



DISPUTE RESOLUTION CONCLUSION REPORT KURUM HYDRO-01/BRADASHESH, ALBANIA July 2018

This report summarizes the CAO Dispute Resolution process and outcomes in relation to the Kurum Hydro-01/Bradashesh complaint

BACKGROUND

IFC's project

IFC has one active project with Kurum International (Kurum), a steel production company in Albania that is a member of the Kurum Group. Controlled by the Turkish Kurum family, the Kurum Group has been operating in the iron and steel industry with a vision to expand its operations to other related businesses in Turkey and the Balkans. Kurum successfully bid for 4 hydropower plants—Uleza, Shkopeti, Bistrice I, and Bistrice II—which were privatized by the Albanian government in 2012.

IFC's project aims to finance acquisition and estimated EUR 10 million rehabilitation of the power plants. The Group intends to utilize the facilities to provide baseload renewable power to its existing steel plant. Through this project, Kurum contemplated reducing its electricity purchase costs, and securing reliable electricity sourcing in order to continue its operations without major disruptions. The project is classified by IFC as a Category B with potential limited adverse environmental or social risks and/or impacts.

The Complaint

In June 2015, a complaint was lodged with CAO by several residents living close to Kurum's steel plant in Elbasan, Albania. The complainants raised concerns about air and ground pollution produced by the plant, and the potential impact of this pollution on the health of residents. The complaint, which is available on CAO's website in redacted form,

contains a detailed description of these issues.¹

CAO Assessment

On the basis that energy generated from the hydropower plants will potentially power the steel plants, CAO found the complaint eligible for further assessment in July 2015, and conducted an assessment trip to Albania in September 2015.

During the assessment, Kurum and the Complainants decided to participate in a CAO-facilitated dispute resolution process to explore mutually acceptable solutions to the issues raised in the complaint. A dispute resolution process does not entail a verification of the issues raised in the complaint. Its primary focus is to provide an opportunity for the parties to resolve the issues through agreement. The dispute resolution process formally started in October 2015.

DISPUTE RESOLUTION PROCESS

Process Design and Capacity Building

As a preliminary step, CAO engaged the parties to establish how the dispute resolution process would be structured. This included reaching an agreement regarding what issues would be discussed, meeting structure, and ground rules.

CAO conducted preliminary bilateral meetings with the parties to better understand their perspectives regarding the concerns raised in the complaint, and to determine how they would like to address them through the

¹ http://www.cao-ombudsman.org/cases/document-links/documents/KurumComplaint_English_Redacted.pdf

dispute resolution process. As a result of these initial meetings, CAO realised that there was neither a history of communication between the parties, nor a pre-existing relationship.

Representatives of the parties participated in separate capacity building workshops facilitated by CAO to develop a common understanding about the dispute resolution process, discuss its design and structure, and clarify issues such as how the parties would be represented, confidentiality, and communication protocols. The workshops also focused on building the parties' communication and negotiation skills, such as active listening and interest-based decision making.



Capacity building workshop with community members, November 13, 2015.



Capacity building workshop with Kurum representatives, December 16, 2015.

As a result of the capacity building workshops, representatives of the parties developed knowledge and skills to help them engage more effectively and constructively in the dialogue process, and make informed

decisions regarding both the process and its outcomes.

Initiating the Dialogue

The capacity building workshops included discussions regarding a Dispute Resolution Framework Agreement (Ground Rules), which was drafted by CAO based on preferences expressed by the parties during the preliminary meetings. Feedback on the Framework Agreement was consolidated into a final document, which was agreed and signed at the first joint meeting of the parties in Bradashesh, Elbasan in December 2015. The representatives of the parties agreed that the Ground Rules would be published on CAO's website².



Ground Rules for the Dialogue Process, December 17, 2015.

At the first joint meeting, the parties also shared their perspectives regarding the concerns raised in the complaint. Specifically, the community representatives shared their concerns with respect to the alleged environmental and social impacts of Kurum's steel plant, including issues of air quality, noise pollution and lack of local investment or employment. Kurum representatives provided

² The Ground Rules can be found on CAO's website http://www.cao-ombudsman.org/cases/case_detail.aspx?id=237 (accessed May 8, 2018)

their views on the issues and explained the plant's working procedures, discussing measures already taken to improve the situation and explaining the standards with which the company says it complies.



First joint meeting facilitated by CAO between Kurum and Community representatives, December 17, 2015.

The first joint meeting resulted in the parties reaching agreement regarding the stages and the structure of the dispute resolution process, as outlined below.



Agreement on a Dialogue Agenda

The parties agreed in February 2016 to categorize the issues for discussion as follows:

- Air quality issues
 - Discomfort related to air quality
 - Land and water contamination
 - Concerns related to community members' health
 - Injury to vegetation and agricultural crops
- Noise issues
 - Discomfort related to noise pollution
 - Concerns related to community member's health
- Social issues concerning a perceived lack of investment by Kurum in community development

Suspension of the Process

In February 2016, the parties agreed to suspend the process given Kurum's financial situation and halt in operations. They agreed to resume dialogue when Kurum became fully operational, but no later than June 2016. However, Kurum filed for bankruptcy protection in Albania and Turkey in February 2017, and the dispute resolution process remained suspended until July 2017 at the request of Kurum, and with the consent of the community representatives.

Resuming the dialogue process and joint site visit

In July 2017, the parties expressed commitment to continue the dialogue process. Kurum indicated that it would not be able to make any financial commitments without prior approval from the court appointed administrator. The parties agreed to a site visit for a group of community members to help them better understand the factory's operations and to observe measures taken by the company to address the environmental impacts of the project. The site visit was conducted in September 2017. According to the community, this site visit enabled a better understanding of the project's operations and environmental impacts.



Site visit by community members to Kurum's steel plant, September 30, 2017.

At a joint meeting in September 2017, the community representatives noted that improvements had been implemented since their previous visit to the plant. In particular, they perceived an improvement in the effectiveness of the dust filters. At the same time, community members believed that there was room for further improvements since they believed pollution was still being observed in the mornings, and they were unsure of where it was coming from. Kurum appreciated the opportunity to show the community members its operations, and they informed community members that they could visit the plant at any time.



Joint Meeting with CAO, Kurum and, community members, 2017.

CAO published a progress report in November 2017, which included a summary of the dispute resolution process to date, and outlined projects already being implemented by the company to mitigate the environmental impacts of the plant. These included repair to the roof of the steel plant, and

the construction of an inner railway to allow scrap to be transported directly into the steel plant to avoid the use of trucks, and mitigate noise. These projects were discussed during the dispute resolution process, considering concerns raised by community members regarding air quality.

Participatory Environmental Monitoring

As a result of ongoing dialogue, the parties agreed to include community members in monthly monitoring activities conducted by LENI-ING shpk, an environmental monitoring agency accredited by the Albanian government for environmental monitoring. The agency has been monitoring Kurum's air emissions monthly since January 2012, and the participatory monitoring activity presented an opportunity for the community to observe and better understand this ongoing process. The participatory monitoring activity, which took place in December 2017, was observed by three community members, an environmental specialist invited by the community members, Kurum's Technical Director, and CAO.

LENI-ING explained to the community members that the monitoring they conduct on a monthly basis involves measuring the levels of sulphur dioxide (SO₂), carbon dioxide (CO₂), nitrogen dioxide (NO₂), and nitrous oxide (NOx) within the company's operational site. Based on this monitoring data, they produce quarterly reports which are submitted to the National Environmental Agency, the Regional Environmental Agency in Elbasan, and to Kurum.

During the monitoring activity, Kurum's Technical Director explained the technology used to improve the plants environmental performance, and the company's commitment to invest in it. He explained that since 2011, the company has made investments to improve technology, which they believe has resulted in environmental improvements, in particular to air quality. These include using natural gas as their fuel source, isolating the scrap processing facility, gas capture and storage, the damping of roads and recent construction of a railway to transport scrap metal.

The participatory monitoring activity included an initial meeting at Kurum's office between representatives of Kurum, the community, specialists from LENI-ING, and CAO, followed by a field visit to observe monitoring activities undertaken by LENI-ING, including the sampling process and the equipment used to collect monitoring data at the scrap facility, rolling plant, steel furnace, and gas storage site. During the participatory monitoring, the community members raised questions regarding the selection process of the environmental monitoring agency, its independence, and its coordination with the monitoring process implemented by the regional environmental agency. They inquired about whether measurements could be taken at nearby houses (and not only within the steel plant perimeter), as well as whether LENI-ING had observed improvements since the start of its monitoring of Kurum operations. Community members also wanted to know whether, in addition to air emissions, water and land were being monitored.

Conclusion of the Dispute Resolution Process

After the participatory monitoring exercise, CAO conducted bilateral meetings with the parties to map their preferences and options regarding next steps. While the community members acknowledged Kurum's efforts to improve the situation, they continued to have concerns following the monitoring visit, both related to the alleged impacts of the plant and the findings of the monitoring conducted by LENI-ING. The community members indicated an interest in working with the company to develop a joint monitoring process and identifying and tasking an international monitoring agency or expert to look at questions related to the company's alleged environmental impacts in the industrial area. The community expressed interest in a joint fact-finding process to improve transparency in the design and implementation of the monitoring process, and enhance their trust in its results.

"We just want to know if it's safe for us to live and to raise our children here."

Perspective shared by community member during a bilateral meeting with the CAO mediation team

CAO shared this position with Kurum, who indicated that the current monitoring process was being conducted by an accredited environmental monitoring agency, who were producing quarterly reports delivered to the respective Albanian institutions. As such they were not in favor of another monitoring process.

"The company is committed to continue to improve the environment."

Perspective shared by company representative during the final joint meeting

A final joint meeting was held in February 2018, during which the parties agreed to the following:

- Kurum committed to provide feedback within ten days to CAO regarding the possibility of a joint fact-finding process to look at the company's environmental impacts within the larger industrial area on community members living in the vicinity of the plant;
- Pending the company's feedback, CAO would either continue the dialogue process (with the consent and at the request of the parties) and implement a joint fact-finding process, or close the dispute resolution process and transfer the case to CAO's compliance arm, in accordance with CAO Operational Guidelines.

Despite the discussions held at the last joint meeting, feedback from Kurum regarding the possibility of a joint fact-finding process was not forthcoming. CAO requested that Kurum provide feedback on their position by March 23, 2018, and informed the company that

absent this feedback, CAO would assume that there was no agreement to enter a joint fact-finding process and the complaint would be transferred from dispute resolution to compliance.

CAO did not receive feedback from Kurum within the timeframe and has not received indication from Kurum on their position since February 2018. As such, CAO concluded the dispute resolution process, and transferred the case to a compliance appraisal process, where the focus is on IFC's role with respect to the project.

Outcomes of the Process

As a result of agreements reached between the parties during the dialogue process, and subsequent work undertaken by Kurum, the following outcomes were achieved:

- **Agreement on Ground Rules:** Although the parties were ultimately unable to reach agreement on all substantive issues, they reached agreement early on regarding procedural ground rules to govern the dialogue process.
- **Mutual understanding:** The participants involved in the dialogue process improved their mutual understanding of the issues. Kurum representatives gained a better understanding of who the complainants were, as well as their respective concerns and goals. Community members learned more about the initiatives implemented by Kurum to address the environmental impacts of the steel plant. Moreover, the dialogue process included agreements for community members to visit the factory to better understand the operations of the plant and its environmental impacts.
- **Improved capacity:** CAO assisted the parties to prepare for effective participation in the dialogue process by building their communication and negotiation skills.
- **Roof reparation:** The roof reparation process was concluded by Kurum to limit the factory's dust emissions.

- **Railway project:** The railway project was also completed by the company, allowing scrap to go straight into the steel plant, and thereby lowering noise levels and reducing the use of trucks.
- **Participatory monitoring:** Community members had the opportunity to better understand the monitoring process being implemented by Kurum by joining a monitoring mission in December 2017.

Moreover, the company representatives indicated to the community members in the last joint meeting, in February 2018, that the following projects are now being implemented to improve the environmental impacts of the steel plant:

- **Green area:** The company is implementing a project to improve the green area within the factory borders. According to the company manager in charge of the project, 230 trees of different varieties will be planted within the first few months of 2018. Two hundred and fifty more trees will be planted in the greater steel plant area. The budget for the tree planting project will increase by 10-15 percent every year.
- **Improved cleaning activities:** The company purchased technology to improve cleaning activities, both inside and outside the plant compound. They have also approved budget for a significant investment in a new reheating furnace with more efficient fuel consumption and reduced air emissions.

INSIGHTS FROM THE PROCESS

While some good outcomes were achieved through the dialogue process, there were some issues on which the parties did not agree, including whether or not Kurum's operations were causing environmental pollution, and to what extent.

Insights from the process include the following:

- **Building capacity is a key ingredient for success:** The success of a dispute

resolution process depends on the parties' ability to cooperate with one another, and with the mediators. Initial workshops helped to develop parties' communication and negotiation skills. While the dialogue process was suspended, other practical challenges arose: some company representatives left Kurum's employment, and some of the community members left the dialogue process for various reasons. These changes in the composition and dynamic between the parties had an impact on the effectiveness of the dialogue process, which the CAO team found, at times, to be an obstacle to effective engagement.

- **Respectful communication:** The capacity building process contributed to the establishment of a respectful communication platform between the parties, which formerly did not exist. It allowed for the parties to express open and sincere perspectives in a respectful manner.
- **Court managed company reorganization:** Kurum's administration and reorganization as a result of its financial situation and resulting court order presented challenges with regard to the company's participation in the dialogue process, and limited company representatives' scope to negotiate.
- **Losing momentum due to suspension of the process:** The suspension of dialogue for a long period of time can cause the parties to lose momentum or diminish commitment to participate in the process, as observed by CAO in the dialogue process.

community members as a result of the process, and Kurum's openness to discuss concerns with community members, present the potential for future dialogue to address mutual concerns.

Further information on the Kurum case is available at www.cao-ombudsman.org.

CONCLUSION

CAO concluded the dispute resolution process for this case with recognition of agreements that partly addressed concerns raised by the community, in addition to matters that the company wanted to address. While a final agreement was not reached by the parties, the bridges built between company and