



OMBUDSMAN ASSESSMENT REPORT

Complaint Regarding IFC Advisory Services Kosovo KEK project (#29107)

January 2012

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

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LIST OF ACRONYMS

BIC	Bank Information Center
CIEL	Center for International Environmental Law
IBRD	International Bank for Reconstruction and Development
IFC	International Finance Corporation
KIPRED	Kosovar Institute for Policy Research and Development
KEK	Kosovo Energy Corporation
SPEK	Kosovo Energy Trade Union
MIGA	Multilateral Investment Guarantee Agency
PSP	Private sector participation
SEIA	Social and Environmental Impact Assessment

1. INTRODUCTION

The Office of the Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The 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.

The CAO assessment is conducted by CAO's Ombudsman 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 and determine whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transferred to CAO Compliance for their review.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether complaints choose to continue working with a CAO Ombudsman process or prefer a transfer to CAO Compliance. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,¹ 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: **Ombudsman assessment:** Assessment of the issues and provide support to stakeholders in understanding and determining whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transfer to CAO Compliance for appraisal of IFC's/MIGA's social and environmental performance. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement:** If the CAO Ombudsman process continues, this phase involves initiation of a dispute resolution process (typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective 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 problem-solving process, in a way that is acceptable to the parties affected².

OR

Compliance Appraisal/Audit: If a collaborative resolution is not possible, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether a compliance audit of IFC's/MIGA's intervention of the project is merited.

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

Step 6: **Conclusion/Case closure**

¹ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, the CAO Ombudsman will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the CAO Ombudsman will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has closed the complaint and transferred it to CAO Compliance for appraisal.

Upon a careful review of the August 2011 Complaint received from complainants that requested confidentiality, the CAO, in September 2011, determined that the complaint met its three complaint eligibility criteria:

1. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
3. The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

Subsequently, according to CAO's Operational Guidelines, the CAO Ombudsman began the assessment of issues and opportunities for resolving the issues in the complaint.

2. THE COMPLAINT

In August 2011, the CAO received a complaint in which the locally affected people requested that their identities be kept confidential. The complaint was supported by both local Kosovar NGOs and international NGOs. The complaint raised concerns about the impact of the privatization of distribution and supply division (KEDS) of the Kosovo Energy Corporation (KEK), Kosovo's publically owned utility. The complaint alleges, among other things, the following social and environmental concerns regarding the KEK privatization process:

- *Job Losses/Retrenchment:* Potential job losses in both the utility and the broader energy sector as well as inadequate plans for retrenchment and associational rights.
- *Tariff Increases:* Concern that removal of government energy subsidies will make energy unaffordable to large portions of society.
- *Due Diligence:* Inadequate studies of the social and environmental impacts of IFC's advisory role and subsequent impact on the energy sector. Specifically, complainants allege that the project is not in compliance with IFC's Performance Standards 1 (Social and Environmental Assessment and Management Systems) and 2 (Labor and Working Conditions).
- *Disclosure of Information:* Crucial information was not disclosed to interested stakeholders in a timely fashion (economic risks, environmental and social impacts, risks to third parties, mitigation options, etc.) and complainants allege that the project is not in compliance with the IFC Policy on Disclosure of Information.
- *Community Consultation:* Consultation should have been more inclusive and extensive through project assessment and selection.

3. THE PROJECT³

This IFC project assists the government of Kosovo with possible privatization of KEK, the country's publicly owned utility, via private sector participation (PSP). Phase 1 reviews the feasibility of introducing PSP in the distribution network and supply functions of KEK. If Phase 1 determines that a PSP is viable from the market perspective and beneficial for the country, Phase 2 will introduce a transparent tender process to attract a private investor with the necessary funds and expertise for solving the KEK operational failures (high overstaffing, inadequate management, outdated equipment) and financial problems (due in particular to low collection rates). The objective is successful completion of the bidding process, with selection of a strategic reputable private operator.

³ The project information here is provided by IFC and does not reflect any judgments on the part of CAO.

This Advisory Services project has been categorized as medium risk, and a medium likelihood in regards to environmental and social risk. The risks identified are reputational risk deriving from the privatization of a public utility which serves the entire country, and the perceived risk of large increases in tariffs.

The IFC is managing a budget of \$2,022,508 for the project.

4. CAO'S ASSESSMENT

4.1. Methodology

The purpose of the CAO assessment is to clarify the issues and concerns raised by complainants, to gather information on how other stakeholders see the situation, and to help stakeholders understand and determine whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transferred to CAO Compliance for their review. *The CAO Ombudsman does not gather information in order to make a judgment on the merits of the complaint.*

The CAO assessment of the KEK-KEDS complaint consisted of:

- Review of project documents
- Interviews, meetings, and group discussions
- Mission to Kosovo

The CAO team conducted two field trips to Pristina, Kosovo in November 2011. In preparation for and during the field trips, the CAO Ombudsman team reviewed IFC project documents, and met with: complainants, IFC's project team, relevant government of Kosovo representatives, and additional stakeholders. Specifically, individual interviews and small group discussions were held with representatives from:

- AFL-CIO Solidarity Center
- Bank Information Center (BIC)
- The Center for International Environmental Law (CIEL)
- Deloitte Consulting
- Forum for Civic Initiatives (FIQ)
- Independent Trade Union of Energy of Kosovo (SPEK)
- Institute for Advanced Studies (GAP)
- International Trade Union Confederation (ITUC) / Global Unions
- KEDS privatization Project Implementation Unit (PIU)⁴
- Kosovar Institute for Policy Research and Development (KIPRED)
- Kosovo Energy Regulatory Office (ERO)
- Ministry of Economic Development
- RIInvest Institute for Development Research
- TetraTech
- United States Agency for International Development (USAID)

⁴ The Project Implementation Unit (PIU) is a technical project management unit that also serves as the technical secretariat for the Privatization Committee. The PIU reports directly to the Privatization Committee and is charged with the day-to-day responsibilities to execute, manage, and oversee the development of the Project. The Privatization Committee, established by Government Decision No 08/39 of October 8, 2008, is the public governmental entity responsible for the Project and ensuring that the Project is executed in a manner consistent with Government objectives.

4.2. Assessment Findings

Numerous stakeholders, including IFC and the Ministry of Economic Development, affirmed their willingness to engage in a collaborative process to address the issues raised in the complaint. However, after a thorough discussion of the CAO mandate, functions, services, and processes, the complainants informed CAO that they considered their interests (and those of the Kosovar public) would be best served by the CAO Compliance function. Therefore, the complaint will be transferred to CAO's Compliance function for appraisal, per CAO Operational Guidelines.

During the assessment, the CAO Ombudsman team did not identify any additional issues or complainants beyond those in the initial complaint and summarized in Section 1 above⁵.

⁵ The complainants requested CAO to also keep the original complaint letter confidential because it would reveal their identities. With the complainants' permission, the concerns and issues expressed in the complaint have been summarized in this public Assessment Report and also shared with other stakeholders during the CAO assessment.