

# **INDEPENDENT COMPLAINTS MECHANISM (ICM)**

## **Monitoring Report for the Period of January to October 2022**

20 January 2023

### **FMO Complaints 20-001 and 20-003**

### **Nyamagasani 1 and 2 Run-of-the-River Hydropower Projects**

**Uganda**

**Inbal Djalovski**

**Arntraud Hartmann**

**Michael Windfuhr**

Members of the Independent Expert Panel

Recipients:

**Complainants**

**FMO**

**Client Company - Frontier Energy**

## Contents

<b>1. Summary of the case</b> .....	3
<b>2. Monitoring activities</b> .....	4
<b>3. Panel's Observations</b> .....	4
<b>3.1 Cases referred to the sub-county</b> .....	4
<b>3.2. Cases found eligible for compensation</b> .....	4
<b>3.3 Allegations of misconduct by Company staff members</b> .....	4
<b>3.4 Review and improvement of the project-level Grievance Redress Mechanism</b> .....	5
<b>3.5 Complaints received after the 27<sup>th</sup> of June 2021</b> .....	5
<b>4. Conclusion and Pending Monitoring Issues</b> .....	6

## 1. Summary of the case

Between May and November 2020, the ICM has received eight complaints, comprising of 50 individual cases of alleged harms caused by FMO-financed operations Nyamagasani 1 and 2 Hydro-Power Plants. The Nyamagasani 1 (15MW) and Nyamagasani 2 (6 MW) hydro-power projects are located on the Nyamagasani river in Kasese District, Western Uganda.

The Complaints were declared admissible by the Panel in three Admissibility Notices issued on 20 June 2020, 27 July 2020 and 12 November 2020.

Upon issuing the Admissibility Notices, the Panel invited FMO to submit a written response to the Complaints (Management Response). On 31 August 2020, FMO provided its Management Response accompanied by supporting materials in relation to the Complaints received up to that date. On 14 October 2020, FMO provided an Addendum to its original Management Response following the Panel's request for further information covering all the individual complainants. In addition, two reports were provided by Frontier Energy via FMO deal team in response to specific complaints on 3 December 2020 and on 23 December 2020.

On 9 February 2021, the Panel issued its Preliminary Review Report. Based on the Preliminary Review of the case and in light of the mutual agreement of both the Client Company, Frontier Energy, and the Complainants to engage in a dispute resolution process, the Panel undertook to facilitate a Dispute Resolution (DRP) process in line with paragraphs 3.2.6-3.2.11 of the ICM Policy.

A Dispute Resolution Process was launched in June 2021. The Dispute Resolution Process was conducted in accordance with paragraphs 3.2.6 – 3.2.7 of the ICM Policy. The Process included information sharing, fact-finding, dialogue, and mediation. More specifically, the ICM provided a neutral platform for a dialogue between the Company, Frontier Energy, and the Complainants.

The Dispute Resolution Process included three roundtable dialogues in August 2021, September 2021, and December 2021. Through these discussions, the Dispute Resolution Process successfully led to mutual agreements signed by the participants, addressing all the issues raised in the Complaints. The agreements were signed by the participants on 25 October 2021 and on 14 December 2021.

On 31 March 2022, the Panel's report on the Conclusion of the Dispute Resolution Process was published on the ICM's website. This report contains an overview summary of the outcomes and agreements between the Parties. The ICM committed to monitor the implementation of the agreements reached by the Parties through the ICM-facilitated Dispute Resolution Process.

This Monitoring Report is published pursuant to paragraph 3.2.11 of the ICM Policy, and it presents the Panel's observations in the context of its monitoring role as set out in the Panel's report on the Conclusion of the Dispute Resolution Process. The reporting period of this report is January to October 2022. The ICM will issue a separate Monitoring Report relating to the period starting from October on the issues that require further monitoring as explained in section 4 below.

## **2. Monitoring activities**

To fulfil its monitoring role, and with the mutual agreement of the Parties to the Dispute Resolution Process, the Panel continued to be assisted by the Expert Mediator. During the monitoring period, the Expert Mediator conducted several site visits on behalf of the ICM. The Expert Mediator held meetings with complainants and other community members, Company representatives, members of the project-level grievance redress committee and County representatives. The Panel also met with FMO's Operational Team to receive updates on progress made, particularly with respect to the implementation of the revised grievance mechanism.

## **3. Panel's Observations**

In this case, the monitoring activities of the ICM focused on the five issues that followed from the agreements reached between the Parties during the Dispute Resolution Process: (i) Cases referred to the sub-county; (ii) Cases found eligible for compensation; (iii) Allegations of misconduct by Company staff members; (iv) Review and improvement of the project-level Grievance Redress Mechanism; and (v) Complaints received by the ICM after 27 June 2021.

A status update of all monitoring focus issues is provided below.

### **3.1 Cases referred to the sub-county**

As agreed by the Parties, seven cases were referred to the sub-county authorities based on findings that the claimed damages were caused by construction activities conducted by the sub-county, and not by the project. The Panel confirmed that these cases were referred, along with adequate records, and resolved by the sub-county.

### **3.2. Cases found eligible for compensation**

Through the DRP, the Parties agreed that 51 individual complainants were eligible for compensation at varying compensation amounts depending on the type and extent of established damage, based on an agreed scale or on independent third-party expert valuation where applicable.

During the monitoring period, all the individual complainants were informed of the outcome of their cases through the DRP via personal letters. Seven individual complainants did not accept the outcome of the DRP as applied to their claims. They refused to accept the compensation amount that was offered to them by Frontier as they insist on their claim that they are eligible for resettlement. These complainants were advised that they may follow the revised GRM process to pursue their claims. The Panel will continue to monitor the implementation of the GRM procedures in handling these complaints.

With regards to all remaining complainants, the Panel confirmed that all individual compensations agreements were signed and delivered to individual complainants in accordance with the agreements reached.

### **3.3 Allegations of misconduct by Company staff members**

To address allegations of misconduct by Company staff, the Parties to the DRP agreed that the Company will engage a third-party independent specialist to carry out an investigation into the alleged misconducts. During the monitoring period, the Panel reviewed the terms of references

of the third-party independent investigation specialist and confirmed that they are consistent with the agreement reached by the Parties.

The investigation was completed on 25 February 2022. The Panel reviewed the findings and, subsequently, confirmed that the Company's management had taken the appropriate action as necessary, based on the investigation outcomes.

### **3.4 Review and improvement of the project-level Grievance Redress Mechanism**

The parties agreed that a review of the project-level grievance redress mechanism will be carried out to address shortcomings and gaps that were identified in the course of the DRP, with the view to strengthen the effectiveness of the project-level grievance mechanism and increase the trust and confidence given to it by community members. The parties further agreed that the Expert Mediator will facilitate and guide the review process and the implementations of necessary changes as a result of the review process.

The review process of the project-level grievance mechanism has included a revision of the policies and operational procedures of the project-level grievance mechanism, including in respect to its structure, the composition and appointment of Grievance Redress Mechanism Committee (GRMC), transparent and accessible records management, as well as consistent and inclusive dispute resolution practices. In March and August 2022, the Expert Mediator facilitated a training on grievance management and dispute resolution for the members of the local level grievance committee.

During the months of April to August 2022, the Company reported some delays in the process of implementing and institutionalizing the new structures and other changes due to the unfortunate and unexpected passing of the Company's Sustainability Director. Since then, it has been reported that both the local and district level GRMC were re-established in line with the new procedures. Additionally, the ICM received recent updates that the new structure began its work, including the processing of complaints.

The ICM will continue to monitor the implementation of the revised GRM structures. The ICM will confirm that the new structures operate consistently with the revised procedures. With the Expert Mediator's support, the Panel will further monitor the effectiveness of the project-level grievance mechanism, in particular in the handling of complaints that were submitted to the ICM after 27 June 2021 and were referred to the revised GRM. The Expert Mediator will continue to provide limited training services to support the capacity building of the GRMC at the district level.

### **3.5 Complaints received after the 27<sup>th</sup> of June 2021**

To ensure efficiency of the DRP and allow dialogue roundtables to proceed, the Panel had set a cut-off date for accepting new complaints into the DRP. The cut-off date was set to 27 June 2021. Any additional complaints that were received by the ICM after that date were addressed by the Parties at the end of the DRP, taking into account any agreements that were achieved during the process. The Panel received a total of 26 additional complaints after the cut-off date.

At the end of the third roundtable dialogue, the participants discussed the 26 complaints and agreed on the approach by which these complaints will be further addressed. Five of the complaints received after the cut-off date were found to be sufficiently repetitive or similar to

issues that were already discussed. They were thus resolved by the Parties in the course of the DRP. With respect to the remaining 21 outstanding cases as well as any future complaints, the participants agreed that these cases will be handled by the project-level grievance mechanism once its review is completed.

The Panel received recent updates that, during the month of September 2022, the revised GRMC had addressed and resolved 16 of the referred complaints that were received by ICM after 27 June 2021. The Panel will further follow up and monitor these complaints to confirm that they were addressed adequately. The Panel will also continue to monitor the resolution of the remaining pending complaints.

#### **4. Conclusion and Pending Monitoring Issues**

In conclusion, the Panel observes that there has been significant positive progress in the implementation of the agreements achieved through the ICM-facilitated Dispute Resolution Process. The Panel confirmed the full implementation with regard to: (i) the cases referred to the sub-county, (ii) cases found eligible for compensation, and (iii) the completion and ensuing actions with respect to allegation of staff misconduct.

The Panel will continue to monitor the completion of remaining pending actions, namely, (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.