

INDEPENDENT COMPLAINTS MECHANISM (ICM)

Final Monitoring Report

Period of November 2022 to July 2024

11 October 2024

FMO Complaints 20-001 and 20-003

Nyamagasani Hydro 1 and 2 Run-of-the-River Hydropower Projects

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Executive Summary

This Final Monitoring Report provides an overview of the Dispute Resolution Process (DRP) facilitated by the ICM, and sets out the Panel's observations in relation to the outstanding monitoring items related to the implementation of agreements reached during the DRP.

In 2020, the ICM received multiple complaints related to the Nyamagasani 1 and 2 Hydro Power Plants ("HPPs"), located in Kasese District, Western Uganda. The complaints alleged harms related to resettlements and damages to properties, lands and crops due to the construction of the HPPs. Some complainants pointed to procedural irregularities and unfair treatment by the project level grievance mechanism.

The HPPs are majority-owned by Frontier Energy, a Danish private equity fund and an FMO client. After declaring the complaint admissible, the Independent Expert Panel ("IEP" or "Panel"), the ICM facilitated a Dispute Resolution Process ("DRP") to address all complaints that were received. In the second half of 2021, the ICM conducted three roundtable dialogues that were facilitated by an Expert Mediator. The dialogues led to mutual agreements that addressed all the issues raised in the complaints.

In the course of monitoring of the implementation of the agreements, the Panel, with the support of the Expert Mediator, conducted joint and bilateral meetings with the Parties, requested written feedback and had regular in-person meetings. The Panel also regularly met with FMO's Operational Team to receive updates on progress made in implementation of the DRP agreements and on its supervision of the project. In its first Monitoring Report of 30 January 2023, the Panel declared three of the five monitoring items fully implemented, namely: (i) cases referred to the sub-county; (ii) cases found eligible for compensation; and (iii) allegations of misconduct by Company staff members. This Monitoring Report relates to the period of November 2022 to July 2024 and it focuses on the remaining two outstanding monitoring items: (i) the implementation of the revised project-level grievance mechanism, and (ii) the handling of the ICM complaints that were referred to the revised project-level grievance mechanism.

During the monitoring period, the ICM reconvened the DRP dialogue forum in November 2023 to better understand issues affecting the performance of the local Grievance Redress Mechanism Committee and the full implementation of the DRP agreements. The dialogue led to the recommendation of various measures that Frontier could take to strengthen the GRM procedure and its implementation. Following the dialogue, Frontier identified new actions items to further strengthen the GRMC.

In this Final Monitoring Report, the Panel confirms that all monitoring items were fully implemented and closes the complaint.

1. Summary of the Case

1.1 Overview of the Complaint

Between May and November 2020, the ICM received eight complaints, comprising of 50 individual cases of alleged harm caused by FMO-financed operations Nyamagasani 1 (15 MW) and Nyamagasani 2 (6 MW) Hydro Power Plants (HPP) ("the Projects"). The HPPs are located on

the Nyamagasani river in Kasese District, Western Uganda. The Nyamagasani 1 and 2 HPP projects are developed and owned by Rwenzori Hydro (Private) Limited and Nyamagasani 2 HPP Limited, respectively. Both Projects are majority owned by funds managed by FMO's client, Frontier Energy ("the Company"), a Danish private equity fund that is developing a portfolio of renewable energy independent power producers in Eastern Africa.

The complaints contained allegations of damages to properties, houses, and crops as well as land that was rendered unsuitable for living due to construction activities of the HPPs. In addition, the complainants argued that adequate compensation was not provided during the acquisition of land by the Company, and that the Company failed to provide appropriate replacement housing. The complaints further contained allegations concerning the fairness and integrity of the project's grievance mechanism. Certain complainants pointed to irregularities and disparities in the grievance process by which settlements on compensation amount were reached, and that some settlements were not respected by the Project or by members of the Grievance Management Committee ("the GMC"). Finally, a few of the complainants expressed their distrust in the Project's grievance mechanism and alleged that it serves the interests of the Project or the self-interest of the Project's Community Liaison Officers who manage it.

The Independent Expert Panel ("Panel") declared the complaints admissible by issuance of three Admissibility Notices on 20 June 2020, 27 July 2020, and 12 November 2020.¹ On 9 February 2021, the Panel issued a Preliminary Review Report in which it communicated its decision to facilitate a Dispute Resolution Process ("DRP") after mutual agreement of both Frontier Energy and the complainants (jointly "the Parties") to engage in a voluntary and collaborative dialogue to resolve the complaints.²

1.2 The Dispute Resolution Process

In June 2021, the Panel initiated the Dispute Resolution Process in accordance with paragraphs 3.2.6 – 3.2.7 of the ICM Policy. The ICM provided a neutral platform for a dialogue between the Parties. The process included information sharing, fact-finding, dialogue, and mediation. The Panel engaged Mr. Alex B. Muhweezi as an Expert Mediator to facilitate the DRP on 31 May 2021, following approval and confirmation by both Parties.

To ensure efficiency of the process, the Panel set a cut-off date of 27 June 2021 and decided that any additional complaints received after that date would be addressed at the end of the DRP, considering any agreements that were achieved during the process. The ICM received a total of 26 additional complaints after the cut-off date. A total of 60 individual cases fell within the scope of the DRP.

On 16 July 2021, the participants signed the Rules of Procedure, setting out the ground rules for the Dispute Resolution Process. The Rules of Procedure included provisions concerning, *inter alia*, the means for conduct of consultations, participation and representation, information

¹ See the Notice of Admissibility ICM complaint 20-001 re: FMO-financed operation Nyamagasani 2 HPP, 20 June 2020.; Notice of Admissibility ICM complaint 20-003 re: FMO-financed operation Nyamagasani 2 HPP, 27 July 2020.; Notice of Admissibility ICM complaint 20-001 re: FMO-financed operation Nyamagasani 2 HPP, 12 November 2020.

² See ICM Preliminary Review Report on FMO complaints 20-001 and 20-003 related to the Nyamagasani 1 and 2 Run-of-the-River HPPs, 9 February 2021.

management and confidentiality. The Rules of Procedure emphasized mutual respect, equitable participation in the process and commitment to respect agreed decisions and recommendations.

Subsequently, the ICM organized three roundtable dialogues in August 2021, September 2021, and December 2021 which were facilitated by the Expert Mediator. Due to Covid-19 restrictions, the roundtable dialogues were held in a hybrid mode, with most participants being present in person in a venue in Kasese town, close to the Project area, with the Panel taking an observer role via remote connection.

Through the roundtable discussions, the DRP successfully led to mutual agreements that addressed all the issues raised in the complaints. On 31 March 2022, the Panel published its Report on the Conclusion of the Dispute Resolution Process on the ICM website.³ As indicated in the Report, the following were main outcomes of the DRP:

- (a) **Withdrawn complaints:** 1 complaint was withdrawn by the Complainant, and another was found to have been resolved already before the start of the Dispute Resolution Process.
- (b) **Referred cases:** 7 cases were referred to the sub-county authorities based on findings that the claimed damages were caused by construction activities of the sub-county.
- (c) **Cases found eligible for compensation:** 51 cases were agreed to be eligible for compensation with varying compensation amounts depending on the type and extent of the established damage, based on an agreed scale or on third-party expert valuation where applicable.
- (d) **Allegations of misconduct by Company staff members:** to address allegations of misconduct of Company staff it was agreed that the Company would engage a third-party independent specialist to carry out an investigation into the alleged misconducts. The investigation findings were to be provided to the Company's management for appropriate action where necessary, and the investigation outcomes would be reported to the Mediator and the Panel.
- (e) **Review and improvement of the project-level Grievance Redress Mechanism "the GRM"):** the Parties agreed that a review of the project-level Grievance Redress Mechanism would be carried out in order to address shortcomings and gaps that were identified in the course of the DRP with the view to strengthen the effectiveness of the mechanism and increase the trust and confidence given to it by community members. The Parties further agreed that the Mediator would facilitate and guide the review process and the implementation of necessary changes as a result of the review process.
- (f) **Complaints received after the cut-off date:** 5 of the complaints received after the cut-off date were found to be sufficiently repetitive or similar to issues that were already discussed and resolved in the course of the Dispute Resolution Process. Therefore, in the interests of efficiency, the agreements reached were extended to cover these new complaints as well. With respect to the remaining 21 outstanding cases as well as any future complaints, the Parties agreed that these cases will be handled by the project-level grievance mechanism.

³ ICM Conclusion of the Dispute Resolution Process, 31 March 2022.

1.3 Summary of the Panel’s findings in its First Monitoring Report of January 2023

The monitoring of the Panel focused on five DRP outcomes that followed from the agreements reached between the Parties during the Dispute Resolution Process. In its first Monitoring Report, published on 30 January 2023, the Panel noted that significant progress had been made in the implementation of the agreements achieved through the ICM-facilitated DRP.⁴ The Panel noted that:

- (i) The cases referred to the sub-county were adequately resolved by the sub-county.
- (ii) All cases found eligible for compensation had been adequately followed up on by the relevant parties. The seven individuals that had refused to accept the compensation amount that was offered to them by Frontier as per the outcome of the DRP, were advised to follow the updated GRM process which the ICM would continue to monitor.
- (iii) Sufficient action was taken to address the allegations of staff misconduct.

The Panel concluded that full implementation was reached on the above items and, accordingly, declared three of the five monitoring items closed. The review and improvement of the project-level grievance redress mechanism and the complaints received after the cut-off date remained the two outstanding monitoring items.

2. The ICM’s Monitoring Role

Based on paragraph 3.2.11 of the ICM Policy, the Panel determines its monitoring role on a case-by-case basis. The Panel considers the monitoring phase as an integral part of its complaints handling mandate. A robust and continuous monitoring is a vital component of successful implementation of DRP agreements. Additionally, effective monitoring is critical in establishing parties’ trust in the ICM process. Therefore, the Panel takes a proactive monitoring approach in its case handling.

In order to fulfil its monitoring mandate, the Panel can engage in various activities. It may, *inter alia*, conduct joint or bilateral meetings with parties and other stakeholders, request written feedback, conduct site visits, and conduct document reviews. Where necessary and depending on the willingness of the parties, the Panel may be required to reconvene the DRP forum, e.g. to address any gaps in the implementation of agreements or any differences of views between the parties in respect of the correct interpretation of agreements.

Throughout the monitoring phase, considering the progress in implementation, the Panel will aim to gradually phase out of the case in order to allow the parties to build confidence in implementation and establish direct problem-solving channels for the future.

3. Monitoring Period of November 2023 to July 2024

During the monitoring period, the Panel focussed its monitoring on the implementation of the two outstanding action items, namely: (i) the review and improvement of the project-level grievance redress mechanism, and (ii) the handling of the complaints received after the cut-off by the project-level grievance mechanism.

⁴ ICM First Monitoring Report, Nyamagasani 20-001/20-003, 30 January 2023.

The Panel, with support of the Expert Mediator, closely monitored the implementation of the action items. From January 2022 to July 2024, the ICM maintained continuous contact with the Parties to confirm and assess the progress in implementation of the agreements. The regular engagements with the Parties included in-person meetings held by the Mediator with complainants and other community members, Company representatives, members of the project-level GRMC and County representatives. The Panel also met with FMO's Operational Team to receive updates on progress made in implementation of the DRP agreements and on its supervision of the project.

The Panel monitored the implementation of measures aimed to improve and strengthen of the project-level grievance redress mechanism. In addition, with regard to the handling of complaints that were submitted to the project-level grievance mechanism after 27 June 2021 and were referred to the revised GRM, the Panel maintained regular calls with the FMO team, Frontier Energy, community members as well as GRMC members, to follow the processing of the complaints by the GRMC.

In 2023, the ICM received 14 new complaints (by nine complainants) which were identical or similar to the complaints handled in the DRP, concerning claims for compensation due to loss of livelihood and damages on crops and houses. When assessing the nature of the complaints as well as the handling of the GRMC in these cases, the Panel noted divergent opinions of the Company and the community members on the performance of the GRMC. Therefore, the Panel recommended to reconvene the DRP dialogue sessions to better understand the issues affecting the performance of the local Grievance Redress Mechanism Committee and the full implementation of the DRP agreements. After obtaining the approval of both Parties to reconvene the DRP roundtable, the ICM conducted a site visit and held DRP discussions in the week of 28 November to 1 December 2023. The roundtable was facilitated by the Expert Mediator.

During the visit, the ICM spoke with many project-affected persons, including the complainants, as well as with the Frontier team and local government authorities. During the roundtable dialogue, participants included the complainants as well as other project-affected people, Frontier's E&S Manager and operational staff, members of the local authorities, members of the district authorities, members of the GRMC, members of the district GRM, religious leaders, and an observer representing FMO.

The dialogues identified different factors affecting the implementation of the DRP agreements and the GRMC's decisions. Based on these findings, the Expert Mediator recommended eight measures for strengthening the GRM procedure and its implementation which were shared with the dialogue participants at the end of the session. In response to the Mediator's recommendations, Frontier identified new action items that it committed to follow in order to further strengthen the GRMC. The action items were organised by the areas of concern, such as, e.g.: (i) proactive engagement, (ii) transparency, consistency, and accountability of the GRM procedures, and (iii) timely feedback.

In February 2024, the Panel convened a meeting with Frontier and with FMO as an observer to assess the status of the agreed action plan. The Panel continued to monitor the implementation of action items from March to July 2024 with the support of the Mediator.

On 29 November 2023, during the ICM site visit to the Project area, the Panel received a complaint letter by the catholic parish of the Kyarumba community that contained a number of requests towards the Company. In part, the complaint contained some repetition of issues that were discussed during the DRP dialogues, in particular, with respect to requests that were to be considered by Frontier as part of its community development fund. According to the complaint, the requests have not been properly followed up by Frontier. Upon reviewing the complaint, the Panel requested Frontier to adequately consider the request for assistance in a manner consistent with its corporate social responsibility commitments, and asked Frontier to provide an overview of the program, to explain the criteria applied and details on the handling and outcome of the Church's request. In response, Frontier provided to the complainant and to the ICM an overview of the Company's Community Development Action Plan (CDAP) as well as the criteria applied to select the projects based on the Sustainable Development Goals ("SDGs"). The Company's response clarified that while the Church's request for resettlement did not meet the CDAP criteria, its other requests, such as supporting single young mothers, developing the health center, environmental conservation and upgrading the access road fall within the CDAP criteria. Frontier committed to further engage relevant stakeholders to advance and collaborate on these initiatives, including by conducting needs assessments as appropriate.

4. The Panel's Observations

The Panel observes that there has been significant positive progress in the implementation of the agreements achieved through the ICM-facilitated Dispute Resolution Process. A status update on the outstanding action items is provided below:

(i) the implementation of the revised project-level grievance mechanism: After the GRM procedures were revised in March 2022, the Panel actively monitored the implementation of the new structures, processes and other changes to allow for effective resolution of grievances at the project level. The Panel notes that a two-tiered GRMC was established in the Project area and at the district level, and that training and capacity building of both GRMCs was conducted. The Panel further notes that the brochure on GRM Policy guidelines was translated into the local language and disseminated to community members. Furthermore, the actions which were identified during the November 2023 dialogues were adequately implemented by Frontier. With implementation of these agreed actions steps, the ICM confirmed the full implementation of the revised GRM structures, and that the new structures operate consistently with the revised procedures.

(ii) the handling of the ICM complaints that were referred to the revised project-level grievance mechanism: The Panel confirms that all complainants have been notified of the GRMC decisions and no appeals have been received after the prescribed three months period to file appeals. Of the 14 complaints that were received by the ICM between January 2024 and 30 June 2024, one complaint was found ineligible for compensation, eight complaints were accepted for compensation, and five complaints were confirmed as having been compensated already during the DRP. The ICM thus considers all complaints that were referred to the GRM after the cut-off date of 21 June 2021 as fully resolved. In addition, no new complaints were received between January 2024 and 30 June 2024 by the ICM.

5. Conclusions

In light of the above, the Panel confirms the full implementation of the DRP agreements as agreed and signed by the Parties. The Panel has conducted active monitoring of the implementation of agreements through regular meetings with all the relevant stakeholders, as well as through reconvening the DRP forum to address certain gaps in implementation. The Panel took note of significant improvements that were made in the GRM's policy and the performance of the GRMC at community and district level. In addition, the Panel notes that all complaints which have been filed at the ICM, the GRM, or with Frontier within the monitoring period have been properly addressed. The Panel thus closes the complaint.

The ICM congratulates all the DRP participants for their continued engagement and collaboration, and expresses its deep appreciation for their efforts to achieve full implementation of the DRP agreements.

Annex 1: Pictures of the ICM visit to the Nyamagasani I and II Project sites



Annex 2: Frontier's Action Plan for full implementation of DRP agreement following the November 2023 dialogues

SN	CONCERN RAISED	ACTION	TIME FRAME
1.	<p>Proactive engagement: Key Players: Frontier identified the following players that will be engaged</p> <ol style="list-style-type: none"> 1. Community 2. PAPs-Directly affected. 3. Community and District level GRMC members 4. Local authorities and other influential players in the community <p>Areas of concerns to address;</p> <ul style="list-style-type: none"> • Management of deep-rooted expectations. • Previous workers who have employment-related complaints • Advise/support PAPs on GRM procedures and appeal procedures • Pursue opportunities and synergies between CDAP and GRM Policy to leverage co-existence and promote participation processes for setting priorities for CDAP. • Implement warning procedures to avert accidents e.g., flushing actions. 	<ul style="list-style-type: none"> • Initiate monthly community meetings with the PAPs and provide project updates on CDAP implementation. • Timely responsiveness in responding to community concerns, feedback to build trust and reduce expectations. • Provide valuable information to the community through reading material to enhance sensitization. • Repair and install siren at the plant. 	<p>Monthly</p> <p>March 2024</p>
2.	<p>GRMC: Transparency, consistency, accountability</p>	<ul style="list-style-type: none"> • Documentation. To maintain detailed records of grievance proceedings and resolutions, accessible to the community to promote accountability. • Monthly review meetings with GRMC to assess the effectiveness of the GRM. • Trainings. Provide bi-annual trainings to GRMC to ensure fair, impartial handling of grievances through the GRM guidelines. • Regular reporting. Monthly provision of reports from the GRMC on grievances received, resolved, and pending to promote transparency 	<p>Continuous</p> <p>Monthly</p> <p>June/December</p> <p>Monthly</p>

3.	Assess concerns regarding cross points over the penstock, canals, etc, and take appropriate action.	<ul style="list-style-type: none"> An inspection to be done on the effectiveness of the existing crossing points and the possibilities to consider adding more to increase access. Sensitize the community on the importance of crossing points. 	Feb 2024
4.	Provide timely feedback to PAPs and the Community on decisions/actions taken by GRMC, as appropriate	<ul style="list-style-type: none"> Emphasize timely delivery of feedback letters to PAPs. Involving PAP in the grievance resolution process. 	07 days after resolution is determined. Continuous
5.	Mobilizing (by Local leaders) the community to a positive attitude towards the project.	<ul style="list-style-type: none"> To provide clear communication of project goals, benefits and expected outcomes to the community. To demonstrate value through showcasing tangible communal benefits as opposed to individual benefits. Improve stake-holder involvement and inclusiveness. 	Monthly meetings
6.	Address the unfulfilled labor/employment terms and conditions e.g., payment of wages to former employees of Frontier Sub-contractor.	<ul style="list-style-type: none"> Follow- up with contractors involved to ensure payment of worker is done. Involve site team in charge of contractor management to ensure all employees are paid during project works. 	December 2023
8.	Transfer of tenure of land to PAPs...slow/uncertain... and engagement of Land Committee at Subcounty and district level	<ul style="list-style-type: none"> Follow up with the district lands office and the officer in charge to acquire the remaining PAP 08 customary land titles 	June 2024