

INDEPENDENT COMPLAINTS MECHANISM (ICM)

Report on the Conclusion of Dispute Resolution Process

31 March 2022

FMO Complaints 20-001 and 20-003

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

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This Report is based on information provided to the Independent Expert Panel (IEP) by the complainants, the lenders, the client company and other relevant parties. This document is not given, and should not be taken, as legal advice, and is not intended to be used as proof for its content in a court of law.

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About the Independent Complaint Mechanism (ICM)

The Independent Complaints Mechanism (ICM) aims to provide complainants with an effective, fair and credible tool to facilitate the resolution of disputes. At the same time, it assists Netherlands Development Finance Company (FMO), Deutsche Investitions- und Entwicklungsgesellschaft (DEG) and PROPARCO in implementing and adhering to their own environmental and social policies and procedures.

The ICM is supported by an Independent Expert Panel (IEP). The IEP is fully independent from DEG, FMO and PROPARCO. It reviews complaints from communities and individuals affected by DEG-, FMO- and/or PROPARCO-financed operations and decides whether a complaint is admissible. In case a complaint is admissible, the IEP processes the complaint in line with the ICM procedures and reports on the outcome of such process.

For more information about the ICM, please visit

- DEG's website: www.deginvest.de/icm
- FMO's website: www.fmo.nl/icm
- PROPARCO's website: www.proparco.fr/icm

1. Summary

Between May 2020 and June 2021, the ICM has received several complaints (collectively, Complaints), comprising of 60 individual cases of alleged harms caused by FMO-financed operations Nyamagasani 1 and 2 Hydro-Power Plant (HPP). The Nyamagasani 1 (15MW) and Nyamagasani 2 (6 MW) hydro-power projects are located on the Nyamugasana river in Kasese District, Western Uganda.

The Complaints were declared admissible by the Independent Expert Panel (“the Panel”) in three Admissibility Notices issued on 20 June 2020, 27 July 2020 and 12 November 2020. Upon the Panel’s invitation, FMO provided its written response to the Complaints (Management Response). The Complainants argued that their properties – mainly houses, land, or crops – were damaged or rendered unsuitable for living due to construction activities of the Nyamagasani projects. They submitted that, despite earlier commitments made by the project, they were not provided with adequate compensation or appropriate replacement housing. Moreover, the Complainants raised allegations of procedural irregularities and unfair treatment by the project’s grievance mechanism (also known as the Grievance Redress Mechanism or GRM).

In the context of the preliminary assessment of the case, both the Complainants and the Client company expressed their willingness to participate in a dispute resolution process. On 9 February 2021, the Panel issued its Preliminary Review Reports, in which it provided an overview of the issues raised by the Complaints, the Management Response, and the roadmap for a collaborative dispute resolution process including a timeline of the process.

This Report is published pursuant to paragraphs 3.2.8-3.2.10 of the ICM Policy and it reports on the successful completion of the Dispute Resolution Process. It provides an overview of the process, the agreement reached by the participants, and its implementation plan. In light of the successful completion of the Dispute Resolution Process, the Panel will begin monitoring the implementation of the agreement, pursuant to paragraph 3.2.11 of the ICM Policy. To guide the monitoring phase, this Report further outlines the scope of the monitoring undertaken by the Panel.

2. Procedural History

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 Nyamugasani 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 process in line with paragraphs 3.2.6-3.11 of the ICM Policy.

As described in further detail below, a Dispute Resolution Process was launched in June 2021. 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.

3. About the Nyamagasani 1 and 2 HPP projects

The FMO-financed operations that are the subject of the Complaints are Nyamagasani 1 and 2 Hydro-Power Plant (HPP). The Nyamagasani 1 (15MW) and Nyamagasani 2 (6 MW) hydro-power projects are located on the Nyamughasana river in Kasese District, Western Uganda, with the weir and intake for Nyamagasani 2 shortly downstream of the powerhouse and tailrace of Nyamagasani 1. The projects have been under construction since June 2017.

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 company, Frontier Energy, a Danish private equity fund that is developing a portfolio of renewable energy independent power producers in Eastern Africa.

FMO acted as Mandated Lead Arranger and Underwriter of the USD 39 million facility, of which 40% is risk-shared with Proparco.¹ These run-of-the-river hydro power projects are the 4th and 5th hydro project FMO is financing with Frontier Energy in Uganda, totalling 47.5MW.²

4. Overview of the Issues

4.1. Issues raised in the Complaints

The Complaints raise allegations of harm caused by the Nyamagasani projects. The Complainants argued that their properties – their houses, land, or crops – were damaged or rendered unsuitable for living due to construction activities of the Nyamagasani projects. They submitted that, despite earlier commitments made by the project, they were not provided with adequate compensation or appropriate replacement housing.

¹ See Proparco's website: <https://www.proparco.fr/en/carte-des-projets/nyamagasani-1?origin=https://www.proparco.fr/en/page-thematique-axe/renewable-energies-and-energy-efficiency>; <https://www.proparco.fr/en/carte-des-projets/nyamagasani-2?origin=https://www.proparco.fr/en/page-thematique-axe/renewable-energies-and-energy-efficiency>.

² For more information, see FMO's website: <https://www.fmo.nl/news-detail/d6343286-eccc-4e35-b477-f22c01c2697a/fmo-enhances-renewable-energy-provision-in-uganda>

In particular, several of the Complainants asserted that, following construction activities, their houses remain located at a steep edge of the constructed canal in areas that present significant risk for their safety and seek replacement housing from the project.

In relation to replacement housing, a number of the Complainants argued that the project failed to install kitchens and latrines in their replacement houses and that the sum of 2,000,000 Ugandan Shillings provided to construct these fixtures was insufficient.

A number of the Complainants made allegations concerning the acquisition of land by the project. They argued that the project failed to properly value the acquired land and did not provide appropriate compensation for the land and the property acquired with it. In certain cases, the acquisition of land gave rise to complaints asserting that the remaining non-acquired parcel of land is insufficient to fulfil its purpose and therefore the project should acquire the parcel of land in its entirety. Similarly, a few of the Complainants alleged that, due to construction activities, their land became “orphaned”, *i.e.* of no value and should thus be acquired by the project.

In addition, the Complainants raised allegations concerning the fairness and integrity of the project’s grievance mechanism. In particular, certain complainants pointed to irregularities and disparities in the grievance process by which settlements on compensation amount were reached. Certain Complainants assert that settlements that were not respected by the project or by members of the Grievance Management Committee (GMC). Further, some of the Complainants argue that the valuation of their property was conducted unfairly to their detriment by the Company’s staff.

Finally, a few of the Complainants expressed their distrust in the project’s grievance mechanism and perceive it as serving the interests of the project or the self-interest of the Project’s Community Liaison Officers who manage it.

5. Overview of the Dispute Resolution Process and its Outcomes

5.1. Overview of the Process

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.

Following a selection process, the Panel selected a qualified expert mediator, Mr Alex B. Muhweezi. The Mediator was then introduced to the Parties. Both the Complainants and the Company confirmed that they have no concerns or objections to the appointment of the Mediator. The ICM then formally engaged the Mediator to facilitate the Dispute Resolution Process on 31 May 2021.

To ensure efficiency of the process, the Panel set a cut-off date of 27 June 2021 and decided that any additional complaints that are received after that date will be addressed at the end of the Dispute Resolution Process, taking into account any agreements that are achieved during the process. The Panel received a total of 26 additional complaints after the cut-off date.

On 16 July 2021, the Participants in the Dispute Resolution Process signed a ‘ground rules’ agreement, setting out the Rules of Procedure for the Dispute Resolution Process. The Rules of Procedure included provisions concerning, *inter alia*, the means for conduct of consultations, participation and representation, information management and confidentiality. Overall, the Rules emphasised mutual respect, equitable participation in the process and commitment to respect agreed decisions and recommendations.

The Mediator conducted a series of consultations with the view to build trust, confirm the dialogue issues, gather and analyse the available records and reports relevant to the process.

Subsequently, three roundtable dialogues were convened by the Mediator with the Panel taking an observer role. The roundtable dialogues were held in a hybrid mode, with most participants present in-person in a venue in Kasese Town, close to the project area. The roundtable dialogues were held on 9-10 August 2021, 1-3 September 2021, and 13-14 December 2021. The roundtable dialogues addressed all 60 individual cases within the scope of the Dispute Resolution Process. At the end of the third roundtable dialogue, the participants also discussed the 26 complaints that were received after the cut-off date and agreed on the approach by which these complaints will be further addressed.

With regard to a number of specific individual cases, the parties agreed to engage expert specialists to provide expert opinions on issues such as soil erosion, structural assessment, and valuation of damages to crops and land.

The roundtable deliberations led to agreements that were formally signed on 25 October 2021 and on 14 December 2021. The participants further agreed to continue using the support of the Mediator through the implementation phase of their agreements.

The Panel wishes to recognise and congratulate both parties – the Company and the Complainants – for their collaborative, genuine and continuous efforts to achieve resolutions for the mutual benefit of all involved and with the intention to build a long-lasting collaborative relationship between the community and the Company.

5.2. Overview of the Agreement

The Dispute Resolution Process led to the final resolution of the vast majority of the individual cases and to agreements on how the remaining issues are to be handled. The agreements and outcomes can be represented by the following categories:

- (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. Individual compensation agreements are to be signed between the Company and each of the individual affected complainants.

- (d) **Allegations of misconduct by Company staff members:** to address allegations of misconduct of Company staff it was agreed that the Company will engage a third-party independent specialist to carry out an investigation into the alleged misconducts. The investigation findings will be provided to the Company's management for appropriate action where necessary, and the investigation outcomes will be reported to the Mediator.
- (e) **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 in order to address shortcomings and gaps that were identified in the course of the Dispute Resolution Process with the view to strengthen the effectiveness of the local mechanism and increase the trust and confidence given to it by community members. The parties further agreed that the Mediator will facilitate and guide the review process and the implementations 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 dates 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 participants agreed that these cases will be handled by the project-level grievance mechanism once its review is completed.

5.3. Overview of the Implementation Plan

The agreements and understandings reached during the Dispute Resolution Process include actions that are set to be implemented during the next six-month period (January to June 2022). These actions are broadly the following:

- (a) Signing on individual compensation/replacement housing as applicable with individual complainant and implementation all agreed compensations.
- (b) Completing the review of the project-level grievance mechanism by Frontier, instituting new structures, processes, and other changes as necessary as a result of the process, including training grievance committee members in dispute resolution. The Mediator will continue to support these processes.
- (c) Addressing outstanding cases at the project-level grievance mechanism, including complaints that were received by ICM after 27 June 2021.
- (d) Ensure the completion of the independent investigation into the misconduct allegations and reporting on its outcomes to the Mediator.
- (e) Continuous monitoring and reporting on implementation progress.

6. The ICM Panel's Monitoring Role

According to the ICM Policy, the ICM Panel is responsible to monitor the implementation of agreements reached through an ICM-facilitated Dispute Resolution Processes and publicly disclose the outcomes of that monitoring. The Panel's specific monitoring role may be determined on a case-by-case basis depending on the agreements reached by the Parties and the particular sensitivities and circumstances of each case.

In this case, the Panel’s monitoring activities will focus on the items listed above in sections 5.2 and 5.3 of the Report. The Panel will continue to be assisted by the Mediator for the purpose of its monitoring role.

More concretely, in the months of January to June 2022, the Panel intends to follow up and monitor the implementation of the following actions:

<u>Agreements</u>	<u>Panel’s Monitoring Role</u>
Referred cases	Confirm that cases referred to the sub-county are provided to the relevant authorities with adequate records and request to handle the complaint. The Panel will follow up on the processing of the complaints.
Cases found eligible for compensation	The Panel notes that several individual compensations agreements were already signed and delivered in accordance with the agreements reached. The Panel will continue to monitor in order to follow up and ensure that all agreed cases are brought to conclusion by the signing of individual compensation/replacement housing agreement and that agreed implementation is delivered.
Allegations of misconduct by Company staff members	The Panel notes that implementation has been initiated. A third-party independent investigation specialist was already engaged by the Company in order to investigate the allegations of misconduct. The Panel will monitor the completion of the investigation. The Panel will review the outcome of the investigation and any actions taken by the Company’s management as a result.
Review and improvement of the project-level Grievance Redress Mechanism	<p>The review process of the project-level grievance mechanism has begun. Based on the Parties’ agreement, the Mediator will continue in assisting in institutionalizing of any new structures and other changes, including training of the grievance committee members.</p> <p>The Panel will monitor the review process itself in order to ensure that it is collaborative and inclusive in nature, taking into account the views of the community. The Panel will monitor the implementation of the changes</p>

	and improvements to the existing mechanism. With the Mediator’s support, the Panel will further monitor the effectiveness of the grievance mechanism, in particular in the handling of complaints that were submitted after the cut-off date.
Complaints received after the 27 June 2021	The Panel will monitor the handling and resolution of complaints that were received by the ICM after 27 June 2021

At the end of the monitoring period (January-June 2022), the Panel will issue a monitoring report. Depending on its findings, the Panel will then also assess whether further monitoring is necessary beyond June 2022.