



CAO ASSESSMENT REPORT

Complaint regarding SCP's operations related to MIGA's TANAP project (#13661)

Vale, Georgia

January 2018

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the president of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
SCP	South Caucasus Pipeline
SGC	Southern Gas Corridor
BP	BP Exploration (Shah Deniz) Limited
BEJV	Bechtel-Enka Joint-Venture
ENKA	Enka Insaat ve Sanayi A.S.
TANAP	Trans-Anatolian Pipeline

1. OVERVIEW

In March 2017, a complaint was lodged with CAO by a former worker (“the Complainant”) of Enka Insaat ve Sanayi A.S. (ENKA), a company which had formed a joint-venture with Bechtel - the Bechtel Enka Joint Venture (BEJV) - to operate as a contractor at the Vale site of the South Caucasus Pipeline (SCP) in Georgia. According to MIGA, the SCP is an associated facility to the Trans-Anatolian Pipeline (TANAP) project in Turkey, which is currently under development and which MIGA may support through the issuance of a guarantee. The complaint focuses exclusively on the SCP and raises concerns about working conditions at the Area 81 site of the SCP (located in Vale, Georgia), health and safety procedures followed by BEJV (“the Company”), and unfair termination of employment with outstanding compensation for work done. On the basis that MIGA considers the SCP to be an associated facility to TANAP, CAO found the complaint eligible for assessment in April 2017. During CAO’s assessment, the Complainant expressed an interest in engaging in a dispute-resolution process convened by CAO. However, the Company indicated that, firstly, in their opinion, CAO has no jurisdiction over this matter and secondly, since they had previously held discussions with the complainant on a bilateral basis, they did not want to engage in the CAO dispute-resolution process. In keeping with CAO’s Operational Guidelines, the complaint will now be handled by CAO’s Compliance function.

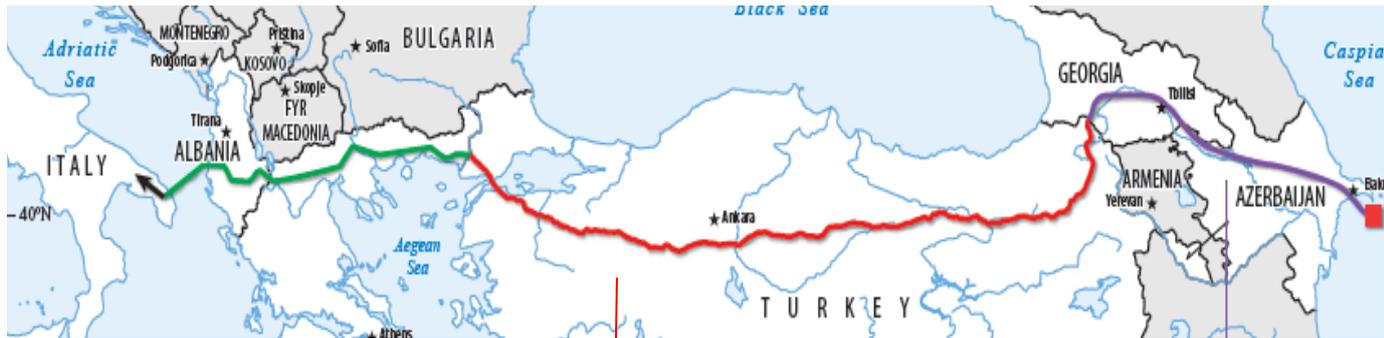
2. BACKGROUND

2.1 The Project

As of September 1, 2017, MIGA is actively considering providing a guarantee to international commercial banks who are proposing to lend up to USD 750 million to the Azerbaijani state-owned Southern Gas Corridor CJSC (SGC), to support SGC’s financing of the TANAP project in Turkey.

According to MIGA, the project consists of the construction and operation of TANAP, a part of the Southern Gas Corridor value chain that aims to transport natural gas from the Shah Deniz gas field in Azerbaijan to Turkey and Europe. The project will allow Azerbaijan to exploit the natural gas extracted under phase 2 of Shah Deniz and will facilitate the tripling of its gas exports and extend the geographical reach of those exports.

MIGA indicated that the Shah Deniz gas field and the expansion of the SCP through Azerbaijan and Georgia are considered associated facilities to TANAP. MIGA determined that, because TANAP has no operational control or leverage over either of these facilities, MIGA’s environmental and social requirements do not apply to these facilities (as per MIGA’s Policy on Environmental and Social Sustainability, and referenced in the Project’s Environmental and Social Review Summary disclosed on October 14, 2016).



TANAP
 Owned by a JV (including BP and SGC)
 Operated by TANAP Doğalgaz İletim A.Ş.

SCP – Associated facility to TANAP,
 according to MIGA
 Owned by a JV (including SGC and BP)
 Operated by BP

MIGA guarantee

2.2 The Complaint

The complaint relates to working conditions and health and safety concerns at the Vale site of the SCP in Georgia while the Complainant was employed there (June 2016-January 2017, during which time BEJV was managing the site). The Complainant also alleges that his employment was unfairly terminated and that the Company still owes him 215.5 Lari (the equivalent of approximately USD 80) in unpaid wages. The issues raised during the assessment are described in more detail below.

While according to his employment contract, the Complainant’s employer was Enka Insaat ve Sanayi A.S. (ENKA), CAO held discussions with ENKA and BP¹ as the operator of the site. BP indicated that the entity they had contracted to conduct construction works at the Area 81 site in Vale was Bechtel-Enka Joint Venture (BEJV), a joint venture between ENKA and Bechtel.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainant, by gathering information and views from different stakeholders without making a judgment on the merits of the complaint. The assessment also seeks to determine whether the Complainant and the Company would like to pursue a dispute-resolution process facilitated by CAO, or whether the complaint should be handled by CAO’s Compliance function for appraisal of MIGA’s performance (see Annex A for CAO’s complaint-handling process).

In this case, CAO’s assessment of the complaint included:

- a desk review of project documentation;

¹ BP is a shareholder in the joint venture that owns the SCP and is also the company operating the SCP. BP is also a shareholder in the joint venture that owns the TANAP, but does not operate the TANAP.

- telephone conversations with the Complainant;
- telephone conversations and email exchanges with SGC, BP Exploration (Shah Deniz) Limited (“BP”) and ENKA (on behalf of BEJV); and
- in-person meetings with MIGA’s project team.

This document reflects the views of the different stakeholders and explains the next steps chosen by each party.

3.2 Summary of views

Complainant’s perspective

Health and Safety issues at the Area 81 site of the SCP

The Complainant raised concerns with regard to the following health and safety issues at the Area 81 site of the SCP (located in Vale):

- **Absence of training of the site’s riggers:** The Complainant alleges that he was hired by ENKA, along with a few others, as a steel assembler, but that he worked as a rigger, without proper training for that role. According to the Complainant, by employing him and his co-workers as steel assemblers, ENKA circumvented its obligation to provide training for them to operate as riggers. The Complainant alleges that ENKA informed them that their contracts would be amended after three months to indicate that they were riggers. However, after seven months of work (June 2016-January 2017), his contract was never amended.

The Complainant allegedly requested to be trained, but training was never provided. Soon after his request for training, he was fired.

The Complainant further alleges that he complained to BP about having been hired as a steel assembler (instead of a rigger) and that BP forwarded the complaint to ENKA, which claimed that he never worked as a rigger.

- **Perfunctory monthly inspection of cranes and lifting accessories:** According to the Complainant, the crane inspectors merely ticked the boxes on the inspection forms without properly inspecting the cranes. The Complainant alleges that this caused him and one of his colleagues to be electrocuted by a crane. The Complainant further alleges that the inspection of lifting accessories was conducted by untrained personnel.
- **Inappropriately low number of workers on site:** According to the Complainant, there were seven cranes on the site and only ten riggers to work on them, which in his opinion was not enough and posed a security risk.
- **Inappropriately heavy lifting required of the workers, without the necessary equipment.**

Working conditions

In addition to the alleged poor health and safety conditions, the Complainant claims that workers were forced to work overtime, and that they would systematically not get paid for overtime work. Workers would only have one Sunday off out of two. The Complainant further asserts that the food served on site was of poor quality and that the size of the canteen was inappropriate, causing workers to have to stand in line for long periods of time to get their lunch. This significantly reduced the lunch break.

The Complainant further alleges that ENKA, a Turkish company, mistreated the Georgian workers and discriminated against them in favor of Turkish workers. He also claims that ENKA was taking advantage of the high unemployment rate in Vale, and that Georgian workers felt

they were not able to voice their concerns with regards to working conditions, for fear of retaliation.

Unpaid wages and unfair termination

The Complainant claims that ENKA unilaterally terminated his contract following his request for training as a rigger. He also believes that his employment was terminated because he left the site without the timekeeper's permission on one occasion. On one very cold day, when it was time to go home, the timekeeper would not release the workers. He asked the timekeeper to release the workers as per the agreed time. When the timekeeper refused to release the workers, the Complainant walked out of the plant, followed by other workers.

Although the Complainant suspects that the above incidences led to his dismissal, he alleges that ENKA did not provide reason for his dismissal, which according to him is against the law.

Finally, the Complainant contends that ENKA still owes him a total amount of 215.5 Laris (approximately \$80). This amount is comprised of 128 Laris of wages not accounted for and penalties of 87.5 Laris, accrued from late payment of his settlement amount on termination of employment². The complainant explained that according to Georgian law, final settlement should be made within 8 days of termination of employment. Failure to do so attracts a penalty of 0.7% per day. The Complainant contends that he received his final settlement 25 days late on February 7, when according to Georgian law, he should have received it within 8 days of his dismissal, i.e. on January 13³. He also stated that ENKA also owes money to other workers who were laid off.

The Complainant indicated his frustration with ENKA, but was nevertheless open to entering into a dialogue with ENKA, BEJV and/or BP. He also expressed his concern that the same pattern of noncompliance with basic health and safety measures was taking place at other SCP sites in Georgia, for example at Tsalka.

SGC's perspective

SGC indicated that they held 6.67 percent of the shares in SCP, but were not operating this project and thus did not have control over SCP. SGC specified that it had never worked with ENKA and further disagreed with MIGA's view that SCP is an associated facility to the TANAP project.

BP's perspective

BP indicated that they are the technical operator of SCP in Georgia and that BEJV was a construction contractor on SCP. BP clarified that the construction work at the Area 81 site in Vale, where the Complainant worked, was essentially complete at the time of CAO's assessment. BP has assumed direct control of the site from BEJV, and the site has fully transitioned from construction to commissioning.

BP indicated that safety is a top priority for the SCP project. During its operation by BEJV, Area 81 had a very strong safety record, with zero days away from work cases (DAFWC) and zero recordable injury frequency (RIF). BP also manage the health and safety performance of their contractors, both by tracking lagging indicators (such as recording safe and unsafe acts, near misses, days away from work cases, and recordable injury frequency) and proactively through mandated safety plans, audits, analysis of the indicators, and monitoring safety performance. They further indicated that, where they had identified issues with the competency of personnel or adherence to procedures at Area 81, action was put in place to address these deficiencies.

² 87.5 is comprised of 500 (final settlement amount the Complainant received from ENKA) * 0.7% (penalty for delayed payment of wages) * 25 days.

³ This is according to the Complainant. The CAO did not verify the provisions of the Georgian law.

With regard to the concerns raised about the size of BEJV's canteen and the quality of the food, BP responded that the canteen at Area 81 began serving Georgian national cuisine in 2015, after a request by workers, but that it is not aware of other complaints regarding the food quality. On the contrary, BP's understanding is that BEJV regularly conducted surveys among workers on that issue and that the most recent survey indicated satisfaction above 80 percent.

BP added that, to their knowledge, this is the first time that the Complainant alleges to have been electrocuted while working at the Area 81 site and that no such injury was reported to the Company.

With regard to the Complainant's interest in engaging in a CAO dispute-resolution process, BP indicated that they believe they would not be a proper party to engage with the Complainant regarding his employment, since the Complainant was never employed by BP.

BEJV's perspective

BEJV indicated that they do not believe that CAO has jurisdiction regarding this matter, and that any claim the Complainant has against BEJV concerning his employment in the SCP project and the termination thereof should only be brought before the Georgian judicial system and no other entity, including the CAO or MIGA.

BEJV stated that they are not willing to engage any further on this matter, since they believe they have devoted enough resources in the past to the Complainant's claims, which he had filed outside of CAO's context.

BEJV indicated that they had investigated the allegations raised by the Complainant regarding unpaid wages, wrongful termination, and safety issues (which were brought to BEJV's attention directly by the Complainant before CAO's involvement), and determined that none of those allegations were substantiated. BEJV responded to the Complainant on two separate occasions to address all the allegations raised by the Complainant. BEJV noted that, as a general rule, they follow strict policies regarding safety, health, and employment. In response to the Complainant's specific concerns, they had the following responses regarding:

- **termination of the employment contract:** The contract was terminated lawfully, by mutual agreement.
- **overtime not accounted for:** The timekeeper provided all employees with timesheets twice per month, to enable them to verify that hours worked were properly recorded. The Complainant did not make a request for correction or any claims about missing time until after his employment was terminated, and there was no evidence that the hours recorded on the Complainant's timesheets were incorrect.
- **the size of the canteen and the quality of the food:** Canteen lines do not take more than 15 minutes, and the most recent survey with regards to the quality of the food served showed an 81 percent satisfaction rate.
- **the Complainant's position:** He was hired as a steel erector and paid accordingly and was never promised a position as a rigger.
- **training:** All staff involved in lifting activities are trained and provided with refresher courses annually.
- **inspection of cranes and other rigging equipment:** Rigging equipment is inspected daily by operators, monthly by mechanical personnel, and annually by a third party (every inspection is referenced on the inspection sticker).
- **manual heavy lifting:** Specific procedures should be followed when it comes to heavy lifting (which notably involve the use of equipment and tools), and individuals observed violating those procedures are provided site instructions, remedial training, and/or disciplinary actions.

4. NEXT STEPS

While the Complainant expressed an interest in participating in a dispute-resolution process with ENKA, BEJV and/or BP, neither one of those companies was willing to engage in such a process. Dispute resolution is a voluntary process that requires mutual agreement to proceed with the process from both parties. In the absence of mutual agreement to engage in dispute resolution, the complaint will now be referred to CAO Compliance.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,⁴ the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgement** of receipt of the complaint.
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: **CAO assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute-resolution process is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.⁵

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question, to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

⁴ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

⁵ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.