

**Inspection Panel**

**Report and Recommendation on a  
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)**

**December 16, 2016**



**THE WORLD BANK**  
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Transformation Phase III Project (P133312)**

**Summary**

1. This Report addresses two Requests for Inspection of the Private Power Generation (Bujagali) Project (the “Bujagali project”)<sup>1</sup>, the Water Management and Development Project (the “WMDP”), and the Energy for Rural Transformation Phase III Project (the “ERT-III”). The complaints raise concerns about potential social and environmental harms caused by the construction of the Isimba dam reservoir and the consequent flooding of the Kalagala Offset Area (KOA).<sup>2</sup> While the World Bank is not financing the Isimba dam, the Requesters claim the flooding will undermine the management of protected natural resources in the KOA, which is a requirement of an Indemnity Agreement (IA) signed between the International Development Association (IDA) and the Government of Uganda (GoU) as part of the Bujagali project. On the basis of its eligibility assessment and observations below, the Panel recommends to defer by up to 12 months its decision on whether to recommend an investigation. This deferral will enable the Panel to review an Environmental and Social Impact Assessment (ESIA) Addendum currently under preparation, which assesses the impacts of the Isimba dam on the KOA and resulting mitigation measures.

**A. Introduction**

2. On May 1, 2016, the Inspection Panel received a Request for Inspection submitted by three residents of the Jinja district in Uganda, supplemented with additional information received on June 20, 2016. The Requesters claim they will likely suffer environmental and social harm as a result of the filling of the Isimba dam reservoir, which will flood parts of the KOA. According to them, this will undermine the management of protected natural resources in violation of the IA. The World Bank<sup>3</sup> is not financing the Isimba dam, neither is it involved in the filling of its reservoir.

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<sup>1</sup> The Panel previously conducted an investigation into the Bujagali project and issued its investigation report in 2008. See: [http://ewebapps.worldbank.org/apps/ip/PanelCases/44-Investigation%20Report%20\(English\).pdf](http://ewebapps.worldbank.org/apps/ip/PanelCases/44-Investigation%20Report%20(English).pdf) The Panel and the independent recourse mechanism of the African Development Bank, which also received a complaint, conducted a joint mission. World Bank Management continues submitting Progress Reports on the implementation of its Action Plan to the Board to date. The latest one was submitted in December 2015.

<sup>2</sup> The KOA includes a 10-km long stretch of the Nile River. The southern and northern boundaries of the KOA are about 12.5 km and 22.5 km downstream of the Bujagali plant. The KOA includes two forest reserves on the river banks, the Kalagala Central Forest Reserve (CFR) and the Nile Bank CFR. Specific protections also apply to the Mabira CFR. (Management Response, page 5)

<sup>3</sup> The terms “Bank”, “World Bank” and “IDA” are used interchangeably in this document. The term “World Bank Group” is used when reference is made to IDA, the International Finance Corporation, and the Multilateral Investment Guarantee Agency.

3. On September 19, 2016, the Panel received a second Request for Inspection submitted by three residents of the Busoga region<sup>4</sup> of Uganda, also associated with the flooding of the KOA. The Request claims that the filling of the Isimba dam reservoir at its tallest proposed height will flood and affect the KOA “*heavily and irrevocably*.”<sup>5</sup> They claim likely environmental, cultural, economic, and health-related harm. Both groups of Requesters asked the Panel to keep their identities confidential.

4. As part of its due diligence, on July 21, 2016 the Panel met with Bank Management to better understand the projects and their status. The Panel also spoke with the Requesters at different occasions to learn more about their concerns. On September 6, 2016, the Panel registered the first Request (RQ 16/05), and on September 22, 2016, the second Request (RQ 16/08). Since both requests raise similar issues and projects, the Panel informed the Board of Executive Directors that for reasons of economy and efficiency it is processing the two Requests jointly (hereinafter both requests are referred to jointly as the “Request”).

5. Management submitted its Response to the Registration on October 31, 2016. On November 30, 2016, the Panel submitted to the Board a Request for Extension for Submission of the Inspection Panel Report and Recommendation until December 16, 2016, to provide time for further consultations with stakeholders.

6. In accordance with the Resolution establishing the Inspection Panel,<sup>6</sup> the purpose of this document is to make a recommendation to the Board of Executive Directors as to whether the Panel should investigate the matters alleged in the Request. The Panel’s recommendation is based on its consideration of the technical eligibility of the Request and its assessment of other factors as reflected in the Panel’s Resolution and its 2014 Operating Procedures.<sup>7</sup>

7. This document provides a description of the projects relevant to the Request (Section B), a summary of the Request (Section C), a summary of the Management Response (Section D), the Panel’s review of the Request and the Management Response (Section E), and the Panel’s Recommendation (Section F).

## **B. Description of the relevant Projects**

8. The Request relates to four projects, one of which, the Isimba Hydropower Plant (HPP) project, is not financed or otherwise supported by the World Bank Group. The Isimba HPP project and the three relevant Bank-supported projects are summarized in this section.

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<sup>4</sup> The Busoga region comprises eight districts: Kamuli, Iganga, Bugiri, Mayuge, Jinja, Luuka, Kaliro and Busiki.

<sup>5</sup> Second Request for Inspection, page 1.

<sup>6</sup> International Development Association (Resolution No. IDA 93-6), The World Bank Inspection Panel, September 22, 1993 (“the Resolution”). Available at:

<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf>.

<sup>7</sup> Inspection Panel Operating Procedures, April 2014. Available at:

<http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2014%20Updated%20Operating%20Procedures.pdf>.

9. The **Isimba HPP project** includes a 183.2 MW run-of-the-river plant with a dam located on the Nile River several kilometers downstream of the Simba Falls and approximately 36 kilometers downstream of the Bujagali HPP dam. The maximum height of the dam structure is planned to reach 36.9 meters, the reservoir surface area 19.4 square kilometers and its volume 60.8 million cubic meters. The reservoir, when completely filled, will extend around 18 kilometers upstream; while it will not reach the location of the Kalagala Falls, it will flood about 4.5 kilometers of the Nile River within the KOA. The Isimba reservoir will flood five of the 13 rapids located between the Bujagali HPP and the Isimba HPP; two of these affected rapids are within the KOA.<sup>8</sup>

10. A technical feasibility study, ESIA's and a Resettlement Action Plan (RAP) were completed by 2014. Construction started in April 2015 and is expected to be completed in August 2018. According to the Management Response, the construction at present is about 45 percent complete.<sup>9</sup>

11. The Bank-supported **Bujagali project** includes a 250 MW run-of-the-river hydropower plant on the Nile River, a reservoir and a dam with a maximum height of about 30 meters. The World Bank Group support for the project includes an IDA Partial Risk Guarantee<sup>10</sup>, approved on April 26, 2007 in the amount of up to US\$115 million, IFC loans totaling US\$130 million, and a MIGA political risk insurance for up to US\$115 million. The IDA guarantee is set to expire in November 2023 upon repayment of the guaranteed commercial loans.<sup>11</sup>

12. The Bujagali plant entered into operation in August 2012.<sup>12</sup> Assessments conducted for the Bujagali project concluded that it would have adverse impacts on natural habitats, including fisheries, forests, and areas of specific cultural relevance to local communities.<sup>13</sup> According to the World Bank's policy on Natural Habitats (OP 4.04), impacts on natural habitats need to be mitigated through the minimization of habitat loss and the creation and maintenance of ecologically similar protected areas<sup>14</sup>, which in this case led to the creation of the KOA. An IA<sup>15</sup> between IDA and the GoU was signed on July 18, 2007, in which the GoU agrees to set aside the KOA *"to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association."*<sup>16</sup> The IA further states that tourism development in the KOA *"will be carried out only in a manner acceptable to the Association."*<sup>17</sup> The GoU in the IA also agreed that it would not develop power generation that could adversely affect the protection of the KOA *"without the prior agreement of the*

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<sup>8</sup> Management Response, page 27.

<sup>9</sup> Management Response, page 27.

<sup>10</sup> The Bujagali Project Appraisal Document (PAD) explains that *"the proposed IDA PRG will provide a guarantee to commercial lenders against debt service payment defaults resulting from the Government's failure to meet its payment obligations as stipulated under the IA and the Government Guarantee."* PAD, page 12.

<sup>11</sup> Guarantee Agreement (B-0130-UG), December 21, 2007, page 49; Management Response, page 29.

<sup>12</sup> Management Response, page 29.

<sup>13</sup> Management Response, page 29.

<sup>14</sup> OP 4.04 on Natural Habitats, para. 5.

<sup>15</sup> Indemnity Agreement, Partial Risk Guarantee for the Private Power Generation (Bujagali) Project, between International Development Association and Republic of Uganda, dated July 18, 2007.

<sup>16</sup> Indemnity Agreement, page 9, section 3.06. (a).

<sup>17</sup> Indemnity Agreement, page 9 section 3.06. (a).

Association.”<sup>18</sup> The IA remains in effect until the commercial loans guaranteed by IDA are fully repaid, which is expected to occur in November 2023.<sup>19</sup>

13. The GoU is required, under the IA, to conserve the present ecosystem of the Mabira Central Forest Reserve (CFR), the Kalagala CFR and the Nile Bank CFR on the banks of the Kalagala Falls through a sustainable management program and budget.<sup>20</sup> The Kalagala Offset Sustainable Management Plan (KOSMP) was prepared by the GoU and covers the period 2010-2019.<sup>21</sup> The implementation of the Management Action Plan as a response to the Panel’s earlier investigation into the Bujagali project has largely been completed, but one of the remaining actions is the continued and satisfactory implementation of the KOSMP.<sup>22</sup> The implementation of specific activities under the KOSMP is also supported by the Bank-financed WMDP, as discussed below.

14. The **WMDP** was approved on June 26, 2012 for an amount of US\$135 million equivalent, with a closing date of December 31, 2018. It is a Category B project which was 38.29 percent disbursed at the time of receipt of the Request. The WMDP aims to (i) improve integrated water resources planning, management and development, and (ii) improve access to water and sanitation services in priority urban areas.<sup>23</sup> The KOSMP sub-component of the project (US\$4.8 million equivalent) seeks to “*support priority investments related to the implementation of the environmental offset that complements the Bujagali Hydropower Project.*”<sup>24</sup> According to Management, this sub-component “*partially complements the resources and efforts of the GoU to comply with its obligations under the IA for the Bujagali project through the implementation of the KOSMP*”<sup>25</sup> and includes several activities.<sup>26</sup>

15. The **ERT-III** was approved on June 5, 2015 for an amount of US\$136.2 million equivalent. The closing date is set for December 31, 2020. This project aims to increase access to electricity in rural areas of Uganda.<sup>27</sup> According to the Management Response, this project is also financing

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<sup>18</sup> Indemnity Agreement, page 9 section 3.06. (a).

<sup>19</sup> Indemnity Agreement, page 11; Management Response page 30.

<sup>20</sup> Indemnity Agreement, page 9 section 3.06. (a).

<sup>21</sup> Management Response page 30.

<sup>22</sup> The Fifth Progress Report on the Implementation of Management’s Action Plan in Response to the Inspection Panel Investigation Report on the Bujagali Project (December 10, 2015) states that “*monitoring of the implementation of part of the SMP [Sustainable Management Plan] has been undertaken and will continue*”. Fifth Progress Report, page 2.

<sup>23</sup> Project Appraisal Document (PAD), Water Management and Development Project, June 1, 2012, page viii.

<sup>24</sup> PAD, Water Management and Development Project, page 7.

<sup>25</sup> Management Response, page 31.

<sup>26</sup> The KOSMP activities supported by the WMDP include: procure a service provider to map degraded areas, survey and demarcate boundaries of CFRs and River Banks; coordinate, supervise and provide technical backstopping to the service provider; procure a service provider to plant and tend the plantings in the degraded areas of Mabira, and its boundaries and within the Nile River banks; sign an MoU with NFA on raising seedlings, supervision and technical backstopping of the service provider on enrichment planting; map out small scale and commercial tree growers, facilitate them and technically support them to grow trees on their land; train, facilitate and provide technical support to 20 community groups within the catchments of the Nile River to engage in high value sustainable agriculture; identify and open trails to high value sites within the Mabira ecosystem to promote tourism; procure a consultant to conduct the ecological and socioeconomic survey for Mabira ecosystem and update the management plan accordingly; and procure a consultant to establish a digital data base for Mabira, and train staff on how to collect data and update the database. Management Response, pages 31 and 32.

<sup>27</sup> PAD, Energy for Rural Transformation Project, May 14, 2015, pages viii, ix.

the preparation of an Addendum to the ESIA that the GoU had prepared for the Isimba HPP project. The objective of this ESIA Addendum is to assess the main environmental and social impacts of the Isimba dam on the KOA and corresponding mitigation measures, if any. According to Management, the Addendum is expected to be finalized by mid-2017.<sup>28</sup>

### C. Summary of the Request

16. The first Request argues that people living and deriving sustenance from the KOA are likely to suffer grave harm as a result of the Bank's failure to hold the Government of Uganda to its commitments in the IA signed as part of the Bujagali project. The Request explains that the development of the Isimba dam will undermine the management of protected resources such as forest reserves, river banks and wetlands, and will undermine and eliminate benefits from the wider socio-economic development framework of the Bujagali project. The Requesters also claim that immense opportunities for sustainable development will be "*extinguished*."<sup>29</sup> According to the Request, the flooding of the KOA will negatively impact the ecological and social functioning of the river section set aside for conservation.

17. The Request explicitly alleges non-compliance with the Bank's policies on Environmental Assessment (OP/OP 4.01), Forests (OP/BP 4.36), Safety of Dams (OP/BP 4.37) as well as Physical Cultural Resources (OP/BP 4.11), and requests "*the Inspection Panel recommend to the World Bank's Executive Directors that an investigation of these matters be carried out*."<sup>30</sup>

18. The second Request argues that the residents living in the vicinity of the KOA are likely to suffer environmental, economic, cultural and health-related harm from the failure to protect the "*biologically diverse and culturally significant section of the Nile River and its riverbanks*."<sup>31</sup> The Requesters claim that the construction of the Isimba dam at its tallest proposed height would heavily and irrevocably impact this area "*in direct violation*"<sup>32</sup> of the IA. The Requesters explain that while they are concerned with the filling of the reservoir at its tallest proposed height and the protection of the KOA, they are not against the construction of the dam itself.

19. The Request explains that the tourism industry around the KOA provides a living for many Busoga people, and the section of the Nile that will be submerged directly supports the livelihoods of many fishermen and subsistence farmers, as well as people operating ferry boats on the river. The Requesters explain that when the Bujagali dam was constructed, the owners of restaurants, arts and crafts businesses, local fruit and vegetable stores, taxis, as well as local tour guides and entertainers, saw their businesses "*slow down or disappear*."<sup>33</sup> The remaining business owners are afraid that the flooding caused by the Isimba dam will harm them again. According to the Request, the decline in tourism will also affect the amount of taxes collected, national revenues, and ultimately the maintenance of public infrastructure in the area. The Requesters are also concerned

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<sup>28</sup> Management Response, page 32.

<sup>29</sup> First Request for Inspection, page 3.

<sup>30</sup> First Request for Inspection, page 3.

<sup>31</sup> Second Request for Inspection, page 1.

<sup>32</sup> Second Request for Inspection, page 1.

<sup>33</sup> Second Request for Inspection, page 1.

about political implications and fear that joblessness will rise, leading to many problems “*such as theft and gambling, excessive drinking, drug abuse, and other social ills.*”<sup>34</sup>

20. The Request also claims that this section of the Nile River contains many unique species of plants and animals, which will be lost forever if the KOA is not protected. According to the Request, this area is also home to important local spiritual and cultural figures. The Requesters explain that the “*Busoga gods and spirits that used to guard the Bujagali falls*”<sup>35</sup> moved away when the Bujagali dam was built. The Requesters are concerned that the Busoga people will suffer if the gods move away again after the flooding of Itanda, which is located in the KOA. The Requesters also express concern about health impacts resulting from sewage and industrial waste in the stagnant water, with deadly diseases increasing. They also explain that crocodiles will move to the stagnant waters and attack people and animals.

#### **D. Summary of the Management Response**

21. Management in its Response argues that the Request for Inspection is ineligible on the following grounds. First, the potential harm alleged by the Requesters does not stem from a Bank-financed project, but is related to the development of the Isimba project, which is not financed by the Bank and hence cannot be subject to Panel review. Second, the Bank-financed Bujagali project is closed and as such is not eligible for the Panel’s review. Third, the two additional Bank-supported operations mentioned in the Inspection Panel’s registration do not relate to the harm alleged in the Request. Finally, the Management Response argues that the issues raised in this Request were addressed in the Panel’s recommendation relating to prior requests in 2001 and 2007.

22. Management argues that the Panel’s jurisdiction over any legal agreement, whether loan, grant or guarantee, ends when the project closes. The Bujagali project has been implemented, commercial operations began in 2012, and the commercial loans under the Bank guarantee were fully disbursed by 2012. Management therefore argues that, as defined by Bank policy, the Bujagali project has closed.

23. The Management Response states that the WMDP is financing the implementation of specific forestation-related activities as part of the KOSMP developed under the Bujagali project, and does not support any intervention that could create or contribute to the alleged harm. The ERT-III includes a component that finances the preparation of an Addendum to the government’s ESIA for the Isimba dam to evaluate potential impacts of the dam on the KOA.

24. According to the Management Response, in early 2015 the Bank noted that the design of the dam could have an impact on the KOA and that there was a potential for non-compliance with the IA. The GoU confirmed its commitment to comply with the IA and shared the draft ESIA with the Bank. The Bank then informed the GoU that the draft ESIA did not include sufficient critical information to confirm IA compliance. The GoU consequently requested the Bank to finance the ESIA Addendum.<sup>36</sup> According to Management, the Bank has “*gone out of its way*”<sup>37</sup> to finance

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<sup>34</sup> Second Request for Inspection, page 2.

<sup>35</sup> Second Request for Inspection, page 2.

<sup>36</sup> Management Response, page 15.

<sup>37</sup> Management Response, page vi.

the ESIA Addendum to support the GoU identify and manage specific impacts on the KOA. The Management Response explains that, on the basis of the findings of the ESIA Addendum, the Bank will determine whether any adjustments to the KOSMP might be appropriate to continue the protections of the ecosystem as agreed in the IA.

25. Management argues that the Requesters' claim that the Isimba dam will have an adverse impact on the KOA is premature, since the ESIA Addendum is still under preparation. Also, the Management Response states that any impact on the KOA would only occur in conjunction with the inundation process, which is expected to occur in 2018. According to Management, the GoU at this point is not in breach of the IA. The Management Response also explains that the Bank requested additional studies to better analyze concerns regarding biodiversity, and specifically fish species endemic to this part of the Nile River. The Management Response further explains that tourism and related income is not protected under the IA, which seeks to limit tourism developments in the KOA. Management also argues that the claims related to cumulative health, and environmental and cultural impacts are unsubstantiated and premature.

26. The Management Response explains that the Bank commits to continue working with the GoU to finalize the assessment of impacts on the KOA to ascertain compliance with the IA. According to Management, if the ESIA Addendum demonstrates that the KOA is under threat, and the GoU refuses to undertake potential remedial measures, it may merit Bank intervention. The Management Response also states that the Bank will work with the GoU on appropriate mitigation measures and to advise the GoU regarding livelihood restoration measures and compensation provided to people affected by the Isimba dam. The Management Response also notes that the Bank's Board has been informed of the issues regarding the Isimba dam and its potential impact on KOA and the IA.

## **E. Panel Review of the Request and of the Management Response**

27. The Panel's review is based on information presented in the Request, the Management Response, other documentary evidence, and additional communications with the Requesters and Management. The following review covers the Panel's determination of the technical eligibility of the Request according to the criteria set forth in the 1999 Clarification (subsection E.1), and observations on other factors and the Panel's review supporting the Panel's recommendation (subsection E.2).<sup>38</sup>

### **E.1. Determination of Technical Eligibility**

#### **E.1.1. Technical Eligibility of the Request**

28. The Panel is satisfied that the Request meets all six technical eligibility criteria provided for in paragraph 9 of the 1999 Clarifications. The Panel notes that its confirmation of technical eligibility, which is a set of verifiable facts focusing to a large extent on the content of the Request

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<sup>38</sup> "1999 Clarification of the Board's Second Review of the Inspection Panel", April 1999 ("the 1999 Clarifications") available at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1999ClarificationoftheBoard.pdf>.



as articulated by the Requesters, does not involve the Panel's assessment of the substance of the claims made in the Request.

29. Criterion (a): *"The affected party consists of any two or more persons with common interests or concerns and who are in the borrower's territory."* The Request was signed by six people. The Panel confirms that two or more of the Requesters live in the borrower's territory and are affected by Project activities. The Panel thus considers this criterion as met.

30. Criterion (b): *"The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester."* The Request relates to four projects, one of which, the Isimba HPP project, is not Bank-supported. The Panel notes that the Requesters, in substance, claim that harm is caused by a Bank omission leading to non-compliance with the Bank's Natural Habitats policy (OP 4.04), which required the creation and maintenance of the KOA as an offset for natural habitats lost as a result of the Bujagali project. The Requesters are concerned that the Bank is not holding the GoU to its contractual obligations under the IA, which was signed between the Bank and the GoU as part of the Bujagali project. The IA requires the protection of the KOA, and the Requesters believe that the GoU is violating the IA by implementing the Isimba HPP project, which will flood part of the KOA. According to the Requesters, the failure of the Bank to protect the KOA would result in serious violations of Bank policy. The Panel notes that, according to its Resolution, the Panel receives requests covering *"situations where the Bank is alleged to have failed in its follow-up on the borrower's obligations under loan agreements (...) provided in all cases that such failure has had, or threatens to have, a material adverse effect."*<sup>39</sup>

31. With regard to the WMDP, the Management Response argues that even if the Isimba HPP project were to affect this project's ability to fully achieve its objectives, this would not create or contribute to the alleged harm. According to Management, such a situation would not represent a deterioration when compared to the without-project situation. The Panel notes that the WMDP seeks to *"support priority investments related to the implementation of the environmental offset that complements the Bujagali Hydropower Project."*<sup>40</sup> The Requesters' claim of harm resulting from a failure to protect the KOA could plausibly be linked to policy non-compliance in the context of activities<sup>41</sup> supported under this project.

32. Regarding the ERT-III Project, Management explains that the assessment conducted under this project will allow the Bank obtain a robust and credible evaluation of any impacts from the Isimba HPP project on the KOA and is in no way intended to serve as the basis for consideration of any IDA-supported project. Management concludes that this project cannot be credibly linked to the alleged harm raised in the Request. The Panel notes that the ERT-III project is financing an Addendum to the Isimba HPP project's ESIA, which is intended to assess and mitigate the impact of the project on the KOA. The Bank-supported ESIA Addendum will determine whether any specific measures will be needed to continue the protections as agreed in the IA. Such measures would be incorporated in the KOSMP, which is also supported by the WMDP and thus any deficiencies in the ESIA Addendum could be plausibly linked to future harm.

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<sup>39</sup> Resolution Establishing the Inspection Panel (Resolution No. IDA 93-6, September 22, 1993), paragraph 12.

<sup>40</sup> Project Appraisal Document ("PAD"), Water Management and Development Project, June 1, 2012, page 7.

<sup>41</sup> See footnote 26 on page 4 for the specific activities supported under the WMDP.

33. The Panel concludes that the Requesters' concerns relate to potential harm resulting from the expected flooding of parts of the KOA and the failure to establish mitigation measures as required by the Bank's policy on Natural Habitats (OP/BP 4.04). The Requesters also explicitly refer to the Bank's policies on Environmental Assessment (OP/OP 4.01), Forests (OP/BP 4.36), Safety of Dams (OP/BP 4.37) as well as Physical Cultural Resources (OP/BP 4.11). The Panel is thus satisfied that this criterion is met.

34. Criterion (c): *"The request does assert that its subject matter has been brought to Management's attention and that, in the Requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures."* The Panel has verified that the Requesters' concerns were brought to the Bank's attention prior to filing the Request, including in September and December of 2014. The Panel is satisfied that this criterion has been met.

35. Criterion (d): *"The matter is not related to procurement."* The Panel is satisfied that the claims raised in the Request for Inspection do not relate to procurement, hence this criterion is met.

36. Criterion (e): *"The related loan has not been closed or substantially disbursed."* The 1993 Resolution<sup>42</sup> establishing the Panel explicitly excludes from the Panel's purview Requests filed after a project's closing date or the substantial disbursement of a loan (95 percent or more). As noted above, this Request relates to three different Bank-supported operations. At the time of receipt of the Request, the WMDP, which supports the *"implementation of the environmental offset that complements the Bujagali Hydropower Project"* was open and 42.66 percent disbursed; the ERT-III project, under which the Bank is financing an ESIA Addendum assessing the impact of the Isimba HPP on the KOA, was open and less than 1 percent disbursed. As discussed in detail below, in section *E.1.2 Panel Analysis of the eligibility of the Bujagali project* of this report, the guarantee for the Bujagali project has not expired and the Bank continues to monitor the operation. Consequently, the Panel is satisfied that all three projects meet this criterion.

37. Criterion (f): *"The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request."* Management argues that the Panel already made a recommendation on the issues raised in the Request. According to the Management Response, the requirements set forth in the IA were the direct result of an effort to address the Panel's findings from the 2007 Bujagali investigation.<sup>43</sup> In its first Bujagali investigation in 2001, the Panel assessed concerns about resettlement as well as environmental and economic impacts, including electricity tariff increases, and impacts on tourism and fisheries resulting from the extension of Owens Falls dam and the construction of the Bujagali dam. In its 2007 Bujagali investigation, the Inspection Panel responded to complaints about resettlement and environmental, cultural, and spiritual impacts due

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<sup>42</sup> International Development Association (Resolution No. IDA 93-6), The World Bank Inspection Panel, September 22, 1993 ("the Resolution"), para. 14 (c). Available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf>.

<sup>43</sup> On March 7, 2007 the Inspection Panel received a Request for Inspection regarding the Bujagali project and issued its investigation report on August 29, 2008.

to the construction of the Bujagali dam. The filling of the Isimba HPP reservoir and its expected flooding of parts of the KOA constitutes new evidence not considered at the time of previous Requests for Inspection. The Panel therefore confirms that it has not previously made a recommendation on the subject matter of the Request and the construction of the Isimba dam possibly impacting the protection of the KOA constitutes new evidence.

### **E.1.2. Panel analysis of the eligibility of the Bujagali project**

38. With regards to the Bujagali project, Management argues that it is closed and therefore not eligible for a Panel review. The Management Response states that in accordance with Bank policy OP/BP 10.00 on investment project financing, the Bank guarantee closing date is the expected completion date of the project, which was in August 2012 in this case. The Management Response further argues that following the closing date of the project, as per policy, the Bank “*has continued to monitor the financial risks covered by the IDA guarantee and will continue to do so until the expiration of the guarantee. Until the Guarantee expires, the GoU is bound by the contractual agreements of the IA.*”<sup>44</sup> The Panel does not agree with Management’s argument that the Bujagali project is not eligible for a Panel review for the reasons discussed in the following paragraphs.

39. First, the Bujagali guarantee was approved when the Bank policy on guarantees OP/BP 14.25 was in effect, which did not include a guarantee closing date. Therefore, neither the IDA Guarantee Agreement nor the IA refer to a closing date. The IA remains in effect until the commercial loans guaranteed by IDA are fully repaid, which is expected to occur in November 2023, and the GoU continues to be bound by its obligations under the IA until then.<sup>45</sup> The concept of a closing date for guarantee operations was introduced in 2013 through the Bank’s policy on investment project financing OP/BP 10.00, which states that the closing date for a guarantee is the expected project completion date.<sup>46</sup> However, the IDA Guarantee Agreement and the IA were not amended to introduce a legally binding closing date per OP/BP 10.00 for the Bujagali guarantee operation. Furthermore, at the time the Panel received the Request for Inspection, the Bank had not yet initiated the closing of the Bujagali guarantee. When the Panel received the Request for Inspection on May 1, 2016, the Bujagali project was still open. The retroactive marking of the Project as closed as of August 1, 2012 was only requested on May 4, 2016.<sup>47</sup>

40. Second, the Panel notes that in accordance with both the previous Bank policy on guarantees (OP/BP 14.25) and the policy on investment project financing (OP/BP 10.00), which replaced this policy in 2013, the Bank’s monitoring of a guarantee operation (“supervision” under the previous policy) continues until the expiration of the guarantee.<sup>48</sup> The previous OP/BP 14.25 on guarantees distinguished between two phases of supervision: the first phase covered the period from guarantee effectiveness to project completion, the second phase from project completion to guarantee expiration, which is defined as the date on which there is no exposure for IBRD or IDA

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<sup>44</sup> Management Response, page 3.

<sup>45</sup> Management Response, page 3.

<sup>46</sup> Operational Policy 10.00, para. 26.

<sup>47</sup> Communication dated May 4, 2016 notes the urgency of requesting to add the closing date in the project portal due to “*a possible new Inspection Panel request surrounding this project*”.

<sup>48</sup> Bank Procedure 14.25, para. 28, 32; Operational Policy 10.00, para. 21.

under a guarantee.<sup>49</sup> The Bank is required to prepare annual Implementation Status and Results Reports for active guarantees until their expiration.<sup>50</sup> While the previous policy did not include a closing date for guarantee operations, OP/BP 10.00 introduced that the closing date for a guarantee is the expected project completion date.<sup>51</sup> According to OP/BP 10.00, the expiration date of a Bank guarantee is the date after which the Bank stops accepting calls on the guarantee.<sup>52</sup> As noted above, according to OP/BP 10.00, monitoring by the Bank of a guarantee continues until the Bank guarantee expiration date.<sup>53</sup> Following project completion, the Bank monitors the specific risks covered by the guarantee and this monitoring function is carried out at the corporate level.<sup>54</sup>

41. The Panel notes that the IA signed between the Bank and the GoU remains in effect until the expiration of the guarantee in 2023, and as noted in the Management Response, the Bank continues to monitor risks covered under the guarantee and follows-up on the GoU's obligations under the IA, including the protection of the KOA. The Bank is currently assessing potential impacts of the Isimba HPP project on the KOA through the preparation of an Addendum to the government's ESIA for the Isimba HPP project. Consequently, the Panel's accountability mandate covers the Bank's engagement in monitoring the risks related directly to the guarantee operation and ensuring that the borrower comply with the obligation covered under the IA to protect the KOA.

42. Third, to the best of the Panel's knowledge, neither the International Finance Corporation (IFC) nor Multilateral Investment Guarantee Agency (MIGA) policies on guarantees includes a guarantee closing date, and IFC and MIGA's monitoring of social and environmental policy requirements continues until guarantee expiration. The Panel observes that the Office of the Compliance Advisor/Ombudsman can review IFC and MIGA projects until guarantee expiration. The Panel notes the inconsistency between the policies in the World Bank Group and believes that the closing date established for guarantees for IBRD/IDA operations should not be arbitrarily used to impede accountability, specifically where the Bank identifies real environmental and social risks, follows-up on the GoU's obligations under the IA (in this case through the preparation of the ESIA Addendum), and possibly places measures in place to mitigate them.

## **E.2. Panel Observations Relevant to its Recommendation and Panel Review**

43. In making its recommendation to the Board and in line with its Operating Procedures, the Panel considers the following issues: (i) whether there is a plausible causal link between the harm

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<sup>49</sup> Bank Procedure 14.25, Guarantees, December 2005, para. 28, footnote 17.

<sup>50</sup> Bank Procedure 14.25, Guarantees, December 2005, para. 32.

<sup>51</sup> Operational Policy 10.00, para. 26.

<sup>52</sup> Operational Policy 10.00, para. 26. On December 3, 2013, Management submitted to the Board an approach paper titled *Enhancing the World Bank's Operational Policy Framework on Guarantees*, which describes the changes to the supervision of guarantee operation. The paper explains that under the new policy framework, the Bank's "full" supervision "is required until the completion of the underlying project" adding that after project completion supervision would be carried out "until the expiration of the guarantee, focusing on the specific risks covered by the Bank guarantee." It further states that "the type of supervision and monitoring needed at different stages of the lifespan of each Bank guarantee" needed clarification in order "to avoid overburdening the front lines unnecessarily whilst maintaining the right type of support to and monitoring of guarantee operations."

<sup>53</sup> Operational Policy 10.00, para. 21.

<sup>54</sup> Bank Procedure 10.00, para 40.

alleged in the Request and the project; (ii) whether the alleged harm and possible non-compliance by the Bank with its operational policies and procedures may be of a serious character; and (iii) whether Management has dealt appropriately with the issues, or has acknowledged non-compliance and presented a statement of remedial actions that address the concerns of the Requesters. Below the Panel records its preliminary observations on the alleged harm and compliance, noting that in doing so, it is not making any definitive assessment of the Bank's compliance with its policies and procedures, and any material adverse effect this may cause.

44. After receipt of the Request, the Panel spoke to the Requesters to seek more clarification on the alleged harm. The Panel was told that the Requesters have not been informed about the design and status of the Isimba HPP project and therefore lack the necessary information to be able to assess the project's impacts on them and their environment in detail. According to the Requesters, the ESIA was not made public or shared with them. With regards to the consultations for the Bank-supported ESIA Addendum, the Requesters told the Panel that no public hearing with the community took place to date. Only one Requester was invited to meet with specialists, but he argued that it seems that none of the issues he raised were followed up upon. The other Requesters were unaware of any consultations in relation to the ESIA Addendum.

45. The Requesters explained to the Panel that there are several factories located close to the river banks that discharge waste directly into the river. Before the construction of the Isimba dam the fast-flowing rapids would wash the waste away. The Requesters expect that the dam and related large amounts of stagnant water will result in the pollution of the river as waste builds up. Families living close to the river in the KOA may no longer have access to clean water. Also due to the presence of stagnant water, diseases like malaria are expected to increase in the KOA. In addition, once the water stops moving, the Requesters fear that overfishing will soon lead to a lack of fish living in these waters. The Requesters also expect that endangered species will lose their habitats due to the flooding.

46. The Panel further learned that the Requesters expect that the tourism industry along the Nile River, which sustains the livelihoods of many community members, will suffer and many people will be displaced as a result of the flooding. According to the Requesters, the KOA includes waterfalls and rapids used for rafting, kayaking and other tourism-related activities that are an important element of Uganda's tourism industry, which attracts over 12,000 visitors a year and has greatly contributed to the local economy. According to the Requesters, the tourism businesses operating on the river will no longer be economically viable after the flooding since no tourist is likely to travel all the way to the area when only three rapids are left. With fewer tourists coming to the area, many other related businesses, such as restaurants, coffee shops, stores, taxis and tour operators, will also no longer be able to survive.

47. The Requesters told the Panel that very few rapids will remain after the flooding of the KOA, and there is no area of similar quality and characteristics that could serve as a new offset. The Panel observed that the affected people face uncertainty about their future due to a lack of information about the project, its timelines, and the extent and nature of its potential impacts. The Requesters emphasized that, especially for the tourism industry, where large amounts of money need to be invested upfront, early planning is crucial.

48. The Panel notes that the Terms of Reference (TORs) for the ESIA Addendum state that it should include an analysis of alternatives of different dam heights, reservoir operating levels, and water release regimes, as they would differentially affect the KOA. The implications of each alternative for the conservation of the KOA and associated human uses needs to be understood and explained. Further, the Addendum should focus in particular on the inundation area, aquatic biodiversity, spiritual values, tourism and recreation, including the likely impacts on local businesses and communities, local employment and the broader economy of the area. With regard to mitigation options, the TORs state that the Addendum will include recommendations for mitigating adverse impacts on the KOA, including direct environmental and social impacts. According to the TORs, to compensate for the inundation of a part of the KOA, its boundaries could be adjusted to include an upstream segment of the Nile River with its river-edge lands.<sup>55</sup>

49. To conclude, the Panel notes that the Requesters allege environmental, economic, cultural and health-related harms, and claim that the IA was designed to protect against these type of harms occurring in the KOA. In addition, the WMDP and the ERT-III also deal with aspects relating to the protection of the KOA and can therefore plausibly be linked to the alleged potential harms. While the alleged harms have not occurred yet, the Request illustrates that they are of a serious nature as they could have far reaching impacts on the community and their environment.

## **F. Recommendation**

50. The Panel notes that the alleged harm can plausibly be linked to the three Bank-supported projects outlined above, and that the Request raises important issues of potential serious harm and policy non-compliance. The Requesters and the Request meet the technical eligibility criteria set forth in the Resolution establishing the Inspection Panel and the 1999 Clarification.

51. As stated above, Management is in the process of preparing the ESIA Addendum, which is expected to be completed by mid-2017. The objectives of the Addendum are to address the main environmental and social impacts of the Isimba HPP on the KOA and corresponding mitigating measures. In addition, Management is also supporting the development of a Long-Term Conservation Options (LTCO) Report that aims to identify options for ensuring a firm legal status for the KOA and sustainable funding.<sup>56</sup> According to the TORs, both the Addendum and the LTCO Report should provide an information base for the GoU to engage with the Bank in arriving at a mutually acceptable solution that would allow Isimba dam development to proceed in a way that is consistent with the spirit and intent of the IA.<sup>57</sup> The Management Response further explains that, on the basis of the results of the ESIA Addendum, the Bank will determine whether any adjustment to the KOSMP might be appropriate to continue the protection of the ecosystems of the Central Forest Reserves as agreed in the IA.<sup>58</sup>

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<sup>55</sup> Terms of Reference (TORs) for the Addendum to the ESIA for the Isimba Hydropower Project and Long-Term Conservation Options Report, pages 1-4.

<sup>56</sup> Terms of Reference (TORs) for the Addendum to the ESIA for the Isimba Hydropower Project and Long-Term Conservation Options Report, pages 1 and 2.

<sup>57</sup> TORs, page 2.

<sup>58</sup> Management Response, page 13.

52. Consequently, the Panel is recommending to defer its decision on whether to recommend an investigation for a period of up to 12 months and wait for the completion of the ESIA Addendum and follow-up Bank actions. In this regard, the Panel wishes to emphasize the importance of a timely completion of the ESIA Addendum, and the necessary speed and harmonization of its time schedule with the construction schedule of the Isimba dam, so that any impacts upon the KOA can be effectively mitigated. During this period, the Panel will follow the developments on the ground, in tandem with the Isimba dam construction schedule, while periodically taking stock of progress in the preparation of the ESIA Addendum and associated LTCO. The Panel will also be in touch with the Requesters with a view to informing itself as to any changes on the ground.

53. If the Board of Executive Directors concurs with this recommendation, the Panel will advise the Requesters and accordingly.

**Annex I**

**Request for Inspection**



The Executive Secretary,  
The Inspection Panel  
1818 H Street NW,  
MSN 10-1007,  
Washington, DC 20433, USA  
Email: [ipanel@worldbank.org](mailto:ipanel@worldbank.org)

April 15<sup>th</sup> 2016

RECEIVED BY IPN 5/1/2016



Attn: Ms. Dilek Barlas

Dear Madam,  
RE: FORMAL COMPLAINT ON CONSEQUENCES OF GOVERNMENT OF  
UGANDA'S BREACH OF INDEMNITY AGREEMENT IN THE BUJAGALI  
DAM PROJECT

We represent Mr. [REDACTED] a citizen of Uganda who [REDACTED]  
[REDACTED] Kampala. Our partner for purposes of correspondence on  
this matter will be Mr. [REDACTED] He can be reached on  
[REDACTED] and [REDACTED]

Our client, and the various persons who live, depend on and derive sustenance from that part of the land chat is described as the "Kalagala Falls Site ("Offset Area") are likely to suffer grave harm as a result of the International Development Association (the Association)'s failures or omissions to hold the Government of Uganda to its commitments in the Indemnity Agreement signed between the Association and the Government of the Republic of Uganda during the negotiation and financing of the Bujagali Hydropower Project located in Jinja, Uganda.

#### Background to the Case

As part of the commitments and documentation signed for the development of a Hydropower dam project at Bujagali Falls (Bujagali Project). The Government of Uganda executed an Indemnity Agreement with the Association. The Bujagali Project was Bank funded. It was apparent in the course of the development of the Bujagali project that it would have flooding and other adverse environmental and social consequences. For this purpose, the parties committed to reserve and protect the Kalagala Falls Site as was broadly defined in the various Bujagali project documents. Our client believes the commitments made in the Indemnity Agreement, IDA Guarantee Facility Agreement, Project Agreement, Implementation Agreement, the General Conditions and all other project related documents are still subsisting and will remain in force for thirty years from July 18 2007.

#### The Complaint

In the said Indemnity Agreement dated July 18 2007, the Government of Uganda committed to the Association, among other things, to:

- (i) Set aside the Offset Area exclusively to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association;
- (ii) To not develop power generation that could adversely affect the ability to maintain the Offset Area without prior consent of the Association;
- (iii) Conserve through a sustainable management program and budget, 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 the Kalagala Falls (as such Reserves are included within the Kalagala Falls Site)

It is important to note that Uganda specifically committed to not take, or permit UETCL or any other Public Sector Entity to take, any action which would prevent or interfere with the performance by Uganda or any such Public Sector Entity of any of its material obligations under the Transaction Documents (or any other related agreement - such as the Indemnity Agreement) to which Uganda is a party.

In contravention of the above-mentioned commitments, Uganda procured the Chinese Firm of China Water and Electric Engineering, which has commenced the construction of Isimba dam in the "Offset Area."

Likely Harm from Violation of Indemnity Agreement and Bank Policies

Our client is privy to an independent report commissioned to determine the impact of the Isimba dam project. That report reveals that our client, the rest of the residents who live and derive sustenance from the offset Area as well as the Ugandan nation that depends on the environmental and social benefits that were protected by the commitments in the Indemnity Agreements and the rest of the transaction documents of the Bujagali Project, are likely to suffer the following consequences:

- (i) The Sustainable Management Plan for the Offset Area recognizes that the Bujagali Project created a negative impact on the environment. The Offset area was designed as a measure to counter balance these negative impacts in the long run. These long term counterbalance measures will be eroded by the development of Isimba dam;
- (ii) The development of this dam will undermine the management of the protected resources such as the targeted forest reserves cited above, the river banks and wetlands. This will also undermine and eliminate any benefits from the wider socio-economic development framework that was considered during the Bujagali Project;

- (iii) The immense opportunities for sustainable development provided by the natural resources around the Offset Area and the Itanda Falls (including water falls, forests, land, water, wetlands, and Nile River Banks) will be extinguished. These opportunities were provided for and safeguarded in the Sustainable Management Plan for the Kalagala Offset Area;
- (iv) The construction of Isimba dam is likely to result in the flooding of the river within the Offset Area. The flooding will impact negatively upon the ecological and social functioning of the river section that was set aside for conservation due to the flooding caused by the Bujagali Project;
- (v) We also believe that if the Bank does not act to hold Uganda to its commitments, the Government of Uganda will be emboldened to flagrantly violate any commitments it has made in previous agreements or will make on future projects. This will unleash the fatal consequence of fostering a flagrant disregard of environmental and social considerations in project development, which as the Bank will agree, are central to achieving broader development goals.

The Bank's Policies that have been violated

Our client contends therefore, that the development of the Isimba dam project is in violation of the World Bank's Operational and Bank Policies, and more broadly, the Bank's 'Safeguard Policies.' Specifically, our client contends that the Isimba Dam, in so far as it is being developed in an area protected by the transaction processes of the Bujagali Dam project, offends the following Operational Policies (Ops):

- (i) OP / BP 4.01 on Environmental Assessment;
- (ii) OP 4.36 on Forests;
- (iii) OP 4.37 on Safety of Dams;
- (iv) OP 4.11 on Physical Cultural Resources.

We request the Inspection Panel recommend to the World Bank's Executive Directors that an investigation of these matters be carried out and a report be made public at the Bank's earliest. We further request that our client be availed all documents related to this project and its history. We trust that the Bank will take the necessary action to hold the Government of Uganda to its commitments in the Indemnity Agreement.

Sincerely:

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Date.

We have enclosed the following attachments for your perusal:

E&D Consulting Services: Independent Tourism and Economic Impact  
Assessment of the Proposed Isimba Hydropower project

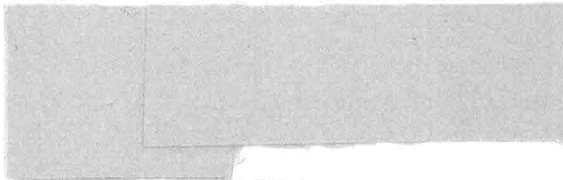
We do not authorize you to disclose our identities or our client's identities.




Jinja

RECEIVED BY IPN 6/20/2016

March 1<sup>st</sup> 2016



KAMPALA- UGANDA


Attn: Mr. 

Dear Sir:

RE: INSTRUCTIONS AND AUTHORIZATION TO ACT ON MY BEHALF  
IN RESPECT OF ALL MATTERS RELATING TO THE  
CHALLENGING OF THE ISIMBA DAM PROJECT

I refer to the several communications between your firm and me and to the captioned matter.

I am interested in challenging the legality of the construction of Isimba Dam at the present location.

I hereby instruct and authorize Messrs  and yourself to act for and on my behalf in challenging the construction of Isimba Dam through all avenues available to me within the law, including at the World Bank Inspection Panel.

Yours sincerely,

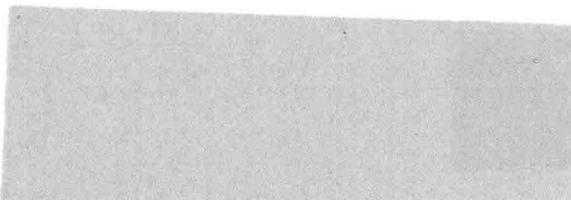




Jinja

RECEIVED BY IPN 5/1/2016

March 1<sup>st</sup> 2016



KAMPALA- UGANDA


Attn: Mr. 

Dear Sir:

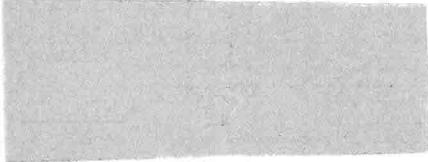
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Yours sincerely,



[REDACTED]  
Jinja

RECEIVED BY IPN 6/20/2016

[Signature]

March 1<sup>st</sup> 2016

[REDACTED]  
KAMPALA- UGANDA

Attn: Mr. [REDACTED]

Dear Sir:

RE: INSTRUCTIONS AND AUTHORIZATION TO ACT ON MY BEHALF  
IN RESPECT OF ALL MATTERS RELATING TO THE  
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I hereby instruct and authorize Messrs [REDACTED] and yourself to act for and on my behalf in challenging the construction of Isimba Dam through all avenues available to me within the law, including at the World Bank Inspection Panel.

Yours sincerely,  
[REDACTED]

[REDACTED]

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From: [REDACTED]  
Sent: Monday, July 11, 2016 9:26 AM  
To: Serge Selwan; [REDACTED]  
Subject: Response to your questions as per the inspection panel

Hi, hope this email finds you well.

The two additional signatures will be affected as a result of flooding the offset area in many ways [REDACTED] is a resident of Bujagali, Jinja, an area that was affected by the construction of Bujagali dam. His livelihood depends on tourism activities on river Nile. He previously owned a restaurant in the area. After the construction of Bujagali dam, he closed his restaurant due to lack of customers as a result of Bujagali dam project flooding the water falls that were used for tourism activities. He was forced to shift his operations in the offset area where he can derive a living.

[REDACTED] is a resident of kalagala village near Nile bank forest reserve right in the offset area. He started as a local historical traditional guide at itanda falls next to Nile bank forest reserve. Currently he is a tour operator in the area, and he has transformed the area into a tourist attraction with over 12,000 visitors a year, which has greatly contributed to the local economy of the Butagaya Sub county.

The offset area has the waterfalls and rapids which are used for rafting, kayaking and other tourism activities which 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.

Bujagali dam project had a lot of impacts, same will Isimba dam project have as a result of flooding the offset area. A lot of people are to be displaced during the construction of Bujagali dam, dynamite was being used to blast the big rocks, that caused cracks in peoples houses who live in Bujagali and up to now those houses have not been repaired. Tourism industry will be impacted, a lot of locals will loose their livelihoods. The offset area was put in place to mitigate the environmental impacts caused by Bujagali dam, so when isimba project goes ahead, there will be no mitigation measures in place, that will greatly impact on the environment.

I hope this answers your questions,  
Kind regards  
[REDACTED]



September 9, 2016

**The Inspection Panel  
World Bank**

Dear members of the Inspection Panel,

We, the residents of the Busoga region and concerned citizens, we are writing to you today to advocate for the protection of the Kalagala Offset Area (KOA). It is known that the KOA was created by the Kalagala Offset Agreement, signed by the World Bank and the Government of Uganda, with the goal of preserving and protecting a biologically diverse and culturally significant section of the Nile River and its riverbanks. Nevertheless, it is also known that the construction of the Isimba Dam to its tallest proposed height would heavily and irrevocably impact this area in direct violation of the Agreement.

We residents have raised this issue with World Bank management, but we are not satisfied that enough is being done to ensure that the Kalagala Offset Agreement is respected. If the World Bank fails to protect the KOA, the destruction of this fragile and important area will cause harm to all of us and our livelihoods, as well as the entire area's cultural heritage, and the completely unique biodiversity of the area. We believe that the World Bank has a responsibility to uphold the Kalagala Offset Agreement. Because of this, we wish to hereby file a request for inspection.

If the dam is built to its tallest proposed height, the Isimba reservoir will submerge about three quarters of the rapids that are the focus of the Kalagala Offset Area's remaining adventure tourism industry. This industry, either directly or indirectly provides a living for many Busoga, including myself. In addition, the section of the Nile that will be submerged directly supports the livelihoods of many fishermen and subsistence farmers, as well as the people who run the ferry boats across the river at designated sites. Also, this section of the Nile is home to important local spiritual and cultural figures, such as certain gods that are essential to our culture. Finally, this part of Nile is home to many unique species of plants and animals, which will be lost forever if the Kalagala Offset area is not protected.

**Economic Impacts**

The completion of Bujagali Dam a few years ago resulted in the loss of revenue and the closing of businesses for many of the people in the area of Budondo Sub-county and Jinja town in the Busoga region. Among the businesses hardest hit were those that depended on a market created by tourists (both Ugandan and Foreign), coming to the area to visit Bujagali Falls, such as local restaurants, arts and crafts businesses, taxi drivers and boda-boda drivers, local village tour guides, local entertainment, and local market shops who sold things like pineapples, mangos, papaya, avocados, etc. Many people who were employed in these areas saw their businesses slow down or disappear with the completion of the Bujagali dam.

Those of us whose businesses were able to survive the damage done by the Bujagali Dam are now afraid that the completion of the Isimba Dam, and the subsequent flooding of the Kalagala Offset, will leave us jobless and unable to support ourselves and our families. As we have seen in Bujagali village, joblessness has led to many problems that were not there before, such as theft and gambling, excessive drinking, drug abuse, and other social ills.

The decline of the tourism industry with the completion of the Bujagali dam also impacted the Ugandan government's ability to maintain the public infrastructure of our area. The government used to receive significant revenue from companies carrying out businesses on the river Nile, from license fees to Pay as You Earn (PYE) income taxes for employees registered with the National Social Security Fund (NSSF) and Uganda Revenue Authority (URA). This revenue has significantly decreased as businesses have shut down and joblessness has risen. As a result, the roads in the Busoga region are in a sorry state, full of holes. When it rains they become impassable, as there is not enough tax to fund upgrading the muddy and dusty roads in Jinja district, and the whole of the Busoga region. Things will only get worse if the remaining tour operators are forced to close.

### **Cultural Impacts**

The local gods and spirits that used to guard the Bujagali falls, and also to give blessings to the people of the Busoga Kingdom, have moved away. To us, this explains why we do not get enough rain, which leads to poor agricultural produce, which leads to famine and malnutrition in the area... If Itanda and the Nile below get flooded too, the gods will have to move again and they will be very disappointed. We are certain that if the gods do not feel honoured and respected (and this includes maintaining their known habitat in the river as it exists now) we Busoga will suffer even more problems.

Bujagali Falls had a huge, old Muvule tree where the blessing gods lived. This tree was cut down because the area was going to be flooded and the blessing gods were forced to migrate. However, before the Bujagali Falls disappeared, it is well-documented that believers in our strong Busoga culture travelled from many different areas and countries to the big Muvule tree to be blessed. Whoever received the blessings achieved what they asked for. These people could come back after a while to share testimony, and the meat of the animals they sacrificed in gratitude would feed the people of the community. The loss of another important cultural location such as this would be a grave burden on the people of this area. We are deeply concerned that this will happen again, and in far worse fashion, if the Kalagala Offset is flooded.

## Health Impacts

Many local people rely on Nile River water for domestic use, as they cannot afford to pay for tap water. Nevertheless, the Nile River quickly became contaminated after the completion of the Bujagali dam. This is because the sewage and industrial wastes from companies near the river Nile are dumped into the river. It was better before, when the Nile's waters ran quickly and did not allow the waste to pool and become stagnant. However, since the dam was built and the water does not have the opportunity to flow, there has been an increase in the spread of deadly diseases such as rampant Bilharzia and diarrhoea. Isimba dam, if built to the highest height, will just worsen this situation by creating two big sections of the Nile (Lake Bujagali and Kalagala) where waste will become trapped and breed disease.

Another unintended consequence of the lake created by the Bujagali dam is the arrival of dangerous animals like crocodiles. When the river still moved fast, crocodiles would not swim through. Now that the water does not move, there are crocodiles living in the Bujagali area, near Nile River Explorers camp, at the Buwenda and Namizi areas. This has put people at risk of being injured or killed in places where they used to be safe. It is a realistic concern that the Isimba dam will create an even larger breeding ground for these dangerous animals, which will later claim/threaten both people and other animals' lives.

## Political Impacts

The mass unemployment created in the Bujagali and Jinja area by the Bujagali Dam has spread to the rest of the Busoga region, making the Eastern region the second poorest after Northern Uganda. The people of these areas join strikes, and most of them have resorted to supporting opposition parties like Forum for Democratic Change (FDC), Democratic Party (DP), etc. This is because the people think the current ruling government is not listening to their cries for help. A onetime Member of Parliament for Kagoma County, Dr. Frank Nabwiso, stated at one point that we cannot have another dam under the Bujagali falls. If we do, he noted, we will lose most of the tourists who provide the government with important revenue which could be used to benefit the local area, put up new roads, buy drugs in hospitals, etc.

Nabwiso also said that another dam will cause us to lose tourists who employ our Ugandans as drivers, swimmers, kayakers, guides, etc. The local Ugandans who are still employed in the tourism industry will lose their jobs, and will put more pressure on government to support or create jobs for them. This will be a serious burden on the government, and can only result in unrest. It is well-known that those Ugandan industries, apart from tourism, which provide employment do not offer jobs on merit, but rather are dependent on the ruling tribe and political party.

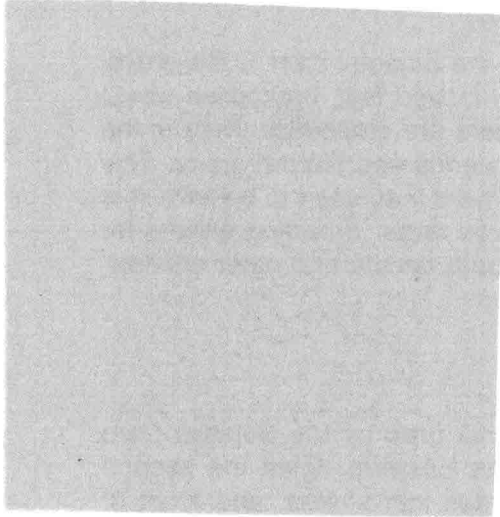
For all these reasons, we are standing as voice to the voiceless people whose property will be underwater if a large Isimba dam is built. Few of these people have even been

offered compensation. A few were offered partial compensation, but most were not acknowledged at all.

Although we are supporting the construction of the smallest Isimba dam, with a primary goal of protecting the Kalagala offset area, we wish to remain anonymous in this process.

Thank you for your time and consideration.

Sincerely -



## **Annex II**

### **Management Response**

**MANAGEMENT RESPONSE TO  
REQUEST FOR INSPECTION PANEL REVIEW OF THE  
UGANDA: PRIVATE POWER GENERATION (BUJAGALI) PROJECT  
(P089659); WATER MANAGEMENT AND DEVELOPMENT PROJECT  
(P123204); AND ENERGY FOR RURAL TRANSFORMATION PHASE III  
PROJECT (P133312)**

Management has reviewed the Request for Inspection of the Uganda: Private Power Generation (Bujagali) Project (P089659); Water Management and Development Project (P123204); and Energy for Rural Transformation Phase III Project (P133312), received by the Inspection Panel on June 20, 2016 and registered on September 6, 2016 (RQ16/05). A second Request for Inspection for the same projects was received by the Inspection Panel on September 19, 2016 and registered on September 22, 2016 (RQ16/08). Management has prepared the following response.

**October 27, 2016**



## **CONTENTS**

<b>Abbreviations and Acronyms .....</b>	<b>iv</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>v</b>
<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. THE PROJECTS .....</b>	<b>2</b>
<b>III. RELATED PLANS AND AGREEMENTS .....</b>	<b>5</b>
<b>IV. ELIGIBILITY CONSIDERATIONS .....</b>	<b>7</b>
<b>V. MANAGEMENT' S RESPONSE .....</b>	<b>10</b>

### **Map**

Map 1. IBRD No. 42401

### **Annexes**

- Annex 1. Claims and Responses
- Annex 2. Project Details
- Annex 3. Kalagala Falls Site Map



## ABBREVIATIONS AND ACRONYMS

BEL	Bujagali Energy Limited
BP	Bank Procedures
CDAP	Community Development Action Plan
CFR	Central Forest Reserve
EPC	Engineering, Procurement, Construction
ERT III	Energy for Rural Transformation Phase III Project
ESIA	Environmental and Social Impact Assessment
GoU	Government of Uganda
GWh	Gigawatt hour
HPP	Hydropower project
IA	Indemnity Agreement
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
IPN	Inspection Panel
KOA	Kalagala Offset Area
KOSMP	Kalagala Offset Sustainable Management Plan
LTCOR	Long-term Conservation Options Report
NEMA	National Environment Management Authority
OP	Operational Policy
RAP	Resettlement Action Plan
SIA	Social Impact Assessment
SMP	Sustainable Management Plan
UETCL	Uganda Electricity Transmission Company Ltd
WMDP	Water Management and Development Project

## EXECUTIVE SUMMARY

### *Management Response*

i. ***Management considers that the Request for Inspection is ineligible for the following reasons:***

- The potential harm that the Requesters allege does not stem from any Bank-financed project, but is related to the development of the Isimba hydropower project (HPP), which is not financed by the Bank and hence cannot be subject to a Panel review.
- The Bank-financed Private Power Generation (Bujagali) Project, which the Request seeks to link to the alleged impacts stemming from the Isimba HPP, is closed and as such is not eligible for a Panel review.
- The two additional Bank-supported operations mentioned by the Inspection Panel (but not cited in the Request)<sup>1</sup> do not relate to the harm alleged in the Request.

ii. ***Management would like to underline that the Requesters state that they are “interested in challenging the legality of the construction of Isimba Dam at the present location.”*** In Management’s view, since the Isimba HPP is not a Bank-financed project, neither the Bank nor the Inspection Panel is the appropriate authority to address such a challenge. Furthermore, the Bujagali project closed in August 2012, and is not eligible for investigation. The Panel’s jurisdiction over any legal agreement, whether loan, grant or guarantee, ends when the project closes. The Bujagali project, a run-of-the-river power plant, has been implemented, commercial operations began in August 2012, and the guaranteed commercial loans were fully disbursed by 2012. Therefore, as defined by Bank policy, the Bujagali project has closed.

iii. ***The other two projects cited in the Panel’s Notice of Registration are unrelated to the harm alleged by the Requesters.*** The Water Management and Development Project (WMDP) is financing the implementation of specific forestation related activities that are part of the Kalagala Offset Sustainable Management Plan (KOSMP/SMP) developed under the Bujagali project and does not support any intervention that could create or contribute to the alleged harm. A component of the Energy for Rural Transformation Project (ERT III) finances the preparation of an Addendum to the Environmental and Social Impact Assessment (ESIA) that the Government of Uganda (GoU) development for the Isimba HPP project. The Addendum – at the request of the Bank – looks specifically at potential impacts of the Isimba HPP on the Kalagala Offset Area (KOA) <sup>2</sup> which is an area that is environmentally protected by an Indemnity Agreement (IA) that the GoU and the Bank entered into in connection with the IDA guarantee for the Bujagali project. In this instance,

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<sup>1</sup> Formal complaints submitted by the Requesters to the Panel only make a reference to the Private Power Generation (Bujagali) Project supported by an IDA guarantee.

<sup>2</sup> The Kalagala offset area (KOA) is defined in the Bujagali legal agreements as the Kalagala Falls Site (KFS). For ease of reference, and unless otherwise indicated, the terms Kalagala Offset Area and Kalagala Falls Site will be used interchangeably in this Management Response.

the Bank has gone out of its way to finance the ESIA Addendum (but not the original ESIA for the Isimba project) to support the GoU to identify and manage specific impacts on the KOA. Completion of the Addendum is expected in mid-2017. ***As this work on the ESIA Addendum is still ongoing, the Requesters' claim that the Isimba HPP will have an adverse impact on the KOA is premature.***

***iv. Hence, in Management's view, the Requesters are not able to demonstrate that their rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank.***

### ***Inspection Panel Request and Background***

v. On September 6, 2016, and September 20, 2016, the Inspection Panel registered two Requests for Inspection concerning the Uganda: Private Power Generation (Bujagali) Project (P089659). In its notice of registration, the Panel added to the Request the WMDP (P123204) and the ERT III (P133312). The Requests were submitted by residents living in or close to the KOA, the offset established to address the adverse environmental and spiritual impacts identified in the earlier Bujagali project.

vi. The Requesters allege that the construction of the Isimba HPP (not financed by the Bank), will lead to flooding of the Kalagala Falls offset. The IA requires the GoU to set aside a defined site at Kalagala Falls to protect its natural habitat and environmental and spiritual values. Under the IA, any tourism development at the Kalagala offset area must be carried out in a manner acceptable to IDA and any power generation development that could adversely affect Uganda's ability to maintain the offset would require the agreement of IDA. The flooding referred to by the Requesters would, allegedly, breach the IA and would lead to environmental, cultural, economic, and health-related harm.

### ***Actions***

vii. ***Recognizing the GoU's obligations under the IA with respect to protection of the Kalagala offset, the Bank commits to*** (i) continuing to work with the GoU to finalize the assessments of impacts of the Isimba Dam on the KOA in detail, with the aim to ascertain whether the relevant objectives and the covenants of the IA remain fulfilled. The Bank will further (ii) work with the GoU so that appropriate mitigation measures are in place to manage any negative impacts once they are known; and (iii) advise the GoU regarding livelihood restoration measures and compensation provided to people affected by the Isimba Dam.

## I. INTRODUCTION

1. On September 6, 2016, the Inspection Panel registered a Request for Inspection, IPN Request RQ 16/05 (hereafter referred to as “the Request”), referencing three projects in Uganda: (i) Private Power Generation (Bujagali) Project (P089659); (ii) Water Management and Development Project (P123204); and (iii) Energy for Rural Transformation Phase III Project (P133312) (the three projects are hereafter referred to, collectively, as the “Projects”) financed by the International Development Association (“IDA,” or “the Bank”). It should be noted that the Request for Inspection only referred to the Private Power Generation (Bujagali) Project. While reviewing the Request, the Panel made the determination that the Water Management and Development Project and Energy for Rural Transformation Project “can all be plausibly linked to the alleged harm.”

2. The first Request for Inspection was submitted by a legal firm based in Kampala, representing residents of the Kalagala offset area (KOA).<sup>3</sup> The residents as well as the firm have requested that their identities remain confidential (hereafter referred to as the “Requesters”). Attached to this Request were letters from residents requesting the legal firm to represent them and emails providing detail on residents who submitted the requests. No further materials were received by Management in support of the Request.

3. The first Request claims that the Indemnity Agreement (IA) between the Bank and the Government of Uganda (GoU), which established the KOA, is violated by the potential impact of the Isimba hydropower project (Isimba HPP), which is not financed by the Bank. The Requesters claim that the Isimba Dam, once completed, will erode the countermeasures that were intended through the establishment of the KOA; that the development of the Isimba Dam will undermine the management of protected resources (i.e., targeted forest reserves, river banks, and wetlands); that the opportunities for sustainable development provided by the natural resources around the KOA will be extinguished; that the construction of the Isimba Dam will flood the river within the KOA and thereby affect the ecological and social functions of the river; and that the GoU might feel empowered to violate other commitments if the Bank does not hold the GoU accountable.

4. The Requesters claim that the flooding of the KOA, as a result of the development of the non-Bank-financed Isimba HPP, violates the provisions of the following Bank policies and procedures:

- OP/BP 4.01, Environmental Assessment;
- OP/BP 4.11, Physical Cultural Resources;
- OP/BP 4.36, Forests; and

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<sup>3</sup> The Kalagala offset area (KOA) is defined in the Bujagali legal agreements as the Kalagala Falls Site (KOA). For ease of reference, the terms Kalagala Offset Area and Kalagala Falls Site will be used interchangeably in this Management Response.

- OP/BP 4.37, Safety of Dams.

In its Notice of Registration, the Inspection Panel added OP/BP 4.04, Natural Habitats, as another policy that may have been violated.

5. On September 22, the Inspection Panel registered a *second Request* for Inspection, IPN Request RQ 16/08, referencing the same projects. This Request came from three residents of the Busoga region and concerned citizens (the “Requesters”), who asked that their identities be kept confidential. Since both requests raise similar issues regarding impacts of the Isimba HPP on the KOA, the Panel is processing both requests jointly.

6. The second Request claims that the filling of the reservoir of the Isimba Dam at its “*tallest proposed height*” will flood and affect the KOA “*heavily and irrevocably*,” and that although the Bank is not financing the Isimba Dam, its reservoir may undermine the management of the protected KOA as required by the IA signed between the GoU and IDA for the Bujagali project. The Requesters consider that they are likely to suffer environmental, cultural, economic, and health-related harm. No other materials were received by Management in support of this second Request or the harms alleged by the Requesters.

7. ***Structure of the Text.*** The document contains the following sections: Section II describes the relevant projects. Section III elaborates on some agreements and plans that are relevant to the Requests. Section IV discusses Management’s view of the eligibility of the Requests. Section V presents Management’s responses to the claims made by the Requesters. Annex 1 presents the Requesters’ claims, together with Management’s detailed responses, in table format. Annex 2 presents a detailed description of the projects related to the Requests and the history of the Bank’s engagement with Bujagali. Annex 3 is a map of the Kalagala offset area (KFS or KOA).

## II. THE PROJECTS

8. The Requests for Inspection registered by the Panel (Notice of Registration IPN Request RQ 16/05) reference three projects: (i) Private Power Generation (Bujagali) Project (P089659); (ii) Water Management and Development Project (P123204); and (iii) Energy for Rural Transformation Phase III Project (P133312). These projects are described below, following a description of the Isimba HPP. Although the Isimba HPP is not financed by the Bank, its potential impact on the KOA led to the Requests for Inspection.<sup>4</sup>

### (i) Isimba Hydropower Project (not Bank-financed)

9. The Isimba HPP is a 183.2 MW run-of-the-river project located about 36 km downstream of the Bujagali hydropower plant on the Nile River.<sup>5</sup> The plant is expected to generate 1,039 GWh per year (annual design energy). The maximum height of the dam structure is 36.9 m. The reservoir surface area is 19.4 square kilometers and volume 60.8

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<sup>4</sup> See Annex 2 for detailed descriptions.

<sup>5</sup> All distances are approximate.

million cubic meters. The reservoir, when full, will extend some 18 km upstream; it will not reach the Kalagala Falls, but it is expected to flood about 4.5 km of the Nile River within the KOA. In addition to the power plant, the project includes construction of a 42-km, 132-kV double circuit line between the Isimba HPP site and the Bujagali substation.

10. ***The Isimba project is not supported by any part of the World Bank Group.*** It is financed by the GoU (15 percent) and a concessional loan from the Export-Import Bank of China (85 percent). The project has been contracted for construction to China International Water & Electric Corporation, under an engineering-procurement-construction (EPC) Contract in the amount of US\$567.7 million and a 40-month construction period. Construction started in April 2015 and is to be completed in August 2018, with the first turbine coming on line in April 2018. The construction is about 45 percent complete at this time.

## **(ii) Private Power Generation (Bujagali) Project (P089659)**

11. The Private Power Generation (Bujagali) Project was a Bank-supported project to enable the construction of a 250-MW run-of-the-river hydropower plant. The project was completed and entered into commercial operation on August 1, 2012. The Bujagali plant has generated an average of 43-44 percent of Uganda's total annual power generation in recent years. The project enabled the country to significantly strengthen its energy security using clean power.

12. The Bujagali plant has a reservoir adequate for daily storage, an intake powerhouse complex, and an earth-filled dam with a maximum height of about 30 meters. The project was constructed on the Nile River, approximately 8 kilometers north (downstream) of the existing Nalubaale and Kiira hydropower plants, which are located between the Bujagali plant and Victoria Lake.<sup>6</sup>

13. The project was supported through an IDA guarantee<sup>7</sup> in the amount of US\$115 million, backstopping debt service repayment of commercial loans, approved by the Bank's Board on April 26, 2007. The guarantee is set to expire in November 2023 upon repayment of the guaranteed commercial loans. In line with Bank Policy the closing date of the Bujagali project occurred on August 1, 2012, which is the date the power plant entered into commercial operation (and which is different from the expiration date of the guarantee). Following the closing date of the project, as per policy, the Bank has continued to monitor the financial risks covered by the IDA guarantee and will continue to do so until the expiration of the guarantee. Until the Guarantee expires, the GoU is bound by the contractual agreements of the IA, which are spelled out in more detail below.

14. The assessments conducted as part of the Bujagali project showed that it would have adverse impacts on natural habitat, in particular on fisheries, forests, and areas of

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<sup>6</sup> The project was structured as an Independent Power Producer (IPP) plant under a Build-Own-Operate-Transfer (BOOT) arrangement, with a 30-year Power Purchase Agreement (PPA) with the Uganda Electricity Transmission Company Ltd (UETCL). The project was developed by Bujagali Energy Limited (BEL), a privately-owned special purpose company incorporated in Uganda.

<sup>7</sup> In addition, the World Bank Group support included IFC loans and a MIGA guarantee.

specific cultural relevance to local communities. To mitigate adverse impacts on natural habitat, and environmental and spiritual values, the KOA was established and protected by the IA between IDA and the GoU, which was signed on July 18, 2007.

**(iii) Water Management and Development Project (P123204)**

15. The development objectives of the Water Management and Development Project (WMDP) are to improve (i) integrated water resources planning, management and development; and (ii) access to water and sanitation services in priority urban areas. The project has three main components: (1) investments in integrated water resources development and management (including the financing of priority investments of the Kalagala Offset Sustainable Management Plan, KOSMP); (2) infrastructure investments in urban water supply sanitation/sewerage and catchment/source protection; and (3) strengthening institutions for effective project implementation.

16. The project was approved by the Bank's Board of Directors on June 26, 2012 and became effective on August 12, 2013. As of October 10, 2016, US\$57.6 million was disbursed, which is 42.7 percent of the total amount of the IDA Credit of US\$135 million. The closing date is set for December 31, 2018.

**(iv) Energy for Rural Transformation Phase III Project (P133312)**

17. The Energy for Rural Transformation Phase III (ERT III) Project aims at increasing access to electricity in rural areas of Uganda. The project has three components: (1) on-grid energy access; (2) off-grid energy access; and (3) institutional strengthening and impacts monitoring. The third component comprises a number of activities, including, among others, carrying out priority environmental and social impact assessments.

18. The project was approved by the Bank's Board of Directors on June 5, 2015 and became effective on March 31, 2016. As of October 10, 2016, US\$0.28 million had been disbursed of the total amount of the IDA Credit of US\$136.22 million. The project is co-financed by a GEF grant of US\$8.2 million and by the GoU in the amount of US\$33.2 million. The closing date is set for December 31, 2020.

19. ERT III is financing an Addendum to the Environmental and Social Impact Assessment (ESIA) that the GoU developed for the Isimba HPP through the ERT III. ERT III does not finance any part of the construction of Isimba HPP nor is it necessary for the Isimba HPP to operate. The objective of the Addendum is to assess the length (in km) and surface area (in ha) of the river and adjacent land areas within the KOA that would be inundated or otherwise affected by the Isimba HPP. The ESIA Addendum is expected to be finalized by mid-2017 (after appropriate stakeholder consultations are held).

### III. RELATED PLANS AND AGREEMENTS<sup>8</sup>

20. **Indemnity Agreement.** The IA is the legal instrument governing the GoU's obligations regarding the KOA. The IA defines the Kalagala offset area ("Kalagala Falls Site") by reference to a map attached to it (KOA Map, see Annex 3). The map indicates that the KOA includes a 10-km long stretch of the river. The southern and northern boundaries of the KOA are about 12.5 km and 22.5 kilometers, respectively, downstream of the Bujagali dam. The KOA extends some distance away from the river, to include two forest reserves on the river banks – the Kalagala Central Forest Reserve (CFR) and the Nile Bank CFR. The IA also extends specific protections to the Mabira CFR.

21. The IA specifically requires the GoU to set aside the KOA *"to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association."* It also limits any tourism development at the KOA and requires that such tourism development only be carried out *"in a manner acceptable to IDA and in accordance with the aforementioned standards."* Further, it requires that any power generation development that could adversely affect Uganda's ability to maintain the above stated protection at the KOA obtain the prior agreement of IDA. The IA remains in effect until the commercial loans guaranteed by IDA are fully repaid (expected to occur in November 2023). While the IA is in effect, the GoU will continue to be bound to its contractual obligations in connection with the KOA and the Bank will continue assessing compliance of this contractual obligation by the GoU.

22. The IA is not intended to preclude the GoU from developing power generation. Because additional power generation that could affect the KOA was foreseen at the time the Bujagali project was conceived, the IA effectively allows the GoU to develop power generation so long as it does so in accordance with the sound standards noted above. The Bank is now taking steps in conjunction with the GoU to determine whether or not the power generation being developed by the GoU will adversely affect the protection of the natural habitat and environmental and spiritual values of the KOA.

23. **KOSMP.** The KOSMP is a sustainable management plan developed by the Ministry of Water and Environment in response to the IA requirement for the GoU to *"conserve through a sustainable management program and budget mutually agreed by the Government and the Association, 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 in the Kalagala Falls Site)."* The referenced sustainable management program was finalized and adopted in 2010, covering the period 2010 through 2019, and was launched by the GoU in 2011. The KOSMP sets forth appropriate mitigation measures to conserve and safeguard the ecosystem of the CFRs and address some of the impacts of the Bujagali project. The KOSMP is a safeguard instrument designed to mitigate impacts from the now closed Bujagali project. It is not a safeguard instrument to mitigate impacts from WMDP (the WMDP has other safeguards instruments that apply to the WMDP project). Accordingly, while the WMDP financing agreement provides financing for specific KOSMP activities,

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<sup>8</sup> More details about the IA and the KOSMP is in Annex 2.



it does not include any an obligation for the GoU to implement the KOSMP. Further, as indicated in the quote above from the IA , the contractual obligations related to the KOSMP for the Bujagali project apply only to the ecosystems of the specified *forest* reserves.

24. The KOSMP is a Government program with a geographic scope that extends beyond the area defined as the KFS/KOA in the Bujagali IA, and which covers activities that go well beyond the specific contractual undertakings in the IA between the GoU and the Bank. In that regard, the title of *Kalagala Offset Sustainable Management Plan* is misleading, since the KOSMP covers a broad range of reforestation, capacity building and livelihood restoration activities outside the KOA and the specific obligations set out in the IA.

25. Under the WMDP, the Bank is only financing the following priority activities set forth in the KOSMP: (i) implementation of an integrated approach to afforestation and reforestation, including, inter alia, restoration of native vegetation, conservation of habitats, and restoration and protection of riverbanks; (ii) training, facilitation and provision of technical support to community and commercial agriculture enterprises in support of environmentally sustainable livelihood strategies; and (iii) strengthening the technical and institutional capacities of the Ministry of Water and Environment and National Forestry Authority for implementing the KOSMP. Specific activities are detailed in Annex 2.

#### IV. ELIGIBILITY CONSIDERATIONS

26. ***Management submits that the Request is ineligible according to the Resolution Establishing the Panel.*** Requests that are considered ineligible for investigation include:

- (i) Those “with respect to actions which are the responsibility of other parties, such as the borrower, or potential borrower, and do not involve any action or omission on the part of the Bank;”
- (ii) Requests filed after the Closing Date of the loan financing the project with respect to which the request is filed or after the loan financing the projects has been substantially disbursed; and
- (iii) Requests related to a particular matter or matters over which the Panel has already made its recommendation upon having received a prior request, unless justified by new evidence or circumstances not known at the time of the prior request (see Panel Resolution 14(a), 14(c), 14(d)).

27. As discussed further below, any one of these grounds provides the basis upon which the present Request is not eligible for investigation.

##### **(i) Project Not Financed by the Bank**

28. ***The potential harm that the Requesters allege stems not from a Bank-financed Project, but from the development of the Isimba HPP, which is not financed by the Bank. For this reason, the Request is not eligible for investigation in accordance with the Panel Resolution.*** The Requesters allege that the inundation resulting from the development of the Isimba HPP will negatively affect the livelihoods which they derive from the KOA. This alleged harm, if it were to indeed materialize, would result from the GoU’s development of the Isimba HPP and not from a Bank-financed project. The Bank has no role in the design, appraisal or implementation of that project. The Panel Resolution states clearly that the “*affected party must demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank.*”

29. ***In this context it is important to underline that the Requesters state in their own words that they are “interested in challenging the legality of the construction of Isimba Dam at the present location.”*** In Management’s view neither the Bank nor the Panel is the appropriate authority to address such a challenge.

##### **(ii) Closed Project**

30. ***The Bujagali project is not eligible for investigation because it is closed.*** The Panel’s jurisdiction over any legal agreement, whether loan, grant or guarantee, ends when the project closes. The rules governing the closing date of Bank projects depend on the type of instrument used. In the case of guarantees, in accordance with Bank policy and instructions, the Bank Guarantee Closing Date is the expected completion date of the

project. Project completion is defined, as applicable, as: (i) the implementation date of the project; (ii) the commercial operations date; or (iii) the end of the availability period. The Bujagali project has now been implemented, commercial operations began in 2012 and the guaranteed commercial loans were fully disbursed by 2012. Therefore, and as stated in Bank policy, it is clear that the Bujagali project has closed. This policy requirement is set out in OP 10.00, para 26 and BP 10.00, para 40. The Panel resolution (para 14) stipulates that “*In considering requests [...] the following requests shall not be heard by the Panel: [...] (c) Requests filed after the Closing Date of the loan financing the project with respect to which the request is filed or after the loan financing the project has been substantially disbursed.*”

### **(iii) Recommendations Made in Prior Requests**

31. ***The Request is ineligible because the issues raised in this Request were addressed in the Panel’s recommendation on prior Requests in 2001 and 2007.*** The Requesters are raising issues that the Panel has already investigated and on which it issued recommendations in its investigations related to Bujagali in 2001 and 2007 (see Annex 2 for more detail). Management addressed the Panel’s earlier findings regarding the Bujagali project in the pertaining Management Action Plan. The requirements set forth in the IA were the direct result of an effort to address the Panel’s findings from the 2007 Request.

### **(iv) Projects Cited by the Panel**

32. In addition, the Panel cites two other projects in its Notice of Registration that are not mentioned by the Requesters. To the extent that Management understands the allegations, these projects are not linked to the alleged harm, as they have no relation to the GoU’s decision to develop the Isimba HPP, as discussed below:

- ***WMDP.*** The WMDP is unrelated to the factual allegations of the Requesters. It is not anticipated that the Isimba HPP would affect the WMDP. ***However, even if potential impacts from the Isimba HPP were to affect the WMDP’s ability to fully achieve its objectives, this would not create or contribute to the alleged harm. Such situation would not represent a deterioration when compared to the without project situation.*** The WMDP is implementing a part of the KOSMP/SMP<sup>9</sup> developed under the Bujagali project and is not related to impacts resulting from the Isimba HPP. The WMDP does not support any intervention that could create or contribute to the alleged harm, hence, it is not clear how acts or omissions under this project would relate to the alleged harm from the Isimba HPP.
- ***ERT III.*** The ERT III is not related to any harms the Requesters raised. Following the Bank’s request to the GoU to study any potential environmental and social impacts from Isimba on the KOA, the Bank agreed, on December 16, 2015, to restructure the ERT III Financing Agreement to support the GoU to undertake an

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<sup>9</sup> KOSMP and the shorter SMP are used interchangeably

ESIA Addendum for that purpose. Apart from financing the ESIA Addendum focusing on the KOA, the ERT III does not relate to the Isimba HPP.

***The ESIA Addendum support through ERT III allows the Bank to obtain a robust and credible assessment of any impacts from Isimba on the KOA.*** This assessment will also inform the Bank's decision on whether or not Uganda is observing its obligations under the IA and is in no way intended to serve as the basis for consideration of any IDA supported project. To that extent, the ERT III supports an effort to study, and where required, mitigate adverse impacts and, hence, cannot be credibly linked to the alleged harm raised in the Request.

33. ***Management reiterates that based on the reasons explained above, Management believes that the Request is ineligible according to the Resolution Establishing the Panel. Nevertheless, the Bank has continued carrying out its due diligence and following up on the GoU obligations under the IA in connection with the KOA.*** The GoU's actions regarding Isimba to date do not in and of themselves merit an investigation. The outcome of the ESIA Addendum will allow the Bank to ascertain whether the Isimba HPP contravenes the understandings between Management and the GoU under the IA. If the outcome demonstrates that the KOA is under threat, and the GoU refuses to undertake potential remedial measures, it may merit Bank intervention. This limitation on Panel accountability, however, does not mean that Bank-Government dialogue diminishes or that the Bank will not continue to engage with the GoU.

## V. MANAGEMENT'S RESPONSE

34. The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1.

35. ***Management submits that the Request for Inspection is not eligible for a number of reasons, which are explained in Section IV above. Despite these reservations, Management would like to provide the clarifications below on the issues raised in the Request.***

36. ***As noted earlier, the potential harm alleged by the Requesters stems from the development of the Isimba HPP, which is not financed by the Bank.*** The Bank has reviewed the feasibility studies and the ESIA prepared for the Isimba HPP to assess the potential impacts of the proposed project on the KOA. The current design of the Isimba HPP requires a reservoir that will inundate a portion of the Nile River, which stretches into the KOA, including a number of rapids that are located in that section of the river.

37. ***At this point the GoU is not in breach of the IA. Assessing the GoU's compliance with the IA in light of the Isimba HPP is currently being examined through the ESIA Addendum.*** It is important to note that the IA does not expressly prohibit development of power generation affecting the KOA. The IA would be violated only if such power projects were to adversely affect the GoU's ability to maintain the IA's requisite protections of the KOA. In this context, Management has consistently engaged with the GoU to underscore the importance of complying with the IA while also developing the Isimba HPP. The GoU responded by reiterating its commitment to the IA and sharing for the Bank's review the technical studies and the safeguard documents for the Isimba HPP.<sup>10</sup>

38. ***The Isimba project is not located within the KOA.*** However, given the potential impacts of the project on the KOA, the GoU is currently preparing the ESIA Addendum, which specifically focuses on such potential impacts. In fact, to support the credibility and robustness of the ESIA Addendum, the Bank provided IDA funding for its preparation through the ERT III as noted above. The Addendum covers the main potential environmental and social impacts, if any, and corresponding mitigation measures for the Isimba HPP as it could affect the KOA. In addition, the GoU will prepare a separate Long-term Conservation Options Report (LTCOR) to address sustainability issues of the KOA, as the IA will expire in 2023.

39. ***Although the construction of the Isimba HPP is ongoing, any impact on the KOA would only occur in conjunction with the inundation process, which is expected to be in 2018.*** The Bank requested additional studies to better analyze concerns regarding biodiversity, and specifically fish species endemic to this part of the Nile. Based on these studies and on the ESIA Addendum and the LTCOR, the Bank will consider whether or not the GoU is complying with its obligations under the IA and the relevant objectives of the IA are still fulfilled. If not, the Bank will engage with the GoU to discuss mitigation measures for such impacts, in line with the IA, or otherwise consider its remedies. This

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<sup>10</sup> Letter from IDA dated January 26, 2015; and response from the GoU dated February 5, 2015. The Bank's comments on the Isimba ESIA were provided to the GoU through a letter dated March 17, 2015.

could entail “to suspend or cancel in whole or in part Uganda’s right to make withdrawals under any development credit agreement or financing agreement between the Association and Uganda or under any loan or guarantee between the Bank and Uganda, or to declare the outstanding principal and interest of any such credit or loan due and payable immediately.”

40. ***In Management’s view, the Requesters’ attempt to seek recourse through the IA under the closed Bujagali project is inappropriate.*** The protection set forth in the IA is limited in scope. The IA established the KOA specifically as an ecologically similar offset under OP 4.04 to address the adverse environmental and spiritual impacts identified in the ESIA/Environmental and Social Management Plan for the Bujagali project. It expressly sets aside the KOA to “*protect its natural habitat and environmental and spiritual values.*” While the Request raises environmental concerns that are not specified, it does spell out in detail the concerns about alleged negative impacts on tourism-related jobs, income and livelihoods. The Request specifically refers to the impact on *whitewater recreation*, which is the tourism activity that would be affected by the partial flooding of the river.<sup>11</sup> Management notes, however, that tourism and related income is not protected under the IA. On the contrary, the IA clearly seeks to *limit* any tourism developments in the KOA to prevent adverse impacts to the environment. This is in line with the measures supported by the SMP, which includes the promotion of socio-economic and environmentally sound eco-tourism activities at the KOA and is operational until 2019. The ESIA Addendum and LTCOR will document current efforts to enhance and further develop the socio-economic framework through the establishment of a range of livelihood strategies in close consultation with local stakeholders. The ESIA Addendum will (i) describe the ongoing tourism related activities within the KOA that would likely be affected by the Isimba HPP; and (ii) specify and locate on a detailed map precisely which whitewater rapids would be lost to inundation by the Isimba HPP, and which would remain available for recreational use within the KOA. The Addendum will also assess the likely impacts of this change on local businesses and communities, along with local employment and the broader economy, including Jinja and beyond, and is expected to lay out planned support for alternative tourism activities, to supplement reduced recreational opportunities within KOA attributable to the Isimba HPP.

41. ***The Requesters’ claims related to potential cumulative health, environmental and cultural impacts as a result of the Isimba HPP are unsubstantiated and premature.*** The Requesters consider that they are likely to suffer environmental, cultural, economic, and health-related harm as a result of the combined effect of Bujagali and Isimba. The Bank is now taking steps in conjunction with the GoU to ensure that the impacts of the Isimba HPP are fully and properly assessed. The ESIA Addendum in particular will make the

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<sup>11</sup> The Requesters allege that “*the impact on the tourism industry along the Nile River that sustains the livelihoods of many of the community members would 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.*”

determination as to whether the power generation being developed by GoU will adversely affect the protection of the natural habitat and environmental and spiritual values of the KOA or not. Both parties remain committed to upholding the IA. Management notes that adverse impacts from Bujagali have been compensated under the now closed project. Management has carefully reviewed the alleged impacts cited in the Request (crocodiles, water quality), none of which have been confirmed in the 2016 environmental audit that was done for the Bujagali project.<sup>12</sup>

42. ***With regard to the two additional operations identified by the Panel,*** Management reiterates that in its view, these two additional projects do not cause or contribute to the harm alleged in the Request, nor to the claim of the Requesters that the Bank allegedly has failed to enforce the IA. On the contrary, both the WMDP and the ERT III Projects are supporting additional measures to strengthen the protection of the KOA and to support the GoU's ability to comply with its obligations as set forth in the IA. Specifically:

- (i) ***The ERT III Project*** is financing the preparation of the ESIA Addendum to enable the Bank to ascertain and ensure Isimba's compliance with the terms of the IA related to the protection of the KOA; and
- (ii) ***The WMDP*** seeks to support the implementation of priority activities such as afforestation, restoration of native vegetation, conservation of sensitive habitats, restoration and protection of river banks and specific livelihood measures that are elaborated in the KOSMP.<sup>13</sup> There is no requirement under the WMDP or the IA obliging the GoU to fully implement all activities set out in the KOSMP.

43. ***The Bank's Board has been informed about the issues regarding the Isimba HPP and its potential impact on the KOA and the IA.*** As part of Management's progress reporting on the implementation of the action plan responding to the previous Inspection Panel investigations of the Bujagali project, these issues have been raised.<sup>14</sup> In Management's view there is clear accountability to the Board regarding the implementation of Action Plans following Panel investigations.

## Conclusion

44. ***In Management's view, the Request is untenable.*** The Bujagali project is closed, the alleged impacts stem from a project not financed by the Bank. The concerns raised in the Request in any case relate to impacts outside the scope of the IA and with respect to which the Bank has no basis to formally intervene.

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<sup>12</sup> Environmental Audit of Bujagali Hydropower Project, dated April 2016.

<sup>13</sup> The Operational Manual for the WMDP details the specific activities supported under the WMDP. Project, as described in Annex 2.

<sup>14</sup> Fifth Progress Report to the Board of Executive Directors on the Implementation of Management's Action Plan in Response to the Inspection Panel Investigation Report on the Uganda: Private Power Generation (Bujagali) Project. <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=68>. Management is preparing a sixth progress report to be submitted to the Board in December 2016.

45. ***Speculation related to the potential impacts of the Isimba HPP on the KOA is premature.*** The Bank is continuing to work with the GoU to study in detail the potential impacts of Isimba on the KOA through the ESIA Addendum and LTCOR. It is therefore premature to assert that the GoU has failed to comply with the IA.

46. ***Development projects, specifically large scale infrastructure, typically involve complex tradeoffs between larger development goals and conflicting or competing interest by groups of citizens.*** In this case, the interest of the local tourism industry may indeed collide with the GoU's interest in developing power generation for economic and social development for the entire country. In Management's view an investigation by the Inspection Panel is not the appropriate channel for such a discussion of national development strategies.

47. ***Management believes that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.***

#### **Actions**

48. Recognizing the Bank's responsibility to assess compliance of the GoU with the IA, the Bank commits to continuing to work with the GoU to finalize the assessment of potential impacts of the Isimba Dam on the KOA. The Bank will further:

- Support the GOU to establish appropriate mitigation measures to manage identified negative impacts. Should the GoU not comply with the mitigation measures, the Bank will consider exercising appropriate remedies;
- Advise the GoU regarding livelihood restoration measures and compensation provided to people affected by the Isimba HPP; and
- Determine, on the basis of the findings of the ESIA Addendum, once it is completed, whether any adjustments to the KOSMP might be appropriate to continue the protections of the ecosystem of the CFRs as agreed in the IA.



# **ANNEX 1** **CLAIMS AND RESPONSES**

*First Request registered on September 6, 2016*

No.	Claim/Issue	Response
1.	<p>Our client and the various persons who live, depend on and derive sustenance from that part of the land that is described as the “Kalagala Falls Site Offset Area” are likely to suffer grave harm as a result of the International Development Association’s failures or omissions to hold the Government of Uganda to its commitments to the Indemnity Agreement signed between the Association and the Government of the Republic of Uganda during the negotiation and financing of the Bujagali Hydropower Project located in Jinja, Uganda.</p>	<p><b>The Requesters allege that the Isimba HPP will have adverse impacts on the KOA. The project is not financed by the Bank. Isimba Dam is not located within the KOA. Management maintains that the harm alleged by the Requesters is not caused by failures or omissions of the Bank.</b></p> <p>However, given the potential impacts of Isimba HPP on the KOA, the GoU is currently preparing an ESIA Addendum, which specifically focuses on such potential impacts. In fact, to support the credibility and robustness of the ESIA Addendum, the Bank provided IDA funding for its preparation, through the ERT III. The Addendum covers the main potential environmental and social impacts, if any, and corresponding mitigation measures for the Isimba HPP as it could affect the KOA. In addition, the GoU will prepare a separate LTCOR to address longer term sustainability issues of the KOA, as the IA will expire in 2023. Both reports are expected to be finalized (subsequent to appropriate stakeholder consultations) by mid-2017.</p> <p>Although construction of the Isimba HPP is ongoing, any impact on the KOA would only occur in conjunction with the inundation process, which is expected to be in 2018. Based on the ESIA Addendum and the LTCOR, the Bank will consider whether or not the GoU is complying with its obligations under the IA and the relevant objectives of the IA are still fulfilled. If not, the Bank will engage with the GoU to discuss mitigation measures for such impacts, in line with the IA, or otherwise consider its remedies.</p> <p>It is important to note that the IA does not expressly prohibit development of power generation affecting the KOA. The IA would be violated only if such power projects were to adversely affect the GoU’s ability to maintain the IA’s requisite protections of the KOA. The IA specifically requires the GoU to set aside the KOA “to protect its natural habitat and environmental and spiritual values in conformity</p>

No.	Claim/Issue	Response
		<p><i>with sound social and environmental standards acceptable to the Association."</i></p> <p>The Requesters' statement that the Bank has failed or omitted to ensure that the GoU is in compliance with the IA is not correct.</p> <p>In a letter from January 26, 2015, Management asked the GoU how it intended to ensure compliance with the IA while also developing the Isimba HPP. The GoU reiterated its commitment to the IA and sharing the technical studies and the safeguard documents for the Isimba HPP for the Bank to review.</p> <p>After discussions with the GOU during the World Bank Annual Meetings in October 2014, the Bank issued a letter on January 26, 2015 noting that the current design of the Isimba HPP could have an impact on the KOA and that there was a potential for non-compliance with the IA. In its response on February 5, 2015, the GoU re-affirmed its commitment to comply with the IA.</p> <p>The GoU shared with the Bank the draft ESIA for the Isimba HPP and associated transmission lines. On March 17, 2015, the Bank informed the GoU that the draft ESIA did not include sufficient critical information to confirm whether or not the Isimba HPP would be in compliance with the IA. The GoU then requested the Bank to finance the Addendum to specifically focus on these potential impacts, which it did through the ERT III.</p>
2.	<p>In the said Indemnity Agreement dated July 18, 2007, the Government of Uganda committed to the Association among other things to: (i) set aside the Offset Area exclusively to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association; (ii) to not develop power generation that could adversely affect the ability to maintain the Offset Area without prior consent of the Association; and (iii) conserve through a sustainable management program and budget the present ecosystem of the Mabira Central Forest Reserve and the Nile Bank Central Forest Reserve on the banks of the Kalagala Falls (as such Reserves are included within the Kalagala Falls Site).</p>	<p><b>As noted in the response to Item 1, the Bank remains committed and the GoU has also re-affirmed its commitment to the provisions of the IA.</b> Based on the ESIA Addendum and the LTCOR, the Bank will consider whether or not the GoU is complying with its obligations under the IA and the relevant objectives of the IA are still fulfilled. If not, the Bank will engage with the GoU to discuss mitigation measures for such impacts, in line with the IA, or otherwise consider its remedies.</p> <p>The KOA encompasses a portion of the Nile River downstream of the existing Bujagali dam and upstream of the proposed Isimba Dam. The Mabira CFR, approximately 50 km from</p>

No.	Claim/Issue	Response
	<p>It is important to note that Uganda specifically committed to not take or permit UETCL or any other Public Sector Entity to take any action which would prevent or interfere with the performance by Uganda or any such Public Sector Entity of any of its material obligations under the Transaction Documents (or any other related agreement – such as the Indemnity Agreement to which Uganda is a party. In contravention of the above-mentioned commitments, Uganda procured the Chinese Firm of China Water and Electric Engineering, which has commenced the construction of Isimba dam in the Offset Area.</p>	<p>the river, is also being conserved by the GoU in accordance with the Bujagali IA. Given the current design of the Isimba Dam, the Mabira CFR will not be affected. The ESIA Addendum covers the main potential environmental and social impacts, if any, and corresponding mitigation measures for the Isimba HPP as it could affect the KOA.</p> <p>The Bank engaged with the GoU to ensure finalization of the ESIA, including the Addendum. The Bank provided comments to the National Environment Management Authority (NEMA) on the copy of the ESIA version that was publicly disclosed.</p> <p>Contrary to the Requesters' claim, construction of the Isimba Dam is not within the KOA. The Isimba Dam wall location is more than 10 km downstream from the edge of the KOA and about 36 km from the Bujagali dam.</p> <p>Construction of the Isimba HPP is ongoing, any impact on the KOA would only occur in conjunction with the inundation process, which is expected to be in 2018. The KOA could also be affected by on-site pre-inundation activities, such as biomass clearing or waste removal. The ESIA Addendum will identify any potential risks and impacts of the Isimba HPP on the KOA and will propose appropriate mitigation measures to be implemented.</p> <p>Under the Isimba project, the GoU is also preparing a Community Development Action Plan (CDAP) and a Resettlement Action Plan (RAP) to compensate for loss of livelihoods among the communities affected by the Isimba Dam and the host communities in the vicinity, including the tourism operators whose property is not affected directly but who have been operating along the stretch of the river that will be affected by the inundation. As the Isimba HPP is not financed by the Bank, the Bank has not reviewed these instruments.</p>
3. (a)	<p>Likely Harm from Violation of the Indemnity Agreement and Bank Policies. Our client is privy to an independent report commissioned to determine the impact of the Isimba dam project. That report reveals that our client, the rest of the residents who live and derive sustenance from the Offset Area as well as the Ugandan nation that depends on the environmental and social benefits that were protected by the</p>	<p><b>The harm alleged by the Requesters is related to the Isimba HPP, a project that is not financed by the Bank.</b> Management is of the view that any speculation related to the potential impact of Isimba on the KOA is premature. The Bank is continuing to work with the GoU to further study in detail the potential impacts of Isimba on the KOA with the aim to ascertain whether the relevant objectives and</p>

No.	Claim/Issue	Response
	<p>commitments in the Indemnity Agreements and the rest of the transaction documents of the Bujagali Project are likely to suffer the following consequences:</p> <p>(i) The Sustainable Management Plan for the Offset Area recognizes that the Bujagali Project created a negative impact on the environment. The Offset Area was designed as a measure to counter balance these negative impacts in the long run. These long-term counterbalance measures will be eroded by the development of Isimba dam.</p>	<p>the covenants of the IA remain fulfilled. It is therefore premature to assume at this point that the GoU has failed to comply with the IA.</p> <p>The Action Plan for the Bujagali project included the preparation of a sustainable management program and a budget to conserve the present ecosystem of the Mabira CFR, as well as the Kalagala CFR and the Nile Bank CFR. The KOSMP, developed by the Ministry of Water and Environment, was adopted in 2010. It was launched by the GoU on May 5, 2011 and covers the period 2010-2019.</p> <p>The KOSMP sets forth appropriate mitigation measures to conserve and safeguard the ecosystem of the CFRs and address some of the impacts of the Bujagali project.</p> <p>It should be noted that the IA commits the GoU to set aside the KOA exclusively to protect its natural habitat and environmental and spiritual values; and limits any tourism development activities at the KOA to activities carried out in conformity with sound social and environmental standards. The purpose of the KOSMP referenced in the IA is to conserve the ecosystems of the CFRs.</p> <p>The ESIA Addendum will assess what, if any, impacts the Isimba HPP (not supported by the Bank) will have on the KOA and this would inform any adjustments to the KOSMP, if and where required.</p> <p>The Request did not provide any reference to the independent report which identified the impacts of the Isimba HPP. However, the Bank is aware of a report prepared for the Jinja Adventure-Tourism Operators, titled "Independent Tourism and Impact Assessment of the proposed Isimba HPP, Nile River, Uganda," dated December 2013, prepared by E&amp;D Consulting Services of South Africa. The report suggested constructing the Isimba Dam at its lowest possible height to eliminate any impact on Uganda's tourism industry. It also noted the urgent need to develop Uganda's power generation. The report also found that the selected height of the Isimba Dam will maximize power generation, but will also have the most significant negative risks for Uganda's tourism sector, in particular on whitewater rafting and kayaking.</p>



No.	Claim/Issue	Response
3. (b)	(ii) The development of this dam will undermine the management of the protected resources such as the targeted forest reserves cited above, the river banks and wetlands. This will also undermine and eliminate any benefits from the wider socio-economic development framework that was considered during the Bujagali Project.	<p><b>The Isimba reservoir will not affect the Mabira CFR (see response to Item 1), the largest forest in the area which protects the catchment of the Nile River and the tributary rivers, such as the Sezibwa, which feed into the Nile.</b></p> <p>The restoration of degraded areas under the KOSMP will help to ensure that the Nile River is protected so that it can continue to provide, among other things, power generation services. The ongoing conservation efforts in Mabira are the single most important intervention to ensure the achievement of the objectives of the KOSMP, alongside the protection of the Nile Basin.</p> <p>The impacts of the Isimba HPP on river banks and wetlands outside the KOA, and on related socio-economic development issues, were assessed as part of the ESIA and Social Impact Assessment (SIA) prepared by the Ministry of Energy and Mineral Development and cleared by NEMA. These impacts are expected to be mitigated and monitored following implementation of an Environmental and Social Management Plan, RAP and CDAP. However, specific impacts on biodiversity and broadly on the KOA can be adequately determined only after the ESIA Addendum is completed.</p> <p>The Strategy for the Integration of the Kalagala Offset SMP into District Development Plans (2010) was prepared in response to a stipulation in the IA and commits to the following obligations: (i) provide exclusive protection of the natural habitat, and environmental and spiritual values of the KOA, (ii) to carry out tourism activities at the site in conformity with sound environmental and social standards, (iii) avoid developing power generation that could adversely affect the ability to maintain the Kalagala Falls, and (iv) conserve through a sustainable management program the present ecosystem of Mabira CFR, Kalagala CFR and Nile Bank CFR.</p> <p>More specifically related to the Requesters' concerns, the objectives of the SMP include the promotion of socio-economic and environmentally sound eco-tourism activities at the KOA. The SMP is operational until 2019 and there is no reason to believe that it has</p>

No.	Claim/Issue	Response
		<p>been <i>undermined or eliminated</i> as alleged in the Request. The forthcoming ESIA Addendum and LTCOR will document current efforts to enhance and further develop the socio-economic framework through the establishment of a range of livelihood strategies in close consultation with local stakeholders.</p> <p>Lastly, Management would like to point out that development projects, specifically large scale infrastructure, typically involve complex tradeoffs between larger development goals and conflicting or competing interest by groups of citizens. In this case, the interest of the local tourism industry, and with it its visitors from developed countries, may indeed collide with the GoU's interest in power generation for economic and social development for the entire country.</p>
3. (c)	(iii) The immense opportunities for sustainable development provided by the natural resources around the Offset Area and Itanda Falls (including waterfalls, forests, land, water, wetlands, and Nile River Banks) will be extinguished. These opportunities were provided for and safeguarded in the Sustainable Management Plan for the Kalagala Offset Area.	See Item 3(a) above.
3. (d)	(iv) The construction of Isimba dam is likely to result in the flooding of the river within the Offset Area. The flooding will impact negatively upon the ecological and social functioning of the river section that was set aside for conservation due to the flooding caused by the Bujagali Project.	<p><b>Although construction of the Isimba HPP is ongoing, any impact on the KOA would only occur in conjunction with the inundation process, which is expected to be in 2018.</b> The Bank requested additional studies to better analyse various concerns, among them biodiversity, which includes a fish species, <i>Neochromis simotes</i>, that is endemic to this part of the Nile. The Ministry of Energy and Mineral Development commissioned Uganda's National Fisheries Resources Research Institute to update a 2001 survey that found this species both within and upstream of the KOA, as well as downstream of the Isimba HPP. The output of this updated fish biodiversity study is expected to be available within the next several months.</p> <p>The ESIA Addendum will also identify whether any other areas in the KOA that may be affected are believed to have spiritual values. The Addendum will further assess significance of the impact on another small area of forest,</p>

No.	Claim/Issue	Response
		which is likely to be inundated by the Isimba HPP.
3.(e)	(v) We also believe that if the Bank does not act to hold Uganda to its commitments, the Government of Uganda will be emboldened to flagrantly violate any commitments it has made in previous agreements or will make on future projects. This will unleash the fatal consequence of fostering a flagrant disregard for environmental and social considerations in project development, which as the Bank will agree, are central to achieving broader development goals.	<b>As noted in the response to Item 1, the GOU is legally bound by the provisions of the IA and based on the ESIA Addendum and LTCOR, the Bank will consider whether or not the GoU is complying with its obligations under the IA and the relevant objectives of the IA are still fulfilled. If not, the Bank will engage with the GoU to discuss mitigation measures for such impacts, in line with the IA, or otherwise consider its remedies.</b>
4.	The Bank's Policies that have been violated. Our client contends therefore that the development of the Isimba dam project is in violation of the World Bank's Operational and Bank Policies and more broadly the Bank's Safeguard Policies. Specifically, our client contends that the Isimba Dam insofar as it is being developed in an area protected by the transaction processes of the Bujagali Dam project offends the following Operational Policies: (i) OP/BP 4.01 on Environmental Assessment; (ii) OP 4.36 on Forests; (iii) OP 4.37 on Safety of Dams; and (iv) OP 4.11 on Physical Cultural Resources.	<p><b>The development of the Isimba HPP is not financed by the Bank and Bank policies do not apply. Management believes it is incorrect to contend that Bank policies are violated by the Isimba HPP.</b></p> <p>Management also believes it is incorrect to contend that as a result of the Isimba HPP, Bank policies are being violated under other Bank-financed projects. The three Bank-financed projects referenced in the Request contribute to protecting the KOA in compliance with the Bank's applicable Operational Policies, in particular:</p> <ul style="list-style-type: none"> <li>• As part of the Bujagali project the Bank assessed its relevant impacts and set forth mitigation measures (as requested by the Inspection Panel at that time) that led to the IA and the adoption and implementation of the SMP in line with OP/BP 4.01, OP/BP 4.04, OP/BP 4.36 and OP 4.11. Finalization of the Isimba ESIA Addendum will identify any additional measures that could be implemented to mitigate potential impacts of the Isimba HPP on the KOA. The Bujagali project is now closed.</li> <li>• The WMDP is financing specific activities under the SMP. There is no requirement under the WMDP, or the IA, obliging the GoU to fully implement all aspects of the SMP.</li> <li>• Any inundation caused by Isimba is not expected to undermine the activities supported by the WMDP.</li> <li>• The ERT III Project is supporting the preparation of the ESIA Addendum. The objective of this activity is to assess and identify potential impacts and recommend appropriate mitigation measures to ensure</li> </ul>

No.	Claim/Issue	Response
		<p>the protection of the KOA in line with the requirements of OP/BP 4.01, OP/BP 4.04, OP/BP 4.36 and OP 4.11.</p> <p>Since the Isimba HPP is not a Bank-financed project, the Bank's policy on Safety of Dams (OP 4.37) also referenced by the Requesters is not applicable.</p>
5.	<p>FROM EMAIL ATTACHMENT</p> <p>The two additional signatures will be affected as a result of flooding the offset area in many ways. XXX is a resident of Bujagali, Jinja, an area that was affected by the construction of Bujagali dam. His livelihood depends on tourism activities on river Nile. He previously owned a restaurant in the area. After the construction of Bujagali dam, he closed his restaurant due to lack of customers as a result of Bujagali dam project flooding the water falls that were used for tourism activities. He was forced to shift his operations in the offset area where he can derive a living.</p>	<p><b>The Bujagali project is closed.</b> The GoU compensated project-affected people according to the RAP Project affected people were compensated for loss of assets and livelihoods, and were provided with support to restore their livelihoods as well. The completion report for the Resettlement Action Plan (RAP) was submitted to the Bank in May 2013. The Bank has reviewed the report which satisfactorily assesses that the overall objectives of the resettlement program, specifically those related to restoring or improving the standards of living of displaced people resettled in Naminya, have been achieved.</p>
6.	<p>FROM EMAIL ATTACHMENT</p> <p>XXX is a resident of Kalagala village near Nile bank forest reserve right in the offset area. He started as a local historical traditional guide at Itanda Falls next to Nile bank forest reserve. Currently he is a tour operator in the area, and he has transformed the area into a tourist attraction with over 12,000 visitors a year, which has greatly contributed to the local economy of the Butagaya Sub county.</p> <p>The offset area has the waterfalls and rapids which are used for rafting, kayaking and other tourism activities which 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.</p>	<p><b>The socio-economic impacts due to inundation are covered in an SIA for Isimba prepared by the GoU, which presents a mitigation plan for implementation, in consultation with the affected people.</b></p> <p>The ESIA Addendum will describe the ongoing tourism related activities within the KOA that would likely be affected by the Isimba HPP. The Addendum will incorporate relevant and accurate information from the Isimba HPP ESIA, along with other Ugandan and international reports.</p> <p>The Addendum will specify and locate on a detailed map precisely which whitewater rapids would be lost to inundation by the Isimba HPP, and which would remain available for recreational use within the KOA. The Addendum will also assess the likely impacts of this change on local businesses and communities, along with local employment and the broader economy, including Jinja and beyond. Until the Addendum is completed, the Bank cannot fully understand the impacts.</p> <p>The ESIA Addendum is expected to lay out planned support for alternative tourism activities, to supplement reduced recreational opportunities within KOA attributable to the</p>



No.	Claim/Issue	Response
		<p>Isimba HPP. To ensure consistency with the letter and spirit of the IA, any such tourism development within the KOA would need to follow sound environmental and social standards acceptable to the Bank.</p> <p>A CDAP was prepared in August 2015 and updated in March/April 2016. A range of livelihood restoration activities are also proposed for the various categories of project affected people losing income or livelihoods. The CDAP does not make a distinction between the Kalagala Falls Site and the wider area affected by the Isimba HPP, but the ongoing work on the Addendum will nevertheless benefit from this information.</p>
7.	<p>FROM EMAIL ATTACHMENT</p> <p>Bujagali dam project had a lot of impacts, same will Isimba dam project have as a result of flooding the offset area. A lot of people are to be displaced during the construction of Bujagali dam, dynamite was being used to blast the big rocks, that caused cracks in people's houses who live in Bujagali and up to now those houses have not been repaired. Tourism industry will be impacted, a lot of locals will lose their livelihoods. The offset area was put in place to mitigate the environmental impacts caused by Bujagali dam. so when Isimba project goes ahead, there will be no mitigation measures in place, that will greatly impact on the environment.</p>	<p><b>The Bujagali project is closed.</b> To the Bank's best knowledge, the GoU compensated project-affected people according to the RAP. Project affected people were compensated for loss of assets and livelihoods, and were provided with support to restore their livelihoods as well.</p> <p>The completion report for the Resettlement Action Plan (RAP) was submitted to the Bank in May 2013. The Bank has reviewed the report which satisfactorily assesses that the overall objectives of the resettlement program, specifically those related to restoring or improving the standards of living of displaced people resettled in Naminya, have been achieved.</p> <p>The ESIA Addendum is expected to be a clear and systematic presentation of concrete, specific recommended options for mitigating any adverse impacts from the Isimba HPP on the KOA. Until the Addendum is completed, the Bank cannot fully understand impacts such as those described.</p>

*Second Request registered on September 19, 2016*

No.	Claim	Response
1.	<p><b>Kalagala Offset Agreement.</b> We, the residents of the Busoga region and concerned citizens we are writing to you today to advocate for the protection of the Kalagala Offset Area (KOA). It is known that the KOA was created by the Kalagala Offset Agreement, signed by</p>	<p>See Item 1 in response matrix for first Request.</p>

No.	Claim	Response
	the World Bank and the Government of Uganda, with the goal of preserving and protecting a biologically diverse and culturally significant section of the Nile River and its riverbanks. Nevertheless, it is also known that the construction of the Isimba Dam to its tallest proposed height would heavily and irrevocably impact this area in direct violation of the Agreement.	
2.	<b>Economic Impacts.</b> If the dam is built to its tallest proposed height, the Isimba reservoir will submerge about three quarters of the rapids that are the focus of the Kalagala Offset Area's remaining adventure tourism industry. This industry either directly or indirectly provides a living for many Busoga, including myself. In addition, the section of the Nile that will be submerged directly supports the livelihoods of many fishermen and subsistence farmers, as well as the people who run the ferry boats across the river at designated sites.	See Item 6 in response matrix for first Request  At this stage, the GoU and its experts have yet to complete the necessary ESIA studies to assess the potential economic impact on the Requesters (see responses to first request).
2.(a)	<i>Loss of Businesses and Employment.</i> The completion of Bujagali Dam a few years ago resulted in the loss of revenue and the closing of businesses for many of the people in the area of Budondo Sub-county and Jinja town in the Busoga region. Among the businesses hardest hit were those that depended on a market created by tourists (both Ugandan and Foreign) coming to the area to visit Bujagali Falls, such as local restaurants, arts and crafts businesses, taxi drivers and boda-boda drivers, local village tour guides, local entertainment and local market shops who sold things like pineapples, mangos, papaya, avocados, etc. Many people who were employed in these areas saw their businesses slow down or disappear with the completion of the Bujagali dam. Those of us whose businesses were able to survive the damage done by the Bujagali Dam are now afraid that the completion of the Isimba Dam and the subsequent flooding of the Kalagala Offset, will leave us jobless and unable to support ourselves and our families. As we have seen in Bujagali village, joblessness has led to many problems that were not there before, such as theft and gambling, excessive drinking, drug abuse, and other social ills.	See Item 6 in response matrix for first Request.
2.(b)	<i>Loss of Revenue and Decline in Public Infrastructure.</i> The decline of the tourism industry with the completion of the Bujagali dam also impacted the Ugandan government's ability to maintain the public infrastructure of our area. The government used to receive	See Item 6 in response matrix for first Request.

No.	Claim	Response
	<p>significant revenue from companies carrying out businesses on the river Nile, from license fees to Pay as You Earn (PYE) income taxes for employees registered with the National Social Security Fund (NSSF) and Uganda Revenue Authority (URA). This revenue has significantly decreased as businesses have shut down and joblessness has risen. As a result, the roads in the Busoga region are in a sorry state, full of holes. When it rains they become impassable, as there is not enough tax to fund upgrading the muddy and dusty roads in Jinja district, and the whole of the Busoga region. Things will only get worse if the remaining tour operators are forced to close.</p>	
3.	<p><b>Cultural Impacts.</b> Also, this section of the Nile is home to important local spiritual and cultural figures such as certain gods that are essential to our culture. The local gods and spirits that used to guard the Bujagali falls, and also to give blessings to the people of the Busoga Kingdom, have moved away. To us, this explains why we do not get enough rain, which leads to poor agricultural produce, which leads to famine and malnutrition in the area. If Itanda and the Nile below get flooded too, the gods will have to move again and they will be very disappointed. We are certain that if the gods do not feel honoured and respected (and this includes maintaining their known habitat in the river as it exists now), we Busoga will suffer even more problems. Bujagali Falls had a huge, old Muvule tree where the blessing gods lived. This tree was cut down because the area was going to be flooded and the blessing gods were forced to migrate. However, before the Bujagali Falls disappeared it is well-documented that believers in our strong Busoga culture travelled from many different areas and countries to the big Muvule tree to be blessed. Whoever received the blessings achieved what they asked for. These people could come back after a while to share testimony, and the meat of the animals they sacrificed in gratitude would feed the people of the community. The loss of another important cultural location such as this would be a grave burden on the people of this area. We are deeply concerned that this will happen again, and in far worse fashion if the Kalagala Offset is flooded.</p>	<p>Through the ESIA addendum the Bank is taking steps in conjunction with the GoU to ensure that the impacts of the Isimba HPP are fully and properly assessed. The ESIA Addendum in particular will make the determination as to whether the power generation being developed by GoU will adversely affect the protection of the natural habitat and environmental and spiritual values of the KOA or not. Both parties remain committed to upholding the IA.</p> <p>The ESIA Addendum will identify whether any other areas in the KOA that may be affected are believed to have spiritual values.</p> <p>Consultations on the ESIA addendum will be carried out with leading cultural bodies (Buganda and Busoga Kingdoms, Ministry of Tourism, Wildlife and Antiquities, Ministry of Gender, Labour and Social Development and Uganda N'eddagala Lyayo).</p>
4.(a)	<p><b>Health Impacts</b>  <i>Water pollution.</i> Many local people rely on Nile River water for domestic use, as they cannot afford to pay for tap water. Nevertheless, the</p>	<p>The ESIA Addendum is expected to provide further details on water quality within the boundaries of the KOA.</p>



No.	Claim	Response
	<p>Nile River quickly became contaminated after the completion of the Bujagali dam. This is because the sewage and industrial wastes from companies near the river Nile are dumped into the river. It was better before, when the Nile's waters ran quickly and did not allow the waste to pool and become stagnant. However, since the dam was built and the water does not have the opportunity to flow, there has been an increase in the spread of deadly diseases such as rampant Bilharzia and diarrhoea. Isimba dam, if built to the highest height, will just worsen this situation by creating two big sections of the Nile (Lake Bujagali and Kalagala) where waste will become trapped and breed disease.</p>	<p>The Isimba reservoir is not expected to suffer from diminished water quality. This is because the residence time of the water in the reservoir will be only about one day, so the water will not be "stagnant" and pollutants will not significantly accumulate within the reservoir.</p> <p>It should also be noted that the alleged impacts related to water pollution have not been confirmed in the 2016 environmental audit that was done for the Bujagali HPP.</p>
4.(b)	<p><b>Crocodiles.</b> Another unintended consequence of the lake created by the Bujagali dam is the arrival of dangerous animals like crocodiles. When the river still moved fast, crocodiles would not swim through. Now that the water does not move, there are crocodiles living in the Bujagali area, near Nile River Explorers camp at the Buwenda and Namizi areas. This has put people at risk of being injured or killed in places where they used to be safe. It is a realistic concern that the Isimba dam will create an even larger breeding ground for these dangerous animals, which will later claim/threaten both people and other animals' lives.</p>	<p><b>Management has carefully reviewed the alleged impacts cited in the Request (crocodiles, water quality), none of which have been confirmed in the 2016 environmental audit that was done for the Bujagali project.</b></p> <p>As the name suggests, Nile Crocodiles, <i>Crocodylus niloticus</i>, are native to the Nile River and associated waterways in Uganda. It is possible that the number of Nile Crocodiles will increase within the stretch of river to be affected by the Isimba Dam, because the slower-flowing waters are likely to provide more suitable habitat. However, the local crocodile population will also be influenced by the availability of suitable breeding sites (sandy burrowing sites).</p>
4.(c)	<p><b>Biodiversity.</b> Finally, this part of Nile is home to many unique species of plants and animals, which will be lost forever if the Kalagala Offset area is not protected.</p>	<p><b>No terrestrial or aquatic animal or plant species is expected to disappear from the KOA as a result of the Isimba HPP.</b></p> <p>The ESIA Addendum is expected to provide additional details on the expected biodiversity impacts of Isimba within the KOA, along with any potential mitigation measures (as needed).</p>
5.	<p><b>Political Impacts.</b> The mass unemployment created in the Bujagali and Jinja area by the Bujagali Dam has spread to the rest of the Busoga region, making the Eastern region the second poorest after Northern Uganda. The people of these areas join strikes, and most of them have resorted to supporting opposition parties like Forum for Democratic Change (FOCJ), Democratic Party (DP), etc. This is because the people think the current ruling government is not listening to their cries for help. A onetime Member of Parliament for Kagoma County, Dr Frank Nabwiso, stated at one point that we cannot have another dam under the Bujagali falls. If we do, he noted, we</p>	<p><b>The impacts of the Isimba HPP on the mitigation measures included in the KOSMP can be fully assessed once the ESIA Addendum is finalized.</b></p> <p>Once the ESIA Addendum is finalized, it will provide an analysis of alternatives of different reservoir operating levels and water release regimes, to the extent these alternatives would differentially affect the KOA. It includes an economic analysis to reflect the trade-offs between power sector development and tourism, including whitewater recreation.</p>

No.	Claim	Response
	<p>will lose most of the tourists who provide the government with important revenue which could be used to benefit the local area, put up new roads, buy drugs in hospitals, etc. Nabwiso also said that another dam will cause us to lose tourists who employ our Ugandans as drivers, swimmers, kayakers, guides, etc. The local Ugandans who are still employed in the tourism industry will lose their jobs, and will put more pressure on government to support or create jobs for them. This will be a serious burden on the government, and can only result in unrest. It is well-known that those Ugandan industries, apart from tourism, which provide employment do not offer jobs on merit, but rather are dependent on the ruling tribe and political party.</p>	<p>The GoU is preparing a CDAP and a RAP to compensate for loss of livelihoods among the communities affected by the Isimba Dam and the host communities in the vicinity, including the tourism operators whose property is not affected directly but who have been operating along the stretch of the river that will be affected by the inundation.</p> <p>The objectives of the SMP include the promotion of socio-economic and environmentally sound eco-tourism activities at the KOA, and the integration of the KOA into social and economic development aspirations of the people in adjacent landscapes. The SMP is operational until 2019 and there is no reason to believe that it has been <i>undermined or eliminated</i> as alleged in the Request. The forthcoming ESIA Addendum and LTCOR will fully document current efforts to enhance and further develop the socio-economic framework through the establishment of a range of livelihood strategies in close consultation with local stakeholders.</p> <p>Even if whitewater recreation opportunities are diminished by the inundation of several existing river rapids by the Isimba Dam, other kinds of tourism will not be "extinguished." The CDAP will help to promote other kinds of tourism development in the Isimba HPP area of influence. Moreover, the benefits of improving Uganda's power supply must be weighed against the risk of decrease in some specialized tourism areas.</p>
6.	<p><b>Compensation for Isimba Inundation.</b> For all these reasons, we are standing as voice to the voiceless people whose property will be underwater if a large Isimba dam is built. Few of these people have even been offered compensation. A few were offered partial compensation, but most were not acknowledged at all.</p>	<p>The GoU is preparing a CDAP and a RAP to compensate for loss of livelihoods among the communities affected by the Isimba Dam and the host communities in the vicinity, including the tourism operators whose property is not affected directly but who have been operating along the stretch of the river that will be affected by the inundation. As Isimba HPP is not financed by the Bank, the Bank has not reviewed these instruments.</p>

## **Annex 2. Project Details**

### **A. Isimba Hydropower Project (not Bank-financed)**

1. **Project Description.** The Isimba Hydropower Plant (Isimba HPP) is a 183.2-MW run-of-the-river project, with a dam located at Koova Island, several kilometers downstream of Simba Falls and about 36 km downstream of the Bujagali HPP dam, along the Nile River.<sup>15</sup> The plant will have four Kaplan turbines, 45.8 MW each, and is expected to generate 1,039 GWh per year (annual design energy). Maximum height of the dam structure is 36.9 m. Reservoir surface area is 19.4 square kilometers and reservoir volume 60.8 million cubic meters. The reservoir, when full, will extend some 18 km upstream, stopping two kilometers from the Kalagala Falls, but flooding about 4.5 km of the river within the KOA. According to the RAP for the plant, there are 13 rapids between Bujagali HPP and Isimba HPP of class 3 or higher: four are between Bujagali HPP and the southern border of the KOA; six are within the KOA; and three are between the northern border of the KOA and Isimba Dam. The Isimba reservoir will flood five of these rapids, including two within the current boundaries of the KOA. In addition to the power plant, the project includes construction of a 42-km, 132-kV double circuit line between the Isimba HPP site and the Bujagali substation.

2. **Project Studies.** A technical feasibility study for the power plant was completed in September 2012 by a joint venture of Fichtner (Germany) and Norplan (Norway). An Environmental Impact Assessment for the power plant was completed in November 2014, and for the transmission line in November 2012, both prepared by a consortium of Fichtner and Norplan and two Ugandan firms – AWE Environmental Engineers, and Kagga & Partners Ltd Consulting Engineers. The same firms prepared a RAP for the power plant in September 2013 and one for the transmission line in August 2012. A Social Impact Assessment for the power plant was completed in December 2014 and for the transmission line in September 2014. The Bank asked the GoU to clarify how it intended to ensure compliance with the IA while also developing the Isimba HPP through a letter dated January 26, 2015. In a letter dated February 5, 2015 the GoU reiterated its commitment to the IA and shared the technical studies and the safeguard documents for the Isimba HPP for the Bank to review. The Bank's comments on the Isimba ESIA were provided to the GoU through a letter dated March 17, 2015.

3. **Project Status.** The project has been contracted for construction to China International Water & Electric Corporation, under an EPC Contract for the amount of US\$567.7 million and a 40-month construction period. The project is financed by the GoU (15 percent) and a concessional loan from the Export-Import Bank of China (85 percent). Construction started in April 2015 and is to be completed in August 2018, with the first turbine coming on line in April 2018. The construction is about 45 percent complete at this time. The Ministry of Energy and Mineral Development reported that by mid-September 2016 the number of compensation claims paid included 745 for the dam site (out of 766);

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<sup>15</sup> All distances are approximate.

1,584 for the reservoir area (out of 1,717); and 691 for the transmission line route (out of 988).

## **B. Private Power Generation (Bujagali) Project (P089659) and the History of the Bank's Involvement with Bujagali**

4. **Bujagali 1 and the first Inspection Panel Request.** The first Bujagali project ("Bujagali Hydropower Project," P078024, or Bujagali 1) was an earlier attempt to develop the Bujagali site in the late 1990s/early 2000s, with AES as the private sector sponsor. The WBG supported the project through an IDA guarantee, IFC loans and a MIGA guarantee. The project was approved by the WBG Board of Directors on December 18, 2001. The IA between IDA and the Republic of Uganda was signed on December 20, 2001, which – inter alia – contained a number of the Government's commitments in relation to the hydropower development at Kalagala Falls; conservation of the Mabira Central Forest Reserve; commitment not to develop any hydropower initiatives at Murchison Falls (a World Heritage Site, which is far north of and not affected by Isimba); and maintenance of a Multi-stakeholder Task Force for the Kalagala Offset to identify, review, implement and monitor environmentally sustainable investment programs with appropriate mitigation measures at Kalagala Falls satisfactory to IDA. In its original version, the IA did not contain a commitment to developing tourism at the Kalagala Falls Site. However, in a letter of June 4, 2002, the Government amended the IA to replace Section 3.08(a) to read: *"Uganda will set aside the Kalagala Falls Site exclusively to protect its natural habitat and environmental and spiritual values and to develop tourism and will not develop the site for power generation without the Agreement with the Association."* An Inspection Panel case (case #24) on the project was registered on August 7, 2001, followed by an Investigation Report (May 23, 2002) and a Management Report and Recommendation (June 7, 2002), with an Action Plan to address the various concerns raised.

5. However, the Bujagali 1 project failed to become effective and was cancelled in November 2003, following the withdrawal of AES from the project in August of that year. With the cancellation of the project, the obligations set out in the IA signed for Bujagali 1 expired and any outstanding actions in the Management Report and Recommendation became moot.

6. **Bujagali 2.** The Private Power Generation (Bujagali) Project, or Bujagali 2, is a 250-MW run-of-the-river power plant with a reservoir adequate for daily storage, an intake powerhouse complex, and an earth-filled dam with a maximum height of about 30 meters. The project was constructed on the Nile River, approximately 8 kilometers north (downstream) of the existing Nalubaale and Kiira hydropower plants, located between the Bujagali plant and Victoria Lake. The Bujagali reservoir has a surface area of about 388 hectares, and its southern boundary reaches the tailrace areas of the Nalubaale and Kiira plants. The Bujagali 2 project included construction of a 100-km long transmission line, a transmission substation at Kawanda, and an extension of the Mutundwe substation. The project was structured as an Independent Power Producer plant under a Build-Own-Operate-Transfer arrangement, with a 30-year Power Purchase Agreement with the Uganda Electricity Transmission Company Ltd (UETCL). The project was developed by Bujagali

Energy Limited (BEL), a privately-owned special purpose company incorporated in Uganda.<sup>16</sup>

7. **Project Status.** The project was successfully completed and entered into commercial operation on August 1, 2012. The Bujagali plant generated 972 GWh in 2012; 1,376 GWh in 2013; 1,366 GWh in 2014; 1,457 GWh in 2015; and 715 GWh in the first half of 2016, or about 43-44 percent of Uganda's total generation in recent years. The project enabled the country to significantly strengthen its energy security using clean power.

8. **World Bank Group Support.** The Bujagali 2 project was supported through (i) an IDA guarantee in the amount of US\$115 million, backstopping debt service repayment of commercial loans; (ii) IFC "A" and "C" loans in a total amount of US\$130 million, and (iii) MIGA political risk insurance for up to US\$150 million. The IDA guarantee is set to expire in November 2023 upon repayment of the guaranteed commercial loans. An IA between IDA and the Republic of Uganda was signed on July 18, 2007, following the approval of the project by the World Bank Group's Board of Directors on April 26, 2007. The project closed on August 1, 2012, when the power plant entered commercial operation. Per OP/BP 10.00 and associated instructions, the implementation support phase of the project also ended on August 1, 2012. Following completion of the project, as per policy, the Bank has continued to monitor the specific financial risks covered by the IDA guarantee and will keep doing so until the expiration of the guarantee.

9. The assessments conducted as part of the Bujagali 2 Project showed that it would have adverse impacts on natural habitat. They noted specific adverse impacts on fisheries, forests, and areas of specific cultural relevance to local communities. According to the World Bank's safeguard policies, in particular OP 4.04, Natural Habitats, the adverse impacts on natural habitats needed to be mitigated through the creation of an ecologically similar protected area, which led to the creation of the KOA.

10. **Indemnity Agreement and the KOA.** The IA is the legal instrument governing the GoU's obligations regarding the KOA. The IA defines the KOA by reference to a map attached to it (KOA Map, see Annex 3). The map indicates that the KOA includes a 10-km long stretch of the river, with five rapids of class 3 or higher. The southern and northern boundaries of the KOA are about 12.5 km and 22.5 kilometers, respectively, downstream of the Bujagali HPP dam.

11. The IA specifically requires the GoU to set aside the KOA *"to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association."* It also limits any tourism development at the KOA and requires that such tourism development only be carried out

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<sup>16</sup> BEL shareholders included: (i) Industrial Promotion Services (Kenya) Ltd., the Kenya subsidiary of IPS, the industrial development arm of the Aga Khan Fund for Economic Development (35 percent); and (ii) Sithe Global Power LLC (US) (Sithe Global) (53 percent) an international development company, which is controlled by Blackstone Capital Partners (an affiliate of the Blackstone Group), and whose shareholders also included Reservoir Capital Group, LLC, a privately held investment firm, and Sithe Global's management. The GoU owned a 12 percent stake in the project.



*“in a manner acceptable to IDA and in accordance with the aforementioned standards”,* and that any power generation development that could adversely affect Uganda’s ability to maintain the above stated protection at the KOA would require the prior agreement of IDA.

12. The IA is not intended to preclude the GoU from developing power generation. Because additional power generation that could affect the KOA was foreseen at the time the Bujagali project was conceived, effectively, the IA allows the GoU to develop power generation so long as it does so in accordance with such sound standards. The Bank is now taking steps in conjunction with the GoU to determine whether or not the power generation being developed by the GoU will adversely affect the protection of the natural habitat and environmental and spiritual values of the KOA.

13. The IA remains in effect until the commercial loans guaranteed by IDA are fully repaid (expected to occur in November 2023). While the IA is in effect, the GoU will continue to be bound to its contractual obligations related to the KOA.

14. The IA of July 18, 2007 for Bujagali 2 differs in a number of ways from the IA of December 20, 2001 for Bujagali 1 in relation to the Government’s commitments related to the Kalagala Falls offset. A notable difference is that the IA of Bujagali 2 does not extend the Government’s commitments to protecting development of tourism per se in the KOA, but instead limits any tourism development and requires that such development be carried out according to sound environmental and social standards.

15. **Kalagala Offset Sustainable Management Plan (KOSMP).** The IA for the Bujagali 2 project requires the GoU to conserve the present ecosystem of the Mabira CFR, as well as the Kalagala CFR and the Nile Bank CFR on the banks of the Kalagala Falls through a sustainable management program and budget. The sustainable management program was developed over the period 2009-2010 by the Ministry of Water and Environment and adopted in 2010. The KOSMP, which covers the period 2010-2019, is comprised of the main document and six appendices: one on ecotourism development at Kalagala-Itanda Falls; four on forestry conservation, and one on district development. Implementation of specific priority activities under the KOSMP is, in part, supported by the IDA-financed Water Management and Development Project (see below).

16. The KOSMP includes the following activities: (i) implementation of an integrated approach to afforestation and reforestation, including restoration of native vegetation, conservation of habitats, and restoration and protection of riverbanks; (ii) implementation of environmentally sustainable livelihoods strategies; and (iii) strengthening the capacities of the Ministry of Water and Environment and the National Forestry Authority to implement the KOSMP. The KOSMP encompasses: Kalagala Falls and Itanda Falls and associated water and islands; Mabira CFR, Kalagala Falls CFR, Nile Bank CFR, Namavundu CFR, Namawanyi CFR, Namananga CFR, and Namakupa CFR.

17. **Bujagali 2 and the Second Inspection Panel Request.** A Request for Inspection of the Bujagali 2 project was registered on March 7, 2007 (case #44), followed by an Investigation Report (August 29, 2008) and a Management Report and Recommendation in Response to the Inspection Panel Investigation Report (November 7, 2008). The Management

Report included an Action Plan to strengthen institutional capacity of the various authorities responsible for the project; social assessment and mitigation measures, including updating of the socioeconomic baseline, follow-up on programs to address vulnerable groups and sharing of project benefits; measures to address physical cultural resources, including chance find procedures; and environmental assessment and mitigation measures, including disclosure of Panel of Experts reports, progress in afforestation, completion of the SMP for the Kalagala offset (see below); and follow-up on disclosure of information regarding Lake Victoria water releases. Most of the measures under the Action Plan have been completed; the remaining actions include: (i) continued and satisfactory implementation of the SMP; (ii) electrification of households in the Naminya Resettlement Area and affected nine villages as part of the community development program; and (iii) issuance of the remaining three land titles, under the supplemental action plan developed by BEL.<sup>17</sup>

### C. Water Management and Development Project (P123204)

18. **Project Description.** The development objectives of the WMDP are to (i) strengthen institutional capacity for integrated water resources planning, management and development; and (ii) provide access to water and sanitation services in priority urban areas. The project has three main components: (1) investments in integrated water resources development and management; (2) infrastructure investments in urban water supply, sanitation/sewerage and catchment/source protection; and (3) strengthening institutions for effective project implementation. The first component includes three sub-components, of which the third is the KOSMP (see above). This sub-component has an allocation of US\$4.8 million equivalent, and partially complements the resources and efforts of the GoU to comply with its obligations under the IA for the Bujagali project through the implementation of the KOSMP.

19. **Specific Activities Supported Under Component 1.3 of the WMDP.** The Project Implementation Manual describes in detail the specific KOSMP activities supported by the WMDP as follows:

- Procure a service provider to map degraded areas, survey and demarcate boundaries of CFRs and River Banks. Coordinate, supervise and provide technical backstopping to the service provider;
- Procure a service provider to plant and tend the plantings in the degraded areas of Mabira, and its boundaries and within the Nile River banks;
- Sign an MoU with NFA on raising seedlings, supervision and technical backstopping of the service provider on enrichment planting;

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<sup>17</sup> The status of the Action Plan is described in the “*Fifth Progress Report on the Implementation of Management’s Action Plan in Response to the Inspection Panel Investigation Report (Report # 44977-Ug) on the Republic of Uganda Private Power Generation (Bujagali) Project (Ida Guarantee NO. B0130-UG)*”, December 10, 2015.

- Map out small scale and commercial tree growers, facilitate them and technically support them to grow trees on their land;
- Train, facilitate and provide technical support to 20 community groups within the catchments of the Nile River to engage in high value sustainable agriculture;
- Identify and open trails to high value sites within the Mabira ecosystem to promote tourism;
- Procure a consultant to conduct the ecological and socioeconomic survey for Mabira ecosystem and update the management plan accordingly; and
- Procure a consultant to establish a digital data base for Mabira, and train staff on how to collect data and update the database.

20. **Project Status.** The project was approved by the Bank's Board of Directors on June 26, 2012 and became effective on August 12, 2013. As of October 10, 2016, US\$57.6 million was disbursed, which is 42.7 percent of the total amount of the IDA Credit of US\$135 million. The closing date is set for December 31, 2018.

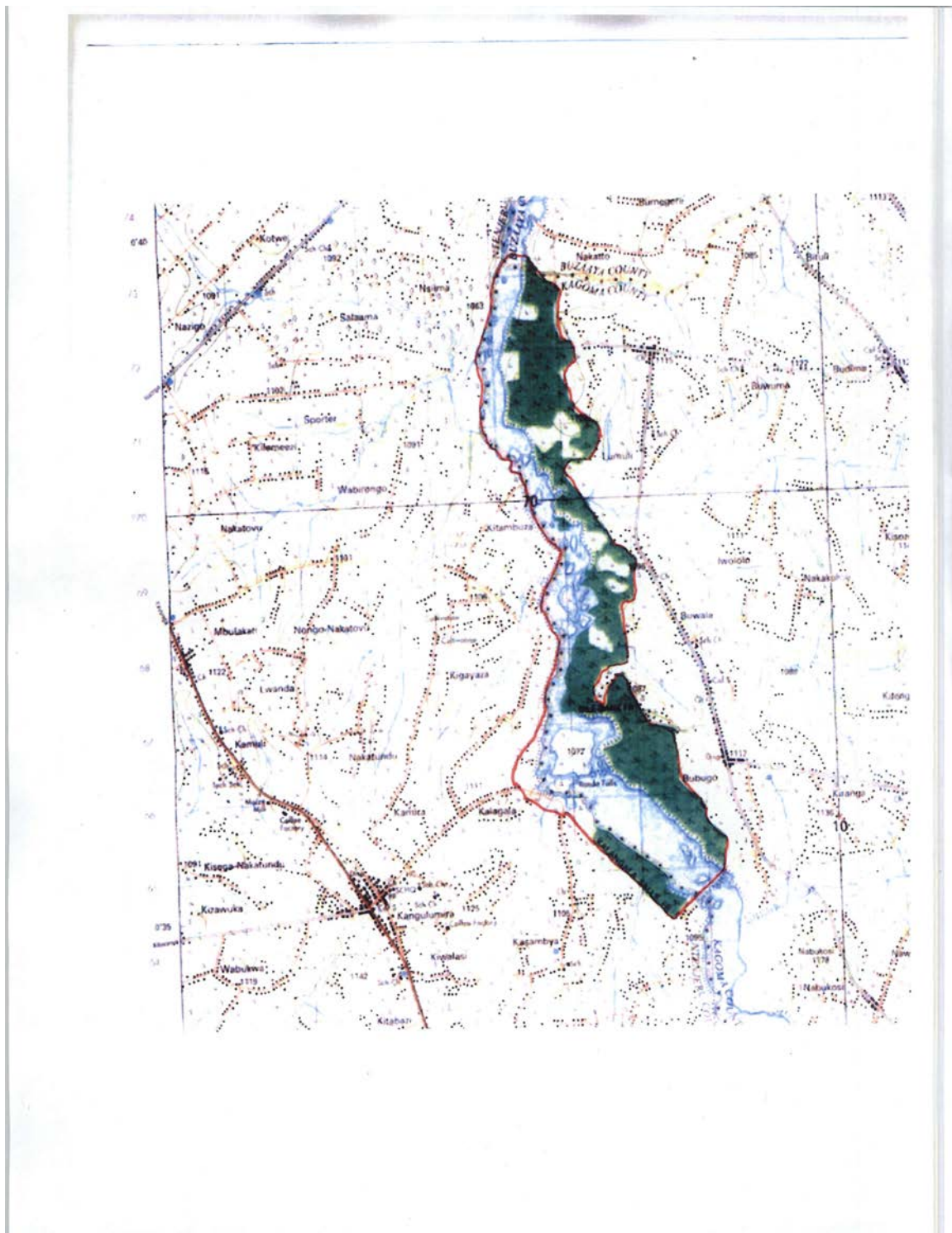
#### **D. Energy for Rural Transformation Phase III Project (P133312)**

21. **Project Description.** The objective of the ERT III Project is to increase access to electricity in rural areas of Uganda. The project has three components: (1) on-grid energy access; (2) off-grid energy access; and (3) institutional strengthening and impacts monitoring. The third component comprises a number of activities, including, among others, carrying out priority environmental and social impact assessment.

22. **Project Status.** The project was approved by the Bank's Board of Directors on June 5, 2015 and became effective on March 31, 2016. As of October 10, 2013, US\$0.28 million was disbursed of the total amount of the IDA Credit of US\$136.22 million. The project is co-financed by a GEF grant of US\$8.2 million and by the GoU in the amount of US\$33.2 million. The closing date is set for December 31, 2020.

23. **The ESIA Addendum.** ERT III finances an Addendum to the ESIA that the GoU developed for the Isimba HPP. The Addendum is required to properly describe the expected environmental and social impacts of the Isimba HPP within the land and water boundaries of the KOA, providing the relevant baseline information and the expected changes as a result of construction and operation of the Isimba HPP. The ESIA Addendum will describe and quantify the length (in km) and surface area (in ha) of the river and adjacent land areas within the KOA that would be inundated or otherwise affected by the Isimba HPP. The land area data will distinguish between forest or other natural vegetation, non-native forest plantations and cultivation or other areas of intensive human use. The Addendum covers the main potential environmental and social impacts, if any, and corresponding mitigation measures for the Isimba HPP as it could affect the KOA. The Addendum is expected to be finalized by mid-2017.

**Annex 3. Kalagala Offset Area Map (as per IA)**



UGANDA  
PRIVATE POWER GENERATION  
BUJAGALI PROJECT:  
KALAGALA FALLS AREA  
(INCLUDING THE NILE BANKS  
AND KALAGALA FALLS CFR),  
THE MABIRA CFR, AND ENVIRONS

- RAILROADS
- MAIN ROADS
- HIGHWAYS
- DISTRICT BOUNDARIES

