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**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE
INSPECTION PANEL INVESTIGATION REPORT**

UGANDA

**WATER MANAGEMENT AND DEVELOPMENT PROJECT
(CREDIT NO. 5127-UG)
AND
ENERGY FOR RURAL TRANSFORMATION PHASE III PROJECT
(CREDIT NO. 5653-UG)**

June 28, 2019
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**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT
OF THE UGANDA WATER MANAGEMENT AND DEVELOPMENT PROJECT
(CREDIT NO. 5127-UG) AND ENERGY FOR RURAL TRANSFORMATION
PHASE III PROJECT (CREDIT NO. 5653-UG)**

Pursuant to paragraph 23 of the Resolution Establishing the Inspection Panel (IBRD Resolution 93-10 and IDA Resolution 93-6), attached for consideration by Executive Directors is Management's Report and Recommendation in response to the findings set out in the Investigation Report No. 136219-UG dated May 2, 2019, of the Inspection Panel on the captioned Projects (Uganda Water Management and Development Project, Credit No. 5127-UG and Energy for Rural Transformation Phase III Project, Credit No. 5653-UG).

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**UGANDA WATER MANAGEMENT AND DEVELOPMENT PROJECT
(CREDIT NO. 5127-UG) AND ENERGY FOR RURAL TRANSFORMATION
PHASE III PROJECT (CREDIT NO. 5653-UG)**

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ABBREVIATIONS AND ACRONYMS

AfDB	African Development Bank
BEL	Bujagali Energy Limited
BP	Bank Procedure
CDAP	Community Development Action Plan
CFR	Central Forest Reserve
EIA	Environmental Impact Assessment
EKOA	Extended Kalagala Falls Offset (<i>also referred to as EKFS</i>)
EKFS	Extended Kalagala Falls Site
EPC	Engineering Procurement Construction
ERT-III	Energy for Rural Transformation III Project
ESIA	Environmental and Social Impact Assessment
ESIA Addendum	Environmental and Social Impact Assessment Addendum
EXIM BC	Export Import Bank of China
GoU	Government of Uganda
GWh	Gigawatt hour
HPP	Hydropower plant
IA	Indemnity Agreement
IDA	International Development Association
IFC	International Finance Corporation
IPN	Inspection Panel
KFS	Kalagala Falls Site
Km	Kilometer
KOA	Kalagala Offset Area (<i>also referred to as Kalagala Falls Site, KFS</i>)
KOSMP	Kalagala Offset Sustainable Management Plan
kV	kilovolt
LRP	Livelihood Restoration Plan
LTCO	Long-Term Conservation Options
MP	Management Plan (for the extended KFS)
MW	Megawatt
NEA	National Environment Act
NEMA	National Environmental Management Authority
OP	Operational Policy
PPA	Power Purchase Agreement
PRG	Partial Risk Guarantee
SIA	Social Impact Assessment
WMDP	Water Management and Development Project

Currency Unit – Ugandan Shilling

(as of June 26, 2019)

US\$1 = 3,711.69 UGX

UGX 1 = US\$0.00027

EXECUTIVE SUMMARY

Background

- (i) On September 22, 2016 the Inspection Panel registered together two Requests for Inspection, IPN Requests RQ 16/05 and RQ 16/08 (hereafter referred to as “the Requests”), concerning the Water Management and Development Project (“WMDP”), the Energy for Rural Transformation III Project (ERT-III) and the Private Power Generation (Bujagali) Project, financed by the International Development Association (IDA). The first Request for Inspection was submitted by a legal firm based in Kampala, representing residents of the Kalagala Offset Area (KOA) and the second Request by three residents of the Busoga area and concerned citizens (hereafter referred to as the “Requesters”).
- (ii) On April 4, 2017, the Board considered the Panel’s recommendation and found that the Bujagali project was not eligible for investigation because the project was closed. On May 3, 2018, the Panel sent to the Board its Second Report and Recommendation that recommended an investigation of the WMDP and ERT-III, which Executive Directors approved on September 19, 2018. On May 2, 2019, the Panel issued its report outlining the findings of the investigation. This Management Report and Recommendation responds to the Panel’s findings as required by the Board Resolution and proposes actions to address the Panel’s findings.

The Bujagali Hydropower Plant (HPP)

- (iii) ***The construction of the Bujagali hydropower plant, which the Bank supported with a Partial Risk Guarantee (PRG), approved by the Bank’s Board on April 26, 2007, has been a key feature of the Government’s plan to address the nation’s chronic and severe power deficit.*** As one of the poorest countries in the world, the inability of Uganda’s population to access reliable electricity has been a serious impediment to the country’s growth and development. The Bujagali hydropower project has helped eliminate severe power shortages and constitutes an efficient and key component of the country’s current power supply system, while representing a more climate-friendly option than fossil fuel alternatives. Even with the much-needed addition of power generation from the Bujagali HPP, nearly 80 percent of Uganda’s population still lacks access to electricity.
- (iv) At the time of Board approval of the Bujagali guarantee, it was recognized that the considerable development benefits of the dam would entail tradeoffs. The dam would flood a portion of the Nile River and adjoining land that was home to important biological and spiritual resources. To help mitigate this impact, and consistent with the requirements of the Bank’s Operational Policy on Natural Habitats (OP 4.04), the Government of Uganda (GoU) agreed with the Bank on the establishment of a biodiversity offset (the Kalagala Falls Site, KFS) downstream from the Bujagali HPP.

The agreement on the Kalagala Falls Site (KFS)¹ was embedded in the Indemnity Agreement (IA) signed in connection with the guarantee.

The Isimba Hydropower Plant

- (v) ***In 2015, as part of its plan to expand electricity access and provide adequate power supply, the GoU started construction of the Isimba HPP, a facility located 36 km downstream from the Bujagali HPP.*** The Bank was not involved in preparation, financing, or construction of Isimba, nor was the Bank consulted by the GoU on the construction of the Isimba HPP which is financed by a bilateral partner.
- (vi) ***When the Bank became aware in 2012 of the Isimba project and its proximity to the KFS, the Bank engaged with the GoU to determine the extent to which the Isimba HPP would impact the KFS.*** This led to the production of an addendum to the Isimba environmental and social impact assessment (ESIA Addendum) to specifically examine potential impacts of the Isimba HPP on the KFS. A key objective of the ESIA Addendum was to enable the Bank to consider its position in light of the IA's stipulation that Uganda would seek the "agreement of the Association" for any developments that could adversely affect protection at the KFS. The ESIA Addendum concluded that the Isimba HPP would flood approximately 23 percent of the KFS in a manner that would likely compromise the objective of the IA to protect the KFS's biological and spiritual values.

2018 Amendment to the Bujagali Indemnity Agreement (IA)

- (vii) ***Throughout its discussions with the GoU regarding Isimba, Management has consistently emphasized the importance of the Government's continued adherence to the Bujagali IA.*** However, cognizant of Uganda's urgent power needs and the country's sovereign decision to proceed with building Isimba (a project that was not financed by the Bank), Management sought a solution that would ensure continued adherence to the commitments set forth in the IA and the principles of OP 4.04, while not undermining other important development initiatives that Uganda was pursuing. The IA provided the Bank the discretion to apply solutions that would not stand in the way of these initiatives. The outcome of this process was an amendment to the IA and an agreement to protect and manage a revised and enlarged KFS offset area, known as the "Extended Kalagala Falls Site" (EKFS).
- (viii) ***The EKFS as described in the amended IA will in Management's view sustain the original purpose of the KFS, while at the same time leading to improved biodiversity outcomes, with stronger legal protection and improved management.*** The EKFS covers a larger area than the original offset and contains a higher biodiversity value and a greater number of species. The amendment to the IA hence provides a greater protective value, consistent with the objectives of OP 4.04, with a stronger legal and institutional foundation, while enabling Uganda to develop renewable and low-cost

¹ The terms "Kalagala Falls Site" (KFS) and "Kalagala Offset Area" (KOA) are used interchangeably in this document. For purposes of clarity, the terms "KFS" and "EKFS" (for the extended KFS) are used except where quoting from another source.

power generation for expanding electricity access essential for its economic and social development.

Panel Report and Management Response

- (ix) ***Management agrees with the Panel that there have been weaknesses in the management and protection of the original KFS since its creation in 2007.*** The original KFS lacked sufficient long-term legal protection under national law. There have also been considerable difficulties associated with the management of the KFS due to weak institutional capacity and financial commitments. Management concurs with the Panel that the KOSMP, which was the principal tool for managing the KFS, was overly broad in geographic scope and in terms of its proposed actions, and hence was not as well focused as it should have been to help ensure optimal management of the KFS for the purposes set forth in the IA.
- (x) ***These considerations have informed the 2018 amendment of the IA and the ensuing agreement on follow-up implementation actions which in Management's view will help address the challenges highlighted in the Panel's report.*** The Bank is working with the GoU on the legal and logistical aspects that will assure effective establishment of the EKFS and appropriately address the management weaknesses that were evident in the original KFS. The actions agreed with the GoU through ongoing dialogue include: (i) development of a robust, sustainable management plan, including measures to address social risks; (ii) efforts to secure funding for establishment and continued maintenance of the EKFS, and (iii) providing stronger legal protection for the EKFS.
- (xi) ***Management further agrees with the Panel that the EKFS will need to be effectively established – both legally and on-the-ground – in ways that appropriately address potential social impacts.*** Both Management and the GoU are acutely aware that the creation of the EKFS and the higher level of environmental protection it implies could potentially have social impacts on people living in and using the area. The actions agreed with the GoU in conjunction with the amendment to the IA include measures to assess, minimize and address such potential adverse impacts before they occur. The Bank will monitor the Government's implementation of these actions as part of its ongoing monitoring of the GoU's compliance with the 2018 IA.
- (xii) ***Management also acknowledges the Panel's conclusion that the partial flooding of the original KFS from Isimba HPP could have serious impacts on tourism businesses and others. However, Management does not share the Panel's view that these impacts constitute harm resulting from non-compliance with Bank policy for the following reasons:***
 - ***First, the decision to extend the KFS is consistent with Bank policy.*** OP 4.04 does not prohibit adjustments to an offset. Management notes that there are ample examples where protected areas – including those protected under international conventions (see Box 1) – have been adjusted to accommodate a country's development needs, such as Uganda's severe power deficit. In Management's view, this adjustment was an appropriate solution to help ensure continuing compliance with the safeguard commitments set forth in the IA while also

accommodating the country's important needs to develop renewable and low-cost power generation for expanding electricity access and supporting economic and social development. Moreover, the extended KFS is both larger and contains higher biodiversity value and a greater number of species than the original KFS (see Table 1).

- ***Second, the objectives of the IA were to preserve the biodiversity and spiritual values of the KFS***, consistent with OP 4.04 and its coverage of "Natural Habitats". Contrary to what has been alleged, the Borrower's commitments under the IA do not extend beyond these objectives to protecting the interests of tourism businesses or others who allege harm resulting from the flooding caused by Isimba. Hence, while Management has urged the GoU to address the impacts stemming from the Isimba HPP promptly and fairly, these impacts are not covered by the Borrower's safeguard obligations under a Bank-supported project and are therefore not enforceable by the Bank.
- (xiii) ***Management does not wish to diminish the significance of the impacts raised in the Request and has repeatedly encouraged the GoU to address these impacts promptly and fairly.*** However, in Management's view the adverse impacts identified in the Panel's Report are not the result of a failure of the Bank to implement its policies or procedures. The Panel Resolution² stipulates that "[...] the Panel's report to the Board will focus on whether there is a serious Bank failure to observe its operational policies and procedures with respect to project design, appraisal and/or implementation." Management maintains that the harm alleged in the Request does not result from Bank-financed operations, but from the non-Bank-financed Isimba project. The Government's actions with respect to this harm are a matter of Ugandan policy and law, and not a matter covered by Bank safeguards policies applicable to the operations under investigation, or by the GoU's obligations under the IA.
- (xiv) ***As part of its continued monitoring of the IA implementation under the Bujagali guarantee operation, Management will continue to support the GoU in managing the EKFS to address potential and actual impacts by:***
- Supporting the GoU to mitigate the impacts of the Isimba HPP on the original KFS by establishing and strengthening EKFS legal protection and management, and
 - Supporting the GoU to assess and manage potential social impacts of extending the KFS and enforcing legal protections.
- (xv) Management believes that the Bank has made every effort to apply its policies and procedures and to pursue its mission statement in the context of the projects. Management acknowledges the Panel's findings and believes that the proposed actions described in its response and Action Plan address these findings.

² As specified in the 1999 Clarifications of the Board's Second Review of the Inspection Panel.

I. INTRODUCTION

1. On September 22, 2016 the Inspection Panel registered together two Requests for Inspection, IPN Requests RQ 16/05 and RQ 16/08 (hereafter referred to as “the Requests”), concerning the Water Management and Development Project (“WMDP”), the Energy for Rural Transformation III Project (ERT-III) and the Private Power Generation (Bujagali) Project, financed by the International Development Association (IDA). The first Request for Inspection was submitted by a legal firm based in Kampala, representing residents of the Kalagala Offset Area (KOA)³ and the second Request by three residents of the Busoga area and concerned citizens (hereafter referred to as the “Requesters”).

2. The Executive Directors and the President of IDA were notified by the Panel of receipt of the Request. Management responded to the claims in the Requests on October 31, 2016. In its Report to the Board, the Panel found the Requests eligible but recommended to defer by up to one year its recommendation regarding an investigation. On April 4, 2017, the Board met to consider the Panel’s eligibility report. The Board accepted the deferral of the Panel’s recommendation to investigate the WMDP and ERT-III, but found that the Bujagali project was not eligible for investigation because it had closed. On February 4, 2018, Management provided an update to the Board on management actions. On May 3, 2018, the Panel sent to the Board its Second Report and Recommendation that recommended an investigation of the WMDP and ERT-III. The investigation was authorized by the Executive Directors on September 19, 2018.

3. On May 2, 2019, the Panel issued its report outlining the findings of the investigation. This report responds to the findings of the Panel and is organized in five sections. Section II provides background on the projects. Section III presents Management’s response to the Panel’s findings, Section IV proposes actions in response to the findings, and Section V contains the conclusion. Detailed findings, comments and actions are provided in Annex 1. Annex 2 presents the Panel’s findings. Annex 3 contains the Amendment and Supplemental Letter to the Bujagali Indemnity Agreement.

II. PROJECT BACKGROUND

4. The Investigation Report references three projects: (i) Water Management and Development Project (Credit No. 5127-UG); and (ii) Energy for Rural Transformation Phase III Project (Credit No 5653-UG), and (iii) Private Power Generation (Bujagali) Project (P089659). These projects are described below, following a description of the Isimba hydropower project. Although the Isimba project is not financed by the Bank, its potential impact on the Kalagala Falls Site (KFS) led to the Requests for Inspection.

³ The terms “Kalagala Offset Area” (KOA) and “Kalagala Falls Site” (KFS) are used interchangeably in project documentation. For purposes of clarity, the terms “KFS” and “EKFS” (for the extended KFS) will be used throughout this document, except where quoting from another source.

A. Isimba Hydropower Project (not Bank-financed)

5. The Isimba hydropower plant (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.⁴ 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 with a volume of 60.8 million cubic meters. The reservoir, when full, extends some 18 km upstream (19 km at maximum flood level); it does not reach the Kalagala/Itanda Falls, but at the maximum flood level covers about 5.7 km of the Nile River that was included in the original boundaries of the KFS. In addition to the power plant, the project included construction of a 42-km, 132-kV double circuit line between the Isimba HPP site and the Bujagali substation.

6. ***The Isimba HPP was not supported by any part of the World Bank Group.*** The project was financed by the Government of Uganda (GoU) (15 percent) and a concessional loan from the Export-Import Bank of China (EXIM BC) (85 percent). The project was constructed by China International Water & Electric Corporation, under an engineering-procurement-construction (EPC) Contract in the amount of US\$567.7 million. Construction started in April 2015 and the plant was completed and commissioned about four years later, on March 21, 2019.

B. Private Power Generation (Bujagali) Project (P089659)

7. ***Background.*** At the time of the preparation of the Bujagali project in 2007, overall national poverty was at 31 percent and there remained significant gaps in socio-economic outcomes, with 90 percent of the poor located in rural areas. Infrastructure was perceived to be a vital element to boost economic growth and lift people out of poverty.

8. Uganda's power sector was suffering from a major shortage, which was a serious obstacle to economic growth. The country's power generation was dependent on the 380 MW Nalubaale and Kiira dam complex. With peak demand on the order of 380 MW, and growing at an annual rate above 30 MW, the country's power system had a large capacity deficit of about 100–120 MW. This was exacerbated by a severe drought in the region in 2004, when output from the Nalubaale and Kiira dropped to 120 MW. The crisis was further aggravated by high levels of technical and non-technical losses (estimated at 44 percent in 2005). Consequently, electricity supply was characterized by extensive load-shedding, affecting households and manufacturing such as high-value agriculture and processing industries.

9. To address this urgent situation, the GoU contracted three 50-MW thermal generation plants running on costly Automotive Diesel Oils, as well as 10 MW of power imported from Kenya on a non-firm basis. The incremental energy cost from these emergency thermal plants was subsidized by the Government rather than being recovered through tariff increases to consumers. This approach had macroeconomic consequences, including higher-than-expected inflation and a widening of the trade deficit due to high oil prices and increases in diesel fuel import for power generation. The situation was not sustainable and threatened to undermine the economy.

⁴ All distances are approximate.

10. ***The Bujagali HPP.*** The Private Power Generation (Bujagali) Project was a World Bank Group-supported project to enable the construction of the 250-MW run-of-the-river Bujagali HPP. The Bujagali HPP 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 HPP and Lake Victoria.⁵

11. The project was supported through an IDA guarantee⁶ 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 project was completed and entered into commercial operation on August 1, 2012. In line with Bank policy, the closing date of the Bujagali project also occurred on the same date. 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 in November 2023 upon repayment of the guaranteed commercial loans.

12. 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 specific cultural relevance to local communities. To mitigate adverse impacts on natural habitats, and on environmental and spiritual values, the KFS was established and protected by an Indemnity Agreement (IA)⁷ between IDA and the GoU, which was signed on July 18, 2007. Until the guarantee expires in November 2023, the GoU is bound by the contractual terms of the IA.

13. ***Contribution of the Bujagali Hydropower Project.*** Since its commissioning in 2012, the Bujagali HPP is the dominant source of generation in Uganda, representing 30 percent of installed capacity, and 45 percent of the annual electricity generation in the country. The Bujagali HPP has helped eliminate severe power shortages and constitutes an efficient and key component of the country's current power supply system by employing a more climate-friendly technology than fossil fuel alternatives. In its first year of operation, the plant generated about 1,353 GWh of electricity, which is about 16 percent over target. The plant maintained 99 percent availability in its first year and 96 percent thereafter, against the PPA obligation of 95 percent. The plant doubled the reliable capacity of the national power system, eliminated load shedding completely and allowed fuel savings of about US\$8 million per month by reducing the need for alternative thermal generation. Further, the availability of energy led Umeme (private distribution concessionaire) to embark on a major electrification initiative—access to electricity rose from 14 percent in 2012 to 22 percent in 2018, contributing towards the GoU's goal of 60 percent electricity access by 2027 and 80 percent by 2040.

14. ***IFC- and AfDB-led Refinancing Transaction.*** The Bujagali project was financed through senior loans with a relatively short total tenor of 16 years (including a 5-year grace period) and a small tranche of subordinated loans with a total tenor of 20 years. In 2017 the GoU

⁵ The project was structured as an Independent Power Producer plant under a Build-Own-Operate-Transfer arrangement, with a 30-year Power Purchase Agreement (PPA) with the Uganda Electricity Transmission Company Ltd. The project was developed by Bujagali Energy Limited (BEL), a privately-owned special purpose company incorporated in Uganda.

⁶ In addition, the World Bank Group support included IFC loans and a MIGA guarantee.

⁷ "IA" refers to the original 2007 Indemnity Agreement; "2018 IA" or "amended IA" refers to the 2018 amendment of the Indemnity Agreement.

approached the World Bank Group and the African Development Bank (AfDB) to refinance BEL's existing US\$452 million debt (as of December 31, 2017) with a longer tenor and lower interest rate loans. The benefits of the refinancing will be passed on to electricity consumers, through an average reduction of end-user tariffs of US¢ 2.3 per kWh, or about 14 percent of the average retail tariffs of US¢ 16.4 per kWh at the time of refinancing. The AfDB received the approval for the refinancing from its Board of Directors in November 2017 and the International Finance Corporation (IFC) received the approval from its WBG Board of Directors in March 2018. The commercial debt guaranteed by IDA was not refinanced, leaving the IDA PRG in place until 2023. In July 2018, the total remaining debt covered by IDA was US\$40.8 million.

C. Water Management and Development Project (P123204)

15. The Project Development Objectives of the US\$135 million equivalent WMDP (P123204) were to improve (i) integrated water resources planning, management and development; and (ii) access to water and sanitation services in priority areas. The project aimed to contribute to higher level goals of sustaining natural resources, improving service delivery, and increasing economic productivity. The WMDP was approved on June 26, 2012 and closed on December 31, 2018.

16. Through Sub-component 1.3, the WMDP supported some (but not all) aspects of the Kalagala Offset Sustainable Management Plan (KOSMP) which was drafted by IUCN Uganda and launched by the Government on May 5, 2011: afforestation and reforestation, restoration of native vegetation, conservation of sensitive habitats, restoration and protection of river banks, promotion of environmentally sustainable livelihood strategies, and enhancement of the capacities of the national and sub-national entities responsible for implementation of the management plan. Agencies implementing the component included: Ministry of Water and Environment and the National Forestry Authority.

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

17. The Project Development Objective of the US\$135 million equivalent ERT-III (P133312) is to increase access to electricity in rural areas of Uganda. ERT-III was approved on June 5, 2015 and has a closing date of December 31, 2020.

18. At the request of the GoU, the Financing Agreement was amended to include language in Schedule 1, Part 3, paragraph (a) (vi) stating: "carrying out of priority environmental and social impact assessment studies and recommendation of appropriate mitigation measures." This limited funding was used to support the preparation of: (i) a study on impacts of the inundation for the Isimba HPP on the KFS, known as the Environmental and Social Impact Assessment Addendum (ESIA Addendum); and (ii) the preparation of a Long-Term Conservation Options Report (LTCO). The ESIA Addendum was finalized in November 2017, and the LTCO report in July 2017.

19. With the finalization of these two studies, ERT-III is no longer financing any activities related to the KFS. It is worth noting that ERT-III did not—and does not—finance any part of the construction of the Isimba HPP, any activities related to the Isimba operation, any activities related to the supervision of the Bujagali IA, or any activities related to the KOSMP preparation and implementation.

III. MANAGEMENT RESPONSE

A. Introductory Observations

20. ***Management notes that this is the third Inspection Panel investigation concerning the construction of the Bujagali HPP since 2001.*** Management's response to key findings of the Panel are presented below. However, Management considers it important to offer some initial observations.

21. ***The construction of the Bujagali HPP, which the Bank supported with a PRG, has been a key feature of the GoU's plan to address the nation's chronic and severe power deficit.*** As one of the poorest countries in the world, the inability of Uganda's population to access reliable electricity has been a serious impediment to the country's growth and development. Even with the much-needed addition of power generation at Bujagali, nearly 80 percent of Uganda's population still lacks access to electricity.

22. ***At the time of Board approval of the Bujagali guarantee in 2007, it was recognized that the considerable development benefits of the project would entail tradeoffs.*** The Bujagali dam would flood a portion of the Nile River and adjoining land that was home to important biological and spiritual resources. To help mitigate this impact, and consistent with the requirements of the Bank's Operational Policy on Natural Habitats (OP 4.04), the GoU agreed with the Bank on the establishment of the KFS, whose southern and northern boundaries were located about 13 km and 23.2 km downstream from the Bujagali HPP, respectively, thus encompassing the Kalagala/Itanda Falls located some 15 km downstream of the Bujagali HPP. The agreement on the KFS was embedded in the IA signed in connection with the guarantee.

23. The IA specifically requires the GoU to set aside the KFS *"to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association."* The promotion of tourism and other livelihood activities is not among the objectives stated in the IA; instead, the IA's only reference to tourism is to require that any tourism development in the KFS 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 KFS 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 by its contractual obligations in connection with the KFS and the Bank will continue assessing compliance of this contractual obligation by the GoU.

24. In 2015, as part of its plan to expand electricity access and provide adequate power supply, the GoU started construction of the Isimba HPP, a facility located about 36 km downstream from the Bujagali HPP. The Bank was not involved in the financing or construction of the Isimba HPP, nor was it consulted on the matter.

25. ***After it became aware of the Isimba project, Management reported to the Board in 2013⁸ on the Isimba project, its likely impacts, and the resulting challenges for the Bank.*** The

⁸ This was after the Bujagali project had closed in December 2012.

4th progress report on the implementation of Management's Action Plan in response to the [second] Inspection Panel Investigation report, dated November 12, 2013, states:

“35. Isimba Falls Dam. The GoU is considering development of a new 100 and 180 MW run-of-the-river hydropower project at the Isimba Falls downstream of the Kalagala Falls. Media reported that the Government of India announced in April 2013 that it would provide USD 450 million in financing for the new dam. The feasibility and due diligence studies by Fichtner and Norplan are ongoing, and 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. The Bank has been following the situation closely and will review the Environmental and Social Impact Assessment (ESIA), which is under preparation, for the proposed development to assess the significance of the potential impact on the Kalagala Offset, and consistency with the Indemnity Agreement. [...]”⁹

26. ***Preparation of the Isimba HPP was subject to uncertainties in design and sources of financing and lengthy preparation of key safeguard documents.*** As the above quote illustrates, uncertainties in project design and sources of financing persisted well into 2013. Eventually, the GoU selected the design with the capacity of 183 MW and financing from a Chinese institution (EXIM BC), rather than from the Government of India as the media reported in 2013. However, the key safeguard documents—the Environmental Impact Assessment (EIA) and Social Impact Assessment (SIA), critical for assessing the impacts of the selected design on the KFS—were finalized only in late 2014, the EIA in November 2014 and the SIA in December 2014. These documents, termed collectively as the ESIA documents (including also the Resettlement Action Plan, prepared earlier) were reviewed by the Bank upon their completion.

27. ***Upon review of the Government's ESIA for the Isimba project as indicated to the Board in the above-mentioned progress report, the Bank found that the ESIA did not examine potential impacts on the KFS to its satisfaction.*** The GoU and the Bank agreed that a more detailed study would be undertaken of these impacts. This study, the ESIA Addendum, concluded that Isimba would flood approximately 23 percent of the KFS in a manner that would likely compromise the objective of the IA to protect the KFS's natural habitat and environmental and spiritual values. A key objective of the ESIA Addendum was to enable the Bank to consider its position in light of the IA's stipulation that Uganda would seek the “*agreement of the Association*” for any developments that could adversely affect protection at the KFS.

28. ***Throughout its discussions with the GoU regarding Isimba, Management has consistently emphasized the importance of the Government's continued adherence to the Bujagali IA.*** Under the IA terms, the Bank has remedies in case of breach, including the cross-suspension of other Bank-financed loans in Uganda. As early as February 2014, the Bank wrote

⁹ IDA/SECM2013-0610

to the GoU citing the provisions of the IA, and repeated these through letters dated April 2014 and January 2015 and in meetings between the GoU and Bank senior staff. On February 5, 2015, the Minister of Finance, Planning and Economic Development wrote to the Bank reaffirming *“the Government of Uganda’s commitment to comply with the Indemnity Agreement for the Bujagali Hydropower Project, including the requirement to seek agreement of the World Bank for power generation development affecting the Kalagala Falls Site and the associated objectives of protecting its natural habitat, environmental and spiritual values in conformity with sound social and environmental standards, acceptable to the World Bank.”* Once the GoU had made the sovereign decision to proceed with the development of the Isimba HPP, Management’s engagement with the GoU helped formulate an appropriate solution that enabled continued adherence to the commitments set forth in the IA and the requirements of OP 4.04. The outcome of this effort was an amendment to the IA and an agreement to protect and manage a revised and enlarged offset area known as the “Extended Kalagala Falls Site,” or EKFS, as described in detail below.

29. ***In Management’s view the adverse impacts identified in the Panel’s Report are not the result of a failure of the Bank to implement its policies or procedures.*** The Panel Resolution states that “[...] the Panel’s report to the Board will focus on whether there is a serious Bank failure to observe its operational policies and procedures with respect to project design, appraisal and/or implementation.”¹⁰ Management maintains that the harm alleged in the Request does not result from Bank-financed operations, , i.e. the WMDP or the ERT-III, but from the non-Bank-financed Isimba project.

30. ***Management also notes that the Board authorized the Panel to investigate the WMDP and ERT-III, but not the Bujagali guarantee operation.*** However, a significant focus of the Panel’s investigation is on compliance with the IA of the Bujagali project, while the GoU obligation regarding KFS did not arise from the WMDP or ERT-III, the only projects subject to investigation. The GoU’s obligation to ensure the maintenance of the KFS relates exclusively to the Bujagali guarantee operation and is embedded in the guarantee’s IA. Notwithstanding these observations, Management responds below to the Panel’s findings, including those that relate to the Bujagali guarantee operation IA.

B. Management’s Response to Key Findings of the Panel

31. ***Management appreciates the insights provided by the Panel in its investigation report.*** The Panel’s account of the long and complex history of the Bujagali project is useful and provides important lessons. Management acknowledges that there were challenges in the maintenance and management of the KFS since its establishment, challenges which the Panel details in its Report. Management agrees with the Panel that the original KFS as created by the IA in 2007 lacked sufficient long-term legal protection under national law. There have also been considerable difficulties associated with the management of the KFS due to weak institutional capacity and financial commitments. Management concurs with the Panel that the KOSMP, which was the principal tool for managing the KFS, was overly broad in geographic scope and in terms of its proposed actions, and hence was not as well focused as it should have been to help ensure optimal management of the KFS for the purposes set forth in the IA.

¹⁰ 1999 Clarification of the Board’s Second Review of the Inspection Panel, Paragraph 13.

32. ***These considerations have informed the 2018 amendment of the IA and the ensuing agreement on follow-up implementation actions which in Management's view will help address the challenges highlighted in the Panel's report.*** The Bank is working with the GoU on the legal and logistical aspects that will assure effective establishment of the EKFS and appropriately address the management weaknesses that were evident in the original KFS. The actions agreed with the GoU through ongoing dialogue include: (i) development of a robust, sustainable management plan, including measures to address social risks; (ii) efforts to secure funding for establishment and continued maintenance of the EKFS, and (iii) providing stronger legal protection for the EKFS. Going forward, the Panel's observations will help inform and enhance these efforts further.

33. ***Management further agrees with the Panel that the EKFS will need to be effectively established – both legally and on-the-ground – in ways that appropriately address potential social impacts.*** Both Management and the GoU are acutely aware that the creation of the EKFS and the higher level of environmental protection it implies could potentially have social impacts on people living in and using the area. The actions agreed with the GoU in conjunction with the amendment to the IA include measures to assess, minimize and address such potential adverse impacts before they occur. The Bank will monitor the Government's implementation of these actions as part of its ongoing monitoring of the GoU's compliance with the 2018 IA.

34. ***Management also acknowledges the Panel's conclusion that the partial flooding of the original KFS from the Isimba HPP could have serious impacts on tourism businesses and others. However, Management does not share the Panel's view that these impacts constitute harm resulting from non-compliance with Bank policy.*** While Management recognizes the serious concerns of the Requesters, including the adventure tourism businesses, that have been affected by the impact on the KFS, these impacts result from the construction of the Isimba HPP, in which the Bank is not involved. Management has repeatedly urged the GoU to address these impacts promptly and fairly. In Management's view, however, these impacts described in the Panel's report are not the result of the Bank's failure to implement its policies or procedures for the following reasons:

- ***First, the decision to extend the KFS is consistent with Bank policy.*** OP 4.04 does not prohibit adjustments to an offset. Management notes that there are ample examples where protected areas—including those protected under international conventions—have been adjusted to accommodate a country's development needs, and in this particular case, to address Uganda's severe power deficit (see Box 1). In Management's view, this was an appropriate solution to help ensure continuing compliance with the safeguard commitments set forth in the IA while accommodating the country's important needs to develop renewable and low-cost power generation for expanding electricity access and supporting economic and social development. Moreover, the extended KFS is both larger and contains higher biodiversity value and a greater number of species than the original KFS.
- ***Second, the objectives of the IA were to preserve the biodiversity and spiritual values of the KFS,*** consistent with OP 4.04. The Borrower's commitments under the IA do not extend beyond these objectives to protecting the interests of tourism businesses or others who allege harm. Hence, while Management has urged the GoU to address the impacts stemming from the Isimba HPP promptly and fairly, including

relevant business interests, these are not impacts that are covered by the Borrower's safeguard obligations under a Bank-supported project and are therefore not enforceable by the Bank. Bank safeguard policies do not extend to protecting all expectations or business planning that might arise within an area that is included within an offset.

Extension of the KFS and compliance with Bank policy

35. ***Management maintains that agreeing to modify the boundaries of the KFS, rather than insisting on maintaining the original boundaries, is consistent with Bank policy and the purpose of the IA.*** Where a Bank-supported project (in this case, the building of Bujagali HPP) “would significantly convert or degrade natural habitat,” OP 4.04 requires the establishment and maintenance of an “ecologically similar protected area.” The original KFS was established for this purpose. The Bank engaged in discussions with the GoU about the impacts of the Isimba HPP in order to ensure compliance with the obligations arising from OP 4.04 and the commitments set forth in the IA. Upon concluding, after appropriate due diligence, that the flooding from Isimba would affect portions of the KFS with adverse impact on its natural habitat, Management insisted that a solution be found that would ensure continuing compliance with OP 4.04 and the IA. OP 4.04 does not contain any provisions that would not permit such adjustment to the offset, where the Bank deems it warranted and consistent with the objectives of OP 4.04.

36. ***In Management's assessment, the decision to extend and reinforce the offset accomplishes the goals of maintaining policy compliance and the integrity of the IA.*** The extended offset area as described in the amended IA will not only sustain the original purpose of the KFS, but in many ways result in enhanced legal protection and improved management, as described in greater detail below. The offset area was enlarged, and studies have shown that it is of higher biodiversity value overall. The new KFS encompasses 15 kilometers (km) of the Upper Victoria Nile River, compared to 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 the National Fisheries Resources Research Institute in 2000 and 2016 and reported in the 2017 ESIA Addendum, 63 fish species (including 9 of global conservation concern) have been found within the new KFS, versus 32 (including 4 of global conservation concern) within the original KFS. The only scientifically described fish species known to occur only within the Upper Victoria Nile, *Neochromis simotes*, has been specifically recorded within the EKFS (along with several other sites both upstream and downstream of the Isimba HPP). See Figure 1 and Table 1 below.

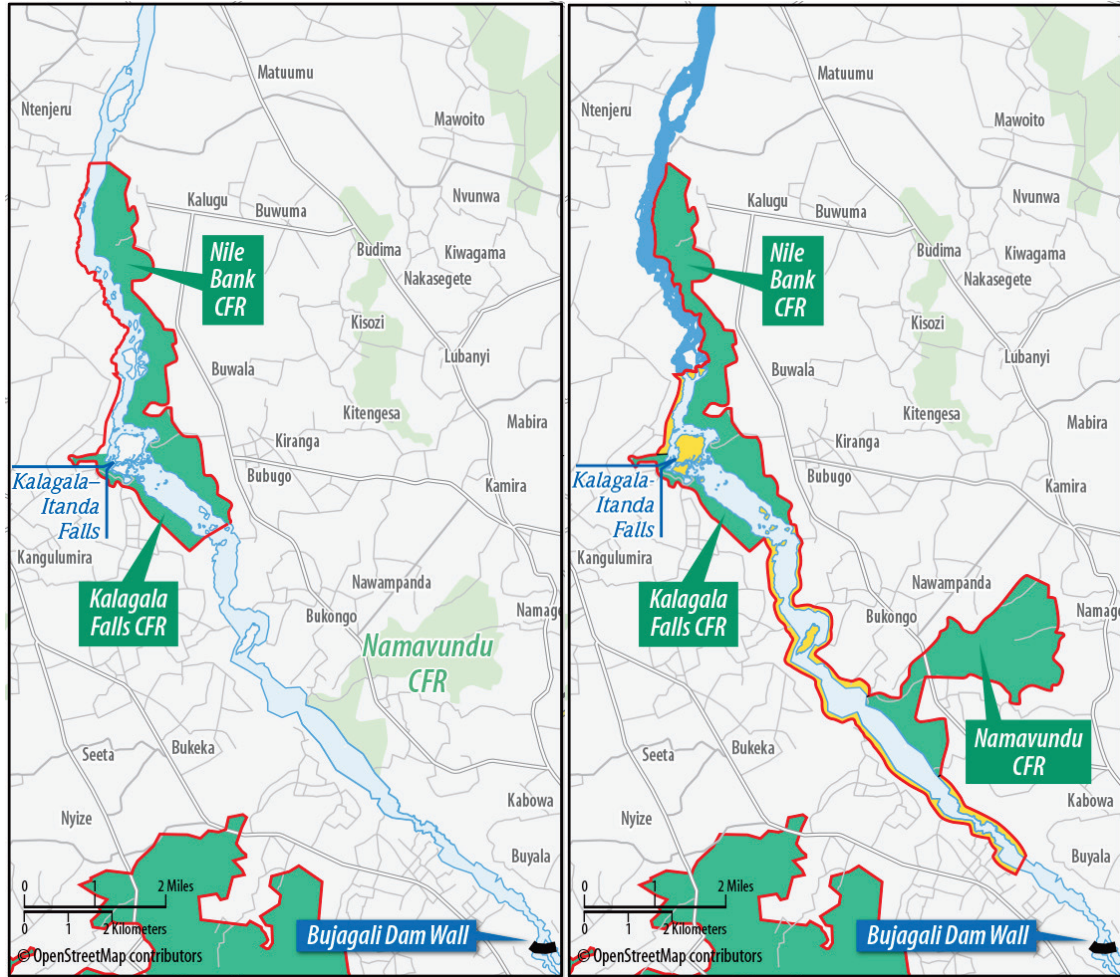


Figure 1: Boundaries (in red) of the Original 2007 KFS (left) and the 2018 Extended KFS (right)

Table 1: Comparison of 2007 KFS and 2018 EKFS
(see also Figure 1 above and Maps 1 and 2)

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 Central Forest Reserves (CFRs) (Nile Bank, Kalagala Falls) 	<ul style="list-style-type: none"> The fast-flowing river length: 15 km Three Central Forest Reserves (Nile Bank, Kalagala Falls, Namavundu)
Number of fish species covered	<ul style="list-style-type: none"> 32 fish species Including 4 of global conservation concern 	<ul style="list-style-type: none"> 63 fish species including 9 of global conservation concern
Legal Protection	<ul style="list-style-type: none"> Reliance on the Indemnity Agreement (IA) No legal mechanism agreed beyond the duration of the IA (2023) 	<ul style="list-style-type: none"> <i>Long-term protection:</i> The National Environment Act (NEA) has been amended to include new provisions that will allow the declaration of the EKFS as a Special Conservation Area and give it legal protection that cannot be reversed by executive action alone.¹¹ <i>Arrangements under the Forestry Act:</i> Cabinet has in the meantime approved and submitted for Parliamentary concurrence a new statutory instrument to declare the EKFS a CFR under the Forestry and Tree Planting Act, which would strengthen its legal protection in conjunction with the revised 2018 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 KFS Management Plan (KFS MP)
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 KFS MP

¹¹ The NEA has been amended by Parliament and signed by the President. The process of drafting the necessary statutory instrument is underway.

37. ***Management respectfully does not agree with the Panel’s conclusions that offsetting an offset “erodes the underlying principles of offsetting.”*** While the Panel’s views regarding “best practice” when it comes to offsets are useful, they are not the appropriate benchmark against which compliance with Bank policies and procedures should be assessed. Management notes that there are many examples globally where the boundaries of an offset have been adjusted for a variety of legitimate and legally authorized reasons. See below Box 1 on Protected Area Boundary Adjustments.

Box 1: Protected Area Boundary Adjustments

Biodiversity offsets frequently involve the establishment or strengthening of some type of protected area, to help ensure that the conservation actions taken to implement the offset result in effective, long-term conservation outcomes. Protected areas—whether or not they are part of a biodiversity offset—sometimes face significant challenges to their effective protection and management. In some cases, these challenges are addressed by adjusting the originally designated boundaries, to accommodate unavoidable external pressures or to make on-the-ground management more feasible.

While protected areas are ideally intended to conserve all the lands and waters within their boundaries in perpetuity, in reality their boundaries are sometimes adjusted for a variety of economic, political or other reasons. As an example, Rwanda’s *Akagera National Park* was significantly downsized to provide space for returning refugees following the country’s violent internal conflict, although on-the-ground management of the remaining park area has greatly improved since then. In Italy, a package of boundary adjustments to the *Belluno Dolomites National Park* was enacted in 2008 to facilitate improved park management, particularly to help ensure that hunting stays outside park boundaries.¹²

The Ramsar Convention on Wetlands of International Importance also provides for and has authorized member states to invoke an *urgent national interest* under the Ramsar Convention as a reason for proceeding with the economic development of a Ramsar protected site, thereby reducing or amending the protected area in accordance with the Convention.

Although the boundaries of the original KFS seemed appropriate at the time of the 2007 Indemnity Agreement, the development of the Isimba Hydropower Project led to an adjustment of the KFS boundaries to avoid a net loss in the surface area (both land and water) as well as the number of fish and other species conserved within the KFS. This boundary adjustment resulted in (i) removing the downstream portion of the KFS that has been inundated by the Isimba Reservoir and (ii) extending the KFS further upstream, resulting in a larger overall EKFS conservation area (15 km of river length vs. 10.2 km in the original KFS). The EKFS is on track to receive long-term legal protection, along with improved on-the-ground management.

38. ***Management would further stress that its decision not to exercise contractual remedies against the Borrower because of a potential violation of the IA was appropriate.*** The Panel appears to fault the Bank for not aggressively using or threatening to use legal remedies available in the IA to influence the GoU’s decisions regarding the Isimba HPP. Indeed, upon determining that the flooding of Isimba would affect the KFS and its objectives, the Bank could have exercised remedies, up to and including suspending its entire lending portfolio in Uganda. As a general principle, the Bank is not legally obliged to exercise remedies in every case where grounds exist to do so. The exercise of remedies is a matter for the Bank’s judgment, taking into account all circumstances and guided by the Bank’s purposes, its interests, and the interests of

¹² <http://www.dolomitipark.it/lv/rettifica.confini.html>

its members as a whole. Hence, in this case Management elected to work with the GoU to fashion an approach that would enable the safeguard obligations arising from the Bujagali project to continue to be met, without undermining other important development initiatives that Uganda was pursuing.

39. ***The purpose of the ESIA Addendum was to assess and mitigate the impacts of Isimba on the KFS and not to influence the design of the Isimba project – a project in which the Bank was not involved.*** Hence, the Panel is correct that the ESIA Addendum, financed under ERT-III, could not influence the design of the Isimba project, given that the design of the Isimba project was completed and construction contracts signed by the time the ESIA Addendum was initiated and construction of the plant was already in progress. In fact, it was not intended or expected to achieve that influence, as shown by the terms of reference for the ESIA Addendum.¹³ The main purpose of the ESIA Addendum was to assess and mitigate the impacts of the project on the KFS, given the Bank’s responsibilities related to the KFS under the IA for the Bujagali project. Therefore, the “project” for the Bank to influence through ERT-III was the *impact of Isimba on the KFS* and not the Isimba project itself. The assessment of that impact and the design of mitigation measures have been done in a manner consistent with the Bank’s operational policies, including OP/BP 4.01. The ESIA Addendum did influence the selection and design of *mitigation measures* for the KFS and helped ensure that the objectives of the KFS are preserved—and even enhanced—and sustained beyond the duration of the IA, as described below. Management agrees with the Panel that the title “ESIA Addendum” can be misleading as it would suggest that this study would serve the purpose of an ESIA for the Isimba HPP, which the addendum never was intended to do.

Bank safeguards and the impacts of Isimba on tourism business

40. ***The GoU’s obligations under the IA were related to meeting the “natural habitats” objectives of OP 4.04 to establish and maintain an ecologically comparable area and not to protect all expectations or business planning that might arise as a result of establishing a particular offset.*** The Panel faults Management for not taking steps to protect the expectations of tourism businesses and others that the KFS would be maintained in its original form. However, the GoU’s safeguard obligations arising from the Bujagali project did not extend to protecting the expectations of such tourism businesses and others, nor could the Bank, under its safeguard policies, legally require them to do that. Consistent with Bank policies, the purpose of the IA was to address biodiversity concerns, not to protect the type of economic activities and expectations that may have arisen within the same area.

41. ***At the same time, Management does not wish to diminish the significance of the impacts from the Isimba HPP on tourism businesses and others.*** As previously explained, Management has consistently urged the GoU to address these impacts. However, the Government’s actions with respect to this particular type of harm are a matter of Ugandan policy

¹³ The objective of the terms of reference for the ESIA Addendum was to prepare “... an Addendum to the Isimba ESIA that addresses the main environmental and social impacts and corresponding mitigation measures for the Isimba Hydropower Project, specifically as it would affect the KOA...”. The terms of reference scope did include a request for presenting an analysis of alternatives for the Isimba project. The purpose of this inclusion was for the Government to demonstrate the rationale for selecting the design of the Isimba project, rather than an expectation that the Government would reconsider and change the project’s design at the stage where the design was set and commercially contracted, and the project already under construction.

and law. They are not a matter covered by Bank safeguard policies applicable to the operations under investigation, nor by the GoU's obligations under the IA.

Addressing the potential impacts of establishing the EKFS

42. ***Management agrees with the Panel that the social and environmental impacts of the revised offset need to be appropriately assessed and addressed.*** The ESIA Addendum made a thorough assessment of the KFS, including the areas of expansion, in terms of the baseline conditions (physical, biological, socio-economic, and cultural and spiritual environment, land use and tourism activities).¹⁴ The study also discussed options for managing the extension in terms of land use and ownership. It was beyond the scope of the ESIA Addendum to prepare a resettlement action plan or livelihood restoration plan for the extension areas, as such documents are typically prepared separately from the ESIA studies; this action was left to be done as part of the KFS Management Plan (KFS MP) and the application of the Forestry Act and the newly revised National Environment Act (NEA) for legal protection of the KFS. It is only during the process of defining and selecting among management options that the nature of social impacts will become evident and the options for avoiding, minimizing or mitigating such impacts will be appropriately considered. The ESIA Addendum recommended an environmental and social management and monitoring framework/plan, estimated a budget, and advised of the need for institutional strengthening. Uganda's National Environmental Management Authority (NEMA) conducted public consultations on the ESIA Addendum.

43. The amendment to the Bujagali Indemnity Agreement of January 24, 2018, prepared on the basis of the ESIA Addendum and the LTCO report, stipulated that the GoU would prepare and adopt (i) a sustainable Management Plan for the EKFS (KFS MP) and (ii) a mechanism that ensures legally-binding and long-term conservation, protection and management of the EKFS (Legal Mechanism). The amendment was accompanied by a Supplemental Letter that elaborated on the key requirements of the KFS MP and the Legal Mechanism (see Annex 3). The Government and the Bank agreed on an EKFS Action Plan, which detailed actions to develop and adopt the KFS MP and Legal Mechanism.¹⁵ The main elements of the EKFS Action Plan to be undertaken by the GoU are as follows:

- Prepare and adopt the KFS MP;
- Adopt Legal Mechanism for long-term protection of EKFS:
 - Apply the National Forestry and Tree Planting Act, 2003 ("Forestry Act") – Amend the Order for Kalagala Falls CFR (KFS CFR) to include all areas of the EKFS not covered by the existing CFRs into the KFS CFR
 - Adopt and apply the NEA

¹⁴ The impacts of the Isimba HPP on the areas of the KFS flooded by the Isimba reservoir and the corresponding mitigation measures in terms of compensation and livelihood restoration were covered by the Isimba safeguard documents. They did not, however, gauge the expected impacts against the requirements set out in the IA.

¹⁵ The Action Plan agreed in late 2017 envisaged that the KFS MP and Legal Mechanism would be adopted by November 30, 2018, as recorded in the amendment of January 24, 2018. The Indemnity Agreement was amended in November 2018 to extend this date to December 31, 2019. The EKFS Action Plan was revised to reflect the new date.

- Declare EKFS as a Special Conservation Area.

44. As noted above, the Bank has emphasized the need to ensure that the expansion of the offset boundaries, agreed under the amendment to the IA, is done with due attention to any potential adverse impacts on livelihood of people affected by such expansion. Under the Supplemental Letter to the amendment to the IA, the GoU commits to the following with respect to the KFS MP:

- To the extent appropriate, incorporate the relevant provisions of the existing Kalagala Offset Sustainable Management Plan and the existing management plans for the CFRs in the EKFS (and Mabira CFR);
- Specify the types of human uses that will be permitted or prohibited within the EKFS; these specifications may vary according to the various management zones within the EKFS;
- Describe the range of EKFS 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 EKFS-related management activities, based on eligibility criteria mutually agreed by the Government and the Bank.

45. The GoU has initiated development of the legally-binding mechanism for the EKFS by preparing a Statutory Order to put the EKFS under the protection of the Forestry Act.¹⁶ The GoU has indicated that a number of related actions have already been completed: the EKFS has been demarcated; stakeholder consultations have been held as required under the Forestry Act; an environmental and social impact analysis has been completed in accordance with Ugandan legal requirements; a land survey and EKFS boundary plan have been prepared and land titles verified. A draft Statutory Order to declare the EKFS a CFR¹⁷ has been prepared and approved by the Cabinet of Ministers, to be submitted to parliament for a resolution as required by the Forestry Act.

¹⁶ The National Environment Act was adopted recently and the GoU is preparing a Statutory Order to declare the EKFS a Special Conservation Area under the Act. This will be done subsequent to the declaration of the EKFS as a CFR under the Forestry Act.

¹⁷ This will be done by extending the boundaries of the existing Kalagala Falls CFR to add 556.1 hectares of the EKFS added by the amendment to the IA. The conservation status of Kalagala Falls, Nile Bank, and Namavundu CFRs will be upgraded to prohibit infrastructure development that could adversely affect and alter biodiversity and aquatic ecosystem of the Nile River.

46. The Government has recently hired a consultant to conduct detailed socio-economic baseline studies for the affected EKFS area; identify all potentially affected people and prepare a census to establish a basis for the design of the compensation and livelihood restoration program; carry out detailed valuation of all affected land, properties and livelihoods as the basis for compensating persons affected by the extension of the KFS and its declaration as a CFR; carry out consultations; and develop a comprehensive livelihood restoration plan.¹⁸ This activity is consistent with the stipulations of the above-mentioned Supplemental Letter. The Bank will continue to follow up with the GoU to ensure that these measures are being implemented in a manner consistent with the revised 2018 IA, in particular that any adverse impact of extending the KFS is compensated and mitigated before any restrictions on access to natural resources or other constraints to economic activities within the EKFS are enforced on the ground.

47. It is important to note that the new areas proposed to be included in the EKFS (except for the Namavundu CFR) have also been protected under the Law on National Environment (Wetland, Riverbanks and Lakeshore Management), Regulation 2000 (100-meter-wide swaths of land on either side of the river). The Namavundu CFR is already protected under the Forestry Act. Therefore, the incremental constraints on economic activities imposed by including those swaths of land in the EKFS are mainly limited to the probability of increased future enforcement within the EKFS boundaries.

IV. PROPOSED ACTIONS IN RESPONSE TO THE FINDINGS

48. Management's proposed Action Plan to address the Panel's findings is laid out in Table 2 below.

49. Through its Action Plan, the Bank supports an appropriate solution that supports the nation- and economy-wide benefits of hydropower development, while preserving and enhancing the objectives of the KFS. Management proposes the actions below to support Uganda in addressing: (i) the actual impacts of Isimba HPP on the original KFS, and (ii) the potential social impacts that could arise from extending the KFS.

50. Management met with Requesters and affected community members in Kampala on May 30, 2019 to discuss the content of the proposed Action Plan. A total of 14 Requesters and community members participated in the consultations, including representatives of local NGOs. The Bank team explained Management's proposed Action Plan to respond to the findings in the Panel Report and sought the Requesters' feedback on the Action Plan.

51. Management would like to emphasize that successful implementation of these actions depends on the sustained commitment and collaboration of the Government. Management has discussed this Action Plan with the Government and secured its agreement to collaborate fully in its implementation.

¹⁸ The Bank advised the GoU to avoid land acquisition within the EKFS and to accommodate the existing private land holdings as part of developing the KFS Legal Mechanism and MP. A final determination as to whether any resettlement, physical or economic, will be needed, will be done as part of the consulting assignment.

A. Supporting the GoU to Mitigate the Impacts of the Isimba HPP on the Original KFS by Establishing and Strengthening EKFS legal Protection and Management

52. Informed by the ESIA Addendum and the LTCO report, the GoU and the Bank agreed on three key actions to mitigate the impacts of Isimba on the KFS and strengthen legal protection and management of the EKFS going forward:

- (i) Adjust the offset boundaries, as described in paragraph 43 (completed on January 24, 2018, by virtue of signing the amendment to the IA);
- (ii) Prepare and adopt the KFS MP by December 31, 2019 (in progress);
- (iii) Prepare and adopt the KFS Legal Mechanism:
 - 1. Issue a Statutory Order under Forestry Act, by December 31, 2019 (in progress)
 - 2. Issue a Statutory Order under the revised NEA. by December 31, 2019 (in progress)

53. These actions are enshrined in the 2018 amendment to the IA and further elaborated in the Supplemental Letter and the EKFS Action Plan, as already described in the previous sections. The actions represent a response to the construction of the Isimba HPP, addressing the third finding of the Panel (taking adequate, timely, and effective measures in response to the threats posed by the construction of the Isimba HPP).

54. The KFS MP is under preparation, with an advanced version and some key annexes drafted, including annexes on eco-tourism promotion and the EKFS/CFR management plan. The KFS MP will contain a number of actions and activities to be taken over a 10-year period to promote the objectives of the KFS, as stated in the IA (*“to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards acceptable to the Association”*). The KFS MP will reflect the lessons learned from the previous period, especially with regard to the need to keep the scope of the MP confined to the objectives of the offset, properly budgeted, and with efficient and accountable institutional arrangements for plan implementation. The KFS MP, specifically, will address the fifth (the need for a systematic impact assessment and adequate mitigation) and sixth (the weaknesses in the institutional and management arrangements, long-term funding, and effective legal framework) findings of the Panel. The KFS MP will be subject to a public consultation process before it is finalized.

55. As described in the previous sections, the GoU is putting in place legal protection for the KFS grounded in national laws (rather than on the IA alone), thereby also coinciding with the sixth finding of the Panel (the need for an effective legal framework). It is important to note that this new arrangement represents a significant improvement in the legal protection of the KFS introduced by the amendment to the IA, as the original IA envisaged the GoU developing protection of the KFS based on domestic law only toward the end of the IA in 2023, with insufficient clarity regarding the nature of such protection and what would happen if the GoU failed in such efforts.

56. Going forward, the main overarching action for the GoU is to complete the actions of developing and adopting the KFS MP and Legal Mechanism, with appropriate mitigation of

associated adverse social impacts, if any, that implementation of the KFS MP and imposition of the Forestry Act and the NEA on the EKFS may entail, as elaborated in the next section. The main action of the Bank is to continue assisting the GoU, through advice, in this effort.

B. Supporting the GoU to Assess and Manage Potential Social Impacts of Extending the KFS and Enforcing Legal Protections.

57. The boundary adjustment of the KFS and creation of the EKFS, as stipulated in the amendment to the IA and associated documents, may have the following social effects: (i) people living and/or having assets or other economic and cultural interests in the areas *added* to the KFS will find themselves subject to the regulations imposed on the offset; and (ii) declaring the KFS as a CFR under the Forestry Act and as a Special Conservation Area under the NEA may impose certain constraints on the economic and cultural use of the resources within the KFS. As noted above, it is only as the management planning process advances that the nature of social impacts will become evident and the options for avoiding, minimizing or mitigating such impacts will be appropriately considered. To the extent adverse impacts are likely to arise from the selected management options, these will need to be mitigated before the constraints are enforced on the ground.

58. As noted above, the Supplemental Letter states that if the KFS MP requires the imposition of new or enhanced restrictions on access to natural resources, the GoU is obliged to *“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 EKFS-related management activities, based on eligibility criteria mutually agreed by the Government and the Bank.”* The GoU has commissioned a detailed analysis of the potential impacts on individual households and businesses of extending the KFS and applying legal protections of the Forestry Act and the NEA and has initiated the development of a corresponding Livelihood Restoration Plan (LRP) with compensation/livelihood restoration measures to mitigate the potential impacts of decisions made during the management planning process. The LRP is to be implemented before relevant management measures the within the EKFS are enforced. The importance of properly conducting and completing this activity cannot be over-emphasized. The associated action for the Bank is to review the schedule and the scope of the LRP and the measures proposed by the analysis to ensure their consistency with the 2018 revised IA and the Supplemental Letter.

59. The GoU will prepare a public consultation and communication plan for the LRP and the KFS MP, in coordination with local community-based organizations. The Bank will assist the GoU in this process through advice and knowledge sharing.

C. Advising the GoU on Managing the Environmental and Social Impacts of the Isimba HPP (completed)

60. As previously emphasized, the Isimba HPP is not a Bank-financed project to which Bank safeguards apply. Therefore, beyond ensuring that the GoU continues to comply with the commitments in the Bujagali IA, the Bank does not have the mandate to ensure that the wider environmental and social impacts of the Isimba HPP are properly managed. Nonetheless, as

stated in Management's first Response to the Request for Inspection in October 2016, the Bank has undertaken to advise the GoU on such matters in a number of ways.

61. ***In February 2019, the Bank shared with the GoU a review of good practice measures for livelihood restoration in environmentally sensitive areas.*** Specifically, the Bank provided a review of international experience in livelihood restoration for people affected by infrastructure projects in areas including, but not limited to, protected and offset areas. The review focused on eco-tourism opportunities, but also considered other measures, including replacement livelihoods for people engaged in subsistence activities that may be prohibited in protected or offset areas such as certain types of farming and sand mining. The review examined eight cases, undertook a comparative analysis of their effectiveness and described lessons learned from their implementation and outcomes. Finally, it provided principles for developing effective livelihood restoration measures in environmentally sensitive areas for the GoU's consideration in developing such measures for people affected by the Isimba HPP.

62. The GoU has advised the Bank that the environmental and social impacts of the Isimba hydropower project have been mitigated as part of the Isimba project, through the appropriate safeguards instruments, including the Isimba HPP Social Impact Assessment (December 2014), Isimba HPP Resettlement Action Plan (September 2013), and the Community Development Action Plan (CDAP) of March 2016; compensation of businesses for lost income as a result of the Isimba project is being made as part of the CDAP.

63. The Ministry of Energy and Mineral Development commissioned the preparation of the CDAP as part of the consultancy services to implement the resettlement action plan and related services for the Isimba project. The CDAP was finalized in March 2016. It is intended to supplement the mitigation measures developed for the Isimba HPP as contained in the Environmental, Social, Resettlement, and Livelihood Restoration Action Plans.

64. Management will monitor the implementation of these actions as part of its continued monitoring of the implementation of the 2018 IA under the Bujagali guarantee. Management will report to the Board annually on implementation progress of the Action Plan.

Table 2: Summary of the Action Plan

Issue	Proposed Actions
Mitigation of adverse impacts of the Isimba HPP on the KFS (second and fourth Panel findings)	Mitigate adverse impacts of Isimba HPP on the KFS
	<ul style="list-style-type: none"> • The GoU to prepare and adopt a Livelihood Restoration Plan for the extended KFS. The Bank will review the plans and monitor implementation for consistency with the 2018 IA. <p>Timeline: adoption of the LRP by December 31, 2019; implementation by December 31, 2020</p>
	<ul style="list-style-type: none"> • The GoU to prepare a public consultation and communication plan for the LRP and KFS MP, in coordination with local community-based organizations. The Bank will review and advise through knowledge and good practice sharing. <p>Timeline: by October 31, 2019</p>
Protection and maintenance of the KFS (first, third, fifth and sixth Panel findings)	Strengthen legal status of the KFS based on Ugandan laws
	<ul style="list-style-type: none"> • The GoU to declare KFS a CFR under the Forestry Law. The Bank will review the draft Statutory Order for consistency with the IA and monitor its implementation through the KFS MP. <p>Timeline: by December 31, 2019</p>
	<ul style="list-style-type: none"> • The GoU to declare KFS a Special Conservation Area under the NEA. The Bank will review the draft Statutory Order for consistency with the IA and monitor its implementation through the KFS MP. <p>Timeline: by December 31, 2019</p>

REVISION

The following page replaces Table 2, “Summary of the Action Plan”, on page 20 of this document and was approved by the Bank’s Board on December 3, 2019.

Since the Government of Uganda (GoU) has decided to enact the legal protection of the Extended Kalagala Falls Site under the National Environment Act, and not as initially planned under the Forestry Act, the original corresponding action, “GoU to declare KFS a CFR under the Forestry Law”, becomes void and hence has been removed from the Action Plan.

Table 2: Summary of the Action Plan

Issue	Proposed Actions
Protection and maintenance of the EKFS and mitigation of potential adverse impacts	<ul style="list-style-type: none"> • The GoU to prepare a public consultation and communication plan for the Livelihood Restoration Plan and EKFS Management Plan, in coordination with local community-based organizations. The Bank will review and advise through knowledge and good practice sharing. <p><i>Timeline: by November 30, 2019</i></p>
	<ul style="list-style-type: none"> • The GoU to declare EKFS a Special Conservation Area under the NEA. The Bank will review the draft Statutory Order for consistency with the 2018 IA. <p><i>Timeline: by December 31, 2019</i></p>
	<ul style="list-style-type: none"> • The GoU to prepare and adopt the EKFS Management Plan. The Bank will review and clear the plan and monitor the implementation for consistency with the 2018 IA and relevant Bank Policy. <p><i>Timeline: preparation and adoption by December 31, 2019; implementation throughout the duration of the IDA PRG (November 2023).</i></p>
	<ul style="list-style-type: none"> • The GoU to prepare and adopt a Livelihood Restoration Plan (including, if applicable, a Resettlement Action Plan) for the EKFS. The Bank will review and clear the plans and monitor implementation for consistency with the 2018 IA and OP 4.12. <p><i>Timeline: preparation and adoption of the Livelihood Restoration Plan (and Resettlement Action Plan, if applicable) prior to impacts, as defined by the EKFS Management Plan.</i></p>

V. CONCLUSION

65. Management believes that the Bank has made every effort to apply its policies and procedures and to pursue its mission statement in the context of the projects. Management acknowledges the Panel's findings and understands the concerns and impacts discussed in the Panel's Report. However, Management believes that the actions described in this Report and the proposed Management Action Plan are the appropriate means to address these findings.

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT
OF THE UGANDA WATER MANAGEMENT AND DEVELOPMENT PROJECT
(CREDIT NO. 5127-UG) AND ENERGY FOR RURAL TRANSFORMATION PHASE III
PROJECT (CREDIT NO. 5653-UG)**

**ANNEX 1:
FINDINGS and COMMENTS**

No.	Issue/Finding	OP/BP	Comments
1.	<p>Bank supervision.</p> <p>The KOSMP operationalizes the IA commitments to maintain and manage the KFS and the premise of the WMDP's support to priority KOSMP activities is the continued protection of the KFS. Although funding and capacity constraints relating to the KOSMP became evident through WMDP supervision, Management did not address these issues to ensure the maintenance of the KFS. Thus, the Panel finds Management in non-compliance with World Bank Policies on Project Supervision (OP/BP 13.05), Investment Project Financing (OP/BP 10.00), and Natural Habitats (OP/BP 4.04).</p>	4.04, 10.00, 13.05	<p>Comment: The WMDP financed the implementation of select priority activities (but not all) of the KOSMP, focusing mainly on restoration activities within the Mabira Ecosystem, which included five CFRs (Mabira, Namakupa, Namananga, Namawanyi and Nandagi). The WMDP supervision focused on the specific activities that were being financed. In accordance with the project design and Government priorities, the funding and capacity constraints also considered implementation of the select activities and not the overall maintenance of the KFS/KOSMP. The funding shortfall was a result of foreign exchange fluctuations which affected the entire project budget.</p> <p>The WMDP closed on December 31, 2018 and successfully completed the selected KOSMP activities that the GoU prioritized and committed to implementing under this project, including the restoration of 2000 hectares of indigenous trees in the Mabira CFR. The restoration activities were aligned to the Mabira CFR Management Plan, and sustainability measures beyond project closure will be undertaken by the National Forest Authority.</p> <p>The project therefore did not create or contribute to the alleged harm because as per its design and development objectives, the WMDP did not have an objective to enforce the IA. In addition, it is important to note that the WMDP project area was not affected by the impacts of the Isimba HPP.</p>

2.	<p>Timeliness of the ESIA Addendum.</p> <p>The Panel notes that the ESIA Addendum, financed under the ERT-III Project, started when the construction of Isimba was already well underway, and was completed when Isimba was almost finished. The Panel thus finds that the ESIA Addendum could not influence the design of Isimba, improve decision making, or help ensure that the Project was sustainable and that its mitigation measures were environmentally sound, as required by the Bank. The Panel therefore finds Management in non-compliance with the World Bank Policy on Environmental Assessment (OP/BP 4.01).</p>	4.01	<p>Comment: The Panel correctly states that the ESIA Addendum, financed under ERT-III, could not influence the design of the Isimba project, given that the design and construction contracts of the Isimba project were completed by the time the ESIA Addendum was initiated and construction of the plant was already in progress.</p> <p>The main purpose of the ESIA Addendum was not, however, to influence the design of the Isimba project—a project in which the Bank was not involved—but to assess and mitigate the impacts of the project on the KFS, given the Bank’s responsibilities related to the KFS under the IA for the Bujagali project. Therefore, the “project” for the Bank to influence through ERT-III was the impact of Isimba on the KFS and not the Isimba project itself. The assessment of that impact and the design of mitigation measures have been done in a manner consistent with the Bank’s operational policies, including OP/BP 4.01. The ESIA Addendum did influence the selection and design of mitigation measures for the KFS and helped ensure that the objectives of the KFS are preserved—and even enhanced—and sustained beyond the duration of the IA.</p>
3.	<p>Harms Caused by the Flooding of the KFS.</p> <p>The Panel finds that Management did not take adequate, timely and effective measures in response to the threats posed by the construction of Isimba Dam and failed to ensure the protection of the KFS as provided for in the KOSMP. These omissions led to harm and Management’s non-compliance with Bank Policy on Natural Habitat (OP/BP 4.04) and with Bank Policies on Project Supervision (OP/BP 13.05) and Investment Project Financing (OP/BP 10.00), which require the identification of key risks to project sustainability and recommendation of appropriate risk management strategies.</p>	4.04, 10.00, 13.05	<p>Comment: The WMDP is unrelated to the issues raised by the Requesters. 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 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.</p> <p>The WMDP seeks to support the implementation of priority activities such as afforestation, restoration of native vegetation, conservation of sensitive habitats, restoration</p>

			<p>and protection of river banks and specific livelihood measures that are elaborated in the KOSMP. There is no requirement under the WMDP or the IA obliging the GoU to fully implement all activities set out in the KOSMP.</p> <p>Supervision of the KOSMP and the IA is not included in the scope of ERT-III. Therefore, the alleged harms, if any, that may have come from the weaknesses in the implementation of the KOSMP—including responding to threats posed by the Isimba project—cannot be attributed to ERT-III, which did not include financing of the Isimba project or financing of the KOSMP, nor did it have any responsibilities for supervision of the IA or implementation of the KOSMP.</p> <p>See the comment in Item 1 related to the Bank’s responsibilities under the WMDP.</p> <p>The Panel acknowledges that “...the ESIA Addendum confirms many types of adverse impact alleged by the Requesters and proposes some mitigation measures...”.</p> <p>The ESIA Addendum indeed identified the key impacts of the Isimba project on the KFS and mitigation measures to counter the adverse impact of Isimba HPP on the KFS and ensure its sustainability. This work was followed by an amendment to the IA (signed in January 2018) to integrate these measures into the KFS MP and the Legal Mechanism to protect the EKFS. The GoU has advised the Bank that the environmental and social impacts of the Isimba hydropower project (HPP) have been mitigated as part of the Isimba project, through the appropriate safeguard instruments. The adverse impacts of extending the KFS and protecting it will be mitigated through the actions to be included in the KFS MP and in the Legal Mechanism for EKFS long-term protection.</p>
4.	<p>The ESIA Addendum as a Tool to Address the Impact on the KFS.</p> <p>Lacking leverage over Isimba and not conducting an adequate analysis of alternatives, Management, through the Addendum, gave implicit support to the alternative that would have the greatest</p>	4.01	<p>Comment: The Bank has not been involved in the Isimba project at any stage, including its preparation, analysis of alternative designs, etc. Consequently, the Bank did not endorse any designs for Isimba.</p> <p>The Panel appears to fault the Bank for not aggressively using or threatening to use legal</p>

<p>impact on the KFS. The only effect the ESIA Addendum could have had on Isimba and its partial inundation of the KFS was to formulate compensatory measures to address impact, rather than the preventive measures preferred by World Bank Policy on Environmental Assessment (OP/BP 4.01). The Panel notes that Management, rather than conducting its own due diligence of the potential impact on the KFS caused by Isimba, asked the GoU to commission the ESIA Addendum, and only agreed to finance it later when the GoU experienced funding constraints. Management, by funding the ESIA Addendum, chose to support an environmental assessment tool for a project the Bank was not financing and over which it has no leverage. The Panel finds that the Management, through the Addendum, provided its implicit support to the project alternative with the most severe impact on the KFS without a robust scientific basis and adequate analysis. The Panel therefore finds Management in non-compliance with World Bank Policy on Environmental Assessment (OP/BP 4.01).</p>	<p>remedies available in the IA to influence the GoU's decisions regarding the Isimba HPP. Indeed, upon determining that the flooding of Isimba would affect the KFS and its objectives, the Bank could have exercised remedies, up to and including suspending its entire lending portfolio in Uganda. As a general principle, the Bank is not legally obliged to exercise remedies in every case where grounds exist to do so. The exercise of remedies is a matter for the Bank's judgment, taking into account all circumstances and guided by the Bank's purposes, its interests, and the interests of its members as a whole. Hence, in this case Management elected to work with the GoU to fashion an approach that would enable the safeguard obligations arising from the Bujagali project to continue to be met, without undermining other important development initiatives that Uganda was pursuing.</p> <p>The analysis of alternatives for Isimba was included in the terms of reference for the ESIA Addendum to demonstrate the GoU's rationale for selecting the design of the Isimba project, rather than with an expectation that the Government would reconsider and change its design.</p> <p>While the Bank did not have leverage over the Isimba project, it did have leverage over the KFS, and exercised it by asking the Government to prepare the ESIA Addendum focused on the KFS. The main purpose of the ESIA Addendum was to assess and mitigate the impacts of the project on the KFS, given the Bank's responsibilities related to the KFS under the IA for the Bujagali project. Therefore, the "project" for the Bank to influence through ERT-III was the <i>impact of Isimba on the KFS</i> and not the Isimba project itself. The assessment of that impact and the design of mitigation measures have been done in a manner consistent with the Bank's operational policies, including OP/BP 4.01. The ESIA Addendum did influence the selection and design of <i>mitigation measures</i> for the KFS and helped ensure that the objectives of the KFS are preserved—and even enhanced—and sustained beyond the duration of the IA</p> <p>The alternative of the Bank conducting its own</p>
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			<p>due diligence of the potential impact on the KFS caused by Isimba, as suggested by the Panel, would have been far weaker. Such analysis would not have had Government's ownership, a key element for reaching an agreement on mitigating the impacts on the KFS.</p>
5.	<p>Required Assessments for the Establishment of the EKFS.</p> <p>Management, based on the ESIA Addendum, recommended the creation of the EKFS to the GoU as a mitigation measure for the partial flooding of the KFS. The Panel finds that the impact of the establishment of the EKFS was not systematically assessed and adequately mitigated, in line with Bank policies, in non-compliance with Bank Policies on Environmental Assessment (OP/BP 4.01) and Natural Habitats (OP/BP 4.04).</p>	4.01, 4.04	<p>Comment: The ESIA Addendum made a thorough assessment of the KFS, including the areas of expansion, in terms of the baseline conditions (physical, biological, socio-economic, and cultural and spiritual environment, land use and tourism activities). The study also discussed options for managing the extension in terms of land use and ownership. It was beyond the scope of the ESIA Addendum to prepare a resettlement action plan or livelihood restoration plan for the extension areas, as such documents are typically prepared separately from the ESIA studies; this action was left to be done as part of the KFS Management Plan (KFS MP) and the application of the Forestry Act and the National Environment Act for legal protection of the KFS. It is only during the process of defining and selecting among management options that the nature of social impacts will become evident and the options for avoiding, minimizing or mitigating such impacts will be appropriately considered. The ESIA Addendum recommended an environmental and social management and monitoring framework/plan, estimated a budget, and advised of the need for institutional strengthening. NEMA conducted public consultations on the ESIA Addendum.</p> <p>The ESIA Addendum did not conduct an assessment of the impacts of extending the KFS <i>on each individual household</i> within the extension area or agree on mitigating or compensating for any adverse impact at the individual level. This is being done as part of the KFS MP.</p> <p>It is important to note that the new areas proposed to be included in the EKFS—except for Namavundu CFR—have also been protected under the Law on National Environment (Wetland, Riverbanks and</p>

		<p>Lakeshore Management) Regulation 2000 (100-meter-wide swaths of land on either side of the river).</p> <p>Namavundu CFR is already protected under the Forestry Act.</p> <p>Therefore, the incremental constraints of economic activities imposed by including those swaths of land in the EKFS are mainly limited to the probability of increased future enforcement within the EKFS boundaries.</p> <p>It is also important to note that the Supplemental Letter to the amendment to the IA of January 24, 2018, stipulates that if the KFS MP requires the imposition of new or enhanced restrictions on access to natural resources, the MP will, prior to the effectiveness of such restrictions, specify measures that would be taken to provide appropriate time-bound compensation to people using natural resources and whose livelihoods could be adversely affected by the EKFS-related management activities, based on eligibility criteria mutually agreed by the Government and the Bank.</p> <p>The Bank made a deliberate effort to strike an appropriate balance between—on one hand—the Government’s effort to develop its power sector in a manner that enables electrification at scale at affordable cost and—on the other—protecting the objectives of the KFS.</p> <p>The agreed EKFS Action Plan is designed to protect against any adverse impact of extending the KFS before adequate mitigation and compensation measures are agreed, satisfactory to the Bank. The Government has contracted a consultant to prepare a census of the people affected by the extension of the KFS and individualized compensation measures, as well as a livelihood restoration plan. The Government has completed a survey of land ownership. At this stage, it is considered that there will be no need for land acquisition, but a final determination will be done as part of the consulting assignment.</p> <p>The Bank remains involved in advising the Government on implementation of the EKFS Action Plan. In February 2019, the Bank prepared a report on good practice for</p>
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			livelihoods restoration in environmentally sensitive areas and shared it with the Government.
6.	Design, Protection and Management of the EKFS. The Panel notes that the creation of the EKFS as a mitigation measure requires adequate and effective institutional and management arrangements, financial provision in the long term, and effective legal protection beyond the required changes to the legal framework. The Panel finds that, in spite of the challenges faced by the original KFS, Management did not assess the institutional capacity and funding arrangements to implement the appropriate conservation measures for the EKFS, in non-compliance with World Bank Policies on Environmental Assessment (OP/BP 4.01) and Natural Habitats (OP/BP 4.04).	4.01, 4.04	<p>Comment: The Bank was well aware of the institutional capacity and funding issues in implementation of the KOSMP. These issues are being addressed as part of the EKFS Action Plan, under the coordination of an interagency Planning Group appointed by the Government.</p> <p>The Government had already given assurances to the Bank on November 27, 2017 that “Government shall provide funds in the Medium-Term Expenditure Framework of Ministry of Water and Environment (MoWE) for purposes of managing the activities of the Extended Kalagala Falls Site.” This has been confirmed by Ministry of Finance issuing, in January 2019, a certification of financial implications of declaring the EKFS a CFR and including US\$22 billion in the Medium-Term Expenditure Framework.</p>

ANNEX 2: PANEL FINDINGS

Issue Area	Panel Observations and Findings
Bank supervision	The KOSMP operationalizes the IA commitments to maintain and manage the KFS and the premise of the WMDP's support to priority KOSMP activities is the continued protection of the KFS. Although funding and capacity constraints relating to the KOSMP became evident through WMDP supervision, Management did not address these issues to ensure the maintenance of the KFS. Thus, the Panel finds Management in non-compliance with World Bank Policies on Project Supervision (OP/BP 13.05), Investment Project Financing (OP/BP 10.00), and Natural Habitats (OP/BP 4.04).
Timeliness of the ESIA Addendum	The Panel notes that the ESIA Addendum, financed under the ERT-III Project, started when the construction of Isimba was already well underway, and was completed when Isimba was almost finished. The Panel thus finds that the ESIA Addendum could not influence the design of Isimba, improve decision making, or help ensure that the Project was sustainable and that its mitigation measures were environmentally sound, as required by the Bank. The Panel therefore finds Management in non-compliance with the World Bank Policy on Environmental Assessment (OP/BP 4.01).
Harms Caused by the Flooding of the KFS	The Panel finds that Management did not take adequate, timely and effective measures in response to the threats posed by the construction of Isimba HPP and failed to ensure the protection of the KFS as provided for in the KOSMP. These omissions led to harm and Management's non-compliance with Bank Policy on Natural Habitat (OP/BP 4.04) and with Bank Policies on Project Supervision (OP/BP 13.05) and Investment Project Financing (OP/BP 10.00), which require the identification of key risks to project sustainability and recommendation of appropriate risk management strategies.
The ESIA Addendum as a Tool to Address the Impact on the KFS	Lacking leverage over Isimba and not conducting an adequate analysis of alternatives, Management, through the Addendum, gave implicit support to the alternative that would have the greatest impact on the KFS. The only effect the ESIA Addendum could have had on Isimba and its partial inundation of the KFS was to formulate compensatory measures to address impact, rather than the preventive

Issue Area	Panel Observations and Findings
	<p>measures preferred by World Bank Policy on Environmental Assessment (OP/BP 4.01). The Panel notes that Management, rather than conducting its own due diligence of the potential impact on the KOA caused by Isimba, asked the GoU to commission the ESIA Addendum, and only agreed to finance it later when the GoU experienced funding constraints. Management, by funding the ESIA Addendum, chose to support an environmental assessment tool for a project the Bank was not financing and over which it has no leverage. The Panel finds that the Management, through the Addendum, provided its implicit support to the project alternative with the most severe impact on the KFS without a robust scientific basis and adequate analysis. The Panel therefore finds Management in non-compliance with World Bank Policy on Environmental Assessment (OP/BP 4.01).</p>
<p>Required Assessments for the Establishment of the EKO</p>	<p>Management, based on the ESIA Addendum, recommended the creation of the EKFS to the GoU as a mitigation measure for the partial flooding of the KFS. The Panel finds that the impact of the establishment of the EKFS was not systematically assessed and adequately mitigated, in line with Bank policies, in non-compliance with Bank Policies on Environmental Assessment (OP/BP 4.01) and Natural Habitats (OP/BP 4.04).</p>
<p>Design, Protection and Management of the EKO</p>	<p>The Panel notes that the creation of the EKFS as a mitigation measure requires adequate and effective institutional and management arrangements, financial provision in the long term, and effective legal protection beyond the required changes to the legal framework. The Panel finds that, in spite of the challenges faced by the original KOA, Management did not assess the institutional capacity and funding arrangements to implement the appropriate conservation measures for the EKFS, in non-compliance with World Bank Policies on Environmental Assessment (OP/BP 4.01) and Natural Habitats (OP/BP 4.04).</p>

**ANNEX 3:
AMENDMENT AND SUPPLEMENTAL LETTER TO THE
BUJAGALI INDEMNITY AGREEMENT**

**OFFICIAL
DOCUMENTS**

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

KM

IME

NUMBER B-0130-UG

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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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): KASAIJA MATIA

Title: MINISTER

INTERNATIONAL DEVELOPMENT ASSOCIATION

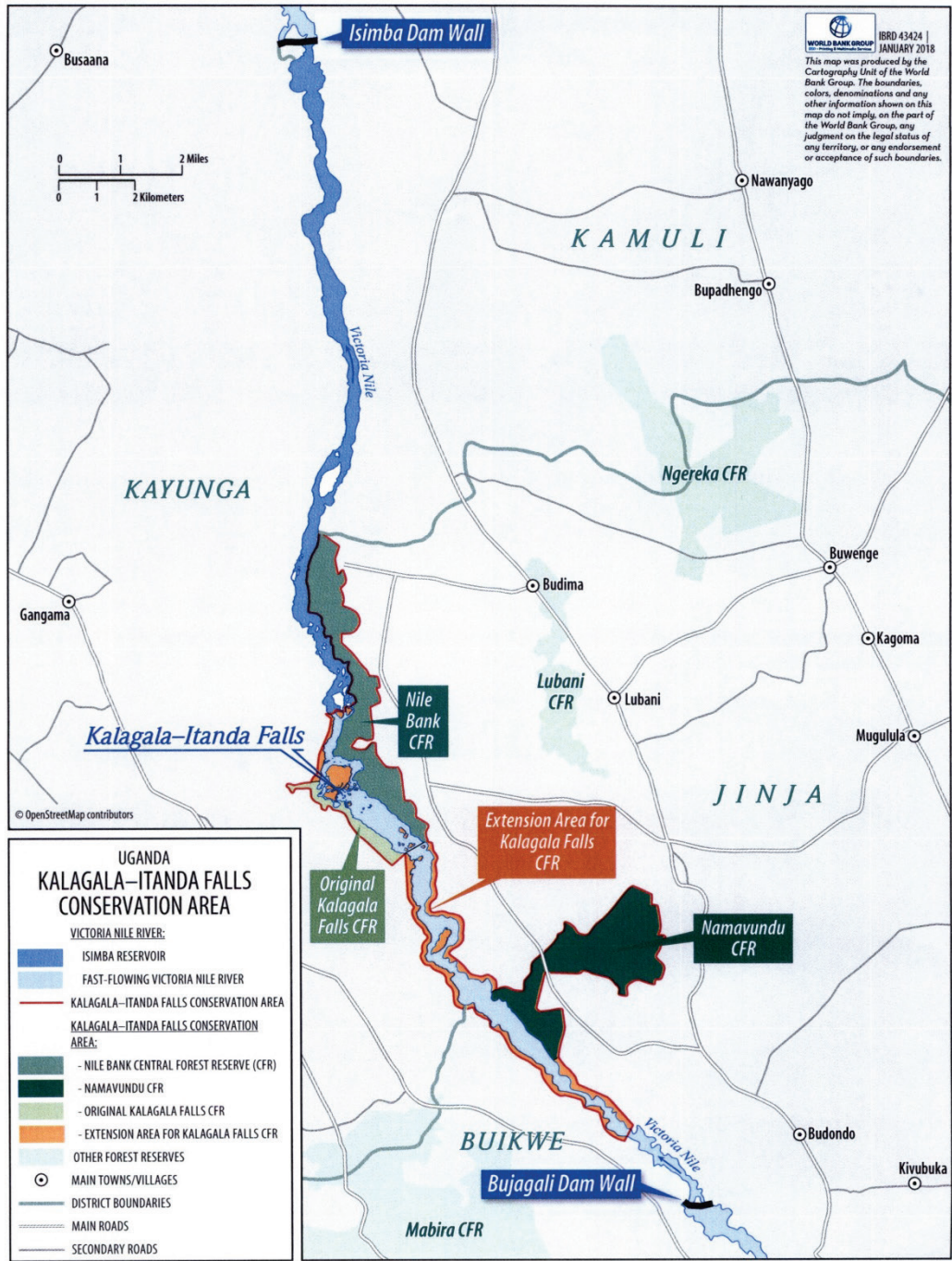
By: 

Authorized Representative

Name (printed): Christina Malmberg Calvo

Title: Country Manager

ANNEX 1



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



THE REPUBLIC OF UGANDA

Ministry of Finance, Planning &
 Economic Development
 Plot 2-12, Apollo Kaggwa Road
 P.O. Box 8147
 Kampala
 Uganda

80130-UG
**OFFICIAL
 DOCUMENTS**

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

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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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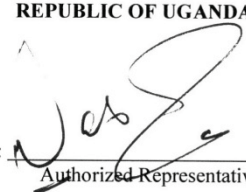
C. Miscellaneous

- (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

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