



**April 10, 2020**

*Office of the Compliance Advisor Ombudsman (CAO)*

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## **COMPLIANCE APPRAISAL: SUMMARY OF RESULTS**

*IFC Investments in Concern Galnaftogaz (IFC Project # 30477, 31723, 33721)  
Ukraine*

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Concern Galnaftogaz (GNG) is Ukraine's second largest fuel retail company by volume of oil product sales and the country's third largest company by number of gasoline filling stations. GNG's "OKKO" brand filling stations offer fuel and services such as convenience stores, car washes, and fast food. IFC has three active investments in GNG, approved in 2011, 2012 and 2013. One objective of the investments was to support GNG in the construction/refurbishing and operation of filling stations in Ukraine.

In late 2016, under agreement between GNG and a developer, Guel Park, construction commenced on a new filling station on Revutskoho Street in Kiev, Ukraine. Local residents who opposed the construction filed petitions and staged protests. The construction continued until October 2017, when protests escalated, and the near-complete building and equipment were damaged. In November 2019, the client announced that it had terminated its agreement with the developer to buy or lease the filling station. In January 2020, IFC advised CAO that GNG had sold its rights to purchase the Revutskoho Street filling station and had removed its branding and surface facilities, including gasoline pumps. To date, the filling station has not been commissioned and is not in operation.

In August 2018, CAO received a complaint filed by twenty community members with the support of Ecoaction, a local NGO. The complainants raise concerns about environmental impacts and compliance with Ukrainian regulations related to the Revutskoho Street filling station. The complainants allege a lack of community consultation around the construction of the filling station, non-compliant permitting, corruption, and use of force against protesters. Following CAO's assessment, the complaint was transferred to the CAO compliance function.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding environmental and social (E&S) outcomes and/or issues of systemic importance to the International Finance Corporation (IFC). In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised, results of a preliminary review of IFC's E&S performance in relation to these issues and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

The complainants present concerns about potential future environmental and health impacts of the filling station on their homes and neighborhood, which is densely populated and close to a recreational area. The complainants are concerned that similar filling stations have presented a safety hazard to local communities. While risks associated with the construction and operation of retail filling stations can be managed through standard mitigation measures, filling stations are associated with a range of hazards if not managed well, and there is a literature that supports the complainants concerns regarding the health impacts of filling stations located near to residential areas.

The complainants assert that their efforts to raise concerns about the environmental impacts of the Revutskoho Street filling station were initially rejected by Guel Park, while GNG maintained

that the development was not their responsibility. The complainants also assert that they have experienced threats and intimidation as a result of their efforts to express their concerns and opposition to the filling station.

CAO finds indications that IFC's review and supervision of the project may not have complied with relevant E&S requirements. A key concern as raised in IFC's supervision documentation is that construction of a filling station such as the Revutskoho Street development falls outside of the client's responsibility because it was being constructed by a separate company. CAO has questions about this approach in light of Performance Standards provisions that require clients to consider and manage third party risk, including risk that arises through contracting arrangements.

IFC itself is not expected to review and supervise every construction project carried out by a client or its client's contractors in an investment of this nature. Rather, IFC is expected to review and supervise such construction by means of the client's environmental and social management system (ESMS). In this case IFC was required to ensure that the client developed an ESMS to address the full range of its business activities, including its filling stations – particularly as the expansion of the filling station network was a significant part of the client's business plan.

Following the October 2017 protests, IFC became aware of the dispute relating to the Revutskoho Street filling station. In such circumstances, the Sustainability Policy envisages that IFC will work with its client to address issues arising during project implementation in a manner that is consistent with the Performance Standards. In particular, IFC is required to seek assurance that the client's ESMS is being applied to the activity in question, and that it adequately addresses relevant risks. IFC has taken steps to gather information about the Revutskoho Street filling station and the client's filling station business generally. However, CAO has questions as to whether IFC's approach provides a basis to conclude that the client's management of risk associated with the construction of new retail filling stations is consistent with relevant Performance Standards requirements, either in relation to the Revutskoho Street filling station, or more generally.

Were GNG pursuing construction of the Revutskoho Street filling station, the combination of concerns regarding compliance and E&S outcomes outlined above might be sufficient to trigger a compliance investigation. However, given that GNG appears to have abandoned the Revutskoho Street site, CAO concludes that a compliance investigation is not warranted in response to this complaint. Further, in the course of this compliance appraisal, IFC reported commencing work with its client to revise its stakeholder engagement policy. This goes some way to addressing CAO's concerns regarding IFC's supervision of the client's ESMS as relates to the construction of filling stations more generally. Going forward IFC has also undertaken to ensure that the client incorporates E&S requirements consistent with the IFC Performance Standards into the construction and site development agreements that it enters into with joint venture partners and contractors. In these circumstances, CAO has decided to close this complaint without further investigation.

As the complainants' concerns regarding fraud and corruption fall outside CAO's mandate, these aspects of the complaint have been referred by CAO to the World Bank Group's Office on Institutional Integrity.

## **About CAO**

*CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.*

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

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

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## Acronyms

<b>Acronym</b>	<b>Definition</b>
AMR	Annual Monitoring Report
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
EHS	Environmental, Health and Safety
ESAP	Environmental and Social Action Plan
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
GNG	Galnaftogaz
GRI	Global Reporting Initiative
IEG	Independent Evaluation Group
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
PDS	Project Data Sheet
PLAS	Plans of Localization and Elimination of Emergencies
PS	Performance Standards (IFC)

## **I. Overview of the Compliance Appraisal Process**

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## II. Background

### **IFC Investment History**

IFC has 3 active projects with Concern Galnaftogaz (abbreviated here as “GNG” and “the client”): 31723, 33721, and 30477. Each project supports the expansion of GNG throughout Ukraine by financing filling stations and other transportation infrastructure. All are classified as Category B projects, which IFC describes as business activities with potential limited adverse environmental or social risks and/or impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.<sup>1</sup>

#### *IFC Project #30477: GNG Central*

Approved in 2011, IFC’s project #30477 supports GNG’s expansion central and eastern Ukraine through (a) building/reconstructing around 75 high-volume filling stations, convenience stores, and liquefied petroleum gas modules; (b) investing in infrastructure upgrades and measurement / control systems, and; (c) managing working capital risks by partially replacing short-term loans with long-term debt.<sup>2</sup> The total project cost was estimated at about \$210 million. IFC arranged a debt financing package of \$80 million.

#### *IFC Project #31723: JV East*

Approved in December 2012, IFC’s project #31723 supports LLC Okkoskhidinvest—a joint venture between GNG and an emerging markets investment fund, ADM Capital—to build/purchase and operate high-volume OKKO filling stations and to supply additional working capital in order to increase the client’s operations to 80 stations.<sup>3</sup> The total project cost was estimated at US\$165m. IFC arranged a debt financing package of \$85m with an option to convert \$15m of this to equity.

#### *IFC Project #33721: GNG Syndicate*

Approved in November 2013, IFC’s project #33721 supports the expansion of GNG throughout Ukraine, and particularly in the southern region, by (a) expanding the number of filling stations, convenience stores, and liquefied petroleum gas modules, (b) investing in infrastructure upgrades and measurement / control systems, and (c) managing working capital risks by partially replacing short-term loans with long-term debt.<sup>4</sup> The total project cost was estimated at US \$220m. IFC arranged a debt financing package of \$100m. As reported by IFC, \$5.5m of its loan amount has not been disbursed.

### **Summary of Complaint**

In 2016 Guel Park (the developer) commenced construction on a new filling station on the intersection of Revutskoho Street and Anna Akhmatova Street in Kiev, Ukraine. The client’s engagement with the project developer was initiated in May 2016 through a sale and purchase

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<sup>1</sup> IFC. “Environmental and Social Categorization.” Available at: <http://bit.ly/ESCCategorization>.

<sup>2</sup> IFC. “GNG Central: Environmental & Social Review Summary.” March 30, 2011. Available at: <http://bit.ly/IFC-Disclosure-30477-ESRS>; IFC. “GNG Central: Summary of Proposed Investment.” March 30, 2011. Available at: <http://bit.ly/IFC-Disclosure-30477-SPI>.

<sup>3</sup> IFC. “JV East: Environmental & Social Review Summary.” July 26, 2012. Available at: <http://bit.ly/IFC-Disclosure-31723-ESRS>; IFC. “JV East: Summary of Investment Information.” July 26, 2012. Available at: <http://bit.ly/IFC-Disclosure-31723-SPI>.

<sup>4</sup> IFC. “GNG Syndicate: Environmental & Social Review Summary.” September 25, 2013. Updated August 8, 2016. Available at: <http://bit.ly/IFC-Disclosure-33721-ESRS>; IFC. “GNG Syndicate: Summary of Investment Information.” September 25, 2013. Available at: <http://bit.ly/IFC-Disclosure-33721-SII>.

agreement. CAO understands that the client committed to buy the developer company, Guel Park LLC, upon completion of construction of the filling station.

Local residents who opposed the construction filed petitions and staged protests from December 2016 onwards. In August 2017, court action to stop the construction commenced. The Supreme Court upheld a lower court judgment finding that the Guel Park development was in accordance with the law. In October 2017 protests against the construction escalated, and the near-complete building and equipment were damaged. To date, the filling station has not been commissioned and is not in operation.

In August 2018, CAO received a complaint filed by twenty community members with the support of Ecoaction, a local NGO. The complainants raise concerns about environmental impacts and compliance with Ukrainian regulations related to the Revutskoho Street filling station. The complainants assert that there has been a lack of community consultation around the construction of the filling station and use of force against protesters.

The complainants allege that the developer of the Revutskoho Street filling station, Guel Park, is controlled by GNG. They allege that the client's engagement of Guel Park to develop the filling station was a business strategy to distance the client from construction of facilities with environmental and social impacts. As set out in CAO's March 2019 Assessment Report, GNG stated that the gas filling station was being constructed by Guel Park, and that GNG and Guel Park had signed an agreement according to which GNG would either lease or purchase the filling station after the completion of construction works, official commissioning of the facility and registration of Guel Park's title to GNG. For this reason, GNG indicated that it had no legal connection with the construction of the gas station and had no legal right to interfere in a business activity of a Guel Park as an independent legal entity.

In relation to the Revutskoho Street filling station, the complainants raise specific concerns relating to:

- non-compliance with local building code and cadaster requirements;
- lack of public consultation or stakeholder engagement; and
- potential environmental and health impacts on local residents, and lack of analysis of such risks.

The complainants allege the client has intimidated activists and community members who have opposed project development through threats and litigation, and that during lawful protests on September 27 and 28, and October 4, 2017, police violently cracked down on protesters using sticks and tear gas at the request of GNG.

The complainants also allege that GNG has engaged in corrupt practices associated with the construction of its filling stations, including at the Revutskoho Street station. As concerns for fraud and corruption fall outside CAO's mandate, CAO has passed these aspects of the complaint to the World Bank Group's Office on Institutional Integrity.

Further details of the issues raised by the complainants together with a summary of client responses are dealt with in the body of this report.

During CAO's Assessment process, both parties indicated their preference for CAO to initiate a compliance process.

### III. Analysis

#### **IFC Policy Framework**

IFC's project #30477 (2011) is covered by the 2006 version of *IFC's Policy on Environmental and Social Sustainability* ("Sustainability Policy") and *Performance Standards on Social & Environmental Sustainability* ("Performance Standards")—together referred to as the Sustainability Framework.<sup>5</sup> IFC's investments in the client through projects #31723 (2012) and #33721 (2013) are covered by the 2012 version of the Sustainability Framework. IFC's Sustainability Framework includes several requirements relevant to the complaint. References below are to the 2012 Framework unless otherwise indicated. IFC's Environmental and Social Review Procedures set out how IFC will ensure client compliance with the Policy and Performance Standards. IFC's due diligence and supervision of its investments in the client has been carried out under version 4 (2009) and subsequent versions of the ESRP.<sup>6</sup>

During its pre-investment review, IFC is required to review the client's environmental and social management system (ESMS) and risk management practices already in place (Sustainability Policy, para. 27). IFC will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time (Sustainability Policy, para. 22).

PS1 requires that IFC clients establish and maintain an ESMS that is appropriate to the nature and scale of the project and commensurate with the level of social and environmental risks and impacts (para. 5).<sup>7</sup> The ESMS incorporates several elements: a policy, identification of risks and impacts; management programs; organizational capacity and competency; emergency preparedness and response; stakeholder engagement; and monitoring and review. PS1 requires that clients establish an E&S policy that is consistent with the Performance Standards, and specifies that the project will comply with the applicable laws and regulations of the jurisdictions in which it is being undertaken (para. 6). Client requirements related to pollution prevention (PS3); community health and safety, and the management of security forces (PS4) are implemented in the client's business activities through the ESMS.

PS1 requires that, for projects that involve specifically identified physical elements, aspects, and facilities that are likely to generate impacts, environmental and social risks and impacts should be identified in the context of the project's area of influence (para. 8), including activities and facilities that are directly owned, operated or managed, including by contractors.

The Sustainability Policy further notes that, at times, a client's ability to achieve E&S outcomes consistent with the PS will be dependent on third party actions, which may include contractors (para. 23). IFC, as part of its own due diligence process, will review clients' identification of third-party risks, and will determine whether such risks are manageable, and if so under what conditions, so as to create outcomes consistent with the PS.

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<sup>5</sup> Further information about IFC's Sustainability Framework is available at: <http://bit.ly/IFC-Sustainability-Framework>. Information about IFC's Performance Standards is available at: <http://bit.ly/IFC-Performance-Standards>.

<sup>6</sup> IFC, Environmental and Social Review Procedures Manual, available at: <http://bit.ly/ESRPManual>.

<sup>7</sup> In the context of this appraisal, IFC's three active investments comprise the 'project': #33721, #3172, and #30477. IFC investments support the expansion of GNG operations, which encompasses a large network of filling stations and related infrastructure.

PS1 requires clients to address E&S risks and impacts commensurate to the client's control and influence over the third-party actions (para 9). PS1 also requires clients to establish procedures to monitor and measure ESMS effectiveness, noting that monitoring should be adjusted according to performance experience and feedback (para. 22.)

In relation to stakeholder engagement, PS1 requires IFC clients to provide affected communities with access to information on the purpose, nature and scale of the project, the duration of proposed project activities, any risks to and potential impacts on those communities, the envisaged stakeholder engagement process and the grievance mechanism (para. 29).

When affected communities are subject to identified risks and adverse impacts from a project, the client will undertake a process of consultation in a manner that provides the affected communities with opportunities to express their views on project risks, impacts and mitigation measures, and allows the client to consider and respond to them (para. 30). The extent and degree of engagement required by the consultation process should be commensurate with the project's risks and adverse impacts and with the concerns raised by the affected communities.

### **IFC's Pre-Investment Due Diligence**

At the pre-commitment phase of the project cycle, CAO considers whether IFC exercised due diligence in its review of the E&S risks of the investment. IFC's review must be commensurate with the level of E&S risks and/or impacts (Sustainability Policy, para. 6).<sup>8</sup> In conducting this compliance appraisal, CAO has considered IFC's approach to the assessment of the client's ESMS to manage particularly as applied to the expansion of their network of filling stations.

#### *IFC's Review of E&S Risk*

During its pre-investment due diligence, IFC reviewed technical, environmental, health, safety and social information and carried out field visits in March 2011 to filling stations and fuel terminals in Lviv, Ukraine.<sup>9</sup> IFC staff reported that social specialists contributed to IFC's pre-investment review of the project, however CAO was not able to confirm this.

IFC identified several Performance Standards as particularly significant to the project: PS1: Social and Environmental Assessment and Management Systems PS2: Labor and Working Conditions PS3: Pollution Prevention and Abatement PS4: Community Health, Safety and Security.<sup>10</sup>

IFC's E&S review summary (ESRS) for its first investment in the client (project #30477) noted that the client's retail filling stations were primarily OKKO brand stations, and that these stations had been refurbished or built according to European Union (EU) standards.

In its ESRS for projects #30477 and #31723, IFC described key E&S issues for the project as: (i) prevention of groundwater/soil contamination; (ii) control of emission of volatile organic compounds (VOCs); (iii) operational hazards and emergency response; (iv) occupational health and safety; (iv) road transportation; and (iii) community engagement and development. IFC reported that the client had presented plans to address these impacts and ensure that the project would meet E&S requirements, including the IFC Performance Standards, EHS Guidelines and national laws and regulations. No key risks were identified for project #33721.

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<sup>8</sup> IFC. 2012. Sustainability Policy, paragraph 6.

<sup>9</sup> IFC, 2011, "GNG Central: ESRS".

<sup>10</sup>Ibid.

### *IFC Review of the Client's ESMS*

IFC and IEG documents indicate that an ESMS was prepared for the project. IEG assessed the ESMS to be satisfactory, noting that the client was engaging with IFC to enhance its environmental, social, health and safety management systems, which were to be fully compliant with the Performance Standards. Limited documentation in relation to the project ESMS was made available to CAO during this course of this appraisal.

### *Client E&S Action Plans*

The ESAP for project #30477 agreed between IFC and the client in 2011 focused primarily on environmental improvements for the client's gas terminals, but also required that the client "involve the communities near the retail stations in the fire drills, if the communities could be affected by the potential fires."<sup>11</sup> Although the 2012 ESAP did not include any actions related to retail filling stations or the client's ESMS,<sup>12</sup> the 2013 ESAP required that the client develop and implement an EHS auditing program with both internal and external EHS audits by December 1, 2013.<sup>13</sup> No specific actions were included related to security, community engagement, disclosure or consultation.

The ESRS provided that GNG had established programs with specified budgets for community engagement and development and noted that the client published a hotline number at each filling station for nearby communities to express their concerns related to GNG operations.<sup>14</sup> Project documents indicate that the client engaged with external stakeholders to inform its corporate social responsibility strategy. However, CAO's appraisal has not identified documentation of the client's engagement with local communities prior to constructing or renovating filling stations.

The 2013 ESRS for project #33721 noted in regard to security personnel that GNG hires an external agency for its depots and filling station security. The security team is not armed. For serious security issues, GNG reports directly to local police stations.<sup>15</sup> CAO found no security risk assessment on file.

### **IFC's Supervision of the Project**

CAO's compliance appraisal considered IFC's supervision of projects #30477, #31723, and #33721 as well as IFC's response to disputes regarding the Revutskoho Street filling station from 2017 onwards. This included: (a) IFC's review of client implementation of measures agreed under the ESAP and (b) IFC's approach to supervising the effectiveness of the client ESMS in avoiding and mitigating risk related to the construction of filling stations given the requirements of the Performance Standards. During project supervision, IFC is required to review client performance against the E&S conditions of investment (para. 45) as well as following the ESRPs. The ESRPs note that the purpose of supervision is to obtain information to assess the status of project's compliance with the PS and other specific E&S requirements agreed at commitment (ESRP 6.1). This includes periodic review of project-related information that may become available and defining any changed project circumstances that were not anticipated in appraisal and that could or do result in adverse E&S risks and/or impacts (ESRP 6.2.1).

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<sup>11</sup> IFC, "ESAP: GNG Central: ESRS."

<sup>12</sup> IFC, 2012, "JV East: ESRS."

<sup>13</sup> IFC, 2013, "GNG Syndicate: ESRS."

<sup>14</sup> IFC, 2011, "GNG Central: ESRS."

<sup>15</sup> Ibid.

### *Compliance with National Law*

The complainants allege that the construction of a filling station is not allowed in the area of the Revutskoho street site according to the cadaster and that the construction permit granted to Guel Park was for a parking lot. The complainants further allege that local building code requirements prohibit filling stations from being located within 50 meters of residential buildings and within 100 meters of public transport facilities. The complainants claim that the Revutskoho Street station is in fact 30 meters away from the nearest residential building and 10.5 meters away from a public bus station. The complainants assert that, in July 2017, the Department of State Architectural and Construction Inspectorate of Kiev identified such regulatory violations and requested the developer, Guel Park, to remedy them.

The complainants allege that the construction works violate their constitutional right for a safe environment under Article 50 of the Constitution of Ukraine. The complainants add that, contrary to Ukrainian law No 45/95-BP 'On Environmental Expertise,' no ecological or environmental survey to assess the potential environmental risks of the planned construction was conducted prior to the start of the construction. The complainants further allege that, in violation of Article 5 of Ukrainian Law on 'The Foundation of Principles of Urban Development' and of Article 21 of Ukrainian Law 3038-IV on 'Regulation of Urban Development Activities,' there were no public consultations by either Guel Park or GNG about the construction of a filling station at Revutskoho Street.

GNG claims that (i) the developer obtained from relevant state authorities an approving opinion for the planned construction and a study confirming compliance with applicable legal requirements, and (ii) that inspections found no breaches of urban planning laws.

During supervision, IFC received information about project compliance with national laws through the client's Annual Monitoring Reports (AMR). In relation to the issues raised in the complaint, GNG AMRs note that, although filling stations are considered "objects of high risk" and thus require emergency preparedness and response plans ('Plans of Localization and Elimination of Emergencies', or PLAS), Ukrainian legislation does not require community participation in defining such plans. CAO's preliminary review of documentation did not identify any site-specific construction plans or permitting compliance documentation submitted to IFC.

Documentation shared with CAO by IFC indicates that the client required Guel Park to obtain city building conditions and restrictions of land development for construction of a filling station or for reconstruction of existing buildings for a filling station, and required that the developer comply with Ukrainian law. In addition, the agreement between GNG and Guel Park required that the developer hold public hearings in accordance with Ukrainian laws and procedures.

IFC supervision documentation shows that IFC raised questions to the client concerning national legal compliance after being alerted to the Revutskoho Street protests. In response, GNG reported that a 2017 action on behalf of Kyiv City Council against Guel Park was dismissed by the courts on the basis that the acquisition of the plot and construction of the filling station was lawful. GNG additionally noted that the Ukrainian Law on Environmental Expertise, in effect until December 2017, did not require environmental impact assessments for real-estate objects that are being constructed or reconstructed. GNG also noted that current Ukrainian legislation, the Law on Environmental Impact Assessment, does not require a developer to conduct public consultations in connection with every new construction or reconstruction project.

## *Stakeholder Engagement*

The complainants allege that neither GNG nor Guel Park engaged stakeholders prior to beginning construction of the filling station. The complainants allege that, after discovering the nature of the filling station development at Revutskoho Street, they reached out to Guel Park and GNG in February 2017 to invite them to a public discussion about the development. The complainants claim that GNG declined on the basis that they were not involved in construction, and that Guel Park did not respond.

GNG states that, after learning about community's discontent with the construction of the filling station and the lawsuit brought against Guel Park, they called for a meeting with local residents to find a satisfactory solution. The meeting took place on October 26, 2017. The complainants assert that during the October 2017 meeting, GNG claimed that it could not influence the actions of Guel Park.

IFC's supervision documents from 2013-2016 note that the client had a detailed community engagement plan and maintained good relationships with various communities near its operation sites. The May 2016 development agreement between GNG and Guel Park required that the developer comply with its stakeholder engagement plan. CAO's preliminary review of the client stakeholder engagement plan indicates that key aspects of the information disclosure and community engagement requirements were not implemented in relation to the Revutskoho Street gas filling station.

GNGs AMRs do not report on stakeholder engagement activities at the level of individual GNG's filling stations, renovation or construction activities. IFC's AMR reviews note that, as a member of the United Nations Global Compact, the client publishes an annual report on progress in implementing principles on human rights, labor, environment and anticorruption. CAO's preliminary review of project documentation has not found evidence of consultation or disclosure of E&S documentation in relation to the Revutskoho Street filling station. As discussed further below, following the September and October 2017 protests against the Revutskoho Street station, IFC's AMR review required follow-up actions and requested that the client put a temporary hold on construction. In June 2019, IFC reported to CAO that the client's stakeholder engagement plan was developed mainly based on gas filling station locations outside of dense residential areas. IFC noted that it was working with the client to update its stakeholder engagement plan to meet the requirements of Performance Standard 1.

## *Environment & Health*

The complaints allege that the construction works violate their constitutional right for a safe environment. The complainants add that, in the same fashion as the Revutskoho Street station, other OKKO filling stations cause negative environmental impacts, and they refer specifically to other OKKO sites in Kiev. The complainants' concerns relate to pollution to soil, water and air, which may have adverse health effects.

GNG states that, although there is no obligation to carry out an environmental impact assessment for filling stations under Ukrainian law, Guel Park did request and receive such an assessment for the Revutskoho Street station.<sup>16</sup>

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<sup>16</sup> As noted above in relation to compliance with national law, GNG asserts that the applicable law did not require environmental impact assessments for real-estate objects that are being constructed or reconstructed.

In addition to PS3 and the General EHS Guidelines, the World Bank Group EHS Guidelines for Retail Petroleum Networks (*Retail Petroleum EHS Guidelines*) set out guidelines for managing EHS issues associated with retail petroleum facilities.<sup>17</sup> These guidelines recommend monitoring and management measures to address risks arising from leaks and spills, wastewater, waste management, and air emissions.

As noted in the Retail Petroleum EHS Guidelines, community health and safety issues associated with the operation of retail petroleum sites include potential public exposure to spills, fires and explosions.<sup>18</sup> While these issues are indicated as being generally negligible for well designed and managed facilities,<sup>19</sup> CAO notes that there is scientific literature to support the complainants' concerns regarding health risks associated with living in close proximity to gas stations, including increased instances of childhood cancer.<sup>20</sup>

GNG's AMRs provided IFC with a range of environmental monitoring data, including air emissions and water quality at several filling station sites, although it is not clear what standards are being reported against, or what sample or proportion of filling stations are represented. AMRs also report information about occupational health and safety, air emission, ambient air quality, industrial effluences, waste water, general waste, and hazardous waste, among others. In 2015 and 2016 IFC reported that the ambient air quality and noise levels for the client's fuel filling stations meet both local regulatory and IFC requirements. IFC reported to CAO that it has confidence in the client's environmental performance because GNG follows some European standards for aspects of its filling station network facilities.

CAO notes that the client's May 2016 agreement with Guel Park required the developer to adhere to Ukrainian law in relation to design and construction of the filling station. However, the agreement did not require the developer to comply with European standards, or with the environmental aspects of the Sustainability Framework or World Bank Group Environmental, Health and Safety Guidelines.

#### *Response to Protests*

The complainants claim that during protests on September 27 and 28, and October 4, 2017, at the request of GNG, police violently cracked down on protesters using sticks and tear gas. The complainants also claim that GNG and Guel Park are intimidating complainants by making threatening phone calls and has bribed some residents in exchange of their acceptance of the project.

The complainants note that the situation escalated following exchanges between the developer and complainants in March 2017, and that subsequently armed guards began protecting the station.

The complainants state that they were personally not involved in the destruction of filling station equipment that occurred during the October 2017 protests. Nevertheless, complainants claim that

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<sup>17</sup> IFC Environmental, Health and Safety Guidelines for Retail Petroleum Networks, April 30, 2007, available at: <http://bit.ly/EHSPetroleumNetwork>.

<sup>18</sup> IFC Environmental, Health and Safety Guidelines for Retail Petroleum Networks, April 30, 2007, available at: <http://bit.ly/EHSPetroleumNetwork>, p. 8.

<sup>19</sup> *Ibid.*

<sup>20</sup> Jean D. Brender, Juliana A. Maantay, and Jayajit Chakraborty, "Residential Proximity to Environmental Hazards and Adverse Health Outcomes," *American Journal of Public Health*, 2011, 101 (Suppl 1): S37-52, available at: <http://bit.ly/2tYI8hR>.

a judge placed liens on some of the activists' apartments at Guel Park's request in May 2017. According to the complainants, Guel Park's judicial request was not well-founded and should not have been granted. The complainants allege that, during their October 2017 meeting, GNG indicated that it could not help to address their concerns about liens. The liens filed by Guel Park against complainants were ultimately not upheld by local courts, although complaints reported to CAO that one of the liens remains in effect pending further litigation.

GNG claims that, during the October 2017 protests, a group of protesters smashed refueling pumps and other equipment, broke windows and display counters, and destroyed inventory, station accessories, and other property. GNG did not respond to allegations of reprisals or to the liens placed on activists' property, other than to maintain that it does not have any legal connection with the construction of the filling station and has no legal right to interfere in a business activity of an independent legal entity.

Regarding the use of security forces, GNG's AMRs state only that security forces are contracted where necessary for labor safety and health of employees and citizens. CAO's preliminary review of documentation has not identified a security risk assessment.

#### *Grievance Redress*

The complainants describe several attempts to engage with GNG about their concerns, although not directly through the clients grievance redress mechanism.

After becoming aware of construction activities underway at Revutskoho Street in December 2016, the complainants claim to have sent a letter to the Deputy District Administrator. The complainants claim to have received a reply that the project involved re-construction of an existing structure on the plot. That same month, the complainants state that they submitted inquiries to the State Architectural and Construction Inspection, and filed a petition with Kiev City Council. After construction activities continued in late January, 2017, the complainants registered a "peaceful protest action against construction of OKKO filling station" with Kyiv City Council. Following the protests, the complainants reported several interactions with GNG representatives, although they note that these were not formal consultations. Subsequently, complainants filed the legal complaints noted above.

IFC and GNG report that the developer announced the construction in a newspaper in May 2016, and that Guel Park received a letter in mid-January 2017 from the Darnytsya Administration confirming that it had received no complaints from the public.

GNG's AMRs note that it has a grievance redress system to deal with complaints about community health, safety and security. As reported this includes a process for the company to conduct an investigation of the causes and origin of the situation. GNG reports that it logs and responds to complaints requiring the responsible employee to deal with and respond to incidents within a prescribed timeframe.

IFC supervision documentation does not indicate whether this system was triggered in relation to concerns about the Revutskoho Street station.

#### *IFC Response to the Revutskoho Street Protests*

In November 2017, IFC engaged the client to discuss a response to the protests. IFC requested a copy of the GNG stakeholder engagement and PS4 security plans, and queried whether GNG had disclosed information about project permits and licenses and other information about

environmental and safety management. In its response, GNG noted that the construction of the Revutskoho Street filling station was being run by Guel Park and stated that this was an unrelated company. IFC supervision documentation notes IFC requested information from its client on the activities of Guel Park.

According to the client, the terms of the contract between GNG and Guel Park required that the station be constructed in accordance with state legislation requirements, and that the construction should be publicly disclosed. The client indicated to IFC that it would provide stakeholder engagement plans, but requested additional information on PS4, noting that the company was not familiar with the requirements.

In December 2017, IFC staff prepared a summary of IFC engagement with the client in response to the protests. IFC reported that the client had made a disclosure about project activities in local newspapers and that it had hosted meetings with stakeholders, with no issues being raised. The IFC team conveyed that they did not view the construction as involving E&S issues of material concern, including in relation to community relations or safety. IFC noted having identified no evidence that GNG mobilized local police or security forces to respond to protests. As follow-up measures, IFC instructed the client to compile information about the protest, including relevant parties, to publish a corporate statement on the incident, and to establish a list of pre-conditions for resuming construction at the site. IFC also requested GNG to provide advance notice before resuming activities on site and reserved the right to conduct site visits.

IFC's supervision of client actions in response to the Revutskoho complaint continued throughout 2018 and 2019, including by updating the project ESAP to add action points requiring the client to provide a summary of current and future filling stations in residential areas and to develop public consultation procedures and a grievance mechanism for gas stations in residential areas and future greenfield filling station development.

In July 2019, IFC reported that it had advised the client about its responsibilities in mitigating third party risk. IFC indicated that the client had committed to resolving disputes with community members near to the Revutskoho Street station, and that the client committed to working with Guel Park to resolve concerns for threats and reprisals. IFC further noted that it continued to work with the client to improve its environmental and social performance, in particular with regard to operational safety, and was working with the client to review and update its Stakeholder Engagement Plan to meet 2012 PS1 requirements.

IFC shared with CAO documentation of the legal relationship between GNG and Guel Park during the period of CAO's appraisal, in October 2019.

#### *GNG-initiated public meeting*

On August 30, 2019, GNG convened a public meeting at the Revutskoho Street station site with the intention to discuss the situation surrounding the filling station. The meeting was announced on the GNG website one week in advance, and information about the meeting was posted in public spaces a day or two in advance.<sup>21</sup> The client reported to IFC that around 30 people attended the meeting, including representatives of the initiative group representing local residents as well as non-resident members of militia groups. At the meeting, the initiative group presented

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<sup>21</sup> Okko website, August 23, 2019, News Release in Ukrainian, "OKKO invites residents of Revutskogo Street and Akhmatova Street in Kyiv to dialogue," available at: <http://bit.ly/2t9Mra1>, English translation prepared by CAO.

to GNG a letter of appeal noting that the proposed meeting format was unacceptable to them because it was not formal or transparent. The initiative members requested that the company convene a meeting with the residents in a different format with additional information about the agenda to be discussed and with at least one week prior notice.

According to the complainants, they received very short notice of the proposed meeting at the Revutskoho Street site and felt that it was a mere formality or “check box” exercise on behalf of the company. The complainants were concerned that the meeting was informal and would not engage substantively with their concerns.

The client reported to IFC that it was disappointed the residents had not been willing to engage substantively during the meeting, but that they were considering the requests of the initiative group, and that they would try to continue the dialogue.

The complainants reported to CAO that they did not receive a response from the client.

#### *Sale of GNG rights to Revutskoho Street Station*

In November 2019, IFC advised CAO that its client intended to sell its interest in the Revutskoho street gas filling station, and advised CAO that they would recommend to the company that it include E&S responsibilities in its sale agreement. The complainants reported that, in November 2019, the “OKKO” brand signage was removed from the filling station site. The same day, the complainants report that an individual who claimed to be linked to the company came to the petrol station site, along with a representative of the Ministry of Internal Affairs of Ukraine, and spoke with local residents about how community opposition to the project was driving away investment. The complainants shared with CAO video footage of interactions between this individual, media, and local residents.

Subsequently, the client published an announcement on its website that it had decided to terminate its relationship with Guel Park.<sup>22</sup> In its news release, the client noted that Guel Park had failed to address the concerns of the local community and had not found a compromise solution. The client stated that it was no longer related to the construction and accepts no liability for any future actions of the developer and land plot lessee within this site.

The complainants expressed concern that the news release suggested that an agreement had been reached between the client and the local community, which they emphasize has not happened. The complainants noted that the news release acknowledged a written agreement between GNG and Guel Park, which they stated the client had previously denied.

In January 2020, IFC advised CAO that the Revutskoho Street filling station had been partially demolished and that GNG had sold its rights to purchase the site. IFC reported to CAO that the client sold the station to a company specialized in distressed assets management with better capacity to develop the station site for other purposes.

The complainants confirmed that gas fuel pumps, OKKO signage, and fencing had been removed from the project site but noted that the fuel connections and other infrastructure remained.

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<sup>22</sup> OKKO Website, November 21, 2019, News Release in Ukrainian, “OKKO and local residents reached an agreement on the petrol station at Revutskogo Street in Kyiv: the company is no longer related to the construction” available at: <http://bit.ly/2FOXIZE>, English translation prepared by CAO.

### *IFC commitments to enhanced supervision*

In the course of this compliance appraisal IFC made the following commitments to enhanced supervision of the client's construction activities. First, IFC reports working with the client to strengthen its approach to stakeholder engagement in relation to planned construction projects. This includes a commitment to develop a public consultation plan for future greenfield gas station developments. IFC also reports working with the client to strengthen its approach to community health and safety assessment and monitoring in relation to new filling stations. Going forward IFC has also undertaken to ensure that the client incorporates E&S requirements consistent with the IFC Performance Standards into the construction and site development agreements that it enters into joint venture partners and contractors.

### **Conclusions**

CAO's appraisal raises a number of questions as to IFC's supervision of the client's ESMS implementation – particularly as relates to the conduct of environmental and social assessments for new filling stations in accordance with PS requirements.

First, CAO has questions as to IFC's application of PS1 consultation and disclosure requirements in relation to the client's plans to construct new filling stations. CAO is concerned that complainants may not have not been informed about significant potential hazards (such as those addressed in filling station PLAS), as required by PS1 regardless of whether such engagement was mandated under national law. CAO also has concerns that complainant opposition to the filling station was not addressed by the client through its grievance mechanism and, instead the complainants allege they received verbal threats, and reprisals in the form of liens placed against their apartments by Guel Park.

Second, CAO has questions as to IFC's application of its third party risk management requirements to the client's business, particularly the third party construction model that was used to develop the Revutskoho Street filling station. The transfer of E&S risk assessment and mitigation requirements to the developer is an important aspect of this requirement and it is unclear how effective IFC's guidance to its client has been in this respect.

Third, CAO has questions about how IFC supervised the client to assess the risks for community safety and the use of security forces, as required by IFC PS3 and PS4.

In relation to the later stage of IFC's supervision, CAO recognizes that IFC engaged with its client to better understand the context of the Revutskoho Street protests and the status of the construction project, and the decision of the client decision not to pursue the Revutskoho Street filling station development. CAO notes also IFC commitments to enhanced supervision of relevant E&S risks provided in the course of this compliance appraisal as outlined above.

#### **IV. CAO Decision**

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding environmental and social (E&S) outcomes and/or issues of systemic importance to the International Finance Corporation (IFC). In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised, results of a preliminary review of IFC's E&S performance in relation to these issues and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

The complainants present concerns about potential future environmental and health impacts of the filling station on their homes and neighborhood, which is densely populated and close to a recreational area. The complainants are concerned that similar filling stations have presented a safety hazard to local communities. While risks associated with the construction and operation of retail filling stations can be managed through standard mitigation measures, filling stations are associated with a range of hazards if not managed well, and there is a literature that supports the complainants concerns regarding the health impacts of filling stations located near to residential areas.

The complainants assert that their efforts to raise concerns about the environmental impacts of the Revutskoho Street filling station were initially rejected by Guel Park, while GNG maintained that the development was not their responsibility. The complainants also assert that they have experienced threats and intimidation as a result of their efforts to express their concerns and opposition to the filling station.

CAO finds indications that IFC's review and supervision of the project may not have complied with relevant E&S requirements. A key concern as raised in IFC's supervision documentation is that construction of a filling station such as the Revutskoho Street development falls outside of the client's responsibility because it was being constructed by a separate company. CAO has questions about this approach in light of Performance Standards provisions that require clients to consider and manage third party risk, including risk that arises through contracting arrangements.

IFC itself is not expected to review and supervise every construction project carried out by a client or its client's contractors in an investment of this nature. Rather, IFC is expected to review and supervise such construction by means of the client's environmental and social management system (ESMS). In this case IFC was required to ensure that the client developed an ESMS to address the full range of its business activities, including its filling stations – particularly as the expansion of the filling station network was a significant part of the client's business plan.

Following the October 2017 protests, IFC became aware of the dispute relating to the Revutskoho Street filling station. In such circumstances, the Sustainability Policy envisages that IFC will work with its client to address issues arising during project implementation in a manner that is consistent with the Performance Standards. In particular, IFC is required to seek assurance that the client's ESMS is being applied to the activity in question, and that it adequately addresses relevant risks. IFC has taken steps to gather information about the Revutskoho Street filling station and the client's filling station business generally. However, CAO has questions as to whether IFC's approach provides a basis to conclude that the client's management of risk associated with the construction of new retail filling stations is consistent with relevant

Performance Standards requirements, either in relation to the Revutskoho Street filling station, or more generally.

Were GNG pursuing construction of the Revutskoho Street filling station, the combination of concerns regarding compliance and E&S outcomes outlined above might be sufficient to trigger a compliance investigation. However, given that GNG appears to have abandoned the Revutskoho Street site, CAO concludes that a compliance investigation is not warranted in response to this complaint. Further, in the course of this compliance appraisal, IFC reported commencing work with its client to revise its stakeholder engagement policy. This goes some way to addressing CAO's concerns regarding IFC's supervision of the client's ESMS as relates to the construction of filling stations more generally. Going forward IFC has also undertaken to ensure that the client incorporates E&S requirements consistent with the IFC Performance Standards into the construction and site development agreements that it enters into with joint venture partners and contractors. In these circumstances, CAO has decided to close this complaint without further investigation.

As the complainants' concerns regarding fraud and corruption fall outside CAO's mandate, these aspects of the complaint have been referred by CAO to the World Bank Group's Office on Institutional Integrity.