



**Date: 4 June, 2007**

### **Notice of Registration**

**Re.: Request for Compliance Review**

**Request No.: RQ2007/1**

**Country: Uganda**

**Bujagali Hydropower Project** (Private Sector, approved by the Boards 2<sup>nd</sup> May 2007)  
and **Bujagali Interconnection Project** (Public Sector, proposed)

The Compliance Review and Mediation Unit (CRMU) refers to the Request for Compliance Review received on 16 May 2007 for the Bujagali Hydropower Project and the Bujagali Interconnection Project in Uganda dated 5 May 2007. The Request was submitted by the Ugandan National Association of Professional Environmentalists (NAPE) and other local organizations (the “Requestors”).

On the same day, in a different courier envelope another original copy of the same Request together with a covering letter dated 10 May 2007 from the African Development Bank (ADB) Group’s Uganda Office addressed to the Director of CRMU was received at CRMU. An advance email from NAPE informing that a Request had been delivered to the ADB Group’s Country Office was received by CRMU on 7 May 2007.

Pursuant to paragraphs 19 and 20 of the Operating Rules and Procedures of the Independent Review Mechanism, I am notifying you that the Request has on 4 June 2007 been registered in the Register of Request of the Independent Review Mechanism for a Compliance Review, published on [www.afdb.org/irm](http://www.afdb.org/irm).

The Bujagali Hydropower Project which was approved by the Boards of Directors of the African Development Bank (ADB) on 2 May 2007 provides for a private sector company (Bujagali Energy Ltd. – BEL) to develop a 250MV run-of-the-river power plant on a Build-Own-Operate-Transfer (BOOT) basis at the Bujagali falls of the River Nile near Jinja, about 8 km downstream from the existing Nalubaale and Kiira hydropower plants.

Closely associated with the Hydropower Project is the Bujagali Interconnection Project, which is proposed for financing by the ADB Group through a public sector loan. The major components of the Interconnection Project include the construction of about 100km long transmission lines, a switchyard at the project site, and a new substation at Kawanda north of Kampala. The transmission facilities will be constructed and operated by the state owned utility, Uganda Electricity Transmission Company Ltd. (UETCL).

For the Registration of the Request, the projects will be treated as one case, however, in the ensuing consideration of eligibility for a compliance review, the two projects may be assessed separately since different policies and procedures may be applicable for review with respect to the private sector project and the public sector project.

The Requestors claim that due to the rising electricity demand and the inability of the Nalubaale and Kiira hydropower stations to generate enough electricity to meet the country's demand, *“many shortcuts [are] being taken to ensure that the project is approved as fast as possible, ignoring outstanding and new concerns raised on the project.”* With respect to the Bujagali Hydropower Project, the Requestors moreover state that the Project *“is based on flawed assumptions and data that have little or no bearing to the current situation, and therefore are not an adequate basis for approval of the project.”* According to the Requestors, the Bank has failed to address the civil society's concerns. This failure is in the Requestors' view a violation of ADB's operational policies and procedures. The Requestors therefore request a Compliance Review and ask the Bank to stay its decision on financing the projects until such an investigation is made.

In the Request for Compliance Review, the Requestors highlight nine (9) concerns that in their opinion are in violation with policies and procedures of the African Development Bank. In brief these concerns are:

### **1. Hydrological Risk, Climate Change, Cumulative Impact Assessments and Kalagala Off-set**

The Requestors question the projects' economic viability because according to them the long-term energy output assessment for Bujagali is no longer valid because of the lower water levels of Lake Victoria. They strongly contest BEL's Social and Environment Assessment (SEA) projections that Lake Victoria is capable of providing adequate water for the project even in its current diminished hydrological state, and claim that *“BEL has little or no control of the manner in which the Nalubaale and Kiira power stations will be operated”*. They furthermore argue that, *“Kiira has contributed substantially to the over-draining of Lake Victoria, causing a lot of misery and economic loss to Uganda and neighboring countries”*. The Requestors allege that BEL's SEA does not address the overall issue of Lake Victoria's long-term health. The Requestors claim that the issue of cumulative impacts by building a cascade of dams along the River Nile, an issue that was highlighted as a significant issue that deserved greater attention in the World Bank Inspection Panel's investigation of the AESNP Bujagali Project in 2001, is still unresolved. According to the Requestors, *“the absence (inadequacy) of this critical information will negatively affect the well being of the Ugandan society, in particular and East Africa, in general.”*

The Requestors also refer to more recent studies, for example a report from 2005 prepared by the consulting firm, Water Resources and Energy Management International Inc, i.a. stating that *“lake evaporation shows a steadily increasing trend, a direct consequence of temperature increase”*. Likewise, the Requestors claim that the findings from a recent (2006) technical report of the Directorate of Water Development (DWD) on declining water levels in Lake Victoria and River Nile have not been addressed in BEL's SEA. The Requestors allege that the Economic and Financial Evaluation of the Bujagali project is based on *“flawed hydrological and climate change assumptions and computations”*, for

example by using “*water release operational rule that does not follow the agreed curve<sup>1</sup>*”. Moreover, they question the use in the SEA of lake levels observed in the last 100 years instead of more recent experiences, suggesting that likely lake levels over the next 30 or more years-scenario would be more appropriate.

The Requestors furthermore question whether the Government of Uganda (GoU) is committed to establish the Kalagala Falls as an environmental off-set for the development of the Bujagali falls.

***With respect to the Hydrological Risk, Climate Change, Cumulative Impact Assessments and Kalagala Off-set, the Requestors state that the lack of up-to-date and adequate information in BEL’s SEA violates the African Development Bank Policy on Environmental Assessment.***

## **2. Economic, Comprehensive Options and Affordability Assessment**

The Requestors state that “*there is no evidence [...] that a comprehensive economic analysis for the Bujagali Project was done*”, and therefore it is, in their view, difficult to determine the economic viability of the project. They argue that the economic analysis undertaken in February 2007 does not adequately address the economic viability in relation to hydrological risks, and social and environmental impacts.

The Requestors also emphasize that alternative energy options have not been adequately studied to provide evidence that the Bujagali dam project is the least-cost option. The Request lists eleven alternatives to the proposed Bujagali dam project, including other hydropower sites, biogases, geothermal and energy efficiency. According to the Requestors, the Government has not taken these known potential energy options seriously because they cannot easily be connected to the national or regional grid. However, in the Requestors’ opinion independent grids could prove more beneficial to the majority of the people, and could also help to reduce the burden on the existing national grid.

The Requestors question the citizens’ ability to afford the power from Bujagali because of the increase of the cost of the Bujagali projects by 30%. Furthermore, they argue that the Bujagali project will not meet the basic energy needs of the majority of Ugandans stating that “*only a fraction of the population can afford unsubsidized electricity*”, and that “*the high cost of the project will further limit funds available for rural electrification*”.

With respect to the economic analysis, the Requestors claim that the 10% social discount rate used in the economic analysis is too high, favoring “*projects with short-term benefits against long-term costs*”. It is moreover argued that the economic analysis failed to systematically determine the macroeconomic benefit of the Bujagali projects. In the opinion of the Requestors it is critical to involve stakeholders from other countries sharing Lake Victoria in addressing the problems caused by the changes in water flows and to find workable solutions for long-term effects.

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<sup>1</sup> The formula of 1954 – known as “the Agreed Curve” - sets a maximum flow of between 300 and 1700 cubic meters per second for the discharge from Lake Victoria, depending on the water level.

The Requestors argue that there is sufficient evidence that the Bujagali dam project was not subject to the magnitude and effects of the risk associated with the project, including taking into account the possible range in values of the basic variables and assessing the robustness of the project's outcome with respect to changes in these values.

***The absence of adequate and comprehensive economic and alternatives (options) of the Bujagali project violates, in the opinion of the Requestor, the African Development Bank's Policies on Economic Evaluation of Investment Operations and Poverty Reduction.***

### **3. Information disclosure, Transparency and Openness**

According to the Requestors, the only document released for review was BEL's SEA, which does not address the overall issue of Lake Victoria's long-term health. They complain that the key document that assigns economic risks, the Power Purchase Agreement (PPA), was only released for public scrutiny at the Electricity Regulatory Authority's office in Kampala on 8 January 2007. They argue that the PPA does not include the costs of Bujagali dam project, and it does not apportion responsibilities, risks and guarantees between the parties. Furthermore, they argue that Uganda laws require that Parliament must approve the state's obligations under the PPA, and that *"there is no evidence that BEL's PPA has been debated and approved by Uganda's Parliament"*.

The Requestors state that it is a requirement of the African Development Bank that there is sufficient information disclosure, transparency and openness regarding the Bank's financed projects. They go on arguing that project proponents should release all documents on the project's economic viability, including all studies on the Lake Victoria/Nile hydrology, the PPA and information how various options have been evaluated. Moreover, that adequate time should be given for review before any further actions are taken on Bujagali.

***The Requestors believe that the discrepancies in the PPA process poses a threat to the Ugandan society and economy and is a contravention to the laws of Uganda, and violates African Development Bank's Policies on Information Disclosure, Accountability, Economic Evaluation of Investment Operations and Poverty Reduction.***

### **4. Dam Safety Issues**

The Requestors state that the Bujagali dam design does not adequately consider the safety problems regarding the old Owen Falls (Nalubaale) dam, and highlights that the powerhouse and bridge have large cracks. They do not consider the formation of a Bujagali Dam Safety Panel (BDSP) as outlined in BEL's SEA to be enough, and suggest 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. They argue that such strategies are very important, especially since *"there was no EIA [Environmental Impact Assessment] done for Kiira dam and no post-construction audit done for Nalubaale dam."*

***The Requestors state that the failure to address dam safety issues and environmental audits in the SEA violates African Development Bank's Policies on Safety of Dams and is***

*inconsistent with the Environmental and Social Auditing Operational Procedure (2000). Furthermore that the Bank's Integrated Environmental and Social Impact Assessment (IESIA) Guidelines (2003) stipulate that the Bank will take an active part to promote "best practices".*

## **5. Indigenous Peoples, Cultural and Spiritual Issues**

According to the Requestors BEL's SEA considers the project area as not inhabited by indigenous people, including the Basoga people, yet the Constitution of the Republic of Uganda (third schedule) considers Basoga as an indigenous people. In the Requestors' opinion the SEA inadequately address cultural and spiritual issues in the affected areas.

*The Requestors argue that the ADB Group's Environment and Social Auditing Operational procedures (2000) and IESIA Guidelines (2003) consider indigenous people and cultural issues important in the development of Bank supported projects, and state that any omission on the Bank's part in considering the importance of people and cultural property is a violation of the Bank's policies and procedural guidelines.*

## **6. Compensation, Resettlement**

Requestors call attention to the situation of the people resettled during the first phase of the project in 2002. According to the Requestors, they were not given land titles to their new lands, "*which caused great uncertainty*". Moreover they state that "*houses and facilities provided to the resettled communities by AESNP are now dilapidated less than five years after construction*". The Requestors accuse the original project sponsor (AESNP) to have left "*problems that arose with the resettled communities [...] unresolved*." A letter from resettled people under the previous AESNP Bujagali project addressed to the Director of BEL is attached to the Request. The letter states that a number of promises by the previous developers have not been fulfilled.

The Requestors also argue that the existing compensation and resettlement framework are outdated. Regarding future resettlements for the Bujagali Interconnection Project the Requestors therefore call for an "*updated compensation and resettlement framework that are in line with the current economic situation*."

*In the view of the Requestors, the lack of a detailed and updated compensation and community development action plan is violating the ADB Group's policies on Involuntary Resettlement (2003), Good Governance (2000) and Environmental and Social Auditing (2000), Industrial Policy Guidelines, Stakeholders Consultations and Participation (2001).*

## **7. Consultations Concerns**

The Requestors say that there is evidence in BEL's SEA that consultations have taken place. However, the Requestors allege that project proponents confuse consultations with true participation in a decision making process, arguing that the SEA does not indicate how each of the stakeholders' concerns raised during the consultation process are going to be

addressed. Moreover, they claim that consultations with the 240 clans in Busoga and 52 clans in Buganda were not done at all.

*The Requestors are of the opinion that the failure to address concerns raised and obtain agreements during the consultation process by dam developers violates African Development Bank's Policies on Stakeholder Consultation and Participation (2001) Environmental, Social Auditing Guidelines (2003) and Environmental Policy (2004).*

## **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". Examples are given for water quality, climate and air-borne particulate data which were done almost ten years ago. According to the Requestors the SEA does not reflect the current environmental realities, e.g. declining lake and river water levels, degradation of wetlands and forests, increased silting, climate change. The Requestors also express doubts about the fish report in BEL's studies.

## **9. Faunal (Terrestrial & Aquatic)**

The Requestors claim that BEL's EIA studies on animals, birds and aquatic life were carried out for very short periods of one to two months, which according to them do not give the variation in species distribution and diversity that usually occur over a period of one year.

*The Requestors are of the opinion that the failure to adequately conduct environmental assessment violates the ADB Group's Policies on Environmental and Social Auditing (2003) and Environmental Policy (2004).*

## **Actions taken by the Requestors**

The Requestors state that they have requested additional information from the World Bank, the Uganda Government and the developer (BEL), arguing that available information does not address their concerns. Such information includes (i) a tariff evolution of the Bujagali project over the projects life, (ii) cumulative impact assessment of having many dams on the same river, (iii) evidence of a commitment on the Kalagala off-set, (iv) an updated mechanism and commitment on the compensation and resettlement framework, (v) dam safety strategies and disaster preparedness mechanisms for Bujagali and power stations upstream the Nile, (vi) a comprehensive assessment of the hydrological and climate change risks, and (vii) a comprehensive economic, affordability and option assessment of the Bujagali dam project.

With respect to consultations with the African Development Bank, the Requestors state in an additional information to the Request provided to CRMU on 18 and 28 May 2007 that they learnt about the ADB involvement in the projects at a very late stage, in fact only through the media a few days after a public dialogue organized in Kampala on 30 March 2007. Furthermore, they state that they had a conversation with ADB staff in Kampala, however, they felt that further engagement with the Bank staff concerning the Bujagali project would not resolve their issues.

The Requestors' claims of non-compliance with policies, procedures and guidelines of the African Development Bank include:

- Information Disclosure
- Environmental Assessment
- Economic Evaluation of Investment Operations
- Poverty Reduction
- Involuntary Resettlement
- Accountability
- Good Governance
- Stakeholders Consultations and Participation
- Safety of Dams
- Integrated Environmental and Social Impact Assessment (IESIA)
- Environment and Social Auditing

By registering the Request for Compliance Review, CRMU decided not to undertake a Problem-Solving exercises, inter alia because the nature of the problems referred to in the Request could not likely be resolved in a Problem-Solving exercise.

In accordance with paragraph 31 of the IRM Operating Rules and Procedures, the Bank's Management must provide the CRMU by no later than 3 July 2007 with written evidence that it has, or intends to comply with the Bank Group's relevant policies and procedures.

The Request has been assigned Request number RQ2007/1. The Requestors shall refer to this Request number in future communication. All decisions relating to the Request will, until further notice, be communicated to the following person at the following address:

Mr. Frank Muramuzi  
 Executive Director  
 National Association of Professional Environmentalists  
 P.O Box 29900  
 Kampala, Uganda

After receiving the Management's response and possible additional information from the Requestors, the Director of CRMU will, in accordance with paragraph 44 of the IRM Operating Rules and Procedures determine if the Request is eligible for a Compliance Review. If determined eligible, the Director will submit a report to the Boards of Directors and/or the President, depending on the status of the projects, with recommendations for Compliance Review. If the Request is determined ineligible by the Director, the procedures described in paragraph 48 of the IRM Operating Rules and Procedures will apply.

Yours sincerely,



Per Eldar Sovik  
 Director

Compliance Review and Medication Unit

cc. Mr. Frank Muramuzi  
Executive Director  
National Association of Professional Environmentalists

Mr. Donald Kaberuka  
President  
The African Development Bank Group

The Executive Directors and Alternates  
The African Development Bank Group