

**The Inspection Panel
Second Report and Recommendation
On
Request for Inspection**

**Republic of Uganda: Water Management and Development Project (P123204) and
Energy for Rural Transformation Phase III Project (P133312)**

A. Background and Introduction

1. On December 16, 2016, the Inspection Panel issued a first Report and Recommendation relating to alleged environmental, social, cultural, economic, and health-related harm resulting from the filling of the Isimba Dam reservoir, which will cause the flooding of parts of the Kalagala Offset Area (KOA)¹ in Uganda. While the World Bank² is not financing the construction or operation of the Isimba Dam, the Panel noted that three Bank-financed projects could plausibly be linked to the alleged harm: the Private Power Generation (Bujagali) Project (the “Bujagali Project”),³ the Water Management and Development Project (WMDP), and the Energy for Rural Transformation Phase III Project (ERT-III). Although the Panel found all three projects eligible in its report, the World Bank’s Board of Executive Directors (the “Board”), in a discussion on April 4, 2017, interpreted that, although the guarantee under the Bujagali Project was still open, the project was closed for the purposes of the Inspection Panel process, and thus not eligible for inspection. The Board approved the Panel’s recommendation of a deferral by up to 12 months on whether an investigation of the WMDP and ERT-III projects is warranted.

2. This second Report and Recommendation presents the Panel’s analysis and recommendation of the WMDP and ERT-III projects now that the deferral period has elapsed. The Report takes into consideration various developments since the deferral, including the Environmental and Social Impact Assessment (ESIA) Addendum (ESIA Addendum) to the Isimba Dam issued in November 2017, and resulting follow-up actions by Management.

¹ The KOA was established in 2007 when assessments for the Bank-financed Bujagali Dam showed that it would create adverse impacts on natural habitat, fisheries, forests and areas of cultural relevance to local communities. The Bank’s policy OP/BP 4.04 on Natural Habitats foresees mitigating the loss of habitat through the creation of ecologically similar protected areas. Consequently, an Indemnity Agreement (IA) was signed between the International Development Association (IDA) and the Government of Uganda (GoU) that required the protection of the KOA. The KOA includes a 10-kilometer (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).

The Panel notes that the IA and some other Project documents refer to the Kalagala Offset Area (KOA) as the Kalagala Falls Site (KFS). In this document, the terms Kalagala Offset Area (KOA) and Kalagala Falls Site (KFS) are used interchangeably.

² The terms “Bank”, “World Bank” and “IDA” are used interchangeably in this document.

³ The Panel had 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)

B. Summary of the Request for Inspection and the Management Response

3. *Request for Inspection.* On May 1, 2016, and September 19, 2016, the Inspection Panel received two complaints, which the Panel decided to process jointly (referred to as “the Request”). The complaints were submitted by three residents of the Jinja district in Uganda, and three residents of the Busoga region of Uganda, respectively (jointly referred to as “the Requesters”). The Requesters asked the Panel to keep their identities confidential.

4. The Requesters explained that people who live and earn livelihoods from the KOA – including farmers, fishermen, and workers from tourism-related activities -- and the value chain connected to it were likely to suffer harm if the Bank failed to hold the Government of Uganda (GoU) to its commitments under the Indemnity Agreement (IA) that created the KOA. They argued that the development of the Isimba Dam would threaten the management of protected resources, including adjacent forest reserves, river banks, wetlands, and the local economy. They claimed that fishermen, subsistence farmers, and tourism workers, particularly the Busoga people who derive livelihoods from this part of the Nile River, would be irretrievably harmed if the Isimba Dam was built and filled to its highest level. The Requesters also claimed that the relevant section of the Nile River to be flooded contained many unique species of flora and fauna that would be irrevocably lost, and that the spirits and gods that protect the Bujagali Falls would be “very disappointed”. In addition, the Request also alleged health impacts due to the resulting stagnant water.

5. *Management Response.* Management, in its Response of October 31, 2016, argued that the Request was technically ineligible because the alleged harm did not stem from a Bank-financed project. Management argued that the Bujagali Project was long closed, notwithstanding the fact that the guarantee would expire in 2023. Management also claimed that the other two Bank projects (WMDP and ERT-III) were not connected to the harm, and that the issues in the Request had been addressed by the Panel previously in 2001 and 2007.

6. Management further stated that although the WMDP was supporting activities as part of the Kalagala Offset Sustainable Management Plan (KOSMP) developed under the Bujagali Project, none of the interventions created or contributed to any alleged harm, and that the ERT-III simply financed the preparation of the ESIA Addendum to examine the impacts of the Isimba Dam on the KOA. Management explained that in early 2015 it had asked the GoU to clarify how it intended to ensure compliance with the IA while also developing Isimba. At that time the GoU shared the technical studies and safeguard documents for Isimba with the Bank and re-affirmed its commitment to comply with the IA. The Management Response explained that the GoU was not in breach of the IA at that time and the GoU’s compliance with the IA was being examined through the ESIA Addendum, which the Bank was funding. According to Management, the Addendum looked specifically at potential impacts of Isimba on the KOA. The Management Response also stated that the IA limits tourism development in the KOA.

C. The Panel's first Report and Recommendation and subsequent actions by Management

7. In its December 2016 Report and Recommendation, the Panel noted that the Bank's potential failure to protect the KOA could be the result of a breach of the IA. Regarding the WMDP Project, the Panel argued that its support of priority investments related to the implementation of the environmental offset that complements the Bujagali Project⁴ could plausibly be linked to alleged harm and policy non-compliance. Regarding the ERT-III Project, which financed the preparation of the ESIA Addendum, the Panel argued that deficiencies in the ESIA Addendum could be plausibly linked to potential harm. Given that the ESIA Addendum and resulting follow-up actions by Management were not yet completed at that time, the Panel recommended to the Board to defer by up to 12 months its decision on whether to recommend an investigation. As mentioned above, the Board, on April 4, 2017, approved the Panel's recommendation to defer its recommendation for the WMDP and ERT-III projects.

8. Management, on February 4, 2018,⁵ submitted an update to its Management Response to inform the Board and the Panel of recent developments regarding the following actions to which Management had committed in its October 2016 Response:

- a) Supporting the GoU to establish appropriate mitigation measures to manage identified negative impacts;
 - b) Advising the GoU regarding livelihood restoration measures and compensation provided to people affected by Isimba; and
 - c) Determining, 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 Central Forest Reserves (CFRs) as agreed in the IA.
- a) Establishment of mitigation measures to manage identified negative impacts

9. Management reported that the ESIA Addendum had been consulted⁶ and was finalized in November 2017, along with a supplemental technical study on fish species distribution.⁷ The Long-Term Conservation Options (LTCO) report,⁸ which was prepared by the GoU in parallel with the ESIA Addendum and analyzed options for establishing a firm legal status, institutional arrangements and sustainable funding for the KOA, was finalized in July 2017.⁹

⁴ Project Appraisal Document ("PAD"), Water Management and Development Project, June 1, 2012, page 7.

⁵ On February 8, 2018, Management submitted a Corrigendum to its Update on Management Actions, explaining that a table in the document has been corrected to include a missing date.

⁶ According to Management, the GoU facilitated extensive and widespread consultations on the ESIA Addendum, commencing in May 2016 and continuing after the first draft became available. These involved Central Government offices, relevant sectoral agencies, offices of the District Local Governments, tourism operators, and fishermen. Update on Management Actions, February 4, 2018, p. 2.

⁷ "Habitat Characteristics and Haplochromine Cichlid Fish Diversity of the Upper Victoria Nile: Towards the Development of Biodiversity Friendly Hydropower Projects," prepared by the National Fisheries Resources Research Institute (NaFIRRI), and completed in January 2017. An earlier haplochromine habitat study was prepared in 2001 by WS Atkins International and NaFIRRI, as part of preparatory work for the Bujagali Project.

⁸ The LTCO report is available at: <http://wbdocs.worldbank.org/wbdocs/drl/objectId/090224b085082cd8>

⁹ Update on Management Actions, February 4, 2018, p. 3.

10. The Management update explained that the GoU had developed an action plan with Bank support in October 2017 to ensure the implementation of mitigation measures to manage the negative impacts of the Isimba Dam on the KOA.¹⁰ The action plan included the following six actions, some of which have been completed, as discussed below:

- Completion of the ESIA Addendum and issuance of the Environmental Impact Assessment (EIA) certificate.
- Strengthening of the legal protection of the Extended KOA (EKOA).
- Establishment of institutional and funding arrangements for the EKOA.
- Management of Isimba construction activities.
- Preparation of the Management Action Plan for the 2007 Bujagali Inspection Panel Case.
- Preparation and adoption of a sustainable management program for the EKOA.

11. *ESIA Addendum and EIA Certificate.* The ESIA Addendum was finalized and disclosed in November 2017. The Panel notes that, according to the Addendum, the main impact of the Isimba Dam on the KOA would be the loss of the Kalagala Falls Site (KFS) geographical area by 22.62 percent; the loss of free flowing river length by 56.1 percent (5.7 kilometers, km); the loss of a free flowing water body area by 58.41 percent with a corresponding increase in the lentic habitat by 12.42 percent (288.89 hectares, ha); the loss of the Nile Bank CFR by 1.68 percent (11.9 ha); the loss of rapids and falls by 42.85 percent (three rapids); the loss of island groups by 57.14 percent (four groups of islands); the inundation of 47.15 percent of existing wetlands; (21.52 ha); and the inundation of 33.75 percent of existing woodlands (2.15 ha).¹¹ The Management update notes that the main adverse impact of this would be the loss of natural fish habitats and the loss of river rapids used by the tourism industry based on whitewater rafting and kayaking.¹²

12. The ESIA Addendum stated that the likely impact on aquatic macrophytes in the KFS will not be significant. It further stated that the likely impact on water quality, phytoplankton, macrofauna and fish would be mixed but that water hyacinth posed a significant problem that needed to be controlled. The likely impact on fish habitats was highly significant to migratory fish migrating upstream to spawn, due to the loss of spawning grounds. Haplochromine and other fish species usually found in the well-oxygenated habitats, including sections of the KFS, would be affected. Fish species intolerant of low oxygen level in the water would vacate the low-oxygen habitats and migrate further upstream. The impact on aquatic flora was considered to be low to insignificant.¹³

13. The Addendum stated that the Isimba Dam would not have an impact on the cultural and spiritual values of the Kalagala and Itanda falls within the KFS with respect to the Buganda and Busoga heritage. However, a few spiritual sites of local significance in the villages of Nsiima, Kibaati, Wabirongo, and Kitambuza, would be closer to the reservoir shoreline after the inundation.¹⁴

¹⁰ Ibid, pp. 4-6.

¹¹ ESIA Addendum, November 2017, pp. iv.

¹² Update on Management Action, February 4, 2018, p. 3.

¹³ Ibid, pp. iv and v.

¹⁴ Ibid, p. vii.

14. According to the Addendum, the key socioeconomic impact was on the tourism businesses of the Upper Victoria Nile. The Addendum stated that out of the available 17 falls or rapids between the Bujagali and Isimba dams, nine would be inundated, of which three are located within the KFS. It stated that out of the available 36.5 km of free-flowing river between both dams, only 17.5 km would remain for the white-water rafters (of which 5.7 km lies within the KFS, as mentioned earlier). The Addendum further stated that since white water rafting utilized the river section from Bujagali downstream to Isimba, losses incurred to the tourism economy could not be isolated for any segment of the river. Therefore, the envisaged whitewater rafting tourism business collective loss in the upper Victoria Nile was estimated to be between 40 percent to 50 percent.¹⁵

15. According to the Management update, the ESIA Addendum proposed as the key mitigation measure the extension of the KOA upstream by approximately 10.5 km to compensate for the 5.7 km loss of free-flowing river. The EKOA would include a stretch of the Nile River that would be approximately 15 kilometers long, and would begin upstream at 2.5 kilometers below the Bujagali Dam and end downstream at the end of the reservoir of the Isimba Dam. It would include: (a) the whole Nile River aquatic area within these limits; (b) all river islands within these limits; (c) all land within 100 meters of the left and right river banks from the annual maximum high-water line; and (d) the entire area of the Namavundu, Kalagala Falls and Nile Bank CFRs except the portions inundated by the Isimba Dam reservoir. The 15-km protected river in the EKOA would result in a net gain of about 4.8 km, compared to the original 10.2 km in the KOA. Management explained that the new protected river area was of generally higher biodiversity value than the one within the original KFS to be affected by the inundation. An example cited was that based on fish species surveys reported in the ESIA Addendum, 63 fish species (nine of global conservation concern) had been found within the new KFS, in comparison with 32 (four of global concern) within the original KFS.¹⁶

16. The Management update further explained that the ESIA Addendum also proposed measures to strengthen management of fish habitats and socioeconomic impacts, especially on tourism. It recommended updating the KOSMP to reflect the changed boundaries of the KFS and mitigate the adverse impact of the Isimba Dam.¹⁷ The ESIA Addendum also provides recommendations for the institutional strengthening of the KOSMP.¹⁸ Based on the ESIA Addendum, the National Environment Management Authority issued the EIA Certificate for the EKOA on November 30, 2017.¹⁹

17. *Legal Protection of the EKOA.* The Management Update explained that the GoU had committed to provide strong and permanent legal protection to the EKOA under Ugandan law, and a two-pronged approach was being followed. First, the GoU proposed protection under the National Environment Act (NEA), which was being discussed in Parliament. Second, the GoU proposed to use the existing Forestry Act as an interim arrangement to mitigate the risk of protracted discussions in Parliament on the NEA.²⁰

¹⁵ Ibid, p. vi.

¹⁶ Ibid, p. 4.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid, pp. 4-5.

18. *Institutional and funding arrangements for the EKO A.* According to Management, short-term institutional arrangements and funding sources for managing the EKO A were clarified by the GoU, and would be in place until the arrangements under the NEA are instituted. According to the update, the GoU advised that the institutional arrangements under the KOSMP would remain in place and the Ministry of Water and Environment's capacity to implement the KOSMP would be strengthened.²¹

19. *Management of Isimba construction activities.* The Management update explained that the KOA had not been affected so far by the construction of Isimba, and the Contractors were instructed by the GoU to refrain from any works that would irreversibly impact the KOA until explicitly advised to proceed. Management explained that this was designed to prevent irreversible impacts until appropriate mitigation measures have been put in place.²²

20. *Management Action Plan for 2007 Bujagali Inspection Panel Case.* According to Management, on December 20, 2017, the last outstanding land title under the Resettlement Action Plan for the Bujagali Project was issued, and the Management Action Plan therefore completed. The Panel notes that Management issued its final Progress Report on the Bujagali Project on February 20, 2018.²³

21. *Sustainable management program.* The Management update explained that the GoU had committed to prepare and adopt a sustainable management program for the EKO A by November 30, 2018. Management further clarified that measures to mitigate impacts on tourism activities were expected to be covered by a separate program under the Community Development Action Plan for Isimba, as they were beyond the scope of the IA.²⁴

Amendment to Indemnity Agreement and Supplemental Letter

22. Management in its update explained that, as envisaged under the GoU's action plan, the Bank and the GoU signed an amendment to the IA on January 24, 2018. The amendment included the following elements: the adjustment of the offset boundaries to extend the KOA upstream, the preparation and adoption of a sustainable management program for the EKO A by November 30, 2018, and the adoption and subsequent maintenance of a mechanism, that is satisfactory to the Bank and ensures legally binding and long-term conservation, protection and management of the EKO A by November 30, 2018. According to Management, a supplemental letter was signed together with the amendment that further elaborated on the expected content of the revised sustainable management program and clarified the features of the long-term, legally binding mechanism for conservation of the EKO A.²⁵

²¹ Ibid, p. 5.

²² Ibid.

²³ The Progress Report can be found on the Panel's website at <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=68>

²⁴ Update on Management Action, February 4, 2018, p. 6.

²⁵ Ibid.

b) Livelihood restoration measures and compensation to people affected by Isimba

23. The Management update explained that the GoU was in the process of updating the Community Development Action Plan for Isimba to reflect measures identified in the ESIA Addendum. Management referred to the ESIA Addendum covering socioeconomic impacts of Isimba, such as on land and property acquisition and related displacement, fishing, forest product extraction and tourism,²⁶ but stated that the protection of economic activities within the offset was outside the scope of the IA. According to Management, the Bank had nevertheless consistently advised the GoU to mitigate the negative economic impacts of Isimba, including through livelihood restoration activities to be identified in the Community Development Action Plan. The update also mentioned that the KOSMP devoted significant attention to the development of eco-tourism within the offset. According to the update, the Bank has emphasized the need to ensure that the expansion of the offset was conducted with due attention to adverse impacts on livelihoods, if any. The update referenced the supplemental letter mentioned above and stated that it contained the following agreements on the EKOAs sustainable management program:

- To the extent appropriate, incorporate the relevant provisions of the existing KOSMP and management plans in the EKOAs.
- Specify the types of human uses that will be permitted or prohibited in the EKOAs.
- Describe the range of EKOAs protection, management and monitoring activities to be carried out to achieve the management objectives.
- If the management program requires new restrictions on access to natural resources, specify measures for appropriate time-bound compensation and livelihood restoration.²⁷

c) Adjustments to the KOSMP to continue the protections of the IA

24. The Management update explained that, as mentioned above, the GoU was planning to update the KOSMP by November 30, 2018, following the IA amendment and supplemental letter, to reflect the changes to the KOA and enhance the current protections of the KOSMP.²⁸

D. Panel's Field Visit and Observations relevant to its Recommendation

25. A team composed of Panel Chairman Gonzalo Castro de la Mata, Panel Member Imrana Jalal, and Operations Officer Birgit Kuba visited Uganda from February 6 to 12, 2018. In Kampala, the Panel met with Government officials from the Ministry of Water and Environment, the National Environment Management Authority, the Ministry of Finance, Planning and Economic Development, the Ministry of Energy and Mineral Development, the Uganda Electricity Generation Company, the National Forestry Authority and staff of the World Bank Country Office. In the Project area, the Panel visited both the Bujagali and the Isimba hydropower plants. In Jinja and in the KOA and its vicinity, the Panel met with the Requesters and other potentially project affected people including fishermen, ferry operators, traditional medicine practitioners ("witch

²⁶ The ESIA Addendum also outlined mitigation measures for all identified impacts, with an emphasis on the impact on tourism, and recommended further enquiry into the impact of the Isimba HPP on local agriculture. Update on Management Action, February 4, 2018, p. 7.

²⁷ Update on Management Action, February 4, 2018, pp. 7-8.

²⁸ Ibid, p. 8.

doctors”), sand miners, tourism operators, rafters and kayakers. The Panel expresses its deep gratitude to them for sharing their views and for providing information. The Panel also expresses its gratitude to the staff of the World Bank Country Office in Uganda for its assistance, and to Bank Management and the project teams for providing several updates and sharing information.

26. The Requesters claimed that the Isimba Dam would cause significantly more harm than they had originally envisioned. The resulting flooding would affect forests, fishing, conservation of some areas of the KOA, adventure tourism based on whitewater rafting, and the extensive service industry depending upon it. Requesters claimed that the local economy was to a large extent based on tourism,²⁹ with around 7,500 workers and residents directly and indirectly affected by tourism losses and the resulting loss of employment and income. The Requesters and other affected people repeatedly complained about the lack of appropriate and accurate information regarding the timing and extent of the inundation, and other difficulties in obtaining basic information about the impact of Isimba. The Requesters claimed that they had asked the GoU and Bank numerous times to share the ESIA, its Addendum, and the plans for the EKO, but these requests had not received a response for many months. Later, when they were finally able to review the ESIA Addendum, they felt that it incorrectly deemed that the new proposed offset to be of equivalent biodiversity value. They also claimed that the ESIA Addendum failed to adequately assess whether an intermediary height of the dam could ensure that the KOA would remain intact or reduce impacts on the KOA. Affected people explained to the Panel that the flooding would affect between three and six rapids of critical importance to Nile-related adventure tourism. They also referred to impacts on agricultural fields that were important to farmers within the KOA.

27. The Requesters claimed that the livelihoods of many people would be severely affected, and the way in which compensation was calculated was unclear, arbitrary and lacked transparency. They further stated that it was difficult to arrange meetings with relevant officials in government agencies, as well as with World Bank staff in Uganda, to discuss their concerns. They explained to the Panel that government officials, as well as World Bank staff, knew as early as 2014 that parts of the KOA would be flooded by the Isimba Dam, but refrained from informing the public and project-affected people. They also claimed that parts of the protected CFRs would be affected and that illegal logging was occurring in parts of the KOA.

28. Several tourism operators informed the Panel that they had invested their life savings in tourism-related infrastructure based on a belief that, given the existence of the IA between the World Bank and the GoU, the KOA would be protected in perpetuity. The Panel team visited several tourism facilities, including lodges and associated infrastructure, whose owners claimed that they would be affected by the flooding. The Panel estimated that some of these structures and business could be completely submerged by Isimba. The Panel understands that the losses would be both direct and indirect, as the tourism industry based on the Nile also supports numerous associated enterprises, including restaurants and bars, hotels, bicycle rental and horse riding operations, etc. Affected people explained to the Panel that, in addition to the loss of many of the

²⁹ According to International Rivers, 50,000 people visit the area for whitewater rafting per year. <https://www.internationalrivers.org/blogs/352/world-bank-reneges-on-its-promise-to-protect-key-biodiversity-site-on-uganda's-white-nile>

rapids, the renowned “Nile Special” standing wave would be lost forever.³⁰ The Panel team heard that even if some rapids remain, the essence of whitewater rafting in that portion of the Nile would be irreversibly harmed, because many tourists travel from all over the world to enjoy a full day rafting experience. The Panel was told that the reduction in the number of rapids and the length of the river that can be traversed would cut rafting trips to half a day at the most, and this would make this river much less attractive to tourists.

29. Tour guides and those providing food services who rely on adventure tourism also feared that they would lose their jobs. Many operators told the Panel that they were not able to take future bookings because they did not know the extent to which they would be affected. They explained that it was not clear how they were going to be compensated. All operators the Panel spoke to explained that the compensation proposals they had received did not consider loss of future income. The Panel learned that because of the uncertainties related to the flooding date, operators were not able to provide employment security to their staff. Many expressed the sentiment that they were functioning based on “guesswork.” They feared that the flooding would also have a significant impact on the town of Jinja and the surrounding region as a whole.

30. The Panel team also met with fishermen, who explained that they had been prohibited from fishing in the river inside the KOA portion to be inundated. These fishermen claimed that they were unable to entertain alternative livelihood activities and thus had no option but to continue fishing. The Panel team also met with sand miners, who alleged that they were prohibited from accessing sand within the KOA portion to be inundated. They claimed that a change in water level would mean that many sand locations would no longer be reachable to them. Operators of ferry boats also expressed concern about losing their income sources as a result of restrictions on economic activities along the river. The Panel also spoke to several practitioners of traditional medicine who explained the importance of the river as the home to their spirits and gods. They expressed concern that the flooding would upset the spirits and gods, negatively affecting the healers’ ability to successfully practice medicine.

31. The Panel also learned about the concern that the change in river flow after the inundation, which would lead to extensive areas of the river being largely stagnant and result in an increase in already widespread diseases that cause severe suffering to the local communities, such as malaria.

E. The Panel’s Review

32. The Panel notes the significant progress achieved in the 12 months since the Board considered its first Report and Recommendation. The Panel also welcomes the measures put in place by Bank Management and the GoU to identify and mitigate the negative impacts related to the flooding of the KOA caused by the construction of the Isimba Dam.

33. Notwithstanding the above, the Panel notes that the objective of the KOA – which was established because of the inundation of the Bujagali Falls from the Bank-financed Bujagali Project to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards – will no longer be met because a significant portion of

³⁰ According to the Requesters, the “Nile Special” standing wave is a rare phenomenon where the water flows over rock formations in a way that creates a constant wave that never breaks and can therefore be surfed non-stop.

it will be flooded. In other words, the flooding of the KOA invalidates the intent for which it was created. The decision to compensate for the flooding with the creation of a new offset severely compromises the credibility of the offset concept, with wide-ranging and unfortunate implications for its future use as a biodiversity management tool.

34. *The WMDP.* One of the sub-components of the WMDP supports priority investments related to the implementation of the KOA that complement the Bujagali Project with US\$4.8 million equivalent allocated through the IDA Credit.³¹ According to the WMDP Project Appraisal Document (PAD), the sub-component finances activities under the KOSMP launched by the Government on May 5, 2011. The activities under the KOSMP include afforestation and reforestation, restoration of native vegetation, conservation of sensitive habitats, restoration and protection of riverbanks, promotion of environmentally sustainable livelihood strategies, and enhancement of the capacities of the national and sub-national entities responsible for the implementation of the management plan.³²

35. The KOSMP, which was developed as a requirement under the Bujagali Project's Indemnity Agreement, aims to "provide measures for ensuring sound environmental management of the Mabira ecosystem housing Kalagala and Itanda Falls for the purposes of '**counter balancing or making up for**' some of the negative impacts caused by Bujagali dam on the environment" (emphasis in original).³³ The WMDP considered the KOSMP as an environmental and social safeguard instrument, together with the Environmental and Social Management Framework and the Resettlement Policy Framework.³⁴

36. According to the KOSMP, it serves "[f]ulfilling Uganda's commitment to the Indemnity Agreement [...] through mitigating against negative environmental impacts of Bujagali Hydro-Power Project" and "[p]roviding a Planning Framework for guiding long term sustainable development actions in Mabira Ecosystem."³⁵ The Panel notes that since the KOSMP was prepared to operationalize the GoU's commitment under the Bujagali Project's Indemnity Agreement to protect the Kalagala Offset, and was included as a safeguard instrument under the WMDP, there is a direct link between the potential harms claimed by the Requesters and the WMDP. It is therefore important to investigate the timing and adequacy of Management's actions in response to the GoU's decision to build the Isimba Dam, which threatens the integrity of the KOA, and the potential non-compliance of these actions with the KOSMP under the WMDP.

37. *The ESIA Addendum under ERT-III.* In its Fourth Progress Report, dated September 13, 2013, on the implementation of the Management Action Plan in response to the Panel's Investigation Report on the Bujagali Project, Management reported the GoU's consideration of developing a new 100- to 180-MW run-of-the-river hydropower project at the Isimba Falls

³¹ Project Appraisal Document on a proposed Credit in the amount of SDR 87.1 million (US\$135 million equivalent) to the Republic of Uganda for a Water Management and Development Project, dated June 1, 2012, sub-component 1.3, page 7.

³² Ibid.

³³ KOSMP, page 8.

³⁴ Project Appraisal Document on a proposed credit in the amount of SDR 87.1 million (US\$135 million equivalent) to the Republic of Uganda for a Water Management and Development Project, dated June 1, 2012, page 65.

³⁵ Kalagala Offset Sustainable Management Plan (2010-2019), section 1.2.2, page 8

downstream of the Kalagala Falls and that a memorandum of understanding had been signed with an engineering, procurement and construction contractor.³⁶

38. Management added that the ongoing feasibility and due diligence studies “indicate that with the largest development option, the reservoir would likely inundate about 8 percent of the Kalagala Offset area, and affect about two thirds of the stretch of the Nile River that is in the Offset area. An island and parts of the shoreline near the Dam would be inundated, along with five out of the remaining 13 named whitewater rapids used for local whitewater rafting activities, which support local livelihoods. The reservoir would affect the nature of the river upstream, which could have an impact on some aquatic species, including rare fish. There would be resettlement at the Isimba site of up to 140 housing structures, 700 affected persons and about 900 ha of farmland; and some cultural assets along the shores could also be affected.”³⁷

39. In addition, Management in the Progress Report noted that it received a zero draft ESIA in April 2013 that indicated that there may be: “(i) negligible to minor impacts on hydrology and hydrogeology; (ii) minor impacts on terrestrial ecology; (iii) moderate impacts on aquatic ecology/fish feeding and spawning habitat, water quality, air quality, noise levels, aesthetics and temporary land take; and (iv) major impacts on agriculture, as about 80 percent of the land to be permanently inundated is under agricultural production.” Management noted that it had been following the situation closely and would review the ESIA being prepared to assess the significance of the potential impact on the KOA.³⁸

40. According to the Management Response, however, only in 2015 did the Bank ask the GoU how it intended to ensure compliance with the IA while also developing the Isimba Dam.³⁹ Management’s financing of an ESIA Addendum through the ERT-III to specifically focus on the potential impacts of the Isimba Dam upon the KOA was then agreed between Management and the GoU. According to the Management update, the preparation of the ESIA Addendum had started in May 2016, and was completed in November 2017.⁴⁰ The Panel notes that, according to the ESIA Addendum itself, when it was finalized, the excavation of the dam and powerhouse had been completed with 79.3 percent of concrete works, and the Project’s resettlement and rehabilitation works were nearing completion.⁴¹

41. The Panel therefore questions the timeliness of the ESIA Addendum, which was commissioned after the decision to build the Isimba Dam was made by the GoU. The Panel stresses that the purpose of the ESIA process is to understand impacts so that decisions are informed, and thus the sequence of the ESIA or its Addendum in relation to the Isimba Dam’s final design is a material consideration that needs to comply with the Bank’s Policy on Environmental Assessment.

³⁶ Fourth Progress Report on the implementation of Management Action Plan in response to the Investigation Panel Investigation Report (Report #44977-UG) on the Republic of Uganda Private Power Generation (Bujagali) Project (IDA Guarantee No. B0130-UG), dated September 13, 2013, para 35, page 11.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Management Response. p. 27.

⁴⁰ Update on Management Action, February 4, 2018, p. 1.

⁴¹ ESIA Addendum, November 2017, pp. iii.

The Panel finds no evidence that the ESIA Addendum has influenced any decision related to the building of the Isimba Dam.

42. In conclusion, the Panel notes the importance of investigating the timing and adequacy of Management's actions in response to the GoU's decision to build the Isimba Dam, which threatens the integrity of the KOA in potential non-compliance with KOSMP under the WMDP. The Panel also notes that the timing, sequencing, and adequacy of the ESIA Addendum, financed under ERT-III with analysis of alternatives limited to Isimba Dam's different heights, reservoir levels and water level regimes, could constitute potential non-compliance with Bank Policies on Environmental Assessment (OP/BP 4.01) and Natural Habitats (OP/BP 4.04), among others.

F. Recommendation

43. In light of the foregoing, the Panel considers the alleged serious harms to be plausibly linked to WMDP and ERT III, and that the Request raises important issues of potential harm and policy non-compliance. As determined in its first Eligibility Report dated December 16, 2016, the Panel notes that the Requesters and the Request meet the technical eligibility criteria set forth in the Resolution establishing the Inspection Panel and the 1999 Clarification. The Panel further notes that the Requesters raise issues of a serious character that can only be fully ascertained in the context of an investigation. The Panel therefore recommends carrying out an investigation into the alleged issues of harm and related potential non-compliance.

44. If the Board of Executive Directors concurs with the foregoing, the Inspection Panel will advise the Requesters and Management accordingly.

Annex

Update on Management Actions

UGANDA

PRIVATE POWER GENERATION (BUJAGALI) PROJECT (P089659); WATER MANAGEMENT AND DEVELOPMENT PROJECT (P123204); AND ENERGY FOR RURAL TRANSFORMATION PHASE III PROJECT (P133312)

UPDATE ON MANAGEMENT ACTIONS

February 4, 2018

1. Management is providing this update to its Response to the Request for Inspection to inform the Board and Panel of the most recent developments regarding the Actions to which Bank Management committed in its Response (paragraph 48).

2. Specifically, Management undertook to continue working with the Government of Uganda (GoU) to assess the potential impacts of the Isimba Hydropower Plant (HPP), which the Bank is not financing nor associated with, on the Kalagala Offset Area (KOA), and to undertake the following:

- (a) *Support the GoU to establish appropriate mitigation measures to manage identified negative impacts;*
- (b) *Advise the GoU regarding livelihood restoration measures and compensation provided to people affected by the Isimba HPP; and*
- (c) *Determine, on the basis of the findings of the [Environmental and Social Impact Assessment (ESIA)] Addendum, once it is completed, whether any adjustments to the [Kalagala Offset Sustainable Management Plan (KOSMP)] might be appropriate to continue the protections of the ecosystem of the [Central Forest Reserves (CFRs)] as agreed in the [Indemnity Agreement (IA)].*

3. The current status and expected timeframe for the completion of each action are provided below in detail.

A. Support the GoU to establish appropriate mitigation measures to manage identified negative impacts on the KOA.

Assessment, Studies and Reports to Assess the Impacts of the Isimba HPP on the KOA and Recommend Mitigation Measures.

4. ***ESIA Addendum to the Isimba HPP.*** Preparation of the ESIA Addendum by the GoU started in May 2016, after the GoU selected consultants under terms of reference agreed with the Bank, and was completed in November 2017.¹ The GoU held extensive consultations throughout

¹ The ESIA Addendum report and its appendices are publicly available on the following websites, respectively:

the preparation of the ESIA Addendum,² starting with a kick-off meeting at the Ministry level in May 2016 involving Central Government offices, relevant sectoral agencies, offices of the District Local Governments, tourism operators, and fishermen. Nineteen focus group meetings were held during September 2-10, 2016 in the affected villages and communities related to the KOA. A stakeholder consultation meeting was organized at the local level in Jinja on August 19, 2016 which specifically targeted local level stakeholders, and involved a total of 58 participants (12 women and 46 men). Another stakeholder consultation meeting was held in Kampala on August 22, 2016, with 11 concerned institutions (including tourism operators) and nongovernmental organizations (and a total of 28 participants).

5. ***Consultations on the final draft of the ESIA Addendum.*** The final draft of the ESIA Addendum was disclosed on the website of the Ministry of Energy and Mineral Development (MEMD) in August 2017 for written comments. Public consultations on the draft ESIA Addendum were first held in five sub-counties (Nazigo, Kangulumira, Wakisi, Butagaya and Budondo) with the leadership of the sub-counties, leadership of all affected villages and representatives of affected communities. Two public hearings were held, one on the Busoga side on October 12, 2017, on the western bank of the river at Kalagala Falls, Kangulumira sub-county, Kayunga district, and on the Buganda side on October 13, 2017, in Bususwa Primary School, Kibibi Parish, Budondo sub-county, Jinja district. The general public was notified of the hearings through notices in multiple newspapers, announcements on local TV and radio stations, community mobilization by the local leadership, and mobile announcements. Tourism companies were also invited through a separate letter dated October 6, 2017 addressed to them. Documents were made available in the local languages, i.e., Luganda and Lusogafor.

6. The public hearings were attended by representatives of the respective District Local Governments, including Kayunga, Buikwe, Jinja and Kamuli; Resident District Commissioners; the local authorities, including Village Local Council Chairpersons and Sub-County Chairpersons for the surrounding villages and sub-counties; representatives from the National Environment Management Authority (NEMA), the Ministry of Energy and Mineral Development, and the World Bank; tourism operators; teachers; transporters; mechanics; farmers; fishermen; and sand miners, among others. Over 300 people attended. Attendance sheets, copies of newspaper announcements and minutes of the various meetings are annexed to the ESIA Addendum.³ Management also requested the Panel's assistance to forward the invitation for the consultations to the Requesters. MEMD also received written comments from a tourism operator, which – together with the GoU response – are annexed to the ESIA Addendum.

<http://www.energyandminerals.go.ug/downloads/ESIAAddendumfinal20November.pdf> and
<http://www.energyandminerals.go.ug/downloads/finalappendixcorrected.pdf>

Addendum to the Environmental and Social Impact Assessment of Isimba 183 MW Hydropower Project on the Kalagala Falls Site in the districts of Kayunga, Buikwe and Jinja.

² The GoU held extensive consultations on the Isimba ESIA during project preparation. The GoU reported holding a total of 22 meetings on the Isimba Environmental Impact Assessment (EIA), Social Impact Assessment (SIA) and Resettlement Action Plan (RAP) in 2012, with 1,077 persons representing different institutions, civil societies and affected persons (APs) participating in these meetings. Of the 22 stakeholder consultations held at the local level, 6 were held in villages within the local government's administrative footprint of KFS. In June 2014, a public hearing was held on the final version of the EIA, SIA and RAP reports.

³ Attendance sheets for public hearings on October 12, 2017 identify two tourism operators in attendance representing *Lemon on the Nile* and *Nile River Explorers*.

7. **Technical studies on fish species distribution.** As a supplement to the work on the ESIA Addendum, the GoU commissioned a technical study on fish species of conservation interest within the Upper Victoria Nile, entitled “Habitat Characteristics and Haplochromine Cichlid Fish Diversity of the Upper Victoria Nile: Towards the Development of Biodiversity Friendly Hydropower Projects,” prepared by the National Fisheries Resources Research Institute (NaFIRRI), and completed in January 2017.⁴ The aim of the study was to provide information on the specific distribution and habitat requirements of fish species of conservation interest, particularly the haplochromine cichlids, keeping in mind the impacts that are likely to occur as a result of construction of the Isimba HPP.

8. **Long-Term Conservation Options (LTCO) report.** In parallel with the ESIA Addendum, the GoU also prepared a Long-Term Conservation Options (LTCO) report, completed in July 2017. The LTCO report analyzes options for establishing a firm legal status, institutional arrangements, and sustainable funding for the KOA, and proposes solutions.⁵

Key Impacts and Mitigation Measures

9. The ESIA Addendum found that the key impacts of the Isimba HPP on the KOA are the consequence of the Isimba reservoir extending into the KOA, causing inundation of about 5.7 km (out of 10.2 km) of the river within the KOA, including three (out of seven) major rapids/island groups within the KOA. The main negative impacts would be the loss of the natural fish habitat, including for some restricted-range species of conservation interest, and the loss of the river rapids for whitewater rafting/kayaking related tourism.

10. The ESIA Addendum proposed, as the key mitigation measure, to extend the KOA upstream by approximately 10.5 km to compensate for the 5.7 km loss of free-flowing river to the Isimba reservoir. Such an Extended KOA (EKOA) would encompass a stretch of the Nile River approximately 15 kilometers long, beginning upstream at 2.5 kilometers below the Bujagali Dam wall and ending downstream at the tail end of the Isimba Dam reservoir (maximum pool level of 1,055 meters above sea level), including (a) the entire Nile River aquatic area within these limits; (b) all river islands within these limits; (c) all land within 100 meters of both the left and right river banks from the annual maximum high-water line;⁶ and (d) the entire area of the Namavundu, Kalagala Falls and Nile Bank CFRs except any portions inundated by the reservoir of the Isimba Dam.⁷ The map of the EKOA is attached as part of an Amendment to the IA (see paragraph 14).⁸ The 15-km length of the protected river included in the EKOA means a net gain of about 4.8 km (15 km vs. the original 10.2 km).

⁴ An earlier haplochromine habitat study was prepared in 2001 by WS Atkins International and NaFIRRI, as part of preparatory work for the Bujagali hydropower project.

⁵ The LTCO report is available at: <http://wbdocs.worldbank.org/wbdocs/dri/objectId/090224b085082cd8>

⁶ The 100-meter zone of major river banks is protected and regulated as wetlands under the National Environment (Wetland, Riverbanks and Lakeshore Management) Regulations 2000.

⁷ The Mabira CFR is not affected by the Isimba HPP and maintains its current protected status.

⁸ The title of the map (“Kalagala-Itanda Falls Conservation Area”) is the term used by the GoU for the KOA. The Bujagali Indemnity Agreement operates with the term “Kalagala Falls Site (KFS),” either in its original definition or for the Extended KFS (EKFS). For the purpose of this Update, the terms KFS, KOA, and Kalagala-Itanda Falls Conservation Area are used interchangeably.

11. The ESIA Addendum also proposed several measures to strengthen management of fish habitats and socio-economic impacts (especially on tourism). It also recommended updating the KOSMP (2010-2019)⁹ to reflect the changed boundaries and mitigate the adverse impacts of the Isimba HPP. The ESIA Addendum further provides recommendations for the institutional strengthening of the KOSMP.

12. The new KFS includes all of the original KFS that will not be inundated by the Isimba reservoir, plus the proposed upstream extension of about 10.5 km, up to within 2.5 km of the Bujagali Dam wall. As such, the new KFS encompasses 15 kilometers (km) of the Upper Victoria Nile River, compared to only 10.2 km in the original KFS. The river area added to the new KFS is of generally higher biodiversity value than the portion within the original KFS that will be affected by Isimba. For example, based on fish species surveys carried out by NaFIRRI in 2000 and 2016 and reported in the 2017 Isimba ESIA Addendum, 63 fish species (including 9 of global conservation concern) have been found within the new KFS, versus 32 (including 4 of global concern) within the original KFS.

Action Plan of October 2017

13. To ensure implementation of the mitigation measures to manage the negative impacts of the Isimba HPP on the KOA, the GoU developed an Action Plan in October 2017 with Bank support. The scope of the Action Plan reflects the objectives of the KOA, which was defined¹⁰ as being set aside “...*exclusively to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association.*” The Action Plan includes the following actions, completed as indicated:

- (a) *Completion of the ESIA Addendum and issuance of the EIA certificate:* Based on the ESIA Addendum, NEMA issued the EIA Certificate for the EKOA on November 30, 2017.¹¹
- (b) *Strengthening legal protection of the EKOA:* The GoU has committed to provide strong and permanent legal protection to the EKOA under Ugandan Law. This would be a significant enhancement of the status of the existing KOA, which enjoys no specific legal protection beyond the provisions spelled out in the IA, which also is timebound. The GoU has followed a two-pronged approach for protecting the EKOA:
 - (i) First, it proposes to do so under the umbrella of the National Environment Act (NEA). A Bill for revision of the NEA was approved by the Cabinet on November 13, 2017 and submitted to Parliament on December 15, 2017. The Bill is currently being discussed by Parliament and is expected to allow for the establishment, through Statutory Instrument, of the EKOA as a “special conservation area” with a primary focus on conservation of water resources and aquatic biodiversity, and including specific and unambiguous

⁹ The Kalagala Offset Sustainable Management Plan (2010-2019) was issued by the Ministry of Water and Environment in 2010.

¹⁰ See Indemnity Agreement, paragraph 3.06(a).

¹¹ Preparation of the ESIA Addendum was a specific condition of approval of the EIA Certificate for the Isimba HPP, which NEMA issued on May 19, 2015.

prohibitions against the building of hydropower facilities or other major infrastructure in or affecting the area. The protection provided by the revised NEA is expected to apply beyond the expiration date of the IA (November 2023).¹²

- (ii) Second, the GoU proposes to use the existing “Forestry and Tree Planting Act, 2003” (“Forestry Act”) as an interim arrangement to mitigate the risk of protracted discussions of Parliament’s consideration of the NEA Bill. This interim arrangement is to be instituted and to remain in place until after the NEA is passed by Parliament. The arrangement involves extending the Kalagala Falls CFR to include all the areas of the EKOA not already belonging to one of the CFRs associated with the EKOA.¹³ The process was initiated on December 8, 2017, by the Ministry of Water and Environment (MOWE), which put out a public notice of intent to issue such an amendment to the Forest Reserves Declaration Order, kicking off a mandatory 90-day public comment period. It is expected that the arrangement under the Forestry Act will be in place within a few weeks after the public comment period ends, unless the process of adopting the NEA advances sufficiently to render the interim arrangements unnecessary.
- (c) *Establishing institutional and funding arrangements for the EKOA:* The GoU clarified institutional arrangements and sources of funding for managing the EKOA in the short term, until the arrangements under the NEA are instituted. The GoU advised that the institutional arrangements developed under the KOSMP will remain in place, with strengthening of the MOWE’s capacity to implement the KOSMP. The GoU further assured that it would provide funds in MOWE’s Medium Term Expenditure Framework for the purposes of managing the activities related to maintaining the EKOA, and that it had already provided UGX3,627,000,000 (about US\$1,006,000) for Fiscal Year 2017/18.
- (d) *Managing Isimba HPP construction activities:* The KOA has not been affected so far by the construction of the Isimba HPP. The Ministry of Energy and Mineral Development instructed Isimba HPP contractors, in letters of October 26, 2017 and November 23, 2017, to refrain from any works that would irreversibly impact the KOA until explicitly advised by the Ministry that it could proceed with such works. This is designed to prevent irreversible adverse impact on the KOA until appropriate mitigation measures have been put in place.
- (e) *Management Action Plan for 2007 Bujagali Inspection Panel Case:* On December 20, 2017, the GoU issued the last outstanding land title under the Resettlement Action Plan for the Bujagali project, completing the Management Action Plan for the 2007 Inspection Panel case (MAP 2007).¹⁴

¹² Instituting this protection would fulfill, significantly ahead of time, an important stipulation in the IA, which asked IDA and the GoU to enter into discussions for the long-term protection of the KFS only upon receiving the IDA notice of a termination (or prospective termination) of the IDA Guarantee Agreement.

¹³ These CFRs are Kalagala Falls CFR, Nile Bank CFR, and Namavundu CFR. Mabira CFR is also included in the sustainable management program under the IA and maintains its current protected status.

¹⁴ Inspection Panel Investigation Report No. 44977-UG on the Private Power Generation (Bujagali) Project.

- (f) *Sustainable management program*: The GoU reiterated its commitment to conserve, through a sustainable management program and long-term funding mutually agreed by the Government and the Bank, the present ecosystem of the Mabira CFR, as well as the EKOVA (including the CFRs therein) and to prepare and adopt, by November 30, 2018, a sustainable management program for the EKOVA. The Bank expects that the management program will include, inter alia, additional mitigation measures for fisheries (monitoring, management, and education programs), given the potential adverse impact of the Isimba HPP on habitats for some fish species. Measures to mitigate the impacts on the tourism activities are expected to be covered by a separate program under the Community Development Action Plan for the Isimba HPP, as they are beyond the scope of the IA.

Amendment to Indemnity Agreement and Supplemental Letter

14. As envisaged under the Action Plan, with these actions (a)-(f) described above, the Bank and the GoU have agreed on and signed on January 24, 2018 the Amendment to the IA (“Amendment”), the key elements of which include:

- Adjusting the offset boundaries to extend the KOVA upstream, as described in paragraph 10;
- Preparing and adopting a sustainable management program for the EKOVA, by November 30, 2018, consistent with the obligations to maintain a sustainable management program for the offset and the CFRs;
- Adopting, by November 30, 2018, and thereafter maintaining, a mechanism satisfactory to the Association that ensures legally-binding and long-term conservation, protection and management of the EKOVA.

15. A Supplemental Letter, also signed together with the Amendment on January 24, 2018, further elaborates on the expected content of an acceptable revised sustainable management program, linking it to the objectives of the IA and emphasizing the importance of mitigating any negative social impact of possible new or enhanced restrictions on the use of natural resources that the expansion of the KOVA boundaries may entail. The Supplemental Letter also clarifies the features of the long-term, legally-binding mechanism for conservation of the EKOVA.

16. The Amendment and the Supplemental Letter are attached to this report.

17. The table below summarizes the ways in which the IA has been strengthened by the Action Plan of October 2017, the Amendment and the Supplemental Letter.

Item	Indemnity Agreement of July 18, 2007	Indemnity Agreement as Amended on January 24, 2018
Size of the KFS	<ul style="list-style-type: none"> The fast-flowing river length: 10.2 km Two CFRs (Nile Bank, Kalagala Falls) 	<ul style="list-style-type: none"> The fast-flowing river length: 15 km Three CFRs (Nile Bank, Kalagala Falls, Namavundu)¹⁵
Legal Protection	<ul style="list-style-type: none"> Reliance on the Indemnity Agreement No legal mechanism agreed beyond the duration of the IA (2023) 	<ul style="list-style-type: none"> <i>Long-term protection:</i> GoU has submitted to Parliament an Amendment to the NEA that is expected to allow for declaring the EKFS a special conservation area and give it legal protection in perpetuity <i>Interim arrangements:</i> Declare the extended offset area a CFR under the Forestry and Tree Planting Act, which would strengthen its legal protection in conjunction with the IA
Institutional Arrangements	<ul style="list-style-type: none"> Complex and time-bound arrangements, defined by KOSMP (2010-2019) 	<ul style="list-style-type: none"> More streamlined long-term arrangements to be defined by the updated KOSMP
Funding	<ul style="list-style-type: none"> Included in the budget of the Ministry of Water and Environment 	<ul style="list-style-type: none"> To be explicitly defined by the updated KOSMP
<p>The revised arrangements are designed to provide legal protection of the EKFS in perpetuity, complemented by institutional responsibilities and funding sources for sustainable management</p>		

B. Advise the GoU regarding livelihood restoration measures and compensation provided to people affected by the Isimba HPP.

18. The ESIA Addendum elaborated on socio-economic impacts of the Isimba HPP, including on: land and property acquisition and related displacement; fishing; forest product extraction; and the tourism industry. The ESIA Addendum also outlined mitigation measures for all identified impacts, with an emphasis on the impacts on tourism, and recommended further enquiry into the impacts of the Isimba HPP on local agriculture. The GoU is in the process of updating the Community Development Action Plan (CDAP) for the Isimba HPP to reflect these measures.

¹⁵ The Mabira CFR is located outside of the KFS and maintains the same level of protection under the Amended Indemnity Agreement.

19. Protection of economic activities within the offset is **outside** the scope of the IA. Nevertheless, the Bank has consistently advised the GoU to mitigate the negative economic impacts of the Isimba HPP, including through livelihood restoration activities to be identified in the CDAP. The KOSMP devoted significant attention to development of eco-tourism within the offset, with a separate appendix (“The Kalagala-Itanda Eco-Tourism Development Plan (2010-2019)”).

20. The Bank has emphasized the need to ensure that the expansion of the offset boundaries is done with due attention to adverse impacts, if any, on livelihood of people affected by such expansion. The Supplemental Letter contains the following agreements on the EKOAs sustainable management program relevant for such protection:

- To the extent appropriate, incorporate the relevant provisions of the existing KOSMP and the existing management plans for the CFRs in the EKOAs (and Mabira CFR);
- Specify the types of human uses that will be permitted or prohibited within the EKOAs; these specifications may vary according to the various management zones within the EKOAs;
- Describe the range of EKOAs protection, management, and monitoring activities to be carried out to achieve the management objectives, including, but not limited to, fishery monitoring, to improve the available information on fish species of conservation concern, thereby enabling adaptive management measures such as fishing regulation and fish habitat management; and
- If such a management program requires the imposition of new or enhanced restrictions on access to natural resources, specify measures that would be taken to provide appropriate time-bound compensation and livelihood restoration assistance to people who were using natural resources prior to the effectiveness of such management program and whose livelihoods could be adversely affected by the EKOAs-related management activities, based on eligibility criteria mutually agreed by the Government and the Association.

C. Determine whether any adjustments to the KOSMP might be appropriate to continue the protections of the ecosystem of the CFRs as agreed in the IA.

21. As stated in Section A, the key measure to mitigate the impacts of the Isimba HPP on the KOA is to adjust the boundaries of the offset, including adding the Namavundu CFR, extending the protected river stretch by 10.5 km and including a 100-m zone on both river banks along the protected stretch. Along with this, legal protection mechanisms, and with them institutional arrangements and funding for the EKOAs, are proposed to be updated. Therefore, the GoU is planning to update the KOSMP by November 30, 2018, as stipulated in the Amendment to the IA and the Supplemental Letter to reflect these changes and enhance the current protections set forth in the KOSMP.

D. Conclusion

22. The GoU, through concerted efforts with Bank Management, has undertaken a suite of actions to secure the legal future of the EKOAs beyond the expiry of the IA in 2023. Such legal

protection will be underpinned by institutional arrangements and funding support. Once the agreed measures are completed, the EKOA will be a sustainably managed and environmentally protected site. As such, the measures implemented by the GoU are an improvement to the protection previously offered by the IA.

23. The Government recognized the impacts of Isimba on certain types of tourism activities, such as rafting and kayaking, due to submersion of several rapids and islands by the Isimba reservoir. The Government has engaged with the affected communities, including rafting/kayaking tourism operators, in discussing mitigation measures, described in the Government-prepared CDAP for the Isimba HPP. The CDAP, which is being revised subsequent to the completion of the ESIA Addendum, considers a range of measures to mitigate the impacts on tourism operators, including assistance with diversification of business, compensation for the loss of revenue, and compensation for redundancy and severance payments.

IFC Refinancing of BEL

24. The International Finance Corporation (IFC) and the African Development Bank (AfDB) are seeking to raise funding in an amount of up to approximately US\$ 400 million to refinance part of the debt of Bujagali Energy Limited (BEL). The refinancing will result in the prepayment of all of BEL's loans from development finance institutions (DFI) as well as certain commercial banks. It will retain, however, loans from several of the existing commercial banks and, with them, the existing IDA Partial Risk Guarantee. Hence, the refinancing does not affect the Indemnity Agreement. The future DFI lenders to BEL would include, in addition to AfDB and IFC, FMO (Netherlands), DEG (German), Proparco (France) and CDC (United Kingdom), all of whom have obtained already the relevant approvals for this transaction.

25. Through the refinancing, the parties are seeking to replace the bulk of BEL's existing senior debt and the entire existing subordinated debt with new loans of 15-year maturity. Such an extension in the maturity of BEL's would have the effect of reducing the amount of annual debt service to lenders and, therefore, the Project tariff.

Attachments:

- Signed Amendment to the Indemnity Agreement
- Signed Supplemental Letter

NUMBER B-0130-UG

Amendment

dated January 24, 2018

to

Indemnity Agreement

(Partial risk Guarantee for the Private Power Generation (Bujagali) Project)

between

REPUBLIC OF UGANDA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

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AMENDMENT TO INDEMNITY AGREEMENT

AMENDMENT ("*Amendment Agreement*") dated January 24, 2018 to the Indemnity Agreement (as defined below) between the REPUBLIC OF UGANDA ("*Uganda*") and INTERNATIONAL DEVELOPMENT ASSOCIATION (the "*Association*").

(A) WHEREAS Uganda and the Association entered into an Indemnity Agreement, dated July 18, 2007 (the "*Indemnity Agreement*"), pursuant to which Uganda undertook certain obligations to the Association in consideration of the Association entering into the IDA Guarantee Agreement;

(B) WHEREAS Uganda and the Association wish to amend the Indemnity Agreement as provided herein;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Terms in initial capital letters in this Amendment Agreement are used as defined herein, and if not defined herein, as defined in the Indemnity Agreement.

ARTICLE II

Amendments

Section 2.01. With effect from the date of this Amendment Agreement, the Indemnity Agreement is amended as follows.

(a) Section 1.02(c)(xi) is deleted in its entirety and replaced with the following:

"(xi) "*Kalagala Falls Site*" means the area designated as "*KALAGALA-ITANDA FALLS CONSERVATION AREA*" in the map attached to this Indemnity Agreement and encompassing the stretch of Nile River approximately 15 kilometers long that begins upstream at 2.5 kilometers below the Bujagali Dam wall and ends downstream at the tail end of the Isimba Dam reservoir (Maximum Pool Level of 1,055 meters above sea level), thereby including (A) the entire Nile River aquatic area within these limits; (B) all river islands within these limits; (C) all land within 100 meters of both the left and right river banks from the annual maximum high-water line; and (D) the entire area of the Namavundu, Kalagala Falls and Nile Bank Central Forest Reserves except any portions inundated by the reservoir of the Isimba Dam."

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- (b) Section 1.02(c)(xii) is deleted in its entirety and replaced with the following:

“(xii) “Mabira Forest Reserve” means the area designated on the map entitled “Mabira Central Forest Reserve – Management Zonation” attached to this Indemnity Agreement, including all use classifications set forth on such map as agreed with the Association;”

- (c) Section 3.06(a) is deleted in its entirety and replaced with the following:

“Section 3.06. Uganda shall:

(a) (i) set aside the Kalagala Falls Site exclusively to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association;

(ii) ensure that any tourism development at the Kalagala Falls Site will be carried out only in a manner acceptable to the Association and in accordance with the aforementioned standards;

(iii) not develop power generation that could adversely affect the above-stated protection of the Kalagala Falls Site without the prior agreement of the Association;

(iv) (A) conserve, through a sustainable management program and long-term funding mutually agreed by the Government and the Association (no later than expiration of the prevailing sustainable management program or such later date as the Association may agree), the present ecosystem of the Mabira Forest Reserve, as well as the Kalagala Falls Site, including the Kalagala Falls Central Forest Reserve, the Namavundu Central Forest Reserve and the Nile Bank Central Forest Reserve and (B) as part of such management program, as soon as reasonably practicable, but in any event not later than November 30, 2018, prepare and adopt a management plan for the Kalagala Falls Site;¹

(v) take all necessary action within its authority (A) to adopt, as soon as reasonably practicable, but in any event not later than November 30, 2018, and (B) to thereafter maintain, a mechanism satisfactory to the Association that ensures legally-binding and long-term conservation, protection and management of the Kalagala Falls Site; and

(vi) upon receiving the Association's notice of a termination (or prospective termination) of the IDA Guarantee Agreement (whether by the Association's payment thereunder or otherwise) which in turn may lead to a termination of the Project or this Agreement, enter into discussions with the Association regarding an extension (and the terms of any extension) of the afore-

¹ The term “Kalagala Falls Site” is the term used in the Indemnity Agreement for the area to be protected. Uganda may use a different term to designate this area for purposes of the above-referenced sustainable management program, management plan or legally binding mechanism.

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mentioned setting aside of and undertakings in respect of the Kalagala Falls Site and the Mabira Forest Reserve;";

- (d) The map attached to the Indemnity Agreement which designates the Kalagala Falls Site is deleted and replaced with the map attached as Annex 1 to this Amendment Agreement.

ARTICLE III

Miscellaneous

Section 3.01. The provisions of the Indemnity Agreement shall, save as amended by this Amendment Agreement, continue in full force and effect and references in the Indemnity Agreement to "this Indemnity Agreement", "hereunder", "herein" and like terms or to any provision of the Indemnity Agreement shall be construed as a reference to the Indemnity Agreement, or such provision, as amended by this Amendment Agreement.

Section 3.02. This Amendment Agreement shall come into force and effect as of the day and year first above written.

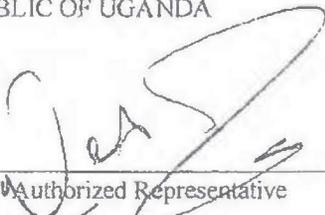
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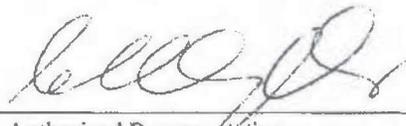
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IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Amendment Agreement to be signed in their respective names as of the day and year first above written.

REPUBLIC OF UGANDA

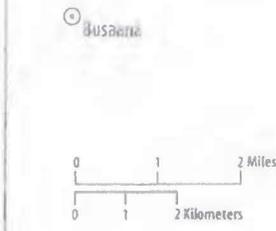
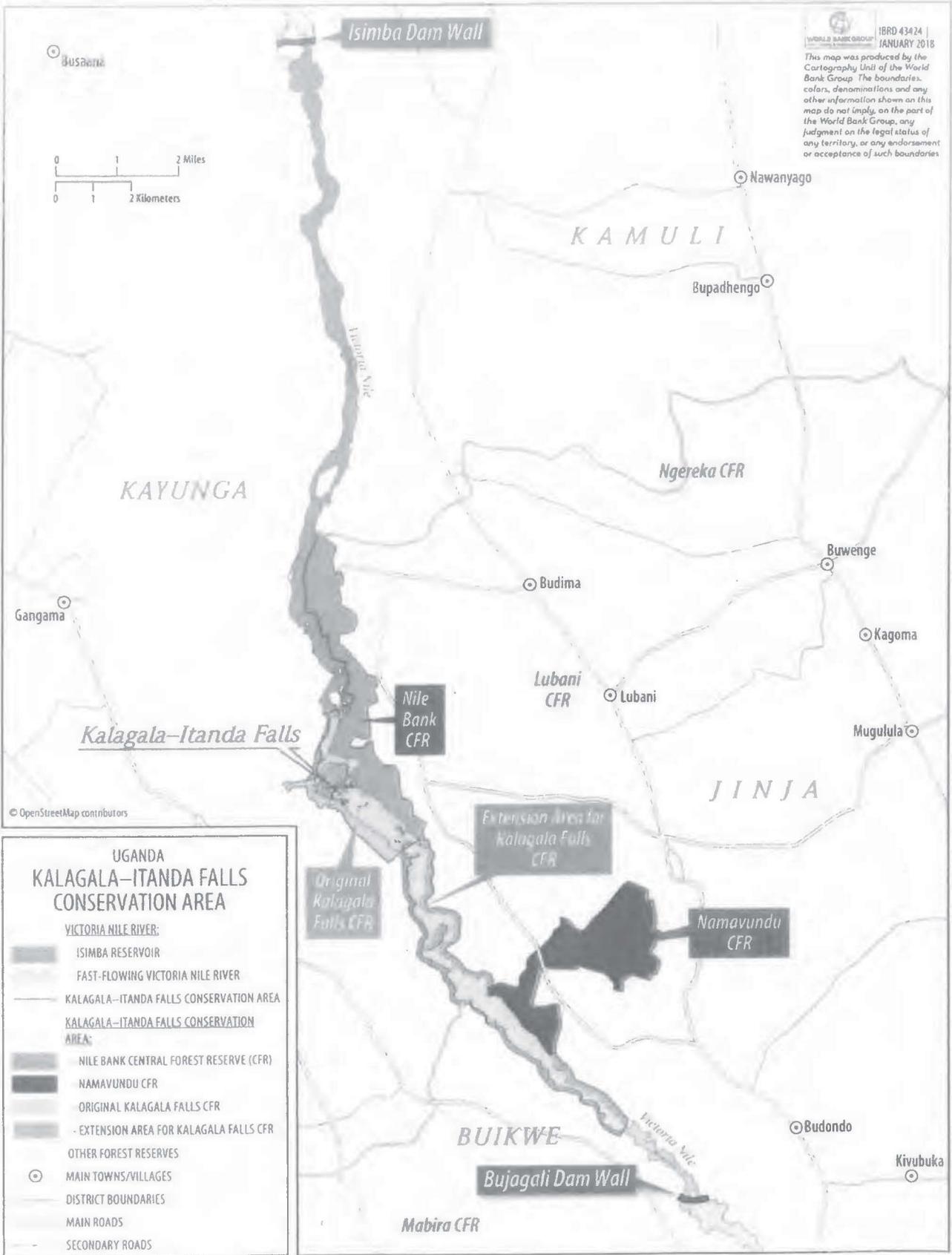
By: 
Authorized Representative
Name (printed): KASAJJA MATIA
Title: MINISTER

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: 
Authorized Representative
Name (printed): Christina Malinberg Celis
Title: Country Manager

ANNEX I

WORLD BANK GROUP
 18RD 43424 | JANUARY 2018
 This map was produced by the Cartography Unit of the World Bank Group. The boundaries, colors, denominations and any other information shown on this map do not imply, on the part of the World Bank Group, any judgment on the legal status of any territory, or any endorsement or acceptance of such boundaries.



UGANDA
KALAGALA-ITANDA FALLS CONSERVATION AREA

VICTORIA NILE RIVER:

- ISIMBA RESERVOIR
- FAST-FLOWING VICTORIA NILE RIVER

KALAGALA-ITANDA FALLS CONSERVATION AREA

KALAGALA-ITANDA FALLS CONSERVATION AREA:

- NILE BANK CENTRAL FOREST RESERVE (CFR)
- NAMAVUNDU CFR
- ORIGINAL KALAGALA FALLS CFR
- EXTENSION AREA FOR KALAGALA FALLS CFR

OTHER FOREST RESERVES

- MAIN TOWNS/VILLAGES
- DISTRICT BOUNDARIES
- MAIN ROADS
- SECONDARY ROADS

Km

Handwritten signature

Telephone : 256 41 4707 000
: 256 41 4232 096
Fax : 256 41 4230 163
: 256 41 4343 023
: 256 41 4341 286
Email : finance@finance.go.ug
Website : www.finance.go.ug



Ministry of Finance, Planning &
Economic Development
Plot 2-12, Apollo Kaggwa Road
P.O. Box 6147
Kampala
Uganda

In any correspondence on
this subject please quote No. ALD 141/259/01

THE REPUBLIC OF UGANDA

Supplemental Letter

January 24, 2018

International Development Association
1818 H Street NW
Washington, DC 20433
United States of America

Dear Sirs:

**Re: Private Power Generation (Bujagali) Project
Section 3.06(a) of Amended Indemnity Agreement (as defined below)**

In connection with the Indemnity Agreement dated July 18, 2007 between the Republic of Uganda ("Uganda") and International Development Association (the "Association") as amended by the Amendment to Indemnity Agreement dated the date of this letter (the "Amended Indemnity Agreement"), I am writing on behalf of Uganda to set forth the following:

A. The legal protection for the Kalagala Falls Site

Pursuant to Section 3.06(a)(v) of the Amended Indemnity Agreement, Uganda has agreed to take all necessary action within its authority (A) to adopt, as soon as reasonably practicable, but in any event not later than November 30, 2018, and (B) to thereafter maintain, a mechanism satisfactory to the Association that ensures legally-binding and long-term conservation, protection and management of the Kalagala Falls Site (the "Legal Mechanism"). In furtherance of this undertaking, Uganda agrees to take all necessary action within its authority to ensure that the Legal Mechanism includes, without limitation, the following elements, in each case in a manner acceptable to the Association:

- (i) conservation of water resources and aquatic biodiversity (consistent with the Amended Indemnity Agreement) as a primary focus of the Legal Mechanism;
- (ii) a clear and accurate geographic definition for the Kalagala Falls Site;
- (iii) a prohibition against the development of power generation facilities in the Kalagala Falls Site;
- (iv) a clear framework for developing a management plan for the Kalagala Falls Site; and
- (v) not be easily rescinded or changed (including, but not limited to, changes to the agreed geographic boundaries of the Kalagala Falls Site contained therein) through executive

Mission

"To formulate sound economic policies, maximize revenue mobilization, ensure efficient allocation and accountability for public resources so as to achieve the most rapid and sustainable economic growth and development"

KM

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action alone (for example, the Legal Mechanism should not be subject to “de-gazettement” without Parliamentary action).

B. Kalagala Falls Site Management Plan

Pursuant to Section 3.06(a)(iv) of the Amended Indemnity Agreement, Uganda has agreed to (A) conserve, through a sustainable management program and long-term funding mutually agreed by the Government and the Association, the present ecosystem of the Mabira Forest Reserve, as well as the Kalagala Falls Site, including the Kalagala Falls Central Forest Reserve, the Namavundu Central Forest Reserve and the Nile Bank Central Forest Reserve and (B) as part of such management program, as soon as reasonably practicable, but in any event not later than November 30, 2018, prepare and adopt a management plan for the Kalagala Falls Site¹ (the “KFS MP”). In furtherance of this undertaking, Uganda agrees (1) if the Legal Mechanism is implemented after the adoption of the KFS MP, to promptly revise the KFS MP in a manner satisfactory to the Association to reflect such Legal Mechanism and (2) that the KFS MP will:

- (i) to the extent appropriate, incorporate the relevant provisions of the existing “Kalagala Offset Sustainable Management Plan (2010-2019)” and the existing management plans for the above-referenced Central Forest Reserves;
- (ii) specify the management objectives for the Kalagala Falls Site, including the conservation of aquatic biodiversity and natural habitats (consistent with the Amended Indemnity Agreement);
- (iii) describe the institutional responsibilities for managing the Kalagala Falls Site;
- (iv) specify the types of human uses that will be permitted or prohibited within the Kalagala Falls Site; these specifications may vary according to the various management zones within the Kalagala Falls Site;
- (v) describe the range of Kalagala Falls Site protection, management, and monitoring activities to be carried out in order to achieve the management objectives, including, but not limited to, fishery monitoring to improve the available information on fish species of conservation concern², thereby enabling adaptive management measures such as fishing regulation and fish habitat management;
- (vi) if such management plan requires the imposition of new or enhanced restrictions on access to natural resources, specify measures that would be taken to provide appropriate time-bound compensation to people using natural resources prior to the effectiveness of such management plan and whose livelihoods could be adversely affected by the Kalagala Falls Site-related management activities, based on eligibility criteria mutually agreed by the Government and the Association; and
- (vii) outline the annual budget needed to carry out the planned management activities and define sources of funding.

¹ The term “Kalagala Falls Site” is the term used in the Indemnity Agreement for the area to be protected. Uganda may use a different term to designate this area for purposes of the above-referenced sustainable management program, KFS MP or Legal Mechanism.

² These include the very localized *Neochromis simotes* and likely new species to science recently discovered by NaFIRRI (particularly *Neochromis* sp. “Red Pelvics”).

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“To formulate sound economic policies, maximize revenue mobilization, ensure efficient allocation and accountability for public resources so as to achieve the most rapid and sustainable economic growth and development”

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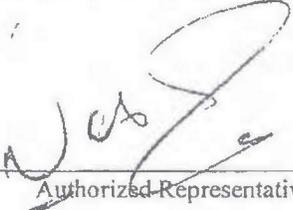
C. **Miscellaneous**

- (i) Capitalized terms used but not otherwise defined in this letter have the meanings provided in the Amended Indemnity Agreement.
- (ii) This letter does not constitute an amendment, waiver or other change to the Amended Indemnity Agreement.

Please confirm your agreement to the foregoing by having a duly authorized representative of the Association sign in the space provided below.

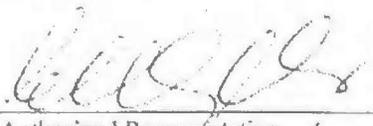
Very truly yours,

REPUBLIC OF UGANDA

By: 
Authorized Representative
Name (printed): KASAIJA MATIA
Title: MINISTER

AGREED:

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: 
Authorized Representative
Name (printed): Christina Malinberg
Title: Country Manager

Mission

"To formulate sound economic policies, maximize revenue mobilization, ensure efficient allocation and accountability for public resources so as to achieve the most rapid and sustainable economic growth and development"