

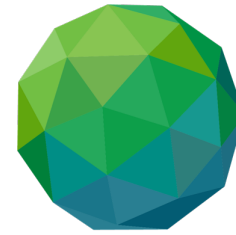
**1<sup>ST</sup> 2022 GRAM WEBINAR**

**PRACTICAL EXAMPLES OF INVOLUNTARY  
RESETTLEMENT AND LAND ACQUISITION  
RELATED COMPLAINTS AND THEIR  
MANAGEMENT THROUGH PROBLEM SOLVING  
AND COMPLIANCE REVIEW**

Tiffany Hodgson

Ben Schoeman

Arntraud Hartmann & Lalanath de Silva



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Independent  
Redress  
Mechanism

# OVERVIEW



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- Welcome and Introduction (5 min)
- Breakout rooms to meet each other (5 min)
- **Short introduction of the IFC performance standard 5 about involuntary resettlement and land acquisition (10 min)**
- **Presentation on a IFC Compliance Advisory Ombudsman's problem-solving case. (25 min)**
- **Presentation on an ADB complaints mechanism's compliance review case from Cambodia. (25 min)**
- **Questions and Answers (25 min)**
- **Conclusion (5 min)**

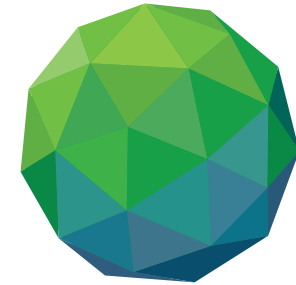
# ESS STANDARD 5: LAND ACQUISITION AND INVOLUNTARY RESETTLEMENT

## AN OVERVIEW

Tiffany Hodgson

Environmental and Social Safeguards, Gender and Indigenous Peoples Manager

Office of Risk Management and Compliance



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Photo by [Christoffer Engström](#) on [Unsplash](#)

- Environment and Social Management System (ESMS)
- Environmental and Social Policy
- **Environmental and social safeguards**
- Updated Gender Policy
- Indigenous Peoples Policy

# ENVIRONMENTAL AND SOCIAL SAFEGUARDS (ESS)



1 – Assessment and Management of ES Risks and Impacts

2 – Labor and Working Conditions

3 – Resource Efficiency and Pollution Prevention

4 – Community Health, Safety & Security

5 – Land Acquisition and Involuntary Resettlement

6 – Biodiversity Conservation and Sustainable Management of Living Natural Resources

7 – Indigenous Peoples

8 – Cultural Heritage

# STRUCTURE OF PS5



- Project Design
- Compensation and Benefits for Displaced Persons
- Community Engagement
- Grievance Mechanism
- Resettlement and Livelihood Restoration Planning and Implementation
- Displacement
  - Physical Displacement
  - Economic Displacement

# SCOPE OF APPLICATION



- Land acquired through expropriation or other compulsory legal procedure
- Land acquired through negotiation with property owners, where expropriation is possible.
- Involuntary restrictions on land use or access to natural resources where communities have usage right.



# MAIN CONCEPTS



## Resettlement

Includes BOTH physical (loss of home) AND economic (loss of income or livelihood source) displacement due to loss of assets/access to assets.



## Replacement Cost

Market value of assets plus transaction costs: allows people to replace lost assets with assets of similar value. Depreciation NOT taken into account.



## Involuntary

Displaced persons have no legal right to refuse resettlement due to (possible) use of eminent domain / compulsory acquisition / expropriation. This INCLUDES negotiated settlements backed by use of such measures.



## Livelihood Restoration

Actions/programs to improve, substitute, or at least restore affected persons' livelihoods. Goes well beyond cash compensation.



## Willing Buyer/Seller

Voluntary transactions in which sellers are given a genuine opportunity to retain/refuse to sell their land and are fully informed about choices and their implications. Not valid if others occupying/using the land are displaced.



## Eligibility

Persons who have legal rights to land/assets, AND those with a claim recognizable under national law, AND those with no recognizable right or claim.



# UNDERSTANDING COMPENSATION AND BENEFITS - DISPLACEMENT



Type	Economic	Physical
<b>Landowner – formal title or legally-recognized customary right</b>	<ul style="list-style-type: none"> <li>• Replacement cost – market price &amp; transaction costs.</li> <li>• Land-for-land compensation preferred.</li> </ul>	<ul style="list-style-type: none"> <li>• Replacement cost – market price &amp; transaction costs for ALL impacted assets.</li> <li>• Choice of housing (resettlement site/self relocation).</li> </ul>
<b>Land user – no title or recognizable legal rights (e.g., informal settlers/users)</b>	<ul style="list-style-type: none"> <li>• No compensation for land.</li> <li>• Replacement cost for standing assets.</li> <li>• Moving allowance ++</li> </ul>	<ul style="list-style-type: none"> <li>• Standing assets – house, crops, and so on at replacement cost.</li> <li>• Adequate housing with security of tenure.</li> </ul>
<b>Livelihood restoration</b>	<ul style="list-style-type: none"> <li>• Equal or better transitional support.</li> </ul>	<ul style="list-style-type: none"> <li>• If livelihood affected, equal or better, transitional support.</li> </ul>
<b>Documentation required</b>	<ul style="list-style-type: none"> <li>• Livelihood Restoration Plan.</li> </ul>	<ul style="list-style-type: none"> <li>• Resettlement Action Plan.</li> </ul>

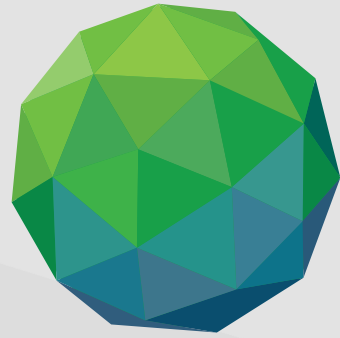
# PS 5, STAKEHOLDER ENGAGEMENT AND GRIEVANCE MECHANISMS



- Engage with affected communities during all stages: Planning, implementation, monitoring, and evaluation
- Engagement with affected communities is key to avoid grievances
- Decision-making processes should include options and alternatives
- Relevant information needs to be disclosed
- Consultation with Indigenous Peoples, additional requirements
- Establish a grievance mechanism

# KEY ISSUES THAT MAY ARISE

- Lack of understanding of eligibility criteria/entitlements
- Lack of consultation with affected communities
- Focus on one kind of compensation only
- Unfair treatment of informal settlers
- Non-compliance with PS5
- Late compensation
- Replacement value calculations
- Importance of livelihoods restoration
- Change in project plan after initial ESIA conducted



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## RESETTLEMENT: CASE STUDY

Mubende Community Resettlement  
Uganda 2014-2019

## ***Content:***

- 1) Background & Context
- 2) The Complaint
- 3) Challenges
- 4) Solutions
- 5) Outcomes



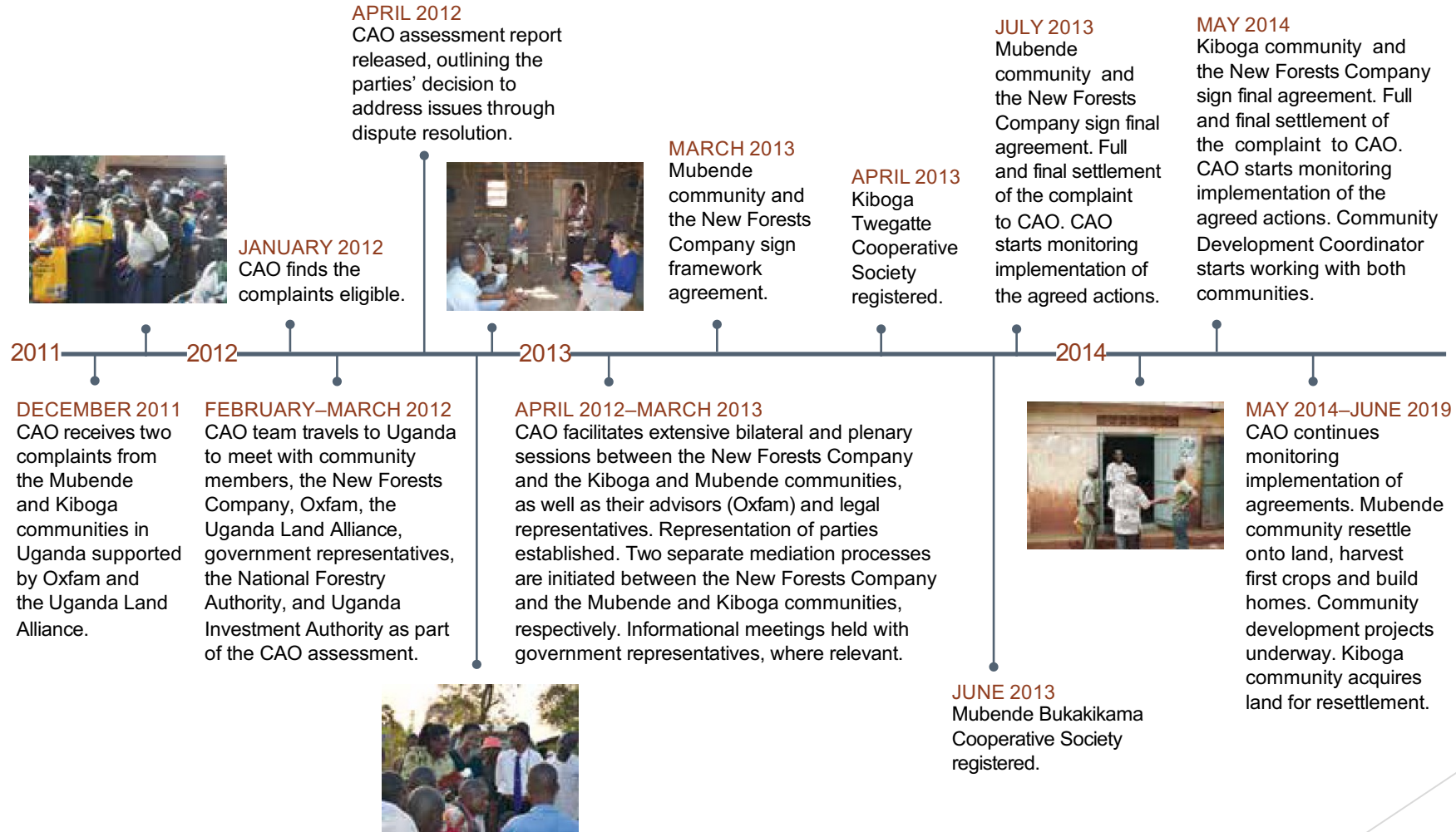
## *Background*

- Uganda has 506 Forests Reserves, created between 1932 and 1965
- Reserved for forests or tree growing
- Now managed by the National Forestry Authority (NFA)
- Then President Idi Amin (1971 – 1979) Proclaimed “all land belongs to all Ugandans” and moved to abolish “mailo”
- Museveni government reinstated “mailo” and freehold title
- In 2008 the New Forests Company (NFC) was granted a lease and license to operate a commercial forest in the Namwasa Central Forest Reserve
- IFC invested in Agri-Vie who in turn invested in the Company

## *Background*

- In 2010 approximately 250 households were evicted from the reserve (by the NFA)
- Households were not offered compensation or resettlement by NFA or government
- Community members were described as “illegal squatters” on forestry land
- Heads of households claimed different forms of tenure rights (recognized in the Land Act 1998:
  - Customary (*Kibanja*)
  - “mailo”
  - Leasehold
- Some members had title deeds / documents to support their claims
- Oxfam UK assisted affected community members to lodge a complaint with CAO

# CASE TIMELINE



## *The Complaint*

- Eviction from prime land that affected community members had occupied for decades
- Emotional damage suffered by people during the evictions
- Physical harm and injury suffered by community members during the evictions
- Loss of homes, land, livelihoods and amenities as a result of the displacement
- Reputational damage suffered by the NFC as a result of the media campaign by civil society
- Need for restoration, **resettlement** and compensation
- Need for recognition of the NFC's right to operate, and protection of its assets and the forests

## Challenges

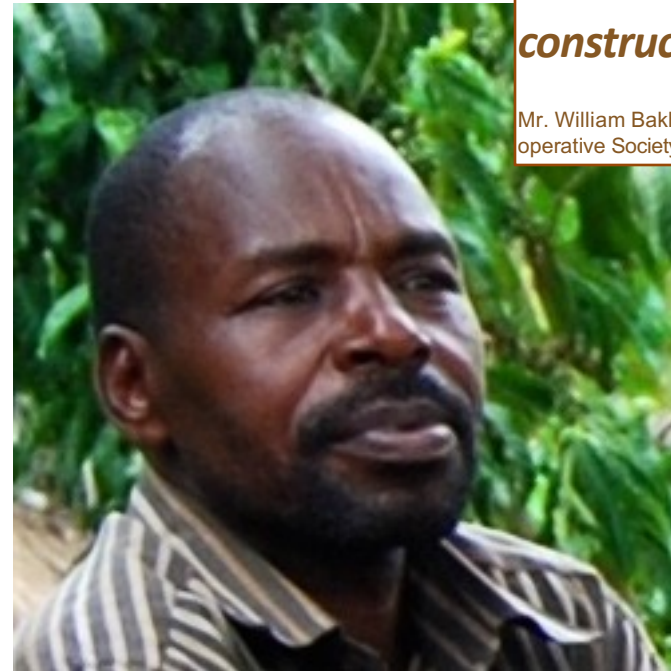
- Govt can acquire land compulsorily in the public interest (but must pay timely, fair and adequate compensation to the dispossessed)
- Govt claimed that the reserve was occupied illegally despite the various rights claimed by community members
- The community claimed that the Company was directly responsible and involved in the forced eviction
- Community brought complaint based on **IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement**
- Company denied legal liability
- Company claimed Performance Standard did not apply to it:
  - IFC invested in Agri-vie not the Company
  - Community vacated voluntarily
  - It was not involved – govt carried out eviction

## Challenges

- Govt of Uganda threatened the NFC's license if it offered "compensation"
- Complaint was brought well after evictions had already taken place
- Affected community was dispersed, most already resettled elsewhere
- Deep pain and anger in community
- Mistrust between Company and community
- Antagonistic government
- Severe economic impacts suffered by affected community

*"I didn't even think that we would ever sit in the same room with the company... but after the intervention of CAO and Oxfam, we started getting hope. After the first land purchase, our hearts were relieved and joyous again. There is a bright future for us again. We have land for cultivation and house construction."*

Mr. William Bakhekisha, Chairperson Mubende Bukakikama Co-operative Society





## *Solutions*

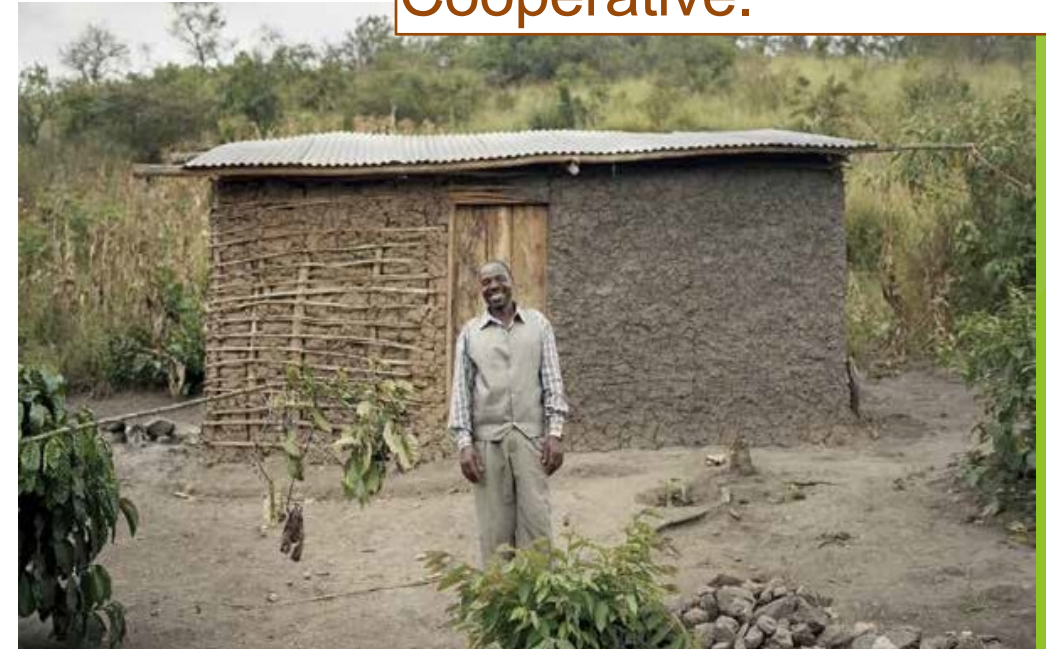
- Agreement to enter DR / mediation provided by CAO
- Compliance investigation suspended
- Support provided to establish representation and mandates
- Capacity building
  - Access to information
  - Skills development
  - Research support
- Facilitated negotiations



## Outcomes

- Negotiated Framework Agreement signed in March 2013
- Representatives canvas affected members for mandate to finalise an agreement
- Final Agreement signed in July 2013:
  - 4-year “Joint Development Programme”
    - Company provides financial assistance, and expertise & technical services
    - Community recognizes Company’s rights, helps to protect plantations
    - Joint monitoring of CSR by Joint Development Forum
  - Community Cooperative established
  - Land purchased by Coop (Freehold Title)
  - Land allocated to members (Long Term Lease Agreements)
  - Economic development initiatives
  - Intro to ancillary NGOs

As of January 2018, 220 households had been resettled with long term leasehold on land owned by their own Cooperative.



## *Outcomes*

- Implementation of Agreement monitored by CAO 2014 - 2018
- Households have security of tenure
- Land is owned and held on their behalf by Mubende Bukakikama Cooperative Society
- Each adult member has a share in the Cooperative, and elect board members
- Cooperative is bound to hold, preserve and apply the land in the interest of its members perpetuity
- Cooperative conducts commercial activities to generate income to benefit its members

The mediation process described in this case study was conducted by a team consisting of:

- Ben Schoeman – Lead Mediator
- Lina Zedriga – Co-mediator
- Chris Baguma – Translator
- Dues Twesigye – Driver & Logistics

under the auspices of the DR function of the:



#### **About CAO**

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability and recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector lending and insurance arms of the World Bank Group. CAO addresses complaints from people affected by IFC and MIGA projects with the goal of improving social and environmental outcomes on the ground and fostering greater public accountability of IFC and MIGA. CAO reports directly to the President of the World Bank Group.

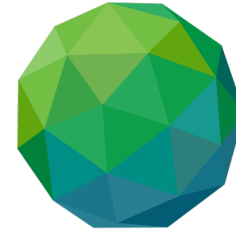
For more information about CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)



# ADB COMPLIANCE REVIEW: REHABILITATION OF THE RAILWAY IN CAMBODIA

Lalanath de Silva & Arntraud Hartmann

GRAM Partnership Webinar March 2022



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Courtesy of Documentation Center of Cambodia Archives

**Documentation Center of Cambodia**





**POIPET**

**SISOPHON**

**BATTAMBANG**

**PURSAT**

**PHNOM PENH**

**TAKEO**

**SIHANOUKVILLE**

**KAMPOT**

NORTHERN LINE (NOT OPERATIONAL)

SOUTHERN LINE





























# ADB PROJECT



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- Rehabilitate 642 km of Railway (only partly done)
- ADB Loan of 42 million USD (2007-2009)
- Project involved involuntarily resettling 2629 households
- Resettlement Plan was prepared (not changed later)
- Five resettlement sites were prepared (moved later/title)
- ESS category "A"

# PROJECT DELAYS

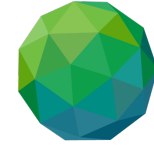


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- Project was delayed by two years
- Final designs done in 2008
- Resulted in increasing affected households by about 30%
- Compensation payments were said to be completed by 2013
- About 50% of AHs had moved to resettlement sites.

# COMPLAINT TO CRP



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- About 22 people complained to OSPF
- OSPF referred it for compliance review to CRP (2012)
- Confidentiality was requested
- Complaint was declared eligible
- Board approved a compliance review with TOR



## MAIN ALLEGATIONS

- Information & consultation
- GRM
- Compensation
- Resettlement site location/facilities
- Income restoration
- Indebtedness
- Human rights violations



# CRP INVESTIGATION



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- Document review
- ADB staff interviews (Hdqr and Cambodia office)
- Interviews with Cambodian officials, consultants, & NGOs
- Meetings with complainants and other affected people
- Visits to 4 resettlement sites





# CRP FINDINGS



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- 2006 RP was flawed (substantial adjustment needed)
- Inadequate information & consultation
- Compensation not inflation-indexed
- Resultant indebtedness present
- No minimum standard replacement housing
- No assistance to households
- Poor facilities at resettlement sites

# CRP CONCLUSION



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- There was harm to complainants and other AHs
- The harm was caused by ADB failures to comply with policies
- The project was non-compliant with involuntary resettlement policy

# RECOMMENDATIONS

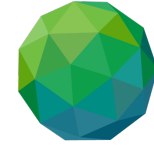


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- Compensation deficit scheme (rough justice)
- Improve resettlement sites
- Debt workout scheme
- Sustain income restoration program

# BOARD DECISION



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- Board divided – Developed Vs. Developing countries
- Majority approved decision
- Compensation, debt scheme and income restoration modified
- Rest accepted.



## MONITORING

- Monitored for 5 yrs with annual site visits
- Active ADB Board Committee engagement
- Partially successful compensation
- Upgrading infrastructure in resettlement sites
- Only 25% AH remained on the sites
- Income restoration offered too late
- Debt work out scheme was too late

# LESSONS



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- Uphold finding – Leadership and enabling environment matters
- Timing of remedy matters
- Rough justice achieved
- Powerful proactive NGO
- Strong BCRC Chair
- Young bureaucracy needing hand holding