

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

April 15<sup>th</sup> 2016

RECEIVED BY IPN 5/1/2016



Attn: Ms. Dilek Barlas

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

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

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

#### Background to the Case

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

#### The Complaint

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

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

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

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

#### Likely Harm from Violation of Indemnity Agreement and Bank Policies

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

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

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

The Bank's Policies that have been violated

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

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

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

As the Requesters and their representative asked for confidentiality, and since the Request included a watermark and letterhead of the Requesters' representative the Inspection Panel reproduced the Request on a separate document

Sincerely:

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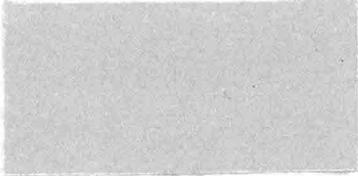


Date.

We have enclosed the following attachments for your perusal:

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

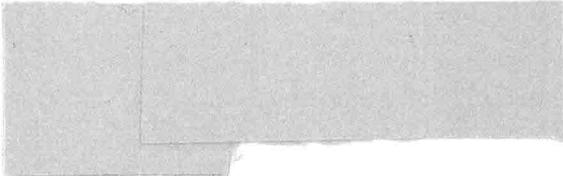
We do not authorize you to disclose our identities or our client's identities.



Jinja

RECEIVED BY IPN 6/20/2016

March 1<sup>st</sup> 2016



KAMPALA- UGANDA

Attn: Mr. 

Dear Sir:

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

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

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

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

Yours sincerely,





Jinja

RECEIVED BY IPN 5/1/2016

March 1<sup>st</sup> 2016



KAMPALA- UGANDA

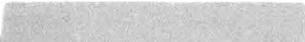
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Yours sincerely,



[REDACTED]

Jinja

RECEIVED BY IPN 6/20/2016

[Handwritten Signature]

March 1<sup>st</sup> 2016

[REDACTED]

KAMPALA- UGANDA

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Yours sincerely,

[REDACTED]

[REDACTED]

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

Hi, hope this email finds you well.

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

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

The offset area has the waterfalls and rapids which are used for rafting, kayaking and other tourism activities which are the primary and distinctive attractions of the tourism industry in Uganda, which is the highest foreign earner exchange to the economy of the country.

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

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

September 9, 2016

**The Inspection Panel  
World Bank**

Dear members of the Inspection Panel,

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

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

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

**Economic Impacts**

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

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

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

### **Cultural Impacts**

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

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

## Health Impacts

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

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

## Political Impacts

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

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

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

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

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

Thank you for your time and consideration.

Sincerely -

