



CAO ASSESSMENT REPORT

**Regarding concerns in relation to MIGA's Investment in Trans-Anatolian
Natural Gas Pipeline (TANAP) Project # 13661, in Azerbaijan**

August 2019

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

About 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

TABLE OF CONTENTS

TABLE OF CONTENTSIII

LIST OF ACRONYMS IV

1. OVERVIEW 1

2. BACKGROUND..... 1

 2.1 The Project..... 1

 2.2 The Complaint..... 2

3. ASSESSMENT SUMMARY 2

 3.1 Methodology..... 2

 3.2 Summary of views 3

4. NEXT STEPS..... 8

ANNEX A. CAO COMPLAINT-HANDLING PROCESS..... 9

LIST OF ACRONYMS

BOTAŞ	Boru Hatları İle Petrol Taşıma A.Ş.
BP	British Petroleum (Shah Deniz) Limited
CAO	Office of the Compliance Advisor Ombudsman
HGA	Host Government Agreement
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
MOUs	Memorandums of Understanding
OWRPPU	Oil Workers' Rights Protection Organization Public Union
SCP	South Caucasus Pipeline
SCPX	South Caucasus Pipeline Expansion
SGC	Southern Gas Corridor Closed Joint-Stock Company
TAP	Trans-Adriatic Pipeline
TANAP	Trans-Anatolian Natural Gas Pipeline

1. OVERVIEW

On October 26, 2018, a complaint was lodged with CAO by nine individuals from the Garajemirli Village, in the Shamkir Region of Azerbaijan (“the Complainants”), supported by the Oil Workers’ Rights Protection Organization Public Union (OWRPPU). The complaint raises issues of land compensation and consultation during the construction of the South Caucasus Pipeline Expansion (SCPX), passing through the Complainants’ lands.

SCPX is part of the Southern Gas Corridor value chain. It 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 Project”), which is supported by the Multilateral Investment Guarantee Agency (MIGA). MIGA guaranteed a loan provided by commercial banks to an Azerbaijani joint investment company, Southern Gas Corridor Closed Joint-Stock Company (SGC) (which has a control of the TANAP Project through majority ownership), to finance its share of the TANAP pipeline. SGC is a joint investment company of the Ministry of Economy of Azerbaijan Republic and the State Oil Company of the Azerbaijan Republic (SOCAR). TANAP Doğalgaz İletim A.Ş. (a special purpose company) operates the TANAP Project. A majority share of this special purpose company is held by SGC, and other shareholders include Turkey’s national gas company BOTAŞ, SOCAR Turkey Enerji A.Ş., as well as BP (the “Company”). BP is the technical operator of the SCPX.

On November 19, 2018, CAO determined that the complaint met its three eligibility criteria. During CAO’s assessment, the Complainants indicated a willingness to engage in a dispute-resolution process, while the Company preferred that the complaint be handled by CAO’s Compliance function. Since no consensus was reached on a dispute-resolution process, which is voluntary, the complaint will be referred to CAO Compliance for appraisal of IFC’s performance, in accordance with CAO’s Operational Guidelines.

2. BACKGROUND

2.1 The Project

On June 27, 2018, MIGA agreed to issue \$779,773,701.89 and €286,149,783.65 (US\$330,923,769 approximately) in guarantees covering 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”) to SGC, in order to finance its share of the Project in Turkey.¹ MIGA’s Environmental Category for the Project is A.

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 pipeline through Turkey to Greece, and (iv) the Trans-Adriatic Pipeline (TAP) through Greece, Albania, and the Adriatic Sea to Southern Italy.²

¹ See MIGA’s website and its description of the project at <https://www.miga.org/project/trans-anatolian-pipeline>

² See MIGA’s Environmental and Social Review Summary about the Trans-Anatolian Natural Gas Pipeline Project at <https://www.miga.org/sites/default/files/archive/Documents/SPGDisclosures/ESRS%20TANAP.pdf>

MIGA's guarantee was issued strictly regarding the TANAP section of the Southern Gas Corridor, but MIGA recognized the Shah Deniz gas field and the SCPX (running through Azerbaijan and Georgia) as associated facilities to the Project.³ This complaint relates to the SCPX section of the Southern Gas Corridor project.

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).⁴ The Project is developed by TANAP Doğalgaz İletim A.Ş., (a special purpose company) to implement, own, and operate the pipeline. A 51-percent majority share is held by SGC, and other shareholders include Turkey's national gas company BOTAŞ, SOCAR Turkey Enerji A.Ş., as well as BP. BP also operates Shah Deniz gas field in Azerbaijan.⁵

According to MIGA, the Project will allow Azerbaijan to exploit the natural gas extracted in the Shah Deniz gas field and will facilitate the tripling of its gas exports and extend their geographical reach. Also, according to MIGA, the Project will increase the diversity and security of Turkey's and Europe's energy supply. The Project is expected to create employment opportunities directly and indirectly through construction, operation, support services, pipe manufacturing, and other activities.⁶

2.2 The Complaint

On October 26, 2018, a complaint was lodged with CAO by the Complainants from the Garajemirli Village, in the Shamkir Region of Azerbaijan, supported by the OWRPPU. The complaint raises issues of land compensation and consultation during the construction of the SCPX passing through the Complainants' lands. The Complainants are comprised of 16 members of the Garajemirli Village. A more detailed description of the issues raised in the complaint and during the assessment is outlined in Section 3.2 below.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the assessment is to obtain a better understanding of the issues and concerns raised by the Complainants, through gathering information from different stakeholders without making a judgement on the merits of the complaint. The assessment also seeks to establish which CAO process the Complainants and the Company would like to pursue, the Dispute Resolution process or the Compliance function for appraisal of IFC'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 some MIGA project documentation;
- telephone conversations with the MIGA team;
- online and in-person meetings with the Complainants and the OWRPPU supporting them;
- a visit to Garajemirli Village to see the Complainants' lands;

³ See Id., page 2, end of section A

⁴ See SGC's website at <https://www.sgc.az/en/about>

⁵ See MIGA's Environmental and Social Review Summary about the Trans-Anatolian Natural Gas Pipeline Project, p.2, para.2, at <https://www.miga.org/sites/default/files/archive/Documents/SPGDisclosures/ESRS%20TANAP.pdf>

⁶ See MIGA's website, development impact section, at <https://www.miga.org/project/trans-anatolian-pipeline>

- telephone and in-person conversations with representatives from BP and SGC in Baku; and
- a desk review of documentation provided by BP and SGC.

3.2 Summary of views

Complainants' perspective

The Complainants explained that, in 2014, BP invited the community of Garajemirli Village, in the Shamkir Region of Azerbaijan, to a meeting to inform them about the construction of the SCPX pipeline, which would pass through their village. According to the Complainants, BP informed them that, if the SCPX pipeline passed through their lands, BP would engage with the affected villagers and enter into lease agreements with them. They also report that, when they inquired about compensation, BP assured them that there was no reason to worry and that their rights would be observed in the determination of compensation amounts.

During the assessment of the complaint, the Complainants raised issues related to the installation of the SCPX pipeline, which fall into four categories that are explained below:

- 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.

a) No compensation for lease of the land

Some of the Complainants explained that, in 2007, they were relocated by the local municipality from land that they owned at that time ("original lands") to their current location ("replacement lands"), where the SCPX pipeline later passed. The replacement lands are the neighboring farm lands to the original lands. The municipality turned the nine Complainants' original lands into a residential area and issued them with new ownership documents for the replacement lands. The Complainants began using the replacement lands to grow their crops.

The Complainants explained that, when the SCPX pipeline was constructed and they began engaging with BP, they were told by BP that the new ownership documents issued by the municipality for the replacement lands were fraudulent and were missing the specific coordinates to indicate which properties each of them owned. The Complainants explain that their ownership over the replacement lands was contested by BP during the construction of the SCPX but had not been contested during the construction of the previous pipelines.

The Complainants further explained that they challenged the issuance of fraudulent documents before government entities and courts. As a result of their challenge, the fraudulent documents were cancelled, which meant that their original lands would belong to them. However, they explained that, at this point, their original lands were already being used for residential purposes by other residents, and they could not take them back even though they were the rightful owners. Accordingly, the municipality permitted them to possess the replacement lands, but refused to issue to them documents confirming ownership over those lands.

The Complainants further stated that, unlike others who entered into a 51-year lease agreement with BP and received compensation both for leasing their land and for the crops

cultivated on their lands, they only received compensation for the crops. The Complainants claim that they were informed by BP that they did not own the replacement lands and therefore were not entitled to compensation for their lease. The compensation for the lease of the replacement lands was paid to the municipality, which is alleged to be the lawful owner of the replacement land.

The Complainants explained that they would like BP to assist them in obtaining legitimate ownership documents for the replacement lands and to thereafter enter into a lease agreement with BP and receive compensation accordingly. The Complainants also allege that some other people who were using the replacement lands in the same area but not included among the Complainants received land ownership documents in time and entered into the 51-year lease with BP.

b) Partial compensation for crops on the land

The Complainants explained that not all of them received 100-percent compensation for the crops on their replacement lands. They claim that BP contested the coordinates of the replacement lands' parcels owned by the Complainants, claiming that some portions of the Complainants' lands that had crops actually belonged to a different land owner. They claim that, as a result, BP paid part of the compensation for the crops on the land to other people.

The Complainants claim that, in other instances, they received only 10 percent of what was due for their crops, because, according to BP, satellite images taken of the land did not show all the crops that were cultivated.

c) Duress to sign the lease agreements and loss of profits resulting from delays in making payments and devaluation of the currency

The Complainants argue that they lacked relevant information about the construction of the pipeline and that they were pressured into signing the lease agreements. They state that the first information session between land owners and BP about the construction of the SCPX pipeline took place in 2014. At this session, the land owners were prohibited by BP from cultivating their lands until the construction of the SCPX pipeline was completed. The Complainants further explained that it was not until February 2015 that they signed the 51-year lease agreements. The Complainants claim that they were forced into signing the lease agreements and were told that if they did not like the terms of the agreement, their land would be used for the SCPX pipeline anyway and they would have to seek redress elsewhere. The lease agreements that the land owners signed contain 13 restrictions on how land owners should use the land after the SCPX pipeline had been installed.

The same group of Complainants further argue that they incurred a loss of profits due to devaluation of the currency and delay in the payments after signing the lease agreements. The Complainants explain that the lease agreements with BP undertook to compensate the land owners for loss of income for a period of three years resulting from the inability to use the land while the SCPX pipeline was being constructed. The lease agreement also undertook to pay for a 51-year lease for having the SCPX pipeline in the Complainants' lands and for applying the 13 restrictions for the use of the land after the pipeline had been constructed. The Complainants explained that, at the time of signing the lease agreements, the exchange rate between the US dollar and the Azerbaijani manat was USD1 = AZN0.78. However, the Complainants argue that BP delayed in making payments. When the Complainants inquired

why the payment had not been made, they were informed by BP that payment would be made when the construction of the SCPX pipeline reached the Complainants' lands.

The Complainants claim that, by the time payment was made, which was eight months after the execution of the lease agreements, the manat had been devalued twice and was trading at USD1 = AZN1.55. This resulted in loss of profit for the land owners. The Complainants also explained that there was a two-month delay in completion of the construction of the SCPX pipeline. However, BP paid them an additional six months compensation for this delay in construction.

The Complainants stated that they would like BP to compensate them for loss of profit caused by late payment of compensation and devaluation of the currency between the signing of the lease agreements and the actual date of payment. They would like BP to pay them the difference between the rate on the date of executing the lease agreement and the rate on the day they received the compensation (for crops and lease of the land). The Complainants further question why the terms of the lease agreements were expressed in manat (AZN) when all the previous agreements for pipelines had been in US dollars. They believe that the contract was signed in manat because BP was aware that the devaluation would take place and that if the lease agreements had been in US dollars they would not have suffered any loss.

d) Inadequate consultation

The Complainants informed the CAO that, although there had been an information meeting in 2014 regarding the SCPX pipeline, there was insufficient information shared about the Project. Furthermore, they argue that the community members were not given an option whether to enter into a lease agreement with BP. They told CAO that they had no choice in the matter and were told that if they were unhappy with the terms of the agreements or the process, they could seek other avenues of redress, but the construction of the SCPX pipeline on their lands would continue regardless. The Complainants also stated that they did not have full understanding of the agreement and the process to be followed during the construction of the SCPX pipeline.

Company's perspective

During the assessment of the case, the CAO team engaged with both SGC and BP. SGC informed the CAO that they are a minority shareholder in the South Caucasus Pipeline (SCP), built to export Shah Deniz gas from Azerbaijan to Georgia and Turkey, with 6.67 percent participating interest. SGC further explained that they do not operate the SCP project, nor are they involved in the day-to-day management or exercise control over SCP. SGC explained that BP acts as technical operator of the SCP project and was responsible for the construction of the SCP and the SCPX pipelines. They also added that SGC was not involved in any discussions or engagement with local authorities or land owners/possessors along the pipeline route related to the acquisition of land and compensation therefore.

On February 5, 2019, SGC forwarded a letter from BP to the CAO, responding to the complaint and explaining the process of land acquisition and compensation for 4 (four) of the Complainants, whose names were disclosed to SGC and BP in the complaint.

During the assessment trip, CAO also met with BP representatives, who responded to the four categories of issues raised by the Complainants. BP started by describing the process of land acquisition, stating that it was done in accordance with a Host Government Agreement (HGA).

They explained that, in accordance with the HGA, BP's role is to identify and inform the government of where the pipeline will run. After that, the State identifies the lawful owners of the respective land parcels that will be affected by the project and acquires the land for the purposes of the project. The Local Executive Authority, which represents the State, then signs the agreements with land owners in accordance with the HGA. The State then authorizes the Ministry of Energy to enter into an agreement which passes over all acquired land parcels to the SCP and SCPX.

BP went on to explain that, as the Technical Operator of the SCPX, they were given a map of the land owners and the location of the land parcels approved by the State. In this case, they took the maps, visited the locations and signed non-binding memorandums of understanding (MoUs) with each lawful land owner. The MoUs captured the inventory of the crops and buildings on the land at the time of signing the respective MoU. The understanding in the MoU was that if the pipeline passed through the specific parcel of land, any payment made to the land owner would be based on the crops and buildings found on the land at the time of executing the MoU.

BP explained that, in this case, an MoU was executed with some of the Complainants in April 2014 and that, contrary to what the Complainants' claim, nothing in the MoU prohibited the Complainants from cultivating the land. Furthermore, the MoU did not impose any obligation on any party to relinquish their the land for the Project. The Complainants voluntarily signed the MoUs, after which, the State then signed the lease agreements with each land owner affected by the SCPX. BP paid the lawful land owners, on behalf of the State, in accordance with the information received from the State.

a) No compensation for lease of the land

BP addressed the issue of no compensation for land because of fraudulent documents, by explaining that they were not aware of the existence of such an issue. BP explained that they paid compensation for lease of land only to the lawful land owners, as informed by the State and in accordance with the law. Therefore, according to the information given to them by the State, the recognized and formally recorded land owner is the local municipality, and thus BP had to pay to the municipality.

Regarding ownership documents, BP stated that they were not authorized to issue ownership documents to the residents. They explained that in other similar situations, they had engaged the services of the Azerbaijan Service and Assessment Network (ASAN) to assist community members with acquiring ownership documents for the project-impacted part of their land. They also stressed that, to avoid the experience in previous pipelines related to the existence of ownership documentation, they only recognized registered owners as eligible for payment.

b) Partial compensation for crops on the land

BP explained that, similar to the issue in (a) above, the information on the lawful land owners and location of the land parcels was provided to them by the State. They stated that they used on-site survey photos and satellite images to establish the amount of crops that were on the land. Where payment was made to a person different from the one claiming to be the lawful land owner or user, it was because the official records and satellite images guided them on what was on the land.

BP further stated that they have a grievance mechanism in place and any land owners who were unhappy about the payment could have raised a complaint with them. They only received a complaint from one of the Complainants.

c) Duress to sign the lease agreements and loss of profits resulting from delays in making payments and devaluation of the currency

BP explained that the Complainants were paid in accordance with their lease agreements or agreements on compensation for crops. They were paid in manat, as stipulated in the contract. BP also explained that the reason why the contract was in manat and not in US dollars like previous pipeline contracts, was because both parties to the agreements were local persons, i.e. the State and individuals (local land owners). They stated that Azerbaijani legislation prohibits contracting in USD when both contracting parties are locals.

BP further stated that they did not negotiate the compensation rate with each person separately, as the guidelines were approved in advance by an independent evaluator. In accordance with the guidelines, the residents were supposed to receive, where applicable, the land rental rate, the livelihood restoration rate, compensation for crops, and compensation for any restrictions applied on using the land. In addition, the residents would receive money for anything else of value on the property. Parties were informed of and provided with these guidelines in advance (in 2014).

BP further explained that the lease agreements stipulated that compensation would be paid by February 2016, or on the date of entry onto land by BP, whichever was later, and that according to their records, all residents were paid before entry onto land. BP again highlighted that there were no challenges or complaints about these guidelines and that land owners signed land entry agreements on the date of entry.

BP also stated that the devaluation of the currency was unfortunate and affected the whole country. However, with regards to this specific case, payment was made in manat according to the lease agreements and was paid according to the time agreed upon in the lease agreement.

BP encouraged the Complainants to use their complaint mechanism and also shared that, in other districts where land owners did not agree to lease their land for the project, BP would make alterations to the route of the pipeline.

d) Inadequate consultation

BP stated that, in 2014, an information session was held with the community to inform them about the pipeline. Everyone was provided with the Guide for Land Acquisition and Compensation (GLAC), according to which the compensation was set. BP also informed the CAO that there was a second consultation session in 2015 with the land owners, to inform them about the pipeline and to discuss compensation rates. There was no obligation for any land owner to enter into a lease agreement with the State. The compensation rates were predetermined by an independent evaluator. BP explained that the land owners were not obliged to accept the proposed compensation rate and that some land owners initially declined the rate and did not lease their land for the project.

BP also informed the CAO that they have a very robust complaint mechanism, where people can lodge written or oral complaints. They did receive complaints during the consultation

process and handled them through this complaint mechanism. They further explained that the State has a compulsory land acquisition mechanism, in the event that a land owner does not willingly agree to lease a parcel of land that is necessary for the project. In this case, the compulsory land acquisition mechanism was not triggered. All the land owners who signed the agreement with the State did so voluntarily.

4. NEXT STEPS

During CAO's assessment of the complaint, and after internal discussions, the Company conveyed to CAO that they wished for the complaint to be addressed by CAO's Compliance function. While the Complainants had expressed their openness to dispute resolution, a dispute-resolution process is voluntary for both sides, and thus mutual agreement must be present in order to proceed with such a process. The complaint is therefore being referred to CAO's Compliance function for an appraisal of IFC's environmental and social due diligence, in accordance with CAO's Operational Guidelines.

ANNEX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, CAO dispute resolution specialists conduct an initial assessment. 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,⁷ 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 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 function 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.⁸

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**

⁷ 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

⁸ 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.

Step 6: Conclusion/Case Closure