

**Sufficient Recourse?
Controversial Oil and Gas Projects in the Former
Soviet Union and Recommendations to Improve the
Compliance Advisor/Ombudsman Function of the
World Bank Group**

November 2011

CRUDE ACCOUNTABILITY

Researched and Written by Sarah Bedy

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Executive Summary

The Compliance Advisor/Ombudsman (CAO) is the grievance mechanism for individuals or communities negatively affected by projects of the International Finance Corporation. All thirty-one eligible complaints to the CAO from the former Soviet Union have centered on three controversial oil and gas sector projects. Complainants from each of these projects participated in a panel discussion at the World Bank Annual Meetings on September 24, 2011 to share their experiences using the CAO mechanism. Several powerful themes emerged that should be considered when the CAO updates its Operational Guidelines in 2012.

The primary concern of complainants was how the CAO fulfills its mandate to “address the concerns of individuals or communities affected by IFC/MIGA projects, enhance the social and environmental outcomes of IFC/MIGA projects; and foster greater public accountability of IFC and MIGA.”¹ Complainants said that the CAO failed to pursue systemic concerns such as violations of national law or inappropriate project risk categorization with IFC senior management or the President of the World Bank Group. Instead, CAO staff said their role was to facilitate specific settlements for impacted individuals. CAO staff stated that they could not address issues related to violations of national law, although compliance with national law is a requirement of the IFC Performance Standards.²

Complainants also noted that the IFC, and subsequently the CAO, assumed limited responsibility for projects after project loans were dispersed or repaid. In the case of the Lukoil Overseas oil and gas field expansion project, the CAO audited the IFC and found it out of compliance with its Performance Standards since it failed to assure air quality measurements for the field prior to project approval. The CAO also found the IFC out of compliance with IFC standards during the implementation of the project due to failure to adequately report emissions monitoring from the field for a period of several years. To their credit, CAO staff worked with field operators to help them achieve compliance with the Performance Standards even after the loan was repaid. However, the CAO ceased to investigate how the IFC approved the project without assuring baseline air quality measurements, and there were no known repercussions for the IFC employees who violated the Performance Standards. Complainants expressed concern about the moral hazard of this lack of accountability post-loan dispersion.

Complainants also suggested that in order to maintain impartiality and independence at the CAO, the CAO Vice President should be term-limited, and staff should have greater independence from IFC management. In order to promote awareness of IFC client grievance mechanisms and of the CAO, they recommended advertising these mechanisms to project-affected communities, since it is often only Western NGOs that inform communities about these options.

It was also stressed by panelists that CAO staff should give a realistic description of the potential scope of CAO activities when assessing a complaint. Panelists said that if the CAO is not able to hold

¹ Compliance Advisor/Ombudsman, “About the CAO: Who We Are,” *Compliance Advisor/Ombudsman*, <http://www.cao-ombudsman.org/about/whoweare/>

² International Finance Corporation, “International Finance Corporation’s Performance Standards on Social and Environmental Sustainability,” *International Finance Corporation*, April 30, 2006, I; [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

IFC responsible for assuring compliance with national or international law and will not routinely evaluate systemic risks, it should be made clear to complainants that the CAO will only address limited individual conflicts created by the project, since the facilitation process will mostly likely require more than a year of the complainant's participation.

Lastly, in the event that the CAO staff working on an assessment/audit change, as in the case of the BTC pipeline project, mechanisms should be put in place at the CAO to create and preserve institutional memory for specific projects.

For more detailed recommendations, please see the "Recommendations" section of this report on page 23. I hope that the observations contained in the following case studies, and the recommendations derived from them, are helpful in improving the CAO's ability to protect project-affected people throughout the world.

Sincerely,



Sarah Bedy
November 27, 2011

This report was culled from the event "The Experience of the CAO in the former Soviet Union: 2004-2011: Panel Discussion"
Civil Society Policy Forum
2011 Annual Meetings of the World Bank Group/International Monetary Fund
September 24, 2011
11:00-12:30 am
MC C1-200

Panelists:

Manana Kochladze, CEE Bankwatch and Green Alternative, Georgia
Sergey Solyanik, Crude Accountability, formerly Ecological Society Green Salvation, Kazakhstan
Igor Golubenkov, Saving Taman!, Russia
Svetlana Anosova, Zhasil Dala, Kazakhstan
Rosa Khusainova, Zhasil Dala, Kazakhstan
Kate Watters (moderator), Crude Accountability, United States

CAO staff present:

Scott Adams, Specialist, Ombudsman, CAO
Henrik Linders, Principal Specialist, Compliance, CAO

Introduction

On September 24, 2011 at the World Bank Group-International Monetary Fund's (WBG/IMF) Annual Meetings, the U.S. NGO Crude Accountability sponsored a panel discussion featuring individuals negatively impacted by oil and gas sector projects financed by the WBG. Each of the panelists had filed a formal project-related complaint to the Compliance Advisor/Ombudsman (CAO), which serves as a grievance mechanism for private sector projects. The panelists discussed projects in Georgia (Baku-Tbilisi-Ceyhan Pipeline project), the Russian Federation (Ruskiy Mir II port project) and Kazakhstan (Lukoil Overseas investment in the Karachaganak oil and gas condensate field). Each provided his or her perspective on how effectively the CAO addressed complaints.

This report provides background information about the Operational Policies and mandate of the CAO, presents case studies of each panelist's complaint and how it was processed by CAO, and provides recommendations for improving CAO's Operational Policies based on the panel discussion.

Background

The International Finance Corporation (IFC) is a division of the World Bank Group that lends to corporations rather than governments. The IFC is "the largest multilateral financial institution investing in private enterprises in emerging markets, with activities in 130 countries. [The IFC] combine[s] financing that helps local businesses grow quickly and sustainably with advice that helps them innovate, raise standards, mitigate risk, and share knowledge across industries and regions."³ The IFC was a sponsor of the three projects discussed at the panel discussion on September 24, 2011.

As with other branches of the World Bank Group, the IFC has an independent recourse mechanism for individuals or communities affected by projects, in this case the Compliance Advisor/Ombudsman (CAO). The CAO is an independent body which accepts complaints about projects supported by the IFC and the Multilateral Investment Guarantee Agency (MIGA), the two private sector-oriented branches of the World Bank Group. The CAO was formed in 1999 and its staff reports directly to the President of the World Bank Group.⁴

CAO's *mandate* is to "address the concerns of individuals or communities affected by IFC/MIGA projects, enhance the social and environmental outcomes of IFC/MIGA projects; and foster greater public accountability of IFC and MIGA."⁵ It has three departments: the Ombudsman, Compliance, and Advisory functions.⁶ When a complaint is received, it is first evaluated by the Ombudsman to determine if it is eligible. In order to be eligible the complaint must be filed by individuals or communities affected by an IFC or MIGA project, or by individuals or organizations representing those impacted by such a project (although the identity of the complainant can be kept confidential).

³ International Finance Corporation, "IFC's Role and Additionality: A Primer," *International Finance Corporation*, 1;

http://www1.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc/vision

⁴ Compliance Advisor/Ombudsman, "About the CAO: Who We Are," *Compliance Advisor/Ombudsman*; <http://www.cao-ombudsman.org/about/whoweare/index.html>

⁵ *Ibid*

⁶ Compliance Advisor/Ombudsman, "CAO Operational Guidelines," *Compliance Advisor/Ombudsman*, 5; <http://www.cao-ombudsman.org/about/whoweare/documents/EnglishCAOGuidelines06.08.07Web.pdf>

If the complaint is eligible, Ombudsman staff engages the IFC client (the company) and complainant in a voluntary process of facilitated negotiation. This dialogue may result in agreements such as the development of social/environmental mitigation plans and progress reports issued by the company, or settlements for affected communities involving compensation or relocation. Ombudsman staff only engages with IFC clients if there is an external complaint.⁷

If one or both parties refuse to engage in the Ombudsman process, the complaint is referred to CAO's Compliance function.⁸ Compliance staff reviews the complaint to see if it is likely that any of IFC's environmental and social Performance Standards have been violated.⁹ If there are likely potential violations, Compliance initiates an audit of the IFC's involvement with the project, to verify how the IFC assured itself that the client met the Performance Standards.¹⁰ Compliance may also review a project at the request of the President of the World Bank Group, senior IFC management, or the CAO Vice President.¹¹

The Advisory function, the third role of the CAO, differs from the first two in that it is not activated by complaints about specific projects. At the request of entities such as the President of the World Bank, senior management of IFC, and the Vice President of the CAO, CAO staff will advise the IFC on trends and best practices regarding "broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic issues." The Advisory function offers general, not project-specific, advice so that it can maintain its independence from the IFC's project implementation.

The CAO's Accountability within the World Bank Group

The CAO Vice President reports to the President and Board of Directors at two points, when a complaint is found eligible for assessment, and when the President approves the release of CAO's findings from assessments and audits.¹² At this time, the information is also made public.

What Constitutes a Legitimate CAO Complaint?

According to CAO's Operational Guidelines "complaints may relate to any aspect of the planning, implementation, or impact of IFC/MIGA projects, including but not limited to: processes followed in preparation of a project, the adequacy of measures for the mitigation of social and environmental impacts of the project, arrangements for involvement of affected communities, minorities, and vulnerable groups in the project, the manner in which the project is implemented."¹³

The CAO in the former Soviet Union

To date, thirty-five eligible complaints to the CAO have been filed from the Europe and Central Asia region, the most of any region in the world.¹⁴ The vast majority of these complaints (twenty-seven)

⁷ *Ibid*

⁸ *Ibid*, 14

⁹ International Finance Corporation, "Performance Standards and Guidance Notes," *International Finance Corporation*; <http://www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards>

¹⁰ Compliance Advisor/Ombudsman, "Operational Guidelines," *Compliance Advisor/Ombudsman*, 22; <http://www.cao-ombudsman.org/about/whowere/documents/EnglishCAOGuidelines06.08.07Web.pdf>

¹¹ *Ibid*

¹² Compliance Advisor/Ombudsman, "Operational Guidelines," *Compliance Advisor/Ombudsman*; 9.

¹³ *Ibid*, 11.

¹⁴ Compliance Advisor/Ombudsman, "CAO Cases: Europe and Central Asia," *Compliance Advisor/Ombudsman*; <http://www.cao-ombudsman.org/cases/>

were filed regarding the Baku Tbilisi Ceyhan (BTC) pipeline, and all but four originated in the former Soviet Union (FSU); specifically in Georgia, Kazakhstan, and the Russian Federation. The other four complaints originated in Turkey; two addressed concerns about BTC, and two cited labor rights grievances involving other projects.

The majority of the complaints were assessed by the Ombudsman function, approved, and facilitated negotiations commenced.¹⁵ Complaints that were referred from the Ombudsman to Compliance department were largely rejected due to lack of evidence of violations of IFC Performance Standards (which have since been updated and expanded).¹⁶ As is noted in the statements below, some complainants have questioned the ability and willingness of the CAO to take on large systemic issues that are raised in complaints.

The following case studies are culled from official CAO complaint documents, interviews with complainants, and public statements made at a panel discussion at the World Bank Group Annual Meeting on September 24, 2011. Using these sources, this report provides insight into CAO's processing of complaints and offers practical recommendations for CAO staff, future complainants, and senior management within the World Bank Group.

Case Study 1: BTC Pipeline (Azerbaijan, Georgia, and Turkey)

Background

Stretching over 1700 kilometers from Azerbaijan through Georgia to the Turkish port of Ceyhan, the Baku-Tbilisi-Ceyhan pipeline is the second longest oil pipeline in the world.¹⁷ Financed by the IFC in 2004, the pipeline is owned by a consortium of eleven companies and operated by BP.¹⁸ IFC issued a total of \$250 million in loans (half from its own account, and half from commercial syndication) for the project, which has an estimated cost of \$3.6 billion and is co-financed by the European Bank for Reconstruction and Development (EBRD).¹⁹

Thirty-three CAO complaints were filed against the BTC project, twenty-seven of which were deemed eligible and are available on the CAO website for analysis.²⁰ In ten instances, the CAO Ombudsman helped the company and the complainants negotiate a settlement, nine times the Ombudsman closed the complaint without reaching a settlement and without referring it for a compliance review, four times the company refused to participate in the negotiation process, once the complainant refused to participate, once the complainant asked CAO to close the case during

¹⁵ *Ibid*

¹⁶ International Finance Corporation, "Policy Review," *International Finance Corporation*, <http://www.ifc.org/policyreview>

¹⁷ Kate Watters, "The Fight for Community Justice Against Big Oil in the Caspian Region," from Julian Agyeman and Yelena Ogneva-Himmelberger, *Environmental Justice and Sustainability in the Former Soviet Union*, Massachusetts Institute of Technology (2009); 155

¹⁸ International Finance Corporation, "BTC Project Overview, Draft 4, Section 1," *International Finance Corporation*, 2; [http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/DOC+-+CH1-+ELCSO/\\$FILE/CH1+The+BTC+Project.pdf](http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/DOC+-+CH1-+ELCSO/$FILE/CH1+The+BTC+Project.pdf)

¹⁹ International Finance Corporation, "BTC Project," *International Finance Corporation*. <http://www.ifc.org/ifcext/btc.nsf/content/Home>

²⁰ Compliance Advisor/Ombudsman, "CAO Cases: Europe and Central Asia," *Compliance Advisor/Ombudsman*, http://www.cao-ombudsman.org/cases/default.aspx?region_id=2

assessment, and once the complainant ceased responding to CAO inquiries. The most recent complaint is currently being assessed.

Interview with BTC Complainant: Manana Kochladze: Green Alternative, Georgia²¹

Kochladze: BTC was one of the most difficult cases in project investment banking around the world. The campaign to stop project financing began three years before construction. The broader issues we were concerned about were violations of national legislation, land tenure and compensation disagreements, concerns related to construction, the environment, and threats to livelihoods through water pollution.

For two years before IFC and EBRD lent money for this project, we brought issues to the company such as concerns about water quality risks, physical damage to local buildings during construction, and requests about information dissemination about the project. Before project approval my organization, Green Alternative, held meetings with BP and a current VP at IFC, who was then the CAO Deputy Vice President. It was suggested by the CAO that we submit a complaint before approval, but we did not see the rationale for this.

The company had a grievance mechanism, but it was ineffective. After the CAO complaint the company checked their grievance process and it was improved, but it did not become great. This was the only case in which CAO's Compliance department made a recommendation that was independent of the complaints of the citizens.²² CAO conducted a compliance assessment on information disclosure and came out with recommendations, improving disclosure and the grievance mechanism.

The first complaint, filed by WWF, centered on potential risks to the water system and watershed around the pipeline. The complaint was rejected by the CAO Ombudsman on the grounds that WWF was not a part of the project-impacted community. EBRD (European Bank for Reconstruction and Development) defines affected communities as anyone in the country, whereas CAO believes it is only anyone who has a problem in their backyard. So, after the first systemic complaint was rejected, my organization decided to focus on one community's water issues instead of those of the whole region.

Thirty percent of land in Georgia was under dispute at the time the loan agreement with IFC was signed. It is clear that due diligence was not done.²³ National law was violated in order to build the pipeline in Georgia; construction violated the Protected Areas law.²⁴ When our complaint about

²¹ Manana Kochladze, interview by Sarah Bedy, September 23, 2011

²² Compliance Advisor/Ombudsman, "CAO Cases-Georgia/BTC Pipeline-02/Rustavi," *Compliance Advisor/Ombudsman*; <http://www.cao-ombudsman.org/cases/document-links/documents/RustaviFinalRevisedAssessmentReport08-12-04.pdf>; and Compliance Advisor/Ombudsman, "CAO Cases-Georgia/BTC Pipeline-13/Tsalka," *Compliance Advisor/Ombudsman*; http://www.cao-ombudsman.org/cases/case_detail.aspx?id=56

²³ International Finance Corporation, "The Baku-Tbilisi-Ceyhan Pipeline Project," *Lessons of Experience*, (September 2006) 2, 19; [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_BTC_LessonsLearned/\\$FILE/BTC_LOE_Final.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_BTC_LessonsLearned/$FILE/BTC_LOE_Final.pdf)

²⁴ International Finance Corporation, "BTC Project and IFC Safeguard Policies OP 4.04 Natural Habitats and OPN 11.03 Cultural Property," *International Finance Corporation*, April 2003, 5;

protected areas and disputed land was accepted, CAO reduced the scope to the community level, rather than looking into IFC's due diligence in assuring itself of the company's legal compliance with Georgian law.

Green Alternative trained our NGO partner, the Georgian Young Lawyers Association, to do redresses for complaints, and we published a guide for the public on how to file a CAO complaint. A few of the thirty-three complaints were filed by individuals. Over 1000 people came into our office with concerns and questions about the project.

What were the gains from the CAO complaint process? In the beginning there were systemic recommendations from the CAO to the company, which improved the information disclosure policy. Then CAO staff working on the project changed, which seemed odd to us, and they began to deal with the problems on a dispute-by-dispute basis. The major problem with the CAO Ombudsman cases is that the only cases that were successful were the ones in which BTC agreed to work with CAO. Also, for the many times staff traveled to the country and the many hours they devoted to the complaints, the overall product of their intervention was inefficient.

The company made some agreements with local communities, but they had minimal impact. BP gave \$1 million to a village in a landslide area for resettlement, but the Georgian government requested the money for a different project and said they would resettle the people themselves.²⁵ That never happened so today the people are moving themselves. IFC and CAO have never followed up after their arbitration to check the result.

Also, CAO did not seem to be able to convince IFC that some of the high standards invoked on the BTC project were good for business. In the IFC evaluation of their project, they essentially said NGOs should only be able to complain about social and environmental issues to CAO, but in BTC we won contract transparency and the publication of host country government agreements.²⁶ IFC evaluated these high standards and said that they preferred to limit NGOs' input in the future because such practices were not smart or fast banking. We thought CAO should push IFC harder to see the value in how these recommendations made them a leader in international best practices.

Best practices at other compliance mechanisms

OPIC (U.S. Overseas Private Investment Corporation) has been using its position as a lender to push clients. Two years ago BP published a report in which it showed how OPIC negotiated with it to raise its social and environmental performance on the pipeline. The last OPIC report assessed BP's environmental and social compliance very negatively and says the company is not addressing technical, social and environmental issues.

[http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/DOC+-+Additionality+Pgms/\\$FILE/BTC+Additionality+Programs.pdf](http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/DOC+-+Additionality+Pgms/$FILE/BTC+Additionality+Programs.pdf)

²⁵ Compliance Advisor/Ombudsman, "CAO Cases: Georgia/BTC Pipeline-07/Dgvari," *Compliance Advisor/Ombudsman*; http://www.cao-ombudsman.org/cases/case_detail.aspx?id=50

²⁶ International Finance Corporation, "The Baku-Tbilisi-Ceyhan Pipeline Project," *Lessons of Experience*, September 2006, 2;

[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_BTC_LessonsLearned/\\$FILE/BTC_LOE_Final.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_BTC_LessonsLearned/$FILE/BTC_LOE_Final.pdf)

OPIC does not say, “We have no leverage once we disperse the money” like EBRD and IFC; they believe they have the leverage and continue to push their clients to perform well throughout the project cycle.²⁷ It was clear in this project that the approach of IFC and EBRD was, “We must give them the money.”

Was the CAO response what you expected? The problem with pursuing a Compliance complaint in this case is that nature has no voice yet. We could not find the person who would say if the aquifer is polluted they will be hurt, yet our aquifer was protected under national law and was at risk in the project. The CAO assessment process was too limited to look at this systemic issue.

The original CAO complaint about BTC was filed in 2004 and we received the final report from Compliance in April 2008. The CAO has revamped their mechanism since that time and now requires a stricter timeline for responding to complainants.²⁸

The CAO regularly responded to complainants, but the actual processing took a lot of time. It seemed that the CAO was always waiting for communication from BP and IFC management. For the seven villages who complained of construction-related cracks to houses, it took three to four years for the complaints to be resolved. One beekeeper who had complained that his hives were affected by construction died before his complaint was processed.

Did CAO provide an impartial and trusted arbiter? In the case of the seven complaints about truck traffic and blasting at the construction site causing cracking in homes and cultural heritage sites, the CAO suggested independent international consultants should do a study. In all other cases, their actions were based on what the company said.

The independent study concluded that while the vibrations from the trucks were at higher levels than the internationally accepted standard, they were unlikely to have caused cracks in buildings in the villages. In one village, the company offered one-time compensation to homeowners within a certain perimeter because the study could not show conclusively whether or not the vibrations were responsible.²⁹ In all other cases the complaints were closed without further negotiation, with the study results delivered to the complainants in Russian.³⁰

The study results were strange because they said that if the houses were constructed up to international standards, the vibrations could not have caused the cracks. However, none of the houses in this rural area were constructed up to international standards. Before project construction the company was obliged to have background information about the vulnerability of local houses, roads, and a historic fortress in order to take proper precautions. The company did not secure this baseline data to project the potential impacts of construction, and IFC failed in ensuring these standards.

²⁷ Office of Accountability, “BTC Monitoring Report,” *Overseas Private Investment Corporation*, October 2010; <http://www.opic.gov/sites/default/files/BTCmonitoringreportOct2010.pdf>

²⁸ Compliance Advisor/Ombudsman, “Operational Guidelines,” *Compliance Advisor/Ombudsman*, 14; <http://www.cao-ombudsman.org/howwework/compliance/documents/EnglishCAOGuidelines06.08.07Web.pdf>

²⁹ Compliance Advisor/Ombudsman, “CAO Cases: Georgia/BTC Pipeline-10/TetriTskaro,” *Compliance Advisor/Ombudsman*; http://www.cao-ombudsman.org/cases/case_detail.aspx?id=53

³⁰ Compliance Advisor/Ombudsman, “CAO Cases: Georgia/BTC Pipeline-17/Tadzrisi,” *Compliance Advisor/Ombudsman*; http://www.cao-ombudsman.org/cases/case_detail.aspx?id=60

After arbitration through the CAO, in one case the company offered to give the people cement to fix the cracks. We thought IFC should have recommended to the company how to compensate these individuals through auditing and assessment of each house. No one needed cement, so all of the villagers refused.

Recommendations to the CAO for improving its mandate and/or complaint assessment process: In 2006, the CAO took our concerns seriously about the improving the timing of its responses to complaints and by providing new guidelines. I have several recommendations for improving CAO's efficiency.

First, compliance is paramount; it should be assessed before negotiation of a complaint. In the case of BTC, we started negotiations with the company in 2002, and then when we complained to CAO we had to start negotiations again in 2005; it was senseless. The 2010 OPIC report of the BTC pipeline found weakened pipeline walls; we could have avoided this through a proper compliance assessment in 2004 and 2005. The CAO always says that compliance findings only help with future projects, but compliance may help improve current projects, not only future ones.

Secondly, the Vice President of the CAO should be term limited. And the CAO should not be a part of IFC as an institution. Perhaps during assessments the CAO could use rosters of independent experts who do not care about the IFC management. There are a lot of conflicts of interest from being within IFC, in our time working with the CAO we saw a number of people leave to go to World Bank Group jobs. [The current CAO Operational Guidelines prohibit CAO staff from "obtaining employment with IFC or MIGA for a period of two years after they end their engagement with the CAO," but do not prohibit employment within other parts of the World Bank Group.]³¹

CAO Response:³² CAO invested considerable effort in getting people to talk in the beginning of this project in order to produce concrete outcomes and raise the company's awareness. Compliance staff visited the site even though the original complaint wasn't referred to Compliance.

These negotiations were complex. For example, one village was not identified as being impacted in the original assessment. A new water pipeline was not approved for the village, yet was necessary, so the two parties agreed the company would give the villagers the pipeline and they would install it themselves. The company should have compensated them for lost income due to the water issue, but the people weren't reporting income on their taxes so establishing the correct amount was problematic. The two parties agreed that fair compensation would be the company putting up tourism billboards on the highway to attract business to the village.

In some cases there was no way forward. Of the cases that went to Compliance, one was regarding the weakening of welding on the pipeline. We asked the company for technical documentation for the whole stretch, and found an international expert on pipelines who had never worked with any

³¹ Compliance Advisor/Ombudsman, "Operational Guidelines," *Compliance Advisor/Ombudsman*, 7; <http://www.cao-ombudsman.org/howwework/compliance/documents/EnglishCAOGuidelines06.08.07Web.pdf>

³² Henrik Linders, Principal Specialist, Compliance, *Compliance Advisor/Ombudsman*. "The Experience of the CAO in the former Soviet Union: 2004-2011." September 24, 2011

BTC partners and hired him to go through documentation to verify what happened. We were fairly diligent in digging into the technical documentation.

Because we are outcome-focused on community groups, we could not accept a complaint from WWF. We are set up to work with local community members, and not to address systemic issues on policy. Some of the issues raised in this case reemerge in other cases around the world, such as IFC perhaps not being diligent or ensuring that clients have following national legislation before a project commences. CAO can change its mandate to look at broader policy issues; this can be done by the President of the World Bank Group. However, currently our mandate is to respond to local impacted community members and look for an opportunity for them and the IFC client to talk. That is the default of CAO when working on a non-systemic level.

CAO has heard feedback from some parties that our process is too slow. We are currently seeing a one to two year completion timeframe for dispute resolution processes.³³

Regarding our professional and physical independence from IFC; we get a lot of information fed to us by being in the same building. We are somewhere in between being a part of IFC and being separate, so that structure is available for criticism. There is a balance to create, because there are advantages to both sides.

Case Study 2: Lukoil Overseas (Kazakhstan)

Background

The Karachaganak field is an oil and gas condensate field in Western Kazakhstan.³⁴ It spans over 280 square kilometers, has produced 1.9 billion barrels of oil and contains 13 trillion cubic feet of gas.³⁵ From 1981 to 1993 the field was developed by Gazprom.³⁶ After the fall of the Soviet Union, it was developed by a consortium of 4 foreign companies including Lukoil, ChevronTexaco, British Gas and the Italian company ENI-Agip.³⁷ Lukoil, which has a 15 percent stake in the field, received a combined loan package of \$150 million from IFC in 2003 to expand the oil field.³⁸

In 2004, the NGO Zhasil Dala (Green Steppe) of the neighboring village of Berezovka filed a CAO complaint related to diminished air and water quality in the village. When neither the complainants nor company was willing to enter into the Ombudsman facilitation process, the complaint was referred to Compliance.³⁹ In 2008, after two more complaints to CAO were filed requesting the resettlement of the villagers of Berezovka, CAO Compliance cited four pages of violations of IFC Performance Standards regarding baseline of air quality measurements and emissions monitoring

³³ Scott Adams, Specialist, Ombudsman, *Compliance Advisor/Ombudsman*, "The Experience of the CAO in the former Soviet Union: 2004-2011." September 24, 2011

³⁴ International Finance Corporation, "IFC Projects: Lukoil Overseas/Summary of Project Information," *International Finance Corporation*, <http://www.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/SPI9953>

³⁵ Svetlana Anossova, "The Experience of the CAO in the former Soviet Union: 2004-2011." September 24, 2011

³⁶ *Ibid*

³⁷ International Finance Corporation, "IFC Projects: Lukoil Overseas/Summary of Project Information," *International Finance Corporation*, <http://www.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/SPI9953>

³⁸ *Ibid*

³⁹ Compliance Advisor/Ombudsman, "CAO Cases: Kazakhstan/Lukoil Overseas: 1/Berezovka," *Compliance Advisor/Ombudsman*, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=104

before project approval and during project implementation.⁴⁰ In the wake of the report of these violations, Lukoil prepaid its IFC loan.⁴¹ In order to protect the reputation of the project, the two field operators who had not borrowed from IFC contacted the CAO and voluntarily worked with the agency to address the air quality concerns.⁴²

Following a site visit by the audit team in January 2009, the CAO released a monitoring report that listed outstanding issues related to the project's performance: reporting of stack emissions; completeness of ambient air quality monitoring programs; and adequacy of the selection of ambient air quality monitoring sites. The project sponsor committed to an action plan to resolve these outstanding issues and, by April 2009, the CAO received confirmation that the action plan had been adhered to.⁴³

The CAO Compliance team's finding that IFC had violated its own Performance Standards in the pre- and post- project approval stage was never addressed by IFC since the loan was pre-paid by Lukoil before any actions could be taken.⁴⁴

Interview with Lukoil Overseas Complainants: Svetlana Anosova and Rosa Khusainova, Zhasil Dala, Kazakhstan; and Sergey Solyanik, formerly of Ecological Society Green Salvation, Kazakhstan (currently of Crude Accountability):

Anosova and Khusainova: Our village, Berezovka, sits along the banks of a river about five kilometers from the giant Karachaganak oil field. Previous to the formation of our resident's group [Zhasil Dala], there was no grievance mechanism of the company, at least that we knew about. Residents of Berezovka complained to the local government and the company when the field was being expanded. We noticed increasingly bad smells and people felt sick, and noticed it impacting their health.

After we formed our organization, the company created a department called "the Department for Contact with the Public." The company's Department for Contact with the Public initially held meetings with residents from the four larger villages of the nine that surrounded the field. The company later changed name of the public outreach department to the Department for Sustainable Development. It is now hard to have public conversations with them.

We were not aware of IFC's involvement in the project or the CAO until Crude Accountability, an American NGO, told us. We filed the CAO complaint in 2004 because we wanted to be relocated.

People from our village had skin problems, hair loss, frequent nose bleeds and running eyes. We interviewed children who reported that they didn't have any memory and came home from school

⁴⁰ Compliance Advisor/Ombudsman, "CAO Audit Report: Case of Residents in Village of Berezovka," *Compliance Advisor/Ombudsman*, March 14, 2008; http://www.cao-ombudsman.org/cases/document-links/documents/CAO_Audit_Report_C_I_R7_Y06_F079_ENGLISH.pdf

⁴¹ *Ibid*

⁴² *Ibid*

⁴³ *Ibid*

⁴⁴ *Ibid*

exhausted. Their bones hurt especially their legs, as well as their muscles, chests and stomachs. Twenty-five of the hundred children we surveyed reported having fainted.

Our village mid-wife in Berezovka reported that most pregnant women were anemic with hemoglobin levels two to three times lower than they should have been. New mothers were reporting that their babies frequently screamed, and only one in ten was able to breastfeed because they couldn't produce milk.

Systemic concerns with the project

IFC's Performance Standards require its clients to obey national laws, and there is a legal practice in the former Soviet Union of relocating civilian populations a set distance away from large infrastructure projects.⁴⁵ When IFC signed the loan agreement with Lukoil Overseas, Kazakhstani law required a five kilometer "Sanitary Protection Zone" (SPZ) around the Karachaganak oil field.⁴⁶ Part of the village of Berezovka fell inside of this perimeter, and there was another village that was closer to the field that KPO moved. After the project was funded, the law was changed without public consultation to require a SPZ of only three kilometers.⁴⁷ The law was changed due to corruption and bribery within our government. The second complaint to the CAO contained evidence of this corruption and requested resettlement for those residing within the original five kilometer SPZ.⁴⁸ Ecological Society Green Salvation, the NGO that filed the second and third CAO complaints, also pursued a case in the Kazakhstani legal system protesting the change to the SPZ law.

What were the gains from the CAO process?

Solyanik: The fact that the CAO came out and paid attention to the complaints protected local activists. It improved the relationship between the company and local population, and the government understood that the problem had been raised internationally and they were not quite so brassy and boldly violating their own laws. And it forced Lukoil to pay the loan back early; they felt uncomfortable.

Anosova and Khusainova: As a result of the CAO, a consultative group formed at the company, and KPO was really proud. But at the same time the group had really narrow tasks and goals. The consultative group couldn't solve major questions, just things like putting a fence around the graveyard, buying candy for kids at Christmas, buying a camera for the school, and paying for locals to go to the sanatorium for health reasons. So they were able to improve their image through these gifts. When we wanted to invite the local environmental administration to address concerns at meetings, those issues were turned down.

The company had a \$10 million budget for social projects per year for the Western Kazakhstan Oblast. KPO gave \$7 million for water system improvement, but after that the village's water got

⁴⁵ International Finance Corporation, "International Finance Corporation's Performance Standards on Social and Environmental Sustainability," 1; [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

⁴⁶ Compliance Advisor/Ombudsman, "Assessment Report: Case Regarding Green Salvation Ecological Society and Karachaganak Petroleum Organization, Burlinsky District, Western Kazakhstan Oblast, Kazakhstan," *Compliance Advisor/Ombudsman*, November 2007, 2; http://www.cao-ombudsman.org/cases/document-links/documents/preliminary_assessment-english.pdf

⁴⁷ *Ibid*, 5

⁴⁸ *Ibid*

worse. They said they would build a new dam in the river for better water access for the community, but when they built it further downstream, the river widened instead of narrowing. We had to use generators to pump water out of the river for our gardens. Our community got together privately and went to the old dam and rebuilt it ourselves. KPO said they built the dam as a social project, but when we looked at where it was built, we noticed it improved the technical capacity of KPO.

Was the CAO response what you expected? The CAO sent a staff person to evaluate the complaint immediately. CAO staff met with the complainants, the village population, local authorities, and the company. We were all encouraged and expected that we would have good help. We were shocked by the first report written by the CAO.

The report said that Berezovka received more privileges than the other eight villages surrounding the Karachaganak oil field, and that many people in the village were hired by the company. This was not true; some people were hired by subcontractors, but few by the actual company. The report also highlighted social projects funded by KPO, claiming that the central street in the village had been repaved. The central street had been paved in the Soviet period, and remained the same. The report also mentioned the remodeling of a school and equipment donated to the medical center. KPO did remodel the school, but it still has outdoor toilets.

The report's conclusion was that according to medical reports, villagers were healthier than those in other villages surrounding the fields. The only recommendation was that the company needed to engage more with the local community.

At the end we felt like they washed their hands of the process. By the second and third complaints, we received only formal responses. We filed our original complaint about air and water quality issues in 2004, and received the Compliance Appraisal in April 2008 citing that IFC had been out of compliance in assuring air quality standards at the field.⁴⁹ CAO has changed its process since that time and now requires a stricter timeline for responding to complaints.

Did CAO provide an impartial and trusted arbiter? After the first two complaints, the CAO Ombudsman proposed joint air quality monitoring between the community, the company and IFC. We refused because we had already seen the health impacts within the village, and also did not believe the data produced by the company. We felt that the CAO had been bought, because of their unwillingness to interfere in government matters.

Furthermore at that point we were convinced that the company was not behaving in an honest way. Government reports showed illnesses in the village, but the information was never made completely available to residents.

An official report of Kazakhstan's Scientific Research Program states, "The summary of models of the dispersion of air pollution from various chemical elements and groups revealed that pollution from nitrogen dioxide and sulfur dioxide creates a surface layer in the atmosphere in a radius of 5000 meters from the source of the emissions, covering a vast territory, which includes the village of Berezovka. It is recommended that the Sanitary Protection Zone of the Karachaganak Oil and Gas

⁴⁹ Compliance Advisor/Ombudsman, "CAO Appraisal for Audit of IFC: Karachaganak, Kazakhstan," *Compliance Advisor/Ombudsman*, October 16, 2009; http://www.cao-ombudsman.org/cases/document-links/documents/CAO_Appraisal_Report_C_I_R7_Y09_F117.pdf

Condensate Field be set at 5000 meters and that the residents of the village of Berezovka be relocated to a different territory.”⁵⁰

We also know that the company paid billions of tenge in fines for elevated emissions from the field.⁵¹ After we read the CAO reports from the second and third complaints we understood that we had wasted time and energy, put grief into it, and that it had all been for nothing. CAO did not try to reach out and contact us at all. During the time the company was saying there were no emissions coming from the field, we showed there were twenty-five toxic elements in the air using the Bucket Brigade method.⁵²

Solyanik: With regards to the CAO Ombudsman’s suggestion about joint air quality measuring, there are no provisions in Kazakhstani law for private air monitoring. KPO suggested that the company that would do the monitoring be a contractor they were already paying, so the community didn’t trust it would be neutral. I think that what that demonstrates is that either the CAO didn’t really have an interest to get deeply into what was happening or they were unprofessional. Why would the CAO propose joint monitoring with local people who do not have expertise in air quality measurement? The second thing they suggested was joint councils to look at these issues, with KPO and local citizens represented. The problem with this recommendation is that the people who would be chosen would be chosen by the local government, which is directly under the authority of the Presidency/centralized authority. These entities were not neutral.

Recommendations to the CAO for improving its mandate and/or complaint assessment process:

Anosova and Khusainova: They need to return to their mission of protecting local communities. In fact what is happening is they are operating as a buffer between IFC and communities and protecting IFC from communities that would complain. They state that they have goals and tasks that they do not fulfill.

Solyanik: This case shows a weakness of the mandate of the CAO. CAO documents do not make it evident that they ever directly raised the question of violations of national law. When we see Western companies with Western financing in Kazakhstan, we do not see higher transparency. We wrote a ton of papers, we spent a tremendous amount of time, we spent our own resources. We do not believe the lives of any local people have been improved. There was no ability by the CAO to actually answer the questions we raised about environment, human rights, social improvements, and improvements in the lives of local people. I would say that what we have learned is that the CAO does not do a good job of really listening to and hearing the responses from the local community and that they are unable to fulfill their mandate. I think part of that is a problem of the

⁵⁰ Report of the Scientific Research Program, “The Evaluation of the state of health of the population living in the area of the Karachaganak Oil and Gas Condensate Field,” RGKP, “Kazakhstan National Medical University in the name of S.D Asfendiarov, Almaty 2008, pp. 158-159.

⁵¹ Silk Road Intelligencer, “Karachaganak fined \$27 million for environmental violations,” *Silk Road Intelligencer*, January 26, 2011; <http://silkroadintelligencer.com/2011/01/26/karachaganak-fined-27-million-for-environmental-violations/>

⁵² Louisiana Bucket Brigade, “History of the Bucket,” *Louisiana Bucket Brigade*, <http://www.labucketbrigade.org/article.php?list=type&type=157> and Mathew C. Plate, “Quality Assurance Plan for Bucket Brigades,” *United States Environmental Protection Agency*; <http://www.labucketbrigade.org/downloads/Quality%20Assurance%20Plan%20for%20Bucket%20Brigades.doc>

relationship between the CAO and IFC, because from the correspondence we saw it was clear that IFC was ignoring some of what the CAO asked them to do.

The question for the leadership of IFC and the Bank in general is do they want the CAO to be a buffer zone to soften the hit from civil society and the public, or do they want a real mechanism to solve problems and answer questions? I just want to say that if there is not a real mechanism, sooner or later there will be a social upheaval or a tragedy that will result in the loss of life, which will sit directly on the shoulders of IFC.

Recommendations to other complainants: Other NGOs should include more legal documentation and facts in complaints than they think they might need to, so there is less ability for manipulation of the issues raised. We need to continue to file complaints because the Bank will get it sooner or later, they have to improve their mechanism or the complaints will keep coming.

What are conditions like in the village today?

Anosova and Khusainova: The General Prosecutor of Kazakhstan eventually accepted the Ecological Society Green Salvation's protest that the Sanitary Protection Zone was illegally reduced. On March 27, 2006, the General Public Prosecutor objected to the conclusion issued by the Senior Sanitary Doctor, which served as the basis for the reduction of the SPZ, recognizing the conclusion as illegal. The five kilometer SPZ was reinstated. Two village families whose residences fell inside the restored SPZ are eligible for relocation, but the concerns of many other farmers whose crops and livestock were within five kilometers of the field went unaddressed. The village of Berezovka is approximately one kilometer long and contains 340 houses, so many of those who were not moved feel they are affected by proximity to the field.

Health problems continue, but in the past few years the level of pollution has gotten better. However, villagers live under a constant level of stress. We have no defense against accidents at the field. When Zhasil Dala was first established, we read a report about what would happen in the case of an accident at the field. It said that a toxic cloud would come over village in eight minutes. The village has no buses or defenses; all we have is community gas masks from 1983.

We wrote a song about community concerns about the project. "KPO promised us social projects, in the end all we got were unhappy results." We expected water improvements but... "all that flowed was our tears. The uncles who came in got millions; the people got hydrogen sulfide. They promised us streets that would shine; the only thing that glows at night is the [oil and gas] fields."

CAO response:⁵³ This case illustrates a common problem we face, which is the differentiation of the boundary between private sector investment and public sector issues. CAO is not a substitute for a national court and we have no jurisdiction over national law. We can check to see if IFC assured itself that the company met the Performance Standards. Those standards are based on international best practice. We use source control as a method to prevent communities from being harmed by pollutants, which is practiced in the US and around the world. [Source control is the practice of limiting the release of pollution at its source, rather than the former Soviet Union's practice of

⁵³ Henrik Linders, Principal Specialist, Compliance, *Compliance Advisor/Ombudsman*. "The Experience of the CAO in the former Soviet Union: 2004-2011." September 24, 2011

instating a protective buffer zone.]⁵⁴ The reason for IFC having Performance Standards is to apply standards consistently, especially where national law is flawed.

The first report issued by the CAO, especially the reference to the funds made available to improve conditions for, among others, the villagers of Berezovka, has been criticized. The CAO has since then changed the provisions on what to contain in initial assessment reports.

The first CAO complaint was transferred to Compliance, and we hired three independent external experts on technical air emissions. We went through the data, traveled to the site, inspected monitoring components, and found that the company was not able to document that they were in compliance, so that meant that IFC was out of compliance in its due diligence. CAO checks for compliance with IFC's internal monitoring requirements, which are separate from national law.

The lead joint venture partners, BG and ENI-Agip contacted IFC and CAO and wanted to do something to fix being out of compliance because of reputational risk to the project. We produced an action plan and they installed more monitoring equipment. A year and half later, in January 2009, I revisited the site and we verified at that time that their technical performance was in compliance with IFC standards.

This result doesn't diminish the stress on the air shed around Karachaganak in general, because there are broader regional development issues. The responsibility of IFC and its clients are more limited than all of the factors that might affect the air shed.

Case Study 3: Russkiy Mir II

Background

In 2005, IFC approved a \$100 million total loan package to Russkiy Mir Group to construct an oil and gas terminal on the Taman peninsula on Russia's Black Sea coast, and to improve rail shipping capacity to the terminal.⁵⁵ The first CAO complaint about the project was filed by the NGOs Saving Taman! and the Environmental Watch on the North Caucasus.⁵⁶ The complaint questioned IFC's due diligence in assuring the client met IFC environmental and social performance standards when preparing for the project, and asserted that the risk categorization of the project was incorrect due to corruption.⁵⁷ The project was categorized as a "B", the medium risk level, rather than as an "A" (which is the highest risk level for a project and requires public consultation).⁵⁸

⁵⁴ Environmental Protection Agency, "Source Control Technology," *Environmental Protection Agency*; <http://www.epa.gov/air/oaqps/eog/course422/ce6.html>

⁵⁵ International Finance Corporation, "Summary of Project Information: Russkiy Mir II," *International Finance Corporation*, <http://www.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/SPI23870>

⁵⁶ International Finance Corporation, "ESRP Manual," *International Finance Corporation*, 9; [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_ESRP_Manual/\\$FILE/ESRP_Manual.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_ESRP_Manual/$FILE/ESRP_Manual.pdf); and Compliance Advisor Ombudsman, "CAO Appraisal: Russia: Russkiy Mir II: 01/02/Taman," *Compliance Advisor/Ombudsman*.

⁵⁷ Compliance Advisor/Ombudsman, "CAO Cases: Russia: Russkiy Mir II: 01/Taman," http://www.cao-ombudsman.org/cases/case_detail.aspx?id=86.

⁵⁸ *Ibid*

The IFC System of Project Risk Categorization

- o Category A - Applies to projects with potential significant adverse social or environmental impacts that are diverse, irreversible, or unprecedented;
- o Category B - Applies to projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures; and
- o Category C - Applies to projects with minimal or no adverse social or environmental impacts, including certain financial intermediary (FI) projects with minimal or no adverse risks.

See International Finance Corporation, "ESRP Manual," 2;
[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_ESRP_Manual/\\$FILE/ESRP_Manual.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_ESRP_Manual/$FILE/ESRP_Manual.pdf)

After receiving the complaint, CAO Ombudsman staff traveled to the area to conduct an assessment and found non-complainant community members who were interested in being involved in a social and environmental consultation and mitigation plan.⁵⁹ The Ombudsman assessment recommended the client and affected community work together to create such a plan, but the complainants asked for the complaint to be referred to compliance to be evaluated solely on the basis of improper project risk categorization. Compliance closed the case without an audit, stating that regardless of risk categorization, IFC had assured itself of the social and environmental performance standards necessary for the project.⁶⁰

The second complaint was filed by an individual who said the pipeline was being built on his property and requested compensation or to be moved.⁶¹ The Ombudsman asked Saving Taman!, his representative, to schedule a meeting between the company and the man. The meeting was never held, and the complainant later asked the complaint to be dropped. The case was referred to Compliance and closed.⁶²

The third complaint was filed on behalf of ninety villagers who asserted that roads and homes were being damaged during terminal and railway construction.⁶³ The Ombudsman connected the villagers and company and together they developed a Working Group with representatives of all entities including the local government. The complaint was resolved and closed through this process.

Interview with Russkiy Mir II Complainant: Igor Golubenkov, Saving Taman!, Russia

Golubenkov: In the beginning we protested against the company. It was not clear if they had a grievance mechanism. We also did not know about CAO, which we later learned about from Crude

⁵⁹ *Ibid*

⁶⁰ *Ibid*

⁶¹ Compliance Advisor/Ombudsman, "CAO Cases: Russia/Russkiy Mir II-02/Taman," *Compliance Advisor/Ombudsman*; http://www.cao-ombudsman.org/cases/case_detail.aspx?id=87

⁶² *Ibid*

⁶³ Compliance Advisor/Ombudsman, "CAO Cases: Russia/Russkiy Mir II-03/Taman," *Compliance Advisor/Ombudsman*, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=88

Accountability. I think that was because there were not proper consultations. All the information was on the level of gossip.

The first public hearings held by the company about the project were closed, and when they held them they lied about what happened. There was a vote at the end of one about if the public agreed the project should go forward, and they lied that the majority of the votes were for the project when they were against. The company invited people who were close to them or interested parties connected to them or the government to the consultations.

I got involved with this project because the previous Administrator of Taman and the head of the City Council found out about a consultation two hours before and called as many people as possible and I was a deputy in the local Council. I became acquainted with Andrey Rudomakha from the NGO “Environmental Watch on the North Caucasus” and he invited me to a joint meeting with the local administration and the company. We raised environmental and financial questions with the company, which were ignored.

Andrey showed me documents that demonstrated how the company had violated Russian national law. There were fifteen documents that showed that the company had pressured regional and national government officials to downgrade the risks involved in the project. On the basis of those documents, Andrey and I wrote a complaint to the CAO. What those documents showed and what the complaint said was that the IFC risk categorization was lowered from A to B based on a violation of national law. Locals created our own NGO, Saving Taman! to address issues with the project.

Systemic concerns with the project

Russian law says that on dangerous projects, at least 50 percent of the local population has to support construction. As part of the process of complaining to the CAO we collected signatures from the adult population, and we were able to collect signatures that amounted to over 50 percent of the adult population who said they were against any sort of environmentally destructive construction. We sent the signatures to our mayor and to the President of the World Bank Group, Robert Zoellick. He promised to deal with them but we never got an answer. Our mayor said if he found one false signature on our petition he would believe they were all fake.

We never had proper consultations, and this was not classified as a high risk level project due to the corruption. We wanted the environmental risk assessment to be done right, but CAO concluded in its response to our complaint that IFC would have funded the project anyway, regardless of risk categorization.

We wanted the risks to be assessed properly because this is a rich, powerful company, and IFC is publically funded with our tax dollars. The company has its own company town in the area and the only previous social support and assistance it offered for area residents was a store. The company used our water, electricity, roads, and gas, and it became a big burden on the local population.

What were the gains from the CAO process? After a while the company started to behave in a more civilized way, and to an extent became more socially responsible. I recommended that the company create a social initiative group and they agreed. We formed the group as a cooperative between the company, local administration and local population, including representatives from Saving Taman! The company gives between \$250,000 and \$300,000 a year to the local budget. They ask the local people how they would like to see the money spent, and then the company brings this long list to

the working group. We decide by quorum which projects are funded. There has been construction on a new medical clinic, which is big money and a big help.

The company also became more open; whenever there is a difficult problem to solve the company invites civil society, including my organization, for a discussion. Our NGO thinks this cooperation by the company might be in order to smooth the way for new construction that is scheduled to start right next to the current project. The same Dutch owners have created a new project bringing in sulfur, coal and steel through the terminal. They had a public hearing, and when I asked if they were applying for IFI financing they did not answer directly. Even though the new project has not started yet, the daughter company responsible for the new project has given eight to nine thousand dollars in financial assistance to Taman.

Was the CAO response what you expected? With the first complaint, it seemed like CAO staff was really listening and there was the possibility to achieve a lot. Then everything changed radically. Maybe it had to do with a conversation in which we shared that we might use the decision of wrong categorization by IFC to sue in international court.

It became procedural. I came to Washington, D.C. and the Ombudsman came to Taman and met with the company. And it was all kind of dragged out and the company offered no social or environmental support. The first CAO complaint was filed in October 2007, and the Compliance appraisal report was published in October 2009.⁶⁴ When CAO Compliance staff came to Taman they agreed violations that had taken place. Together we measured the size of the Sanitary Protection Zone with our GPS, and the SPZ was shorter than it was supposed to be.

We were quite sure at the time that the complaint to CAO was going to be resolved in our favor. We consulted about using the international legal system to take the case further. After we received the report in response to our first complaint, we were very upset when it was not in our favor.

The second complaint was filed by one of the farmers within the Sanitary Protection Zone.⁶⁵ After he filed the complaint, the local police accused him of raping his daughter. And so he dropped the complaint. CAO said that he lives inside the SPZ but that the project is in the construction phase, and when it starts operations we'll have to deal with the issue. CAO washed their hands of the complaint. I also experienced oppression because of my activism. I started to have problems from the state monitoring bodies and the result of that was a judge ordered my store closed. So the company tried to do the same thing to me that it did with the farmer. However, there is a system where Compliance automatically kicks in to protect pressured people, so once the complaint is filed the complainant cannot withdraw it.⁶⁶

After the second complaint, Compliance staff and an arbitration specialist from St. Petersburg came to meet with us. The expert from St. Petersburg said even if we were successful in getting Compliance to consider our case, it would take many years and he said maybe we could decide it all

⁶⁴ Compliance Advisor/Ombudsman, "CAO Cases: Russia: Russkiy Mir II:01/Taman 1View Documents," *Compliance Advisor/Ombudsman*; <http://www.cao-ombudsman.org/cases/document-links/links-86.aspx>

⁶⁵ Compliance Advisor/Ombudsman, "Cases: Russia/Russkiy Mir II-02/Taman," http://www.cao-ombudsman.org/cases/case_detail.aspx?id=87

⁶⁶ Compliance Advisor/Ombudsman, "Operational Guidelines," *Compliance Advisor/Ombudsman*, 11; <http://www.cao-ombudsman.org/about/whoweare/documents/EnglishCAOGuidelines06.08.07Web.pdf>

quickly. And he wanted to know specifically what we wanted out of it at the practical level, but we wanted IFC's highest standards to be upheld.

The third complaint was about damage to property. The company brought a lot of sand in to improve the railroad for two to three months, and twenty-four hours a day big vehicles were driving through the center of town, which did a lot of damage to the road and to the houses along the main road. I recommended that the residents complain to the community administration and CAO.

The Ombudsman called the company and asked them to solve the problem, and I thought it would get resolved. The ruined homes are still there, but when the Ombudsman came, the local government, together with the company, promised to fix the roads, and they did. No compensation was given to anybody but they fixed the road. At the same time, a different company agreed to build a bypass around Taman, which they did, improving the situation.

Did CAO provide an impartial and trusted arbiter? After my final complaint, I got the report, and that was it. And then I met with them for World Bank Annual Meetings but they did not come to me at all, I did not get any more information from them. My opinion changed radically. I think the Bank cynically wants to demonstrate that they are open for conversation with civil society and after the conversation ends they forget about civil society and the conversation. Even the CAO site is misleading, and does not share that even in the closed cases people may continue to experience the same problems with no resolution.

Through the whole process the company has gotten stronger and stronger. They have learned lessons that have enabled them to become entrenched in the community. They have increased their annual support (this year it is \$90,000), which has calmed the community for now. The environmental damage was the least concern of the community. The company has gotten permission to deepen the area around their terminal so they can transport more oil and gas, and the daughter company will be able to transport steel, sulfur and coal. They behave nicely.

The social issues are addressed by the company, but most people do not understand they can go to the company to complain about environmental issues. They have not started operating the terminal, so the environmental problems are not clear. Locals will get it once the company starts working, even those who are supporting the company now will experience hardships later.

Recommendations to the CAO for improving its mandate and/or complaint assessment process: The mandate is excellent. But I do not think CAO is implementing the goals of transparency and accountability the way that it says it does. If they have an issue in front of them on project risk categorization, they need to raise this with the Board, President, and project teams.

With regards to the Ombudsman, it does not have any teeth; I think in the development of new CAO standards if you find an IFC employee who fails to do his job or is violation the principles of the institution, you should recommend individual repercussions, not just give recommendations or wishes about how things might change.

I also think there should be a term limit for the head of the CAO.

CAO Response:⁶⁷ IFC first considered investing in an ammonia plant in Taman, but since they saw that that potential client did not share IFC's values and commitment to certain standards, along with financial factors, IFC decided to walk away from that investment. They decided to invest in the second project they considered, Russkiy Mir II.

Even though in this case there was debate about whether the project should have been a category A or category B, most major environmental and social issues associated with the project have been addressed. And IFC standards have been implemented and they can demonstrate that they are following standards, so we found that the Performance Standards had been met.

Recommendations

The event panelists identified several themes for improving CAO's Operational Policies, some of which are further elaborated in the individual case studies. The following general recommendations are drawn from the panelists' testimony and should be considered in the 2012 review of CAO's mandate and guidelines.

Recommendation 1: Clarify/improve the scope of the CAO's mandate and complaint processing

- The President of the World Bank Group, the Board of Directors, IFC senior staff, and the Vice President of the CAO must determine whether the goal of CAO intervention is to encourage affected communities and IFC clients to settle for the lowest level of social and environmental compliance acceptable to both parties, or to push IFC to meet or set international environmental and social protection best standards. If it is the former, the CAO should be clear so that communities do not have false expectations. If it is the latter, the CAO should be much stronger in addressing (or referring to the appropriate agency) systemic problems such as corruption in host countries that directly benefits, and therefore likely implicates, IFC clients.

The CAO should be particularly diligent about ensuring that the IFC has conducted a risk assessment which guarantees maximum protection for affected communities, and that IFC has taken reasonable steps to assure itself that national laws have not been ignored or changed through illegal means to reduce the social and environmental protections required of IFC clients. While IFC might be responsible only for its Performance Standards, within these is the obligation to respect national law, and if national law has been obviously corrupted to accommodate projects, the CAO should report this to the President of the World Bank Group.

- CAO project compliance assessments should rigorously evaluate domestic and international legal compliance and broader environmental and social risks as well as technical compliance with IFC Performance Standards.

Recommendation 2: Ensure IFC accountability for Performance Standards during all project stages

- The CAO should hold IFC accountable to its Performance Standards even after project loan money is dispersed or repaid; it should fully complete compliance audits to identify the nature and root cause of violations.

⁶⁷ Henrik Linders, Principal Specialist, Compliance, *Compliance Advisor/Ombudsman*, "The Experience of the CAO in the former Soviet Union: 2004-2011." September 24, 2011

- Management should encourage IFC to develop a formal method of addressing Performance Standards violations, which is directly linked to the findings of the CAO. IFC employees who violate Performance Standards should face professional repercussions.

Recommendation 3: Foster Greater Independence/Impartiality within the CAO

- The CAO Vice President should serve in this role for a maximum term of two to four years.
- The CAO office should be housed outside of the IFC building.
- Independent contractors who are not influenced by existing relationships with IFC should be hired by the CAO to conduct initial complaint assessments.

Recommendation 4: Increase the visibility of project recourse mechanisms

- IFC should be held responsible by the CAO for ensuring that clients' grievance mechanisms are known to affected communities.
- IFC should publicize its participation in projects to affected communities, possibly through print media and signs on site, so that CAO can serve as a resource to project-impacted communities.
- CAO's assessment of IFC's implementation of its 2006 Performance Standards states: "Feedback from local stakeholders suggests that interviewees at times were unaware of the existence of a complaints system, how to use it, who to contact, and how to follow up. Respondents in one project expressed that a variety of complaints remained outstanding."⁶⁸

Future Opportunities for Improving the CAO's Response to Complaints

CAO will hold public consultations in early 2012 to discuss updating its Operational Guidelines. Potential points of discussion include the terms for leadership within CAO, the rigor with which Ombudsman staff transfers cases to Compliance, and overall procedural efficiency. The schedule for these consultations will be announced on the CAO website at www.cao-ombudsman.org.

⁶⁸ Compliance Advisor/Ombudsman, "Advisory Note: Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information," *Compliance Advisor/Ombudsman*, 14; http://www.cao-ombudsman.org/documents/CAOAdvisoryNoteforIFCPolicyReview_May2010.pdf

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CRUDE ACCOUNTABILITY

P.O. Box 2345

Alexandria, VA 22301

Tel/Fax: 703-299-0854

Email: kate@crudeaccountability.org

Web: <http://www.crudeaccountability.org>