indemnity Agreement, which is still under negotiations. In that report, the Inspection Panel concludes that it expects “ Management to provide members of the Board of Executive Directors [of the World Bank] with accurate and complete information about this matter once the negotiations have concluded”.

CRMU also noted that the Bank Group’s Investment Proposal for the Bujagali Hydropower Project inter alia mentions hydrology as a risk factor. Annex 6 of the Proposal inter alia states: “The risk is related to the water level in Lake Victoria and is mitigated by the hydrologic force majeure clauses in the PPA”. Since the Kalagala Off-set agreement between GoU and IDA, as outlined in the Management’s response, also has implications for the Bank Group, CRMU encourages the Management to provide its Boards of Directors with accurate and complete information about the offset provisions for the Kalagala Falls as soon as the Indemnity Agreement between the Government of Uganda and IDA has been concluded. Notwithstanding the above, an assessment of the captioned agreement, with respect to the Bank Group’s own policies and procedures, would be relevant.

2. Economic, Comprehensive Options and Affordability Assessment

The Requestors argue that it is difficult to determine the economic viability of the project because “the incremental social and environment costs or damages attributed to Bujagali project were not mentioned, consequently allocating a zero monetary value to the environmental damages and social costs by default”. They claim that the World Bank Inspection Panel and the IFC Compliance Advisor/Ombudsman echoed similar concerns in their review of the AESNP Bujagali dam project in 2002. Furthermore, the Requestors state that “The economic analysis failed to systematically determine the

macroeconomic benefits of the Bujagali project”, arguing that some of the assumptions used in the analysis are erroneous. For example that “*tariffs will be lower when Bujagali is around compared to when it is absent for household connected to the grid, while those not connected will not be affected*”. A concern expressed by the Requestors is that power from Bujagali will be unaffordable for the majority of the country’s population.

The Requestors also allege that “*The World Bank Group, like the Ugandan government, has skewed its research efforts to consistently promote Bujagali above other options*” Furthermore, they argue that “*While the World Bank’s 2002 appraisal of the Bujagali project was over-optimistic in many instances, the analysis of alternatives to the project was consistently pessimistic*”. They state that “*This is still a problem with the new BEL Bujagali project*”. In the opinion of the Requestors “*the absence of an adequate comprehensive economic and alternative (options) assessment of the Bujagali dam Project violates the African Development Bank’s Policies on Economic Evaluation of Investment Operations*”.

The Management, on the other hand, argues that the key elements of the Economic Study that was made public on February 26, 2007 and includes “*(i) the impact of the current power crisis conditions on the sector and the need for emergency thermal power, (ii) the demand forecast, (iii) the level of electricity tariffs, (iv) the hydrology of Lake Victoria and its impact on hydropower generation, (v) the supply alternatives and their costs, (vi) the environmental and social cost of Bujagali and its main alternative, and (vii) the economic value of electricity to consumers, the end-user tariff path and its affordability*”. Management further states that the “*Economic evaluation of Bujagali takes into consideration environmental and social costs associated with the project. The largest such cost is for implementation of the resettlement and community development action plans related to the dam and the associated Interconnection Project*”.

Regarding the assessment of alternatives, **the Management** Response *inter alia* states that “*The economic analyses considered power generation options that had realistic potential for availability in a time frame similar to the Bujagali project, and which, therefore, could be considered as alternatives. All options that could compete with the proposed Bujagali project in providing power to the main grid network were considered*”. With respect to the Karuma Dam project, which was considered to be the most promising large-hydro power alternative to the Bujagali project, the Management states that “*analysis shows that Bujagali has a lower construction cost, which has resulted in its being the least-cost option when the two plants are compared in the WASP analysis*”. The Management agrees that independent grid networks form an important element of Uganda’s electrification program. Commenting on many alternative off-grid energy solutions, the Management emphasizes that some are not found viable while other alternatives are being pursued through other types of project financing.

With respect to the economics, alternative options, and affordability analysis, CRMU observes the diverging views of the Requestors and the Management on affordability, and the Bujagali projects contribution to the country’s economic development and poverty eradication. What could justify a compliance review is the Requestors’

allegation that the economic and alternative assessments made for the Bujagali project violate the African Development Bank's policies on the Economic Evaluation of Investment Operation and Poverty Reduction.

3. Information Disclosure, Transparency and Openness regarding the Bujagali Dam

The Requestors state that “*it is a requirement of the African Development Bank that there is sufficient information disclosure, transparency and openness regarding Bank financed projects*”. Furthermore, they say that “*More transparency and openness is needed on how various options have been evaluated*”. They also mention that “*At least, project proponents should release all documents on the project's economic viability, including all studies on the Lake Victoria/Nile hydrology, the PPA and option analysis*”.

With respect to the PPA, **the Requestors** allege that this document, which is key to economic risks, was only released on January 8, 2007 for public scrutiny by Uganda Electricity Regulatory Authority (ERA) at its Kampala Office. The Requestors also claim that “*there is no evidence that BEL's PPA has been debated and approved by Uganda's Parliament, yet it is reported in BEL's SEA to have been signed way back in 2005*”.

The Requestors claim that the Bank Group's policies and procedures for Information Disclosure, as well as other policies mentioned in their Request such as the Economic Evaluation of Investment Operations and Poverty Reduction, have been violated.

In its Response, **Management** highlights that “*a thorough hydrological analysis was undertaken as part of the due diligence for the project. This analysis underwent extensive internal reviews and was discussed in a series of meetings with Ugandan power sector stakeholders*”. Furthermore, Management says that “*the conclusions regarding hydrology were publicly disclosed on February 26, 2007...*” and that “*...a copy of this report was provided by the IFC staff to the Requestors on February 28, 2007*”.

With respect to the PPA, the **Management** refers to information from ERA that the PPA and the Implementation Agreement were made publicly available for 30 days as of March 6, 2006, in respect of the High Court ruling in 2001. According to Management, ERA has again made the PPA and the Implementation Agreement publicly available for an open-ended period, starting on January 8, 2007. Management also states that “*The Agreements have been reviewed by the AfDB Group and are consistent in form and substance with international standards*”. Moreover, that “*The GoU will be required to seek all approvals under local laws, prior to the lenders (including the Bank Group) providing any financing for the project*”.

During its Uganda mission, the CRMU team was informed that the PPA had been, and is currently available for “reading” at the library of ERA. The current copy of the PPA contains the framework for fixing the tariff to be paid to the developers; however, the PPA cannot be finalized and the tariffs determined before the exact costs of the Bujagali projects have been settled.

In CRMU's opinion, there are significant differences between the Requestors and the Management as to what has been disclosed, and what the requirements are with respect to the Bank Group's policies on disclosure and transparency.

According to the additional information submitted by the Requestors on 18 and 28 May 2008 in relation to the Registration of the Request, they claim that they only learnt about the African Development Bank's involvement in the Bujagali projects through the media and within few days after a public hearing on the project on 30 March 2007. This information was reiterated by the Requestors to the CRMU mission in Uganda. Likewise, from discussion with the Prime Minister of the Basoga Kingdom and other people living in the project affected area, it became evident that local people had little or no knowledge of the Bank Group's involvement in the Bujagali projects. The lack of information about the Bank Group's involvement in the Bujagali projects is a concern, not only with respect to the Bank Group's policies, but also in relation to the dissemination of information about the Bank Group's lending activities.

4. Dam Safety Issues

The Requestors state that the Bujagali dam design does not adequately consider the safety problems of the old Owen Fall (Nalubaale) dam, and highlights that the powerhouse and bridge have large cracks. They argue that there should have been an integral comprehensive plan and strategies for addressing dam safety issues, including “concrete steps to decommission the old Nalubaale and disaster preparedness mechanisms and associated costs”. Furthermore they state that “Such strategies are very important; especially since there was no EIA done for Kiira dam and no post-construction audit done for Nalubaale dam”.

The Requestors further state that “Failure to address dam safety issues and environmental audits in the SEA violates African Development Bank's Policies on Safety of Dams”.

In their Response, the **Management** states “The AfDB has no explicit policy requirements related to dam safety”. However, they add that “AfDB Management agrees that dam safety concerns are an integral part of the review of any hydropower development”. Furthermore, Management informs that “The GoU, with the assistance of IDA under the Third Power Project, engaged consultants to review the safety of the dam structure (i.e. a post-construction audit) and to devise a plan and strategy for remedial works to correct deficiencies. These remedial works were concluded under the oversight of an international expert panel”. The Management also refer to a report on the Nalubaale structures of 2005, prepared by the consulting firm Lahmeyer International, quoting a section of the report which states that “there is no present risk in the condition and stability of the main dam, but the situation is more serious for the intake structure, the headrace bridge and the powerhouse structure”. Furthermore, Management informs that the design of the Bujagali dam has been reviewed by the technical advisors of the GoU, the current owners' Engineer and the lenders' Engineer, and states that “This

review has also included the evaluation of flood risks and their incorporation in the design of Bujagali and is considered to be consistent with the AfDB policies”.

CRMU observes that although the Bank Group does not have an explicit policy on Dam Safety, the Management informs that dam safety issues have been adequately addressed and refers to several World Bank Operational Policies, such as OP 4.37 on the requirement for a Dam Safety Panel (DSP), OP 4.01 on Environmental Assessment, OP 4.04 on Natural Habitats and OP 7.50 on Projects in International Waterways.

During its mission to Uganda, CRMU received varied information regarding the future operation of the Nalubaale power plant after the Bujagali Hydropower station has been commissioned.

5. Indigenous Peoples, Cultural and Spiritual Issues

The main complaint by **the Requestors** on Indigenous People is that the Basoga people are not considered to be indigenous in the SEA, whereas they are recognized as indigenous people by the Constitution of the Republic of Uganda. The Requestors furthermore argue that *“Cultural and spiritual issues in the Bujagali area were inadequately covered in the SEA”*. They refer to the Bank Group’s Environment and Social Auditing Operational procedures (2000) and the Integrated Environmental and Social Impact Assessment (IESIA, 2003) guidelines stating that *“any omission on the Bank’s part in considering the importance of peoples and cultural property is a violation of the Bank’s own policy and procedural guidelines”*.

The Requestors claim that any omission on the Bank Group’s part in considering the importance of peoples and cultural property is a violation of the Bank’s own policies, for which they have specifically made reference to the Environment and Social Audit procedures and the IESIA guidelines.

On the other hand, **Management** says that AfDB has no policy that specifically addresses Indigenous people, and bases its response on the World Bank policy on Indigenous People (OP 4.10). With respect to Cultural and Spiritual Issues, Management responds that AfDB has no explicit policy on cultural and spiritual issues; however, stating that *“BEL is committed to comply with World Bank OP/BP 4.11, Physical and Cultural Resources”*. The Management Response also states that *“The management of cultural and spiritual issues is part of the overall social management plan (part of the SEAP)”* and that *“Implementation will be monitored/supervised by the World Bank Group throughout the loan/contract periods”*.

Most of the people with whom the CRMU team discussed these issues appreciate the importance of preserving the cultural heritage. However, it is apparent that some of these issues seem to remain unresolved. This may be due to conflicting perceptions on the preservation of traditional values (including the moving of spiritual powers from the

Bujagali Falls to another location) on the one hand, and how these values should be respected in the preparations of the Bujagali Hydropower Project on the other.

On the basis of the Management Response, the CRMU would suggest a review of the Bank Group's underlying principles and procedures for referring assessments on Indigenous Peoples rights and Cultural and Spiritual issues to another institution's policies, and for passing on the monitoring/supervision responsibilities to other institutions.

6. Compensation, Resettlement

The Requestors' main concern involves the living conditions of the resettled people by the first Bujagali project which was developed by AESNP in 2002. They claim that the *"houses and facilities provided to the resettled communities by AESNP are now dilapidated less than five years after construction"*. Furthermore, they state that *"Most of the people who were moved in 2002 were not given land titles to their new lands, which caused great uncertainty"*. They add that the existing compensation and resettlement frameworks are outdated; therefore, they call for a review of these frameworks to upgrade them in order to cope with current economic realities. The Requestors claim that *"the lack of a detailed and updated compensation and community development action plan in BEL's SEA is a violation of the African Development Bank's policies on involuntary resettlement (2000), good governance (2000) and Environmental and Social Auditing (2000), Industrial Policy guidelines, Stakeholder consultation and Participation (2001), among others"*.

The Requestors attach a letter, dated 18 February 2007, from people living in the Naminya Resettlement area addressed to BEL and copied to the Minister of Energy and Mineral Development, Minister of Lands, Minister of Local Government and other stakeholders. Listing a number of problems, the letter concludes that *"Before we were resettled, we were promised many things, but up to now, it is five years, many of those things have never been fulfilled or provided."*

The Management has responded to the claims by first addressing the AESNP resettlement issue. In that respect, it states that the GoU assigned the Bujagali Implementation Unit (BIU) to oversee the community relations until a new developer had been identified. Furthermore, Management mention that BEL has *"conducted the APRAP [Assessment of Past Resettlement Activities and Action Plan], which identifies legacy issues and actions that need to be undertaken for the project, in compliance with World Bank Groups resettlement policies"*. The Management Response also states that *"Recent supervision missions have confirmed that the quality of resident houses is still adequate"* and that *"any future claims will be addressed through the grievance mechanism"*. As for the grievances of the resettled people, Management states that a *"witness NGO appointed by UETCL will operate independently of project management or government influence in assessing the fairness of any claim and in making its recommendations for redress or otherwise to project management"*.

With respect to the Compensation and Resettlement Frameworks, **Management** *inter alia* states that “*Both the APRAP and the RAP for the transmission line have taken into account new conditions. For example, the APRAP determined that past resettlement did not provide for vulnerable people and has recommended actions to ensure that these people’s needs are addressed going forward*”.

Management provides a detailed response to the letter sent by the Naminya community on 18 February 2008, including issues of land titles, schools, health centre, water, housing, latrines, electricity, sources of income and food, resettlement disturbance package, community centre, the market, environment protection, employment, and routine maintenance. Management also refers to several visitations by the World Bank, Government and the dam developers to the people affected by the project.

With respect to the Bujagali Interconnection Project, **Management** *inter alia* states that “*The arrangements for compensation comprise a carefully designed series of packages to reflect the actual nature of impact to property, living accommodation and holding or household viability in the project corridor*”.

In the meeting with the developers (BEL), the CRMU was given a copy of a letter written by a group of resettled people stating that they disagree with the aforementioned Naminya community letter and the way in which it had been sent to the developers and high officials. In another letter, dated March 19, 2007, which was drafted by nine MPs and handed over to the CRMU by BEL, the MPs state that “*We are also aware of attempts by a few individuals to subvert the commencement of the project through distortion and in some instances the use of underhand methods to create doubts. We would like to categorically state that these detractors do not represent the wishes and interest of our constituents*”.

Considering the apparent differing views, **the CRMU team** met and talked to a number of resettled people, including community leaders, to verify the written information. During CRMU’s visit to the community, it was confirmed that at least one of the houses had cracks as stated by the Requestors. However, whereas some of the people the CRMU team talked to admitted that their new houses are better compared to their old houses, others complained that the rooms of the new houses had no ceiling which made them uncomfortable when sharing a house with many family members. Some people also claimed that the sample house shown to them prior to their decision to relocate had a higher standard compared to the ones provided to them. Other complaints from the resettled people included school and health facilities, water supply and transportation. Representatives of the BIU and BEL, on the other hand explained that people had been given different options with respect to houses, and that the houses had been constructed in accordance with the options agreed upon.

Another issue expressed by some resettled people to the CRMU team is their limited opportunities to generate cash income in the new area. Compared to their previous location near Bujagali where they had different opportunities to generate income from fishing and agricultural farming; at the new location they can only do subsistence

farming. Due to their distance from the market coupled with the daily demands, they face great difficulty in generating sufficient income from these crops.

From what has been read and seen on the ground, CRMU is of the opinion that there is a prima facie evidence of harm in the project's resettlement areas which justifies a compliance review. Since the Requestors' claim violation of a number of the Bank Group's policies, the review would be important in helping the Bank Group to ensure that its relevant policies and procedures for resettlement and compensation to affected people have been or will be complied with.

7. Consultations Concerns

The Requestors accuse the project proponents of confusing consultations with real and effective participation in a decision-making process. They claim that *"The failure to address concerns raised and obtain agreements during the consultation process by the dam developer violates African Development Bank's Policies on Stakeholder Consultation and Participation (2000) among others"*. The Requestors also argue that proclaimed consultations with different clans (240 clans in Basoga and 52 clans in Buganda) have not occurred.

The Management responds by saying that *"The SEA includes an annex listing issues and concerns raised in each of the public consultations"* and *"There is also a Public Consultation and Disclosure Plan (PCDP) discussing past and planned consultation activities"*. They furthermore inform that *"AfDB also posted the Executive Summaries (in English and French) of the SEA and the RAP in its public information centre"*. In responding to the Requestors' specific claim, the Management states that *"While it would be impossible to address each of the stakeholders concerns, at all meetings with stakeholders, the developer has invited community representatives and community members to raise issues with regard to their involvement in the project"*.

The CRMU observes significant diverging views between the Requestors and the Management regarding the Bank Group's requirements for consultations. With reference to the issues discussed above under the headings "Indigenous Peoples, Cultural and Spiritual Issues" and "Compensation, Resettlement", there apparently exist different understandings of problems and arrangements, which should have been resolved through a consultation process.

8. Old and Inconsistent Data

The Requestors state that BEL's SEA is *"based on old data that has little or no bearing to the current situation"* and furthermore that *"the SEA does not reflect the current environmental realities"*.

Management contests this allegation by stating that *"The proposed Bujagali Hydropower Project is a new operation. As such, there has been a fresh assessment of the social and environmental aspects of the project, which has also required drawing*

upon former studies, where relevant”. Management also states that “BEL conducted consultations in January, March and May 2006 related to development of the Terms of Reference (TOR) for the Bujagali project’s social and environmental analysis”.

In CRMU’s opinion, the issue of Old and Inconsistent Data is closely linked to the foregoing issues on hydrological risks, social and environmental assessments, and economic analysis and could be addressed along those issues if a compliance review is approved.

9. Faunal (Terrestrial & Aquatic)

The main concern raised by **the Requestors** is that BEL’s EIA studies on animals, birds and aquatic life were carried out for a very short period (one- to two months).

The Management contends the allegations by inter alia saying that “*the Bujagali project benefits from the considerable baseline social and environmental data gathering for the previous project under AES. Work conducted for BEL was designed to build upon those data and additional studies were undertaken as needed, to confirm or update the baseline*”. The Management Response further states that: “*Management considers that the baseline data gathering was satisfactory*”.

A compliance review would verify whether the studies undertaken comply with the Bank Group’s relevant policies, including those particularly mentioned by the Requestors as have been violated, which are the Bank Group’s Environment and Social Audit Guidelines (2003) and Environment Policy (2004).

10. Other issues

During the CRMU’s mission to Uganda, some additional issues were raised by the Requestors:

1. The Requestors were concerned that the contractor of the Bujagali Dam has commenced the site mobilization, including the clearing of vegetation for access roads and the building of temporary structures. In this relation, NAPE, one of the Requestors, emphasized that the European Investment Bank (EIB) Board’s approval of its financing to the Bujagali Hydropower project stated that “*EIB disbursement should occur in line with those of the other co-financiers, in particular the World Bank Group, in order to ensure a coherent approach to any recommendations the World Bank’s Inspection Panel may express in the future and their full consideration in the project*”.

The Director of CRMU, in consideration of paragraph 18 of the IRM Rules, would make an interim recommendation to the Management of the Bank Group to undertake precautions similar to the European Investment Bank with respect to its disbursements for the Bujagali projects.

2. With respect to the transmission line, the Requestors expressed concerns during the CRMU visit that the route of the new transmission line on the stretch from Mutundwe to Kawanda had been changed to avoid settlements along some parts of the new line. However, the new route is adjacent to a sensitive wetland area, and the Requestors claim that the change of the route has not been addressed in the SEA. Representatives of UETCL, however, informed the CRMU team that the social and environmental impact of the new route has been described in an Appendix to the SEA.

In CRMU's opinion, a compliance review should verify that the changed route of the transmission line has been adequately addressed in the SEA and is in compliance with the Bank Group's relevant policies and procedures.

3. During the Uganda mission, the CRMU team was informed that the tourism around the Bujagali Falls, and in particular rafting companies and their skilled staff, would be severely harmed. The sponsor, BEL as well as different Government officials argued that most of the affected rafting companies had agreed to be relocated to another location downstream of the Bujagali Falls. The CRMU team was informed that at least one of the companies operating from or around the Bujagali Falls had not accepted to be relocated.

On the basis of different views about the rafting industry expressed to the CRMU team, a compliance review should cover the relevance of the Bank Group's policies in the case of the requesters' concern about tourism and rafting at the Bujagali Falls.

IV. RECOMMENDATIONS FOR COMPLIANCE REVIEW

1. CRMU Recommendations

Based on the above discussed concerns raised by the Requestors, the Management Response, and on the basis of CRMU's assessment of whether or not there is a prima facie evidence that the alleged harm, or risk of harm, relates to non-compliance with the Bank Group's policies and procedures, the Director of CRMU is of the opinion that, a Compliance Review, under IRM Rules could be conducted.

The basis of this conclusion relates to the many observations made on significant diverging views between the Requestors and the Management on key issues which directly and indirectly implicate the Bank Group's policies and procedures. To reiterate, these issues include: the hydrology of Lake Victoria and the River Nile Basin, the impact of climate change, cumulative effects of building more dams on the River Nile, the validity of the Kalagala Off-set agreement, the analysis of economics and alternative energy sources; cultural and spiritual matters, and compensation and resettlement of affected people, and information disclosure and consultation. Also, for several issues, such as dam safety and indigenous people, the Bank Group's Management has referred to policies of other institutions, for which a review would be warranted to determine the underlying terms for making such references.

Considering the many diverging views related to the application of the Bank Group's Policies and Procedures, and the Requestors allegations that many of these policies and procedures have been violated in the preparations of the Bujagali projects, the Director of CRMU recommends that a Compliance Review should be undertaken. This is in order to verify or to discard the allegations made in the request with respect to non-compliance with the Bank Group's relevant policies and procedures, including assessment of the likelihood of resulting harm caused or to be caused to people and communities in the project areas.

2. Afterward Steps

Upon the Boards of Directors' approval of the recommendations of this eligibility report, and in accordance with the IRM Rules paragraph 45, the Director of CRMU hereby:

- Recommends Prof. Daniel D. Bradlow (chairperson) and Dr. Madiodio Niasse from the Roster of Experts of the Independent Review Mechanism as members of the Review Panel for the Bujagali Hydropower Project and the Bujagali Interconnection Project.
- Suggests, in addition to the members of Review Panel, specialists be hired to complement the expertise of the Panel and to effectively tackle the magnitude issues involved in the request for compliance review. These specialists will provide short term inputs in specific areas to be decided upon by the Review Panel.
- Proposes an estimated budget of UA 165,000 to cover the total cost of the compliance review which is within the approved CRMU budget frame for 2007.
- Advises to coordinate with the Inspection Panel of the World Bank, which is currently preparing an investigation of a similar Request on the Bujagali Hydropower Project. The Director of CRMU has discussed with the Inspection Panel ways of possible co-operation with respect to the compliance review in order to reduce costs, especially those of hiring of specialists. The Inspection Panel and CRMU intend to develop an understanding on opportunities to share factual data and information, including findings of specialists, on a confidential basis subject to the respective rules, procedures and limitations of each institution. The information sharing will respect and fully take into account the different policies and procedures of the respective institutions and the need for separate reviews/inspections in accordance with the relevant rules and mandates.