



APPRAISAL REPORT

CAO Appraisal for Audit of IFC

CAO Compliance

O-I-R7-Y06-F086
January 15, 2008

**Karachaganak Project
Kazakhstan**

**Case of
Green Salvation/ Residents in the Village of Berezovka II**

Summary

This appraisal report responds to a complaint about the Karachaganak Project, an IFC investment. The complaint was filed by the civil society organization Green Salvation Ecological Society (Green Salvation) on behalf of villagers in Berezovka, Kazakhstan. This is the second complaint to CAO in relation to IFC's involvement in the Karachaganak Project.

The first complaint filed by villagers of Berezovka, supported by the civil society organization Crude Accountability, was dated August 22, 2004. The first complaint was transferred to CAO Compliance for appraisal on August 30, 2006. The appraisal concluded on April 17, 2007 that the issues raised merited an audit. An audit was commissioned on June 1, 2007, and the report is at this date of January 2008 pending comments and response from IFC, before it is presented to the President of the World Bank Group for clearance to disclose.

This second complaint is dated April 11, 2007. The CAO Ombudsman concluded that the parties were not willing to engage in a facilitated solution of the issues raised in this second complaint. The case was therefore transferred to CAO Compliance on November 19, 2007, for an appraisal to determine whether the complaint fulfilled the criteria for the next step in the CAO's investigative process, an audit of IFC. This second complaint raised concerns about the same impact of the project on villagers' health and on their quality of life as the first complaint, but in the context of the legality of the national permissions and licenses under which the project operates.

Office of the Compliance Advisor/Ombudsman (CAO)
for the
International Finance Corporation (IFC)
Multilateral Investment Guarantee Agency (MIGA)
Members of the World Bank Group



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About the CAO

The 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.

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

For more information about the CAO, please visit www.cao-ombudsman.org



1. Overview of the CAO Compliance Appraisal Process

When the CAO receives a complaint about an IFC or MIGA project, it first refers it to the CAO Ombudsman, which works to respond quickly and effectively to complaints through facilitated settlements, if appropriate. If the CAO Ombudsman concludes that the parties are not willing to reach a facilitated solution, the CAO Vice President has the discretion to request the compliance arm of CAO, CAO Compliance, to appraise the concerns raised in the complaint for a compliance audit of IFC or MIGA. Alternatively, a compliance audit can be initiated by request from the President of the World Bank Group or the senior management of IFC or MIGA.

A CAO Compliance appraisal is a preliminary investigation to determine whether the CAO should proceed to a compliance audit of IFC or MIGA. Through CAO Compliance appraisals, the CAO ensures that compliance audits of IFC or MIGA are initiated only for those cases with substantial concerns regarding social or environmental outcomes.

A compliance audit is concerned with assessing the application of relevant policy provisions and related guidelines and procedures to determine whether IFC and MIGA are in compliance. The primary focus of compliance auditing is on IFC and MIGA, but the role of the sponsor may also be considered.

A compliance audit appraisal, and any audit that ensues, must remain within scope of the original complaint or request. It cannot go beyond the confines of the complaint or request to address other issues. In such cases, the complainant or requestor should consider a new complaint or request.

CAO compliance appraisal will consider how IFC/MIGA assured itself/themselves of compliance with national law, reflecting international legal commitments, along with other audit criteria. The CAO has no authority with respect to judicial processes. The CAO is not an appeals court or a legal enforcement mechanism, nor is the CAO a substitute for international courts systems or court systems in host countries.

The appraisal criteria are set forth in CAO's Operational Guidelines. The criteria are framed as a series of questions to test the value of undertaking a compliance audit of IFC or MIGA. The criteria are as follows:

- Is there evidence (or perceived risk) of adverse social and environmental outcomes that indicates that policy provisions (or other audit criteria) may not have been adhered to?
- Is there evidence of risk of significant adverse social and environmental outcomes that indicates that policy provisions, standards, guidelines, etc., whether or not complied with, have failed to provide an adequate level of protection?
- Is there evidence (or perceived risk) of significant adverse social and environmental outcomes where policy provisions, standards (or other audit criteria) were not thought to be applicable but perhaps should have been applied?



- Is there evidence that the application of some aspect of a policy, standard, guideline or procedure resulted in adverse social and environmental outcomes?
- Can the cause of adverse social and environmental outcomes not be readily identified and corrected through the intervention of the project team without a detailed investigation of the underlying causes or circumstances?
- Could a compliance audit yield information or findings that might better inform the application of policies (or other audit criteria) to future projects?

During appraisal, CAO Compliance holds discussions with the IFC or MIGA project team and other relevant parties to understand the validity of the concerns and to explore whether an audit would be warranted.

After a compliance appraisal has been completed, the CAO can choose only one of two options: to close the case, or to initiate a compliance audit of IFC or MIGA.

The CAO will report and disclose the findings and decision of the CAO compliance appraisal in an appraisal report in order to inform the President of the World Bank Group, the Boards of the World Bank Group, senior management of IFC or MIGA, and the public in writing about its decision.

If the CAO decides to initiate a compliance audit, as a result of the compliance appraisal, the CAO will draw up a terms of reference for the audit in accordance with CAO's operational guidelines.



2. Background and Concerns that Led to the Appraisal

1. IFC is financing Lukoil Overseas Karachaganak B.V. to fund a portion of its share of development of the Karachaganak oil, gas and condensate field in Kazakhstan, the Karachaganak Petroleum Operation B.V. (the Project).

2. The civil society organization, Green Salvation, submitted the complaint to the CAO on behalf of residents of the village of Berezovka. The complaint raised issues concerning consequences for the villagers as a result of the Project, but in the context of the legality of the national permissions and licenses under which the project operates. Berezovka is located approximately 3 kilometers from the Karachaganak production facilities.

3. IFC's involvement started 2002, and the Project is developing in different stages. The development is ongoing.

CAO Compliance	
2004	
October 1	CAO Ombudsman receives the first complaint from residents in the village of Berezovka. The complaint is dated August 22, 2004.
2005	
2006	
August 30	CAO Compliance receives the complaint dated August 22, 2004 for appraisal after the CAO Ombudsman finds that the stakeholders are unwilling to further engage in a process of negotiated dispute resolution.
2007	
April 12	CAO receives the second complaint from residents in the village of Berezovka. The complaint is dated April 11, 2007.
April 17	CAO Compliance publishes the appraisal report related to the first complaint.
June 1	CAO Compliance commissions audit initiated as a consequence of the first complaint.
October 29	CAO Compliance draft audit report related to the first complaint finalized and sent to IFC for comments and response.
November 19	CAO Compliance receives this second case for appraisal after the CAO Ombudsman finds that the stakeholders are unwilling to further engage in a process of negotiated dispute resolution.
December 18	CAO Compliance finalizes this appraisal report related to the second complaint.
Pending	Public release of the audit report initiated by the first complaint.



3. Scope of the Appraisal for an Audit of IFC

4. The complainants have raised specific issues in their complaint regarding:

a. *Re-sizing of the sanitary protection zone.* The complainants state that the reduction of the sanitary protection zone around the project, a zone defined by national legislation, was done without an environmental impact assessment, without a review by a national ecological expert, and without providing information to, or consulting with, the local residents. The complainants state that the above-mentioned claimed irregularities constitute violation of Article 6 of the Aarhus convention and Articles 13, 14, 15.1, 16 and 36 of the 1997 Republic of Kazakhstan law on review by ecological experts. The complainants state that there is an ongoing national legal process that attempts to address, or partly address, the claimed irregularities.

b. *Emissions to air.* The complainants state that the actual emission to air exceeded the established ecological guideline for the project, and therefore constitutes a violation of Article 20 of Republic of Kazakhstan law on environmental protection. The complainants further state that inconsistencies between the monitoring data presented by project, and nationally determined baseline data for the area, question the reliability of the data presented by the project. The complainants also question the accuracy of the model used to predict effects on ambient air concentrations.

c. *Violations of IFC's policies and operating standards.* The complainants state that due to the claimed violations of international agreements and national legislation, the project is subsequently in violation of IFC's policies and standards that specify that IFC does not finance project activities that contravene country legislation or international agreements.

The complainants further state that the disclosure of information and public consultation in relation to the re-sizing of the sanitary protection zone was inadequate when compared with IFC's requirements.

d. *Relocation of villagers.* The complainants seek assistance in resolving the issue of relocating the residents of Berezovka to a "safe" location. This is in line with the first complaint from villagers of Berezovka, where they seek relocation to an "ecologically clean zone" so they have "a chance to lead a proper existence."



4. Policy Provisions Identified as Relevant

5. CAO Compliance identified the following provisions as the basis for evaluating the issues raised:

a. *Re-sizing of the sanitary protection zone.* There are no provisions in IFC's policies or guidelines for the use of sanitary protection zones in projects like Karachaganak. The establishment and application of a sanitary protection zone is a question for national authorities. The policies and guidelines of IFC do not generally accept removal of receptors as a solution to pollution, but focus on source control and monitoring. Since the sanitary protection zone in itself does not pose any violation of IFC's policies or guidelines, the applicable policy requirement would only be how IFC assured itself that the project complied with national requirements. In the specific case of national authorities re-sizing the sanitary protection zone, it is reasonable only to expect that IFC assured itself that a re-sizing did not have implications on compliance with IFC requirements. The complainants state that there is an ongoing national legal process that attempts to address, or partly address, the claimed irregularities.

b. *Emissions to air.* The IFC states that the project is being designed to comply with World Bank Group Guidelines and Safeguard Policies, and that monitoring and mitigation plans ensure that the Project is compliant with IFC's policies and guidelines. The specific environmental and social safeguard policies and guidelines related to emissions to air from this project are specified as the "World Bank Guidelines for Oil and Gas Development (Onshore) July 1, 1998 /---/ Thermal Power Plant Guidelines, July 1, 1998," which can be found in the Pollution Prevention and Abatement Handbook 1998. This does not exclude other IFC or World Bank Group provisions from being applicable.

c. *Violations of IFC's policies and operating standards.* CAO's mandate is limited to consider how IFC assures itself of compliance with national law, and requirements that have relevant legal standing. The mandate to investigate whether there has been fraud and corruption in connection with IFC's involvement lies with the World Bank's Department of Institutional Integrity.

Since IFC's disclosure policies mainly apply to information related to IFC's decision to invest, they are not directly applicable to disclosure of information that pertains to changes in a nationally defined zone for which there are no provisions in IFC's environmental or social policies.

d. *Relocation of villagers.* Relocation of villagers is in this case related to national decisions, legislation, and/or requirements, and not to IFC's performance, or IFC's requirements or conditions for involvement. There are no provisions in IFC's policies that generally allow relocation of receptors as a solution to a potential pollution. This is contrary to the general view of source control as the preferred mitigation.



5. CAO Findings

6. The appraisal team finds the following:

a. *Re-sizing of the sanitary protection zone.* Since the sanitary protection zone in itself does not pose any violation of IFC's policies or guidelines, and the resizing has no consequence for the applicable policy requirements, the question is limited to how IFC assured itself that the project complied with national requirements. The complainants state that there is an ongoing national legal process that attempts to address, or partly address, the claimed irregularities. IFC has assured CAO that as soon as any national requirement has relevant legal standing, IFC will assure itself that the Project complies as required by IFC's policies.

b. *Emissions to the air.* It is evident that in relation to emissions to air, IFC has assured itself of environmental performance by following up on the data from the monitoring program established. This program, however, initially focused on national requirements. There are differences between the national requirements and the requirements set by IFC as a condition for their own involvement. It is not evident to the appraisal team how IFC assured itself that IFC's conditions were met. This finding is consistent with the finding made during appraisal of the first complaint to CAO on the Karachaganak project, and the issue of emissions to air is currently the scope of the ongoing audit. The result of the audit is pending.

c. *Violations of IFC's policies and operating standards.* IFC has assured CAO that as soon as any national requirement has relevant legal standing, IFC will assure itself that the Project complies as required by IFC's policies. It is outside the mandate of CAO Compliance to investigate whether there has been fraud and corruption in connection with the definition of the sanitary protection zone. CAO refers the complainants to the World Bank's Department of Institutional Integrity for all such matters.

CAO Compliance does not find that IFC policies on disclosure are directly applicable to disclosure of information that pertains to changes in a nationally defined zone for which there are no provisions in IFC's environmental or social policies or guidelines.

d. *Relocation of villagers.* Relocation of villagers is in this case related to national decisions, legislation, and/or requirements, and not to IFC's performance, or IFC's requirements or conditions for involvement. There are no provisions in IFC's policies that generally allow relocation of receptors as a solution to a potential pollution. This is contrary to IFC's general view of source control as the preferred mitigation.



6. The CAO Decision

7. The CAO concludes the following:

a. *Re-sizing of the sanitary protection zone.* CAO does not find that this issue fulfills the criteria for further investigation in the form of an audit of IFC.

b. *Emissions to the air.* The issue related to emissions to air fulfills the criteria for further investigation in the form of an audit of IFC. Based on the appraisal report related to the first complaint on the Karachaganak project, CAO developed terms of reference for an audit of IFC, with the scope of assessing how IFC assured itself that relevant policy provisions related to emissions to air were adhered to. CAO refers the complainants to this ongoing audit, and the subsequent audit report, that currently is pending.

c. *Violations of IFC's policies and operating standards.* CAO does not find that this issue fulfills the criteria for further investigation in the form of an audit of IFC.

The issue of fraud and corruption is outside the mandate of CAO Compliance, and CAO refers the complainants to the World Bank's Department of Institutional Integrity for all such matters.

CAO does not find that the issue of disclosure of information related to the re-sizing of the sanitary protection zone fulfills the criteria for further investigation in the form of an audit of IFC.

d. *Relocation of villagers.* CAO does not find that this issue fulfills the criteria for further investigation in the form of an audit of IFC.

Based on the above, CAO refers the complainant to CAO's ongoing audit of IFC in relation to emissions to air from the Karachaganak project, and to the World Bank's Department of Institutional Integrity in relation to allegations of fraud and corruption in re-sizing the sanitary protection zone. CAO will close this appraisal with no other action than the ones described above.