



March 16, 2020
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*Trans-Anatolian Pipeline (MIGA Project # 13661), Complaint 02
Azerbaijan*

Executive Summary

In October 2018, a complaint was lodged with CAO by the Complainants from the Garajemirli Village, in the Shamkir Region of Azerbaijan, supported by the Oil Workers' Rights Protection Organization Public Union. The complaint raises issues of land compensation and consultation during the construction of the South Caucasus Pipeline Expansion (SCPX), which passes through the Complainants' lands.

SCPX is part of the Southern Gas Corridor value chain and consists of the pipeline running from Azerbaijan through Georgia to the Georgia/Turkey border where it connects with the Trans-Anatolian Natural Gas Pipeline (TANAP) ("the MIGA Project"). The TANAP Project was supported by the Multilateral Investment Guarantee Agency (MIGA).¹ MIGA guaranteed a loan provided by a consortium of commercial banks ("the Lenders") to an Azerbaijani state-owned enterprise, Southern Gas Corridor Closed Joint-Stock Company (SGC), to finance its share of the TANAP project.

MIGA recognized the SCPX project to be an associated facility of the Trans-Anatolian Natural Gas Pipeline (TANAP) project.²

In August 2019, the MIGA guarantee was cancelled after SGC repaid the loan to the Lenders.

In September 2019, the case transferred to CAO's compliance function for appraisal. Despite the MIGA project becoming inactive in August 2019, the CAO process continues as the MIGA project was active at the time the complaint was received.

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 E&S outcomes and/or issues of systemic importance to MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of MIGA's E&S performance in relation to these issues, the existence of questions as to the adequacy of MIGA's requirements, and a more general assessment of whether a compliance investigation is the appropriate response.

In this case, the complaint raises concerns regarding economic displacement as well as information disclosure, community engagement, and consultation concerning livelihood restoration and compensation. While evidence beyond the complainants' account of events is limited, these issues are potentially substantial in nature in that they may have a material livelihood impact on a significant number of households.

¹ See project description on MIGA's website at: <https://bit.ly/MIGA-Tanap-ProjectBrief>.

² MIGA. 2017. Environmental and Social Review Summary (ESRS) (October 14, 2016, updated May 2, 2017). Available at: <https://bit.ly/MIGA-TANAP-ESRS>.

SCPX is acknowledged by MIGA to be an associated facility of TANAP. However, MIGA determined that its E&S requirements would not be extended to cover SCPX. This decision was based on a conclusion that SCPX would be operated by third parties over which TANAP has no operational control or leverage. Considering the ownership structures of SCPX and TANAP, CAO has questions as to the robustness of the analysis that led MIGA to this conclusion.

MIGA did not engage with public reporting of the issues related to the complaint (community grievances over compensation for land used by SCPX) either in 2015 during MIGA's due diligence or in 2018 during MIGA project monitoring. Underlying this lack of response was MIGA's conclusion that TANAP had no operational control or influence over SCPX.

Nevertheless, CAO has determined that a compliance investigation is not the appropriate response to this complaint. In reaching this conclusion, CAO has considered the following: (a) that the resettlement process that gave rise to this complaint occurred prior to MIGA providing a guarantee for the TANAP project in June 2018; (b) that the MIGA guarantee was cancelled in August 2019; and (c) that IBRD requested and received from its Board of Executive Directors a safeguard policy waiver for TANAP "associated projects," including SCPX.

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) 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 lending arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and thus to improve the environmental and social (E&S) performance of IFC and MIGA.

CAO consists of three unique and complementary functions, Dispute Resolution, Compliance and Advisory, which together provide a flexible framework for handling people's complaints and addressing systemic concerns about IFC and MIGA projects.

About CAO's Compliance Function

CAO's Compliance function provides oversight of IFC and MIGA investments with the objective of improving E&S performance of the institutions.

The compliance function is activated when either of the parties opt for it following CAO's assessment of the complaint or when the Dispute Resolution process does not lead to an agreement between the parties. The compliance function can also be initiated by the CAO Vice-President, the President of the World Bank Group or IFC/MIGA senior management.

Following a compliance investigation, CAO may determine that it is necessary to monitor actions taken by IFC or MIGA until such actions assure CAO that its compliance findings are being addressed.³

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

³ CAO Operational Guidelines, 2013, para. 4.4.6.

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Acronyms

Acronym	Definition
AzSCP	Azerbaijan South Caucasus Pipeline Ltd.
BOTAŞ	<i>Boru Hatları İle Petrol Taşıma Anonim Şirketi</i> [BOTAŞ Petroleum Pipeline Corporation]
BP	British Petroleum
CAO	Office of the Compliance Advisor Ombudsman
E&S	Environmental and Social
EBRD	European Bank for Reconstruction and Development
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
IBRD	International Bank for Reconstruction and Development
IFC	International Finance Corporation
IFI	International Financial Institution
MIGA	Multilateral Investment Guarantee Agency
PAD	Project Appraisal Document
PS	Performance Standard
PS1	Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impact
SCPX	South Caucasus Pipeline Expansion
SD2	Shah Deniz Stage 2
SGC	Southern Gas Corridor Closed Joint-Stock Company
SOCAR	State Oil Company of the Azerbaijan Republic
TAP	Trans-Adriatic Pipeline
TANAP	Trans-Anatolian Natural Gas Pipeline
TPAO	<i>Türkiye Petrolleri Anonim Ortaklığı</i> [Turkish Petroleum Corporation]
WBG	World Bank Group

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

MIGA's Guarantee

On June 27, 2018, MIGA agreed to issue \$780 million and €286 million (approximately \$331 million) in guarantees (“the MIGA Project”) in support of the Trans-Anatolian Natural Gas Pipeline (TANAP) Project in Turkey. The fifteen-year guarantee covers non-shareholder loans from Crédit Agricole Corporate and Investment Bank, Société Générale, Citibank N.A., Banco Santander, S.A., and AKA Ausfuhrkredit-Gesellschaft mbH (together, “the Commercial Banks” or “the Lenders”) to Azerbaijani state-owned enterprise Southern Gas Corridor Closed Joint-Stock Company (SGC), in order to finance its share of the TANAP project.⁴

MIGA’s guarantee established a contractual relationship directly with the Lenders. MIGA’s guarantee involved no direct contractual agreement with SGC. However, the contract of guarantee contained covenants to be passed on by the Lenders to SGC through the loan agreement. These covenants included E&S provisions, environmental guidelines, and an Environmental and Social Action Plan.

MIGA designated the Project as category A, meaning that the project was expected to have potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented.⁵

The TANAP pipeline is a section of a larger value chain called Southern Gas Corridor, built initially to transport gas from the Shah Deniz gas field in Azerbaijan through Georgia, Turkey, Greece, and Albania, into Italy. The Southern Gas Corridor comprises: (i) the Shah Deniz gas field in Azerbaijan (operated by BP); (ii) the South Caucasus Pipeline (SCP) and its expansion through Azerbaijan and Georgia to Turkey (SCPX); (iii) the TANAP through Turkey to Greece; and (iv) the Trans-Adriatic Pipeline (TAP) through Greece, Albania, and the Adriatic Sea to Southern Italy.

MIGA’s guarantee was issued strictly for the TANAP section of the Southern Gas Corridor. However, MIGA recognized the SCPX project to be an associated facility of the TANAP project.⁶

SGC is a closed joint-stock company whose shareholders are the Ministry of Economy of Azerbaijan Republic (51 percent) and the state oil company SOCAR (49 percent).⁷ The TANAP Project is developed by TANAP Doğalgaz İletim A.Ş. (a special purpose company) to implement, own, and operate the pipeline. A 58-percent majority share is held by SGC, and other shareholders include Turkey’s national gas company BOTAŞ and BP.

The SCPX Project is owned by a consortium of companies including SGC (6.7 percent), Azerbaijan South Caucasus Pipeline Ltd. (SOCAR subsidiary; 10 percent), TPAO (Turkish Petroleum Corporation; 10 percent), and BP (28.8 percent), among others. BP is managing the SCPX Project on behalf of the partner companies and is the technical operator of the South Caucasus Pipeline Company.

Figure 1 below shows the context of MIGA’s guarantee in relation to the TANAP and SCPX projects.

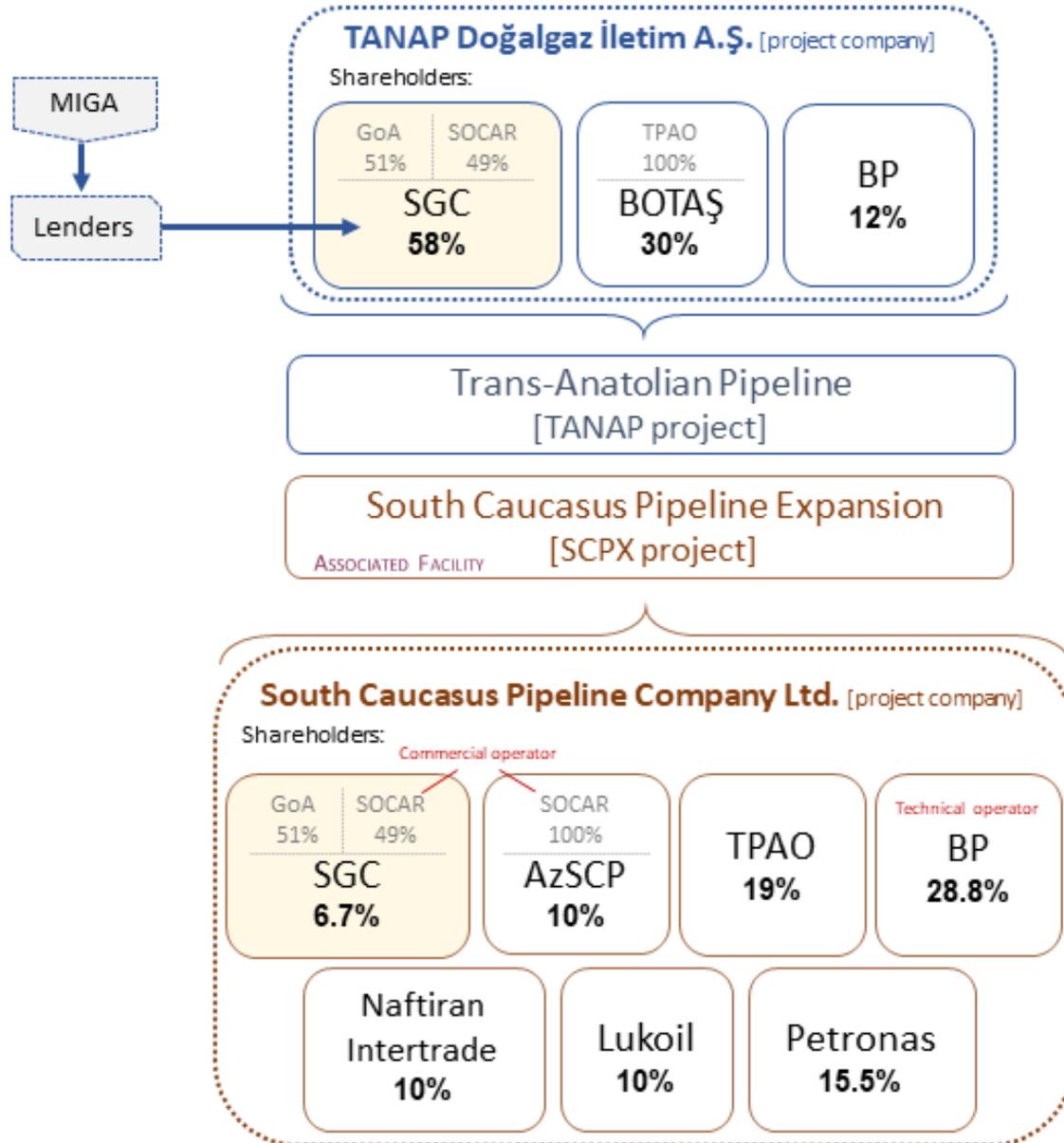
⁴ MIGA Project Brief, available at: <https://bit.ly/MIGA-Tanap-ProjectBrief>.

⁵ MIGA, 2013. Policy on Environmental and Social Sustainability, para. 38. Available at: <https://bit.ly/2TaU0Ye>

⁶ MIGA. 2017. Environmental and Social Review Summary (October 14th, 2016; updated May 9, 2017). Available at: <https://bit.ly/MIGA-TANAP-ESRS>.

⁷ See SGC website at: <https://bit.ly/37kDtp9>.

Figure 1. Context of MIGA Guarantee in Relation to TANAP and SCPX⁸



⁸ Figure adapted from CAO Appraisal report of TANAP-01 case. Information on TANAP project ownership derives from World Bank 2016 Project Appraisal Document (PAD 1665), available at <https://bit.ly/2tljodP>, and SOCAR Midstream website, "TANAP: Trans Anatolian Natural Gas Pipeline (TANAP)," available at <https://goo.gl/3ftrFe>. Information on SCPX project ownership derives from the BP Azerbaijan website, "South Caucasus Pipeline," available at <https://goo.gl/KMutFp>; from the Asian Development Bank 2016 Report and Recommendation of the President to the Board of Directors: Proposed Partial Credit Guarantee Shah Deniz Gas Field Expansion Project (Azerbaijan) [Project Number: 49451-002], available at <https://goo.gl/Bx1yhM>, and from the EBRD website, "SOCAR – South Caucasus Gas Pipeline," available at: <https://goo.gl/YV9ArH>.

International financial institutions (IFIs) are supporting some projects of the Southern Gas Corridor, including TANAP. In December 2016, the Executive Directors for the International Bank for Reconstruction and Development (IBRD) and MIGA's Board of Directors jointly approved a loan proposed by IBRD and a guarantee proposed by MIGA for the TANAP project.⁹ SCPX is not being supported by any IFI.

According to MIGA, SGC repaid the loan to the Lenders earlier than anticipated. Consequently, in August 2019, the MIGA guarantee was cancelled.

Complaint and CAO Assessment

The Complaint

In October 2018, a complaint was lodged with CAO by the Complainants from the Garajemirli Village, in the Shamkir Region of Azerbaijan, supported by the Oil Workers' Rights Protection Organization Public Union. The complaint raises issues of land compensation and consultation during the construction of the South Caucasus Pipeline Expansion (SCPX) project passing through the Complainants' lands.

According to the CAO Assessment report,¹⁰ the Complainants raise concerns around four issues related to the installation of the SCPX pipeline: (a) no compensation for lease of the land; (b) partial compensation for crops on the land; (c) duress to sign the lease agreements and loss of profits resulting from delays in making payments and devaluation of the currency; and (d) inadequate consultation.

The Complainants claim that they did not receive compensation for the lease of their land through which the SCPX pipeline passed and received only partial compensation for the crops grown on the land. They state that they were informed by BP that the ownership documents issued by the municipality were fraudulent and thus not entitled to compensation for the lease. They note that the land ownership had not been contested during the construction of previous pipelines. They state that they were permitted to possess the lands on which they had been growing crops, but that the municipality refused to provide documents to confirm ownership.

In addition, the Complainants claim they were only partially compensated for their crops, as the company contested the coordinates of the land parcels, or in some cases, satellite images taken of the land did not show all the cultivated crops.

The Complainants note that they had received insufficient information about the SCPX pipeline and were pressured into signing the lease agreements. According to the complainants, the lease agreements with BP would compensate for loss of income during the three years of construction and for land-use restrictions, in addition to payment for the 51-year lease for the pipeline on their lands. The complainants claim a loss of profit due to delay in payment as well as devaluation of the Azerbaijani currency during that time.

Company's Perspective

BP asserts that it was unaware of concerns regarding fraudulent documents and paid compensation for lease of land to the municipality as the formally recorded land owner. They state that they used on-site survey photos and satellite images to determine the amount of crops on the land. They claim they engaged the services of the Azerbaijan Service and Assessment Network to assist community members with acquiring ownership documents for project-impacted

⁹ World Bank. 2016. Azerbaijan and Turkey - Trans-Anatolian Natural Gas Pipeline Project (English) [PAD 1665]. Available at: <https://bit.ly/2tljodP>.

¹⁰ CAO Assessment report, August 2019. Available at: <https://bit.ly/TANAP-02>.

parts of their lands. They also pointed out they have a grievance mechanism, but that only one of the complainants had presented a complaint.

BP explained that the payment in local currency was in accordance with Azerbaijani legislation. The compensation rate was determined as set out in the 2014 guidelines. With regard to the timing of payment, the company stated the lease agreements stipulated payment by February 2016 or date of entry onto land by BP, whichever was later, and that they claim all residents were paid before entry onto land.

Following CAO's assessment, the Company decided not to pursue a CAO-facilitated dispute resolution process, and accordingly, the complaint was transferred to CAO's compliance function for appraisal in September 2019.

III. Analysis

MIGA's Policy Commitment and Requirements

MIGA's guarantee project was prepared in the context of its 2013 Policy on Environmental and Social Sustainability¹¹ (the Sustainability Policy) and Performance Standards¹² (PS). The 2013 Environmental and Social Review Procedures Manual (ESRP) provides internal guidance on E&S due diligence and monitoring. According to the Sustainability Policy, MIGA is committed to providing "support to projects and investment activities with the intent to 'do no harm' to people and the environment" (para. 9). Moreover, the Performance Standards are centered on "the application of a mitigation hierarchy to anticipate and avoid adverse impacts on workers, communities, and the environment, or where avoidance is not possible, to minimize, and where residual impacts remain, compensate/offset for the risks and impacts, as appropriate" (Sustainability Policy, para. 5).

With respect to risk identification, the Sustainability Policy further provides that when any World Bank Group (WBG) entity is involved with the project, "MIGA may rely on and use such entity's environmental standards, environmental and social due diligence and/or monitoring, in accordance with WBG common or shared guidance" (para. 6).

MIGA's Policy Framework Applicable to Third-Party Associated Facilities

MIGA's 2013 Performance Standards require identification of E&S risks and impacts in a project's area of influence. This includes risks and impacts with respect to associated facilities, which "are not funded as part of the project and that would not have been constructed or expanded if the project did not exist and without which the project would not be viable" (PS1, para. 8). Associated facilities include "railways, roads, captive power plants or transmission lines, pipelines, utilities, warehouses, and logistics terminals" (PS1, para. 8, FN15).

In cases where third parties are responsible for aspects of E&S risk management at associated facilities, PS1 stipulates that "an effective ESMS should identify the different entities involved and the roles they play, the corresponding risks they present to the client, and opportunities to collaborate with these third parties in order to help achieve environmental and social outcomes that are consistent with the Performance Standards" (para. 2). Moreover, in the event of risks and impacts resulting from a third party's actions, PS1 requires the client to "address those risks and impacts in a manner commensurate with the client's control and influence over the third parties, and with due regard to conflict of interest" (para. 9).

¹¹ MIGA. 2013. Policy on Environmental and Social Sustainability. Available at: <https://bit.ly/MIGA-Sustain-Policy-2013>.

¹² MIGA. 2013. Performance Standards on Environmental and Social Sustainability. Available at: <https://bit.ly/MIGA-PS-2013>.

Where MIGA's guarantee holder (i.e., MIGA's client¹³) is a lender that does not control the project enterprise, MIGA requires the client "to the extent practicable under the circumstances: (i) to include covenants in their loan documents or some other agreement with the Project Enterprise that require compliance with MIGA's environmental and social standards; and (ii) to diligently enforce these covenants against the Project Enterprise." (Sustainability Policy, para.2, FN1). The Sustainability Policy further provides that "MIGA, as part of its own due diligence process, will review Clients' identification of third party risks, and will determine whether such risks are manageable, when the Client has control or influence over the actions and if so under what conditions" (para. 21). It further notes that certain risks may require MIGA to refrain from supporting a proposed project.

According to the ESRP's section on addressing third-party activities, when the client does not have control or influence over third-party actions and behavior, and the E&S risks and/or impacts associated with such actions are high, "specific requirements and actions are to be determined on a case-by-case basis" (para. 2.5).

MIGA's E&S Due Diligence Review

IBRD conducted an environmental and social due diligence review of the TANAP project prior to MIGA's involvement. IBRD determined that SCPX was an associated facility of TANAP but requested and received from the Board of Executive Directors a safeguard policy waiver¹⁴ for "associated projects," including SCPX. The basis for the waiver according to the Project Appraisal Document (PAD) is that "the Bank has little to no reasonable expectation that it will: (a) be able to have access to all of the project documentation of the Associated Projects; (b) be allowed to take part in the supervision of the Associated Projects; or (c) be able to negotiate a legal framework that would allow the Bank to exercise remedies in the case of non-compliance with safeguard instruments under the Associated Projects, all of which are necessary for the proper application of the Bank's environmental and safeguard policies."¹⁵

The PAD notes that the above conclusions were based on the following:

- (a) The ownership structures for the Associated Projects differ from that of TANAP. BOTAŞ [IBRD's client] is not a shareholder in any of the three Associated Projects. SGC is a minority shareholder, with 6.7 percent in SD2 and SCPx and 20 percent in TAP;
- (b) The Bank has no participation in the financing of any of the Associated Projects;
- (c) Two of the three Associated Projects are in advanced stages of implementation, and the third Associated Project has started construction; and
- (d) While the Bank has had some success in getting access to safeguard information about the Associated Projects, the Bank has been told that unlimited access would not be possible due to the confidentiality considerations of the other projects.¹⁶

¹³ MIGA's 2013 Sustainability Policy defines a client as "the Project Enterprise or the Guarantee Holder (as these terms are formally defined in MIGA's Contract of Guarantee), or the borrower of any loan guaranteed by MIGA, as is appropriate in the context. The Project Enterprise takes the actions necessary to implement the Performance Standards" (para. 2, FN1).

¹⁴ IBRD requested a waiver for OPs/BPs 4.01 (Environmental Assessment), 4.04 (Natural Habitats), 4.36 (Forests), 4.09 (Pest Management), 4.11 (Physical and Cultural Resources), 4.12 (Involuntary Resettlement) and 4.37 (Safety of Dams). No waiver was sought for OP/BP 4.10 (Indigenous Peoples) or OP/BP 7.60 (Disputed Territories) as these policies were not triggered. Refer to: World Bank. 2016. Azerbaijan and Turkey - Trans-Anatolian Natural Gas Pipeline Project (English) [PAD 1665], para. 113, FN4. Available at: <https://bit.ly/2tljodP>

¹⁵ Ibid., para. 113.

¹⁶ Ibid., para. 114.

The PAD further notes that “recognizing the functional and perceptual linkage between TANAP and these other investments,”¹⁷ IBRD carried out due diligence review of the potential risk levels and management systems of these associated projects, including reviewing the Environmental and Social Impact Assessments (ESIAs). IBRD’s review, which was largely based on publicly available information, concluded that the “ESIAs of associated projects generally comply with the Bank’s safeguards procedures and are of high quality.”¹⁸ The review “identified no significant compliance issues,” deeming the associated projects to be “of moderate risk, well planned, and executed with documentation and procedures comparable to the Bank’s environmental and social safeguard policy requirements.”¹⁹

The PAD specifically discusses land acquisition and social impacts in associated projects, including SCPX.²⁰ It notes that there is no physical displacement in these projects and that most of the expropriation is for a temporary period of three years for the duration of the construction period. It states these projects have followed the applicable land acquisition laws in accordance with respective Host Government Agreements. According to the PAD, the projects have in place a Guide to Land Acquisition Implementation that describes the process, procedures, compensation, and grievance mechanism, and is made available to all land owners. In addition, the project policies indicate they pay crop compensation damages to all informal users who cultivate public lands. The PAD also notes that all projects have internal grievance mechanisms in place, and for SCPX, both verbal and written grievances are subject to investigation. It is noted that most complaints were related to crop compensation and orphan lands.

MIGA’s E&S due diligence confirmed that IBRD’s E&S due diligence was considered to be of sufficient quality and scope to adequately inform MIGA’s approval process. When any WBG entity (i.e., IBRD in this case) is involved with the project, “MIGA may rely on and use such entity’s environmental standards, environmental and social due diligence and/or monitoring, in accordance with WBG common or shared guidance” (Sustainability Policy, para. 6).

MIGA’s Environmental and Social Review Summary (ESRS) concluded that the E&S performance of SCPX is outside the scope of MIGA’s guarantee. The ESRS stated that, consistent with both Performance Standard 1 and IBRD’s approach to associated facilities in this project, “MIGA’s E&S requirements will not be extended to cover the associated facilities. These projects are operated by third parties over which TANAP has no operational control or leverage.”²¹

CAO notes that issues of land compensation with SCPX had been reported publicly as early as 2015.²² While IBRD had noted in the PAD that there were complaints related to crop compensation and orphan lands, CAO did not have access to further documentation related to these allegations.

Determination of Control and Influence

MIGA examined SGC’s control in relation to the TANAP associated facilities, including SCPX. Important to MIGA’s review was the minority shareholder’s position of SGC in all the associated facilities. With respect to SCPX in particular, SGC has only a 6.7% share and therefore does not have control of SCPX operations.

¹⁷ Ibid., para. 115.

¹⁸ Ibid., para. 115.

¹⁹ Ibid., para. 116.

²⁰ Ibid., paras. 116–117.

²¹ MIGA. 2017. Environmental and Social Review Summary (updated May 9, 2017).

²² Green Alternative. 2015. South Caucasus Pipeline Expansion Project (SCPX) and land purchase practices in Georgia. While this report pertains to the Georgian section of SCPX, the issues discussed are comparable to issues raised in the CAO complaint. Available at: <https://bit.ly/GreenAlt-2015-SCPX>.

MIGA reported that it explored the question of SGC influence in the TANAP project associated facilities in terms of coordinating with other IFIs on opportunities to collaborate and share information.²³ MIGA noted that IFI coordination would not be an avenue of influence in SCPX, as no other IFI is providing support to SCPX.

MIGA noted that it did not engage with SCPX as part of its due diligence. MIGA also reported that it did not require SGC to include identification of E&S risks posed by associated facilities in the TANAP project ESMS, as the PAD included this analysis.

CAO notes that, except for the discussion in the PAD on associated facilities, MIGA provided no documentation containing deliberation or analysis of the potential influence of SGC or the TANAP project in associated facilities, including SCPX.

MIGA did not engage with TANAP project shareholders (other than SGC) about either the extension of its Performance Standards to associated facilities or avenues of information sharing between TANAP and associated facilities “to help achieve environmental and social outcomes that are consistent with the Performance Standards” (PS1, para. 2). MIGA did not provide analysis of the conditions under which third-party risks, including those from associated facilities, would be manageable, or discussion of whether certain risks would require MIGA to refrain from supporting the project (Sustainability Policy, para. 21).

CAO notes similarities in the ownership composition of TANAP and SCPX projects. There is direct participation of SGC and BP in both the TANAP and SCPX projects (see Figure 1). In addition, CAO notes that the Government of Azerbaijan and the corporate groups that hold equity in TANAP (SOCAR, BP, and TPAO) together own 64.5% of SCPX.

CAO understands the concept of “influence” as used in the Performance Standards to include the ability to leverage relationships to achieve outcomes consistent with MIGA’s E&S requirements.

In this context, CAO has questions as to the robustness of the analysis that led MIGA to the conclusion that there was no prospect to work through the lenders or TANAP equity holders to influence SCPX as an associated facility, or to share information that would help support the achievement of outcomes consistent with the Performance Standards.

MIGA Project Monitoring

After MIGA issues a Contract of Guarantee, MIGA monitors the project through the following actions: (a) implement a regular program of monitoring for business activities with E&S risks and/or impacts in accordance with the ESRP; and (b) review implementation performance via the client’s Annual Monitoring Report and updates on the E&S Action Plan (Sustainability Policy, para. 43). MIGA may undertake monitoring site visits and may conduct desk review of information relevant to E&S compliance (ESRP, 2.1). The ESRP further notes that the monitoring responsibilities include “learn[ing] if there are any material E&S concerns including CAO/Inspection Panel or NGO/CSO campaigns” (para. 2.1).

A monitoring site visit was conducted in early October 2018 to the TANAP project in Turkey, which was the first MIGA monitoring visit since the due diligence visit in September 2016. Based on MIGA documentation of this visit, the management of E&S risks was found to be satisfactory. Given that the associated facilities had been determined to be outside the scope of the MIGA guarantee, the site visit focused on TANAP and excluded the associated facilities, including

²³ World Bank. 2016. Azerbaijan and Turkey - Trans-Anatolian Natural Gas Pipeline Project (English) [PAD 1665], para. 116. The PAD provides that the “Bank team will seek to coordinate with the other IFIs on opportunities to collaborate and share information in this respect” (para. 116). The Asian Development Bank, the European Bank for Reconstruction and Development, and the European Investment Bank indicated their willingness to collaborate with the World Bank during the implementation of TANAP and associated projects. MIGA notes that SGC confirmed its support to IFI collaboration.

SCPX. MIGA documentation makes a brief mention of the complaint to CAO, which had been filed shortly after the site visit.

The issues raised in the current complaint were reported publicly in August 2018.²⁴ This was shortly after MIGA had issued the guarantee. However, CAO has not seen any documentation by MIGA to indicate they raised this issue with the client.

MIGA Project Closure

In August 2019, the MIGA guarantee was cancelled after SGC repaid the loan to the Lenders. According to MIGA, a cancellation memo was completed, but no E&S information was included; it noted that a CAO case was open.

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 E&S outcomes and/or issues of systemic importance to MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of MIGA's E&S performance in relation to these issues, the existence of questions as to the adequacy of MIGA's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in such circumstances.

In this case, the complaint raises concerns regarding economic displacement as well as information disclosure, community engagement, and consultation concerning livelihood restoration and compensation. While evidence beyond the complainants' account of events is limited, these issues are potentially substantial in nature in that they may have a material livelihood impact on a significant number of households.

SCPX is acknowledged by MIGA to be an associated facility of TANAP. However, MIGA determined that its E&S requirements would not be extended to cover SCPX. This decision was based on a conclusion that SCPX would be operated by third parties over which TANAP has no operational control or leverage. Considering the ownership structures of SCPX and TANAP, CAO has questions as to the robustness of the analysis that led MIGA to this conclusion.

MIGA did not engage with public reporting of the issues related to the complaint (community grievances over compensation for land used by SCPX) either in 2015 during MIGA's due diligence or in 2018 during MIGA project monitoring. Underlying this lack of response was MIGA's conclusion that TANAP had no operational control or influence over SCPX.

Nevertheless, CAO has determined that a compliance investigation is not the appropriate response to this complaint. In reaching this conclusion, CAO has considered the following: (a) that the resettlement process that gave rise to this complaint occurred prior to MIGA providing a guarantee for the TANAP project in June 2018; (b) that the MIGA guarantee was cancelled in August 2019; and (c) that IBRD requested and received from its Board of Executive Directors a safeguard policy waiver for TANAP "associated projects," including SCPX.

²⁴ Green Alternative. 2018. The violations of social, economic and environmental rights during development and energy infrastructure projects. Case of South Caucasus countries. Page 34. Available at: <https://bit.ly/GreenAlt-2018-SCPX>.