

**CRUDE ACCOUNTABILITY & KPO
CONSORTIUM: FINAL STATEMENT
AFTER EXAMINATION OF
COMPLAINT**

UK National Contact Point for
the OECD Guidelines for
Multinational Enterprises

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Summary

Findings and recommendations

The UK NCP examined a complaint from Crude Accountability and others (the complainants) about actions of the KPO consortium as the operator of the Karachaganak oil and gas condensate field in Kazakhstan. Specifically, the UK NCP considered how KPO responded to the situation of two households whose properties were located within a protective zone around the facility and who were consequently entitled to be resettled and compensated by the Kazakh authorities.

The households' entitlement to resettlement was confirmed by a court decision in 2010, but in 2013, when the complaint was made, neither household had been resettled by the authorities. One had moved at its own expense, selling its residence and business at a price below that it considered reasonable. The other remained in a living situation declared to be illegal and felt by the household to be unsafe.

The complaint said that the voluntary obligations placed on KPO by the OECD Guidelines for Multinational Enterprises oblige KPO to address the impacts on the households, including impacts on their human rights.

Under Chapter II of the OECD Guidelines, multinational enterprises should address adverse impacts that relate to matters covered by the Guidelines. They should address impacts that they cause or contribute to (Paragraph 11), and also impacts that they are linked to by a business relationship (Paragraph 12). KPO had a business relationship with the Kazakh authorities, and the UK NCP's Initial Assessment accepted for examination an issue under Chapter II, Paragraph 12.

The impacts in the complaint appeared relevant to the households' human right to an adequate standard of living. The UK NCP's Initial Assessment therefore also accepted for examination an issue under Chapter IV, Paragraph 3 of the OECD Guidelines (which obliges enterprises to address human rights impacts specifically, as part of wider obligations to respect human rights).

Mediation between the parties failed to produce an agreement, and so the UK NCP has made a further examination of the issues and makes findings as follows:

- **KPO has not taken adequate steps to promote the households' prompt resettlement and proper compensation in line with applicable international standards. This means that KPO has not met its obligations under the OECD Guidelines Chapter II Paragraph 12 to address impacts it is linked to by a business relationship.**
- **There is no clear and authoritative guidance to establish that the situation as examined affects the households' human rights to an adequate standard of living. This means that the UK NCP does not accept the claim that KPO has not met human rights obligations under the OECD Guidelines.**

To meet KPO's Chapter II obligations, the UK NCP recommends:

- **That KPO regards both households as entitled to resettlement arrangements consistent with the current IFC standard for Involuntary Resettlement, and follows the steps identified in the standard to remedy any deficiencies in the arrangements actually offered to them, completing any action required by May 2018.**

For ease of reference the requirement under the IFC standard is set out below in Annex A to this Final Statement

The UK NCP will request updates from the parties in May 2019 to inform a follow-up report to this Final Statement.

UK NCP procedure

The OECD Guidelines are voluntary principles for responsible business conduct in areas including employment, human rights and the environment. Each country adhering to the Guidelines is required to maintain a National Contact Point (NCP) to consider complaints under the Guidelines. The UK government maintains the UK NCP to meet this requirement. The UK NCP is not part of the OECD and has no wider responsibilities for OECD functions.

The UK NCP is staffed by officials of the Department for International Trade (DIT) which was formed in 2016. Prior to this, it was staffed by officials of the Department for Business, Innovation and Skills (BIS). The UK NCP is funded by DIT and the Department for International Development (DfID). It operates independently of Ministers, who have no role in UK NCP decision making on complaints.

The UK NCP follows published procedures in handling any complaint, including:

- An initial assessment to decide whether issues raised are accepted for further examination**
- An offer of mediation if issues are accepted**
- A further examination if mediation is refused or fails to produce an agreement between the parties**
- A Final Statement reporting the outcome of mediation or further examination.**

An Initial Assessment of this complaint was published in December 2013. The parties accepted mediation, but they were unable to reach an agreement within the timescales expected for the UK NCP process. The UK NCP began its further examination of the complaint in July 2015.

The UK NCP aims to make a Final Statement within a year of receiving a complaint. The deadline was not achieved in this case. A key part of the delay was the extended, but ultimately unsuccessful mediation.

Detailed analysis

Details of the parties involved

The complainants

1. The lead complainant is Crude Accountability, an NGO based in the United States. Crude Accountability has worked with the community in Berezovka, the village neighbouring the KPO facility, for a number of years.
2. Co-complainants are:
 - a) The Ecological Society Green Salvation, an NGO based in Almaty, Kazakhstan, which works to improve socio-ecological conditions in Kazakhstan.
 - b) Zhasil Dala (Green Steppe), a local environmental organisation founded by members of the community in Berezovka and based there.

The company

3. In the period that the complaint was under consideration, the KPO consortium has been a joint venture between: BG Group (29.25%), ENI (29.25%), Chevron (18%), Lukoil (13.5%) and KazMunaiGas¹ (10%). The UK NCP notes that BG's interest has been acquired by Shell in 2016.
4. The consortium has a production sharing agreement with the Government of Kazakhstan that took effect in 1998 and covers operations to 2038. Since signing the agreement, the partners have invested over \$19bn in operations and in 2014 the facility produced 142.5 million barrels of oil equivalent of liquid hydrocarbons, gas and fuel gas.
5. The three consortium partners based in OECD countries were originally named in the complaint, and it was submitted to the Italian NCP (in respect of ENI) and the US NCP (in respect of Chevron) as well as the UK NCP (in respect of BG Group). The Italian, US and UK NCPs agreed that the UK would lead handling² and the complaint has therefore followed the UK NCP complaint process. The consortium has responded as a whole rather than separate partner companies engaging individually.

¹ KazMunaiGas entered the joint venture in 2012.

² Paragraph 24 of the OECD's commentary on implementation procedures of the Guidelines says that where issues arise from activity of a group of enterprises organised as a consortium or joint venture, the NCPs involved should consult with a view to agreeing on which NCP will take the lead.

UK NCP process

Initial Assessment

6. The UK NCP received the complaint on 17th June 2013, and confirmed handling on 12th July after discussions with the US and Italian NCPs. The finalised Initial Assessment was published in December 2013 and can be found at:

[Initial Assessment of 2013 for CA KPO](#)

7. The Initial Assessment accepted an issue in regard to the following Guidelines obligations:

Chapter II General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A. Enterprises should

2. Respect the internationally recognised human rights of those affected by their activities.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless linked to their operations, products or services by a business relationship. This is not intended to shift responsibility for an adverse impact from the entity causing an adverse impact to the enterprise with which it has a business relationship.

Chapter IV Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

3. Seeks ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

Mediation

8. Parties accepted the NCP's offer of mediation, and agreed the UK NCP's proposal of Dr Karl Mackie as mediator. It took some time to agree a terms of reference and arrangements for a meeting. A first meeting with the mediator took place on 17th June 2014. And a number of further meetings took place in 2014. The mediator reported to the NCP that the parties were continuing to pursue an agreement. New events in Berezovka and plans for further expansion of the KPO facility then complicated the position. In June 2015, the mediator reported to the UK NCP that the parties would not be able to reach an agreement within the timescales expected under the UK NCP process. On 6th July 2015, the UK NCP wrote to the parties to say that it would begin a further examination of the issues accepted.
9. This Final Statement records the UK NCP's findings after further examination.

Further Examination

Note on the scope of the issue

10. The issue examined by the UK NCP concerned two households. In the original complaint, this was a small part of a wider issue about adverse impacts of the KPO facility on the village/community of Berezovka generally. The UK NCP rejected the wider issue as not substantiated³. It accepted the issue in relation to an adverse impact on the two households because they had a legal entitlement to resettlement and compensation that was not disputed and that had not been fulfilled.
11. Chapter II of the Guidelines includes obligations on enterprises to address adverse impacts on matters covered by the Guidelines. The UK NCP accepted an issue about KPO's obligation under Chapter II Paragraph 12 to seek to prevent or mitigate an adverse impact to which it was linked by a business relationship.
12. The UK NCP accepted that the adverse impacts on the two households appeared to be relevant to their human rights, in particular the right to *an adequate standard of living... including adequate food, clothing and housing, and to the continuous improvement of living conditions*⁴. If the UK NCP makes a finding in regard to a Chapter IV obligation, it must also make a finding about the general obligations that enterprises respect human rights (Chapter II Paragraph 2 and Chapter IV

³ See Paragraph 6 above for a link to the full Initial Assessment finding.

⁴ The issue was also potentially relevant to the right to health, but further examination did not produce any additional information about this aspect.

Paragraph 1). This is because these general obligations are defined as including the more specific obligations in Chapter IV Paragraphs 2-6.

13. In the further examination stage of the process, the complainants argued that the impacts on the two households arose from KPO's operations, and that the UK NCP should re-visit its Initial Assessment decision not to examine further whether KPO met obligations relating to causing or contributing to adverse impacts (Chapter II, Paragraph 11 and Chapter IV Paragraph 2). The UK NCP has not been persuaded to do this. The decision at Initial Assessment was on the basis that the adverse impacts to the households arise because they have a legal entitlement to resettlement and the responsible authorities have not fulfilled that entitlement. KPO is not responsible for fulfilling the legal entitlement to resettlement and no case has been made that KPO has obstructed or delayed its fulfilment.
14. The complainants also invited the UK NCP to re-open an issue in regard to engagement providing opportunities to consider stakeholder views (Chapter II, Paragraph 14). The UK NCP has not re-opened this issue, but does make observations about engagement with the households as part of its findings.
15. The UK NCP has said in several recent statements that it is not within its remit to make findings about the actions of any party other than the company against which a complaint is made. The UK NCP does not make independent findings on whether impacts are human rights impacts. States have the duty to protect human rights. Relevant international authorities are competent to make findings and statements about how these duties are fulfilled in individual States. These authorities, as well as individual State authorities, also make findings and statements about how duties apply in particular contexts. The UK NCP bases its own findings on findings and statements of these authorities that are relevant to the situation presented in a complaint. The NCP expects that enterprises will use a similar process in deciding when their obligations to respect human rights are engaged.

Note on the timeframe

16. The obligation to address impacts of business relationships in Chapter II, Paragraph 12 and the human rights obligations of Chapter IV were added to the OECD Guidelines in 2011. The UK NCP considers that these obligations do not apply to actions taken before 1st September 2011. The UK NCP considers, however, that they do apply where an impact that arose before 1st September 2011 is ongoing.
17. The general obligation to respect human rights in Chapter II, Paragraph 2 was part of the OECD Guidelines before 2011, but it was not defined as including any specific obligations.

Information provided by parties

18. To determine whether KPO met its obligations, further examination looked at information about four things: the process for setting and enforcing the protected area (known as the Sanitary Protection Zone or SPZ); the circumstances of the two households; the actions taken by KPO to engage with the authorities and with the households about the resettlement; and the guidance available to KPO from international authorities.
19. In addition to the complaint and supporting information, the complainants provided, at the NCP's request, details of the situations of the two households affected by the existing Sanitary Protection Zone arrangements.
20. In addition to the response and supporting information, the consortium provided some more details of the process for establishing a Sanitary Protection Zone, and details of communications between the consortium, the authorities, and residents of Berezovka. The consortium provided details of communications from the Kazakh authorities to the two households affected by the existing arrangements.
21. The NCP held a further teleconference with the complainants and (separately) a further teleconference with the consortium, to clarify some points in regard to the information provided.

Other sources

22. The NCP made online searches for additional information, noting in particular material from the parties' websites, reports arising from related complaints to the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation over the period (2004-09), by the OECD on Responsible Business Conduct in Kazakhstan (2014) and reports by UN bodies with a human rights interest.
23. The UK NCP also obtained confirmation of some background details from staff at the British Embassy in Kazakhstan.

Information sharing

24. All the information provided to the NCP has been shared with the parties in the complaint. Information is shared on the understanding that while the complaint is under consideration it should not be shared further or made public. After the process is complete, parties are free to discuss it but should not share information provided by another party without its permission.

Limitations of information review

25. The UK NCP operates within general boundaries set by the OECD Guidelines, including the voluntary nature of the Guidelines and the requirement on NCPs to operate transparently. The UK NCP has no powers to require any party to provide information to it, nor any special status permitting it to obtain confidential information that other government officials are under statutory obligation to protect. The UK NCP expects, in any case, to share information it obtains with parties. The UK NCP has some ability to share sensitive information on a confidential basis. Its ability to do this depends on parties' own transparency or confidentiality obligations, however, and also on the level of good faith with which parties approach the process.
26. There have been a number of problems in establishing the facts of the situation. Events referred to in the complaint span more than 10 years and some details have become unclear over time. The NCP has also found that information offered by parties has sometimes been incomplete or inaccurate. In particular, the NCP has found it difficult to obtain a clear and accurate picture of what exchanges have taken place between the households and the Kazakh authorities responsible for relocating them. The complainants take their account of these exchanges from the households and KPO takes its account from the authorities. Each party presumably offers its account in good faith, but the two accounts do not agree. The documentary evidence offered has been limited, and the UK NCP has not been able to identify an independent third party to comment.
27. The UK NCP has made findings where it believes that they are supported by information available and/or by reasonable inference.

Findings on further examination

The Sanitary Protection Zone or SPZ

28. The Sanitary Protection Zone (SPZ) is an area of a specified size around the KPO facility within which it is prohibited to reside or carry on a business. Its purpose is to ensure that people live and work at distance considered by the authorities to be safe in regard to, for example emissions from the facility and emergency evacuation arrangements. The SPZ boundary is the limit beyond which any impacts must not exceed safe standards.
29. Kazakh law requires the operator of an industrial facility to submit to the authorities information about risks and mitigations (including environmental impact assessment and health studies of location

populations), and proposals for an SPZ design based on these. If the authorities approve the proposals, the “design based SPZ” is put in place and monitored for a year before becoming the confirmed SPZ. Public engagement is part of this process: members of the public can raise comments and objections in writing or at public hearings.

30. Size and design of an SPZ are generally based on the risks associated with normal operations. For an oil or gas facility like Karachaganak that contains hydrogen sulphide, however, emergency emissions are taken into account⁵. Measurement of the SPZ boundary for this type of facility starts from the outer row of production wells. The Kazakh authorities are legally responsible for setting the SPZ parameters and requirements and the consortium says it has at all times fully complied with their requirements in this regard.
31. The Karachaganak facility started production in 1984 and had an existing SPZ before KPO took it over in the 1990s. However, it appears that the facility had fallen into disuse prior to the takeover and it is not clear that any SPZ was marked or enforced.
32. KPO planned to develop the facility in a number of phases and anticipated that each phase would require a new appraisal of the SPZ. The UK NCP has seen an Environmental and Social Impact Assessment (ESIA) published by KPO in March 2002 in connection with Phase Two of the facility’s development⁶, which took place between 1998 and 2004. This ESIA indicates that a 5km SPZ is expected for Phase Two, but says that research is being directed at providing substantiation for a (future) reduction of SPZ size.
33. The 2002 ESIA refers to Berezovka village. It affirms that KPO operations have not had an adverse effect on water and crops in Berezovka and that a study has shown health of Berezovka residents to be comparable with health of residents in a control community. In regard to the SPZ, it says: *within the SPZ limits are a part of Tungush settlement and the northern suburb of Beryozovka settlement. Provided that new drilling does not occur in the territory near Beryozovka settlement, it will not be considered as located within the Field SPZ. The main factor determining the SPZ size is the possible pollution of atmospheric air connected with the field operations, processing and exploitation of the facilities.*
34. The village of Tungush, mentioned above, was relocated in 2003. The UK NCP understands that KPO implemented and financed that relocation at the request of the Kazakh government and on the basis that it would be re-imbursed by the government.

⁵ The NCP’s understanding is that “emergency emissions” does not refer to an uncontrolled release, but to action that the operator expects to take from time to time to burn or flare off gas to prevent pressure build-up that would otherwise risk an explosion.

⁶ The NCP saw the ESIA as submitted to the IFC, but assumes that the same information would have been provided to inform the SPZ decision.

35. Subsequently, the main changes to the SPZ appear to have been as follows:
- a) With effect from 2004, the SPZ was reduced to 3km⁷ (informed by the research referred to in the ESIA).
 - b) In 2006, following a legal challenge, this reduction was suspended, effectively restoring the earlier 5km SPZ.
 - c) In 2010, a ruling of the Specialised Inter-District Environmental Court of Astana declared that the 2004 reduction was illegal, restored the 5km SPZ and ordered that people within this SPZ should be relocated.
 - d) From 2011-13, KPO undertook a further SPZ review to ensure compliance with updated Kazakh legislation, but this did not change the 5km limit.
 - e) In 2015, the authorities agreed a new proposal, based on planned operational developments, to extend the existing 5km SPZ and relocate Berezovka village. The relocation is to be completed by 2018.
36. According to both parties in the complaint, the exact contours of the SPZ may change outside the review process based on more minor operational developments. The exact contours of the SPZ boundary were not marked until 2015.
37. KPO accepts that the properties of the two households fell within the 5km SPZ. KPO suggested that both households also had residential properties outside the SPZ, but the company offered no information to support this and the complainants deny it. The complainants do accept that it is possible that one household's residential property was not wholly within the SPZ throughout the period of the complaint (since the SPZ contours fluctuate and were unmarked until 2015).

The circumstances of the households

Household A.

38. The complainants say that Household A. moved to Berezovka in 1998 and leased land and a meat processing plant. In 2000, they bought the plot of land together with the plant and a house. After the SPZ was reduced in 2004, they actively sought to have the position of their property in regard to the SPZ confirmed by the courts. They participated in the court case to restore the 5km SPZ. The NCP understands that the 2010 court ruling restoring the 5km SPZ explicitly names them as having property within it.

⁷ KPO notes that the 3km includes a 1.5km SPZ plus a further 1.5km buffer zone.

39. Following the 2010 ruling, Household A. stopped operating their processing business. They subsequently started court proceedings against the authorities for failing to implement the 2010 court ruling. The courts made a decision awarding them compensation in 2012. Household A. did not consider the award amount adequate, and in fact they did not receive any compensation because the award decision was overturned on appeal.
40. A family member and legal representative of Household A. wrote to KPO's General Director in September 2012 claiming that Kazakh law required KPO to pay compensation. The letter set out a compensation claim, including the cost of a new residential property and the costs of immovable land, buildings and equipment associated with the business. KPO's Director replied in October 2012, noting that the 2010 court ruling made the authorities rather than KPO responsible for compensation and refusing the claim in the absence of legal grounds for payment.
41. In May 2013⁸, Household A. sold their property and moved out of the Berezovka area. The family say that the property sold for less than half the value given in an independent estimate in 2011. They want to obtain full compensation for their losses (including the loss of their business).
42. Household A.'s property was bought by a KPO contractor, and KPO understands that it is now used to store equipment and will not be affected by the most recent change to the SPZ (because it is not used as a dwelling).

Household B.

43. Household B.'s property has been owned by family members since 1994. It includes housing and farmland. Household B. have farmed the land, and leased additional farming land around the property from the Kazakh state in 2003 and in 2008. They have constructed and stocked fishponds on some of this land.
44. Household B. did not take any action to confirm their position in regard to the SPZ boundary or entitlement to resettlement, and did not participate in the court case to restore the SPZ or the wider relocation campaign. The complainants state that the 2010 court ruling does refer to Household B., however, and KPO accepts that Household B.'s property fell within the 5km SPZ.⁹

⁸ This was before the complaint was submitted (in June 2013) and that the original complaint document was therefore incorrect in saying that both families "continue to live inside the SPZ"

⁹ Information provided to the NCP suggests that Household B.'s property is on the SPZ boundary, so that subsequent minor changes to the contours bring parts of the property inside or outside the 5km boundary.

45. The family in Household B. continued to occupy their property and farm their land after the 2010 ruling. They accept that they received some communications from the authorities in 2011-12, but say that they received nothing that they recognised as a formal and adequate offer of relocation or compensation. They shared the general concerns of Berezovka residents about the risks of living near the KPO facility. The complainants say that a family member of Household B. was among the young people who developed unexplained symptoms of illness at Berezovka's school in November 2014¹⁰. KPO informed the NCP that Household B. was included in the wider relocation of Berezovka taking place as a result of the latest SPZ changes and has now been relocated.

Actions taken by KPO

46. KPO told the NCP that it had not had any communications with the two households. KPO had established stakeholder communication arrangements (including a Berezovka Village Council) and grievance procedures, but was not aware of either household having used these. KPO considered that it was not appropriate to contact the households directly because this could interfere with legal and official processes.
47. The complainants do not dispute KPO's statement that neither household used KPO's established stakeholder routes. However, it is not the case that KPO had no communication at all with the households. The complainants were able to provide copies of Household A.'s 2012 correspondence with KPO (see Paragraph 40 above). KPO itself also shared with the UK NCP a letter written to it by Household B. in October 2015¹¹.
48. In regard to communications with the authorities, KPO told the UK NCP that it engaged as required with the Kazakh courts in their consideration of the SPZ issues, and co-operated fully with the Governmental Working Group set up after the 2010 court ruling to resolve outstanding resettlement issues. KPO also raised a question about outstanding resettlement cases with the Burlin District Akim in 2013, and was advised that issues were unresolved because of disagreement as to the amount of compensation due.

¹⁰ Berezovka residents attributed these symptoms to emissions from the KPO facility, although a subsequent inquiry by the authorities did not find anything to support this. The complainants say that one of the children affected was a relative of Household B. and that this entitled the family to be in the first wave of the current relocation. However, KPO says that Household B. was in the first wave because of an unrelated illness of an elderly family member, and that no child of Household B. was involved in the 2014 incident.

¹¹ On translation, this handwritten letter appears to be an agreement by Household B. that having received assurance from the authorities that the family will shortly be relocated, the household has no claim against KPO or further interest in the complaint. The only conclusion the UK NCP has drawn from this letter is that Household B. has been in communication with KPO.

49. As with the households, KPO considered it was not appropriate to make any more direct intervention with the authorities. The UK NCP asked UK government representatives in Kazakhstan to comment on this view and they said that they would not expect an intervention from KPO to influence the Kazakh authorities.

Applicable standards

50. The performance standards of the International Finance Corporation (IFC) are developed for businesses and are relevant to the circumstances in the complaint, specifically the standard for Involuntary Resettlement¹². This standard says that resettlement is considered involuntary where affected individuals or communities do not have the right to refuse land acquisition which results in displacement, including in cases of lawful expropriation or restrictions on land use. Involuntary resettlement should be avoided or minimised wherever feasible by exploring alternative project designs.
51. The IFC provided loans for the KPO facility in 2002 and IFC standards therefore applied directly to the project until 2009 (when repayment was completed). From 2004, Crude Accountability and its co-complainants used the IFC's complaints system (the Compliance Advisor Ombudsman or CAO) to raise complaints about KPO's impacts on Berezovka (these complaints make no specific reference to Households A. and B.). The CAO conducted a detailed investigation and a site visit. Its final report on the complaints, published in 2010, does not identify any outstanding issue in relation to resettlement, although it encourages the parties to continue communicating.

Guidance available on human rights

52. The IFC Performance Standard on Involuntary Resettlement is not a human rights standard, although it does highlight that human rights are often affected by resettlement activities.
53. The framework that became the UN Guiding Principles on Business and Human Rights was produced in 2008. The Guiding Principles were launched in 2010 and incorporated into the OECD Guidelines in 2011.
54. A number of human rights reports relating to Kazakhstan were available around this time: the UN Committee on Economic, Social and Cultural Rights report on Kazakhstan (2010), the report of the Special Rapporteur on the Rights to Adequate Housing (2011), and UN Human Rights Committee conclusions on Kazakhstan (2011). The UK

¹² The standard was originally developed in 1990, and was updated in 2006 and again in 2012. The 1990 standard is based on a situation where the developer has direct responsibility for resettlement. The 2006 update introduces a specific reference to private sector responsibilities in cases of government managed resettlement.

NCP found no specific references to the issue of resettlement from Sanitary Protection Zones in these reports, but both the ESCR report and the Special Rapporteur report identified concerns in regard to forced evictions.

55. In 2015, the Special Rapporteur on Hazardous Substances and Wastes visited Kazakhstan. He stated that people located within SPZs are exposed to health risks and reports failure to relocate people living in SPZs as an issue of concern in Kazakhstan generally, and quotes unidentified Kazakh officials as saying that legal issues and constraints on local budgets affect their ability to implement relocation. These remarks are not made in the context of the situation of Berezovka village specifically. The Special Rapporteur's report does, separately, refer to the situation of Berezovka village, but in regard to potential health impacts¹³.
56. For completeness, the UK NCP also notes that the OECD reported on responsible business conduct in Kazakhstan in 2014. The UK NCP found no relevant observations in the OECD's report.

Conclusions

57. Households A. and B. came into possession of their properties after the Karachaganak facility began production in 1984. According to KPO's 2002 Environmental and Social Impact Assessment (ESIA), public consultation on the Phase Two development plans for the facility began in 1998. The NCP considers that it is likely that Household A. was aware when it purchased its property in 2000 that it could be within the 5km SPZ. The position is less clear in relation to Household B., whose property was acquired earlier.
58. The 2002 ESIA notes, however, that provided there is no new drilling in the part of the field that is near Berezovka, the village will not be considered as within the SPZ. On this basis, it seems clear to the NCP that KPO's intention was for the Berezovka community, including Households A. and B. to remain where they were, and did not identify any risks to them in so doing. The NCP acknowledges that the Kazakh authorities are legally responsible for setting the SPZ parameters and requirements and the consortium says that it has at all times fully complied with their requirements.
59. The ESIA also noted that KPO was researching whether a reduction in the SPZ can be substantiated. This research appears to have underpinned what the UK NCP assumes to be a KPO proposal to the

¹³ The UK NCP refers to the Special Rapporteur's report to the UN Assembly of September 2015. "Preliminary remarks" made by Rapporteur in an end of visit statement in April 2015 do appear to link Berezovka, among other locations, with his general remarks on relocation from SPZs.

authorities to reduce the SPZ to 3km¹⁴. The properties were outside this reduced SPZ.

60. The reduction was subsequently found to have been improperly made according to Kazakh law (see Paragraph 62 below) The IFC and the CAO do not appear to have raised any questions about the approach, however, and the UK NCP notes that it appears to be consistent with the IFC standard that involuntary resettlement should be avoided wherever feasible by exploring alternative project designs.
61. It appears, however, that while the approach may not have created any increased risk to the Berezovka community, KPO did not communicate effectively with the community about the approach to the SPZ and about its underpinning assessment that there were no operational risks to them. The CAO noted this failure, saying *the lack of disclosure....contributes to mistrust and misconceptions*. KPO's involvement in the relocation of Tungush (for which the CAO states there was *no technical requirement as a result of the project's activities*) also created expectations in Berezovka.
62. The inadequacies in KPO's communications may have contributed to the decision to bring a legal challenge on behalf of the community (including Household A.) in 2006. The eventual outcome of this challenge was the 2010 court ruling which not only declared the reduction illegally made and restored the 5km SPZ, but also explicitly required the relocation of people living within the 5km SPZ (to be carried out by the responsible authorities).
63. The UK NCP considers that the 2010 ruling changed the position with regard to KPO's obligations to households inside the SPZ, including Households A. and B. It effectively placed those households in a situation of "government managed resettlement" as referred to in the IFC's involuntary resettlement standard.
64. The UK NCP recognises that the situation was not the typical involuntary resettlement situation for which the IFC standard was developed. The UK NCP has seen no evidence of any action or threat of action by the Kazakh authorities to forcibly evict the households or to order them not to carry on business/farming activities that in principle the court had ruled illegal. Household A. actively sought the 2010 court ruling. Nevertheless, the UK NCP considers that KPO should have recognised that the IFC standard was relevant to the situation and should be applied as good practice.
65. The complainants say that neither household has been made an adequate offer of compensation or a substantiated offer of relocation.

¹⁴ The NCP's Initial Assessment noted (Paragraph 17) that there was no information to suggest that KPO had sought the reduction. After further examination, the NCP's understanding is that KPO initiated it, in line with the usual SPZ process, but did not expect it to change the situation with regard to Berezovka as set out in its 2002 ESIA.

The NCP has noted at Paragraph 26 above that the parties give conflicting accounts of the authorities' interactions with the households. The limited documentation that parties have provided does not evidence any sustained or substantial attempt by the authorities to relocate the households. The 2015 Special Rapporteur's report indicates that problems with authorities resourcing and implementing resettlements are not unusual.

66. Following the 2010 ruling, Household A. stopped operating their business and made approaches to press for implementation of the ruling. When it had not been implemented after 3 years, Household A. acted on their own initiative: they sold their property to a KPO contractor, and moved away from the area at their own expense. They continued to seek compensation for the full value of their assets, but did not receive it. They effectively forfeited their rights: because they no longer live within the SPZ, they are not now included in the wider relocation of Berezovka taking place from 2015. Household A. appears to the NCP to have a respectable claim that it has lost out because of the inaction of the authorities (and KPO's failure to address this).
67. Household B. remained, and as a result has been able to take advantage of the wider relocation now in progress – it was relocated in 2015. The UK NCP notes that this is five years after the court ruling. Household B.'s concerns have always focused on the potential health and safety risks of its proximity to the KPO facility. The NCP notes that the 2010 court ruling declaring its situation illegal for health and safety reasons must have served to increase those concerns during the five years it has waited for resettlement.

Chapter II obligation to address impacts of a business relationship

68. As previously noted, the UK NCP considers that the Guidelines obligation to address impacts of a business relationship applied from September 2011. It should have been clear to KPO at this point that the relocation of Household A. and Household B. was an outstanding issue (by comparison, the relocation of the Tungush appears to have been implemented within a few months of the decision).
69. The UK NCP confirms that the adverse impacts on the two households relate to matters covered by the OECD Guidelines. In particular they relate to provisions under Chapter II that enterprises and their business partners should contribute to economic and social progress (Paragraph 1), that their systems and practices should foster confidence and mutual trust with the societies they operate in (Paragraph 7), and that they should engage with relevant stakeholders (Paragraph 14). The UK NCP considers that it should have been clear to KPO that it had an obligation to address the impacts.

70. KPO's IFC loan had ended at this point, but the IFC standard remained available as a "good practice" standard for a resettlement issue, and was updated by the IFC in 2012. The standard says that *where land acquisition and resettlement are the responsibility of the government, the [business] will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this Performance Standard. In addition, where government capacity is limited, the client will play an active role during resettlement planning, implementation and monitoring.* The UK NCP considers that it should have been clear to KPO that the IFC standard was relevant to the situation of households affected by the 2010 court ruling.
71. The UK NCP considers that KPO had, at the very least, an obligation to engage with the households (whether or not they used its formal stakeholder processes), as well as with the authorities. KPO was also conducting a new review of the SPZ from 2011, and presumably had opportunities as part of this process to communicate with the households, and to highlight their situation to the authorities.
72. In regard to the authorities, the IFC standard says that the purpose of business engagement with the authorities is to ensure that resettlement meets the standard. An intervention by KPO may not, in fact, have influenced the authorities to change their approach, but the UK NCP has not seen anything to suggest that the authorities limited or proscribed KPO's involvement. If resources were a part of the reason for delay, it also appears that KPO was well placed to assist: the NCP notes that KPO was able to fund the Tungush relocation, and understands that it is also providing funding for the current relocation.
73. The UK NCP has noted in previous assessments¹⁵ that even if a business believes that it cannot succeed in changing the outcome or the behaviour of a business partner, it still has a responsibility to examine what it can do. The obligation is to *seek to prevent or mitigate* an impact. The information provided by KPO does not suggest that it made any considered appraisal – formal or informal – to support its assertion/conclusion that it was not appropriate to intervene.
74. On the basis of its further examination, the UK NCP therefore finds that the KPO consortium did not meet its obligation under Chapter II, Paragraph 12 to seek to prevent or mitigate adverse impacts to which it was linked by a business relationship.

Chapter IV obligations in regard to human rights impact

75. The obligation under Chapter IV, Paragraph 3 to seek ways to prevent or mitigate human rights impacts to which a business is linked is similar

¹⁵ For example, its 2015 Final Statement in a complaint from Lawyers for Palestinian Human Rights (LPHR) against G4S.

to the Chapter II Paragraph 12 obligation in terms of what it asks a business to do. The information considered by the UK NCP as to KPO's actions will largely be the same as that considered in relation to the Chapter II obligation. The only additional element is to assess whether the impacts should have been regarded by KPO as (actual and potential) human rights impacts.

76. The IFC standard states that involuntary resettlement will often have human rights impacts. As noted at Paragraph 64 above, however, the situation here was not the typical one envisaged in the standard. The UK NCP has not found any clear statement from human rights authorities that relates clearly to the situation here. The 2015 Special Rapporteur's report provides a firmer indication that failure to relocate people living within an SPZ can have human rights impacts, but it does not constitute clear guidance (and obviously was not available to KPO in the relevant period).
77. The human rights risk that is identified in connection with economic rights and resettlement is forced eviction. The delay in implementing the court ruling could be seen as having effected a kind of "constructive eviction" in the case of Household A. but this is debatable and the UK NCP has not seen any clear international authority to support such a conclusion. Household B. has remained in its residence until relocating this year.
78. The UK NCP concludes that there is no clear guidance to establish that the impacts as examined are human rights impacts and/or that KPO should have considered them as triggering its human rights obligations under the Guidelines.

Examples of company good practice

79. The UK NCP notes that its decision at Initial Assessment to accept only a limited aspect of the complaint was partly a result of KPO's being able to demonstrate improved monitoring procedures and stakeholder communications arrangements following the earlier CAO criticisms.
80. The UK NCP notes internal handling complexities presented for KPO by a complaint directed at its individual partner companies, and acknowledges KPO's co-operation with the UK NCP's decision to handle it as a single complaint.

Recommendations to the company and follow-up

81. KPO has assured the UK NCP that in relation to the ongoing resettlement of Berezovka, it is following the current (2012) IFC Standard on Involuntary Resettlement, in particular in regard to private sector responsibilities under government-managed resettlement.

82. The UK NCP recommends that the KPO regards both Household A. and Household B. as entitled to resettlement arrangements consistent with the current (2012) IFC standard (because their entitlement to resettlement was unfulfilled when that standard took effect). The UK NCP recommends that KPO follows the steps identified in the standard to remedy any deficiencies in the arrangements actually offered to Household A. and Household B., and that it completes any action required by the end of May 2018.
83. For ease of reference, the requirement under the IFC standard is set out below in Annex A. to this Final Statement.
84. The UK NCP will request an update from both parties in May 2019.

**UK NATIONAL CONTACT POINT FOR THE OECD GUIDELINES FOR
MULTINATIONAL ENTERPRISES**

UK NCP

ANNEX A

IFC Performance Standard 5 – Land Acquisition and Involuntary Resettlement

Private Sector Responsibilities Under Government-Managed Resettlement

30. Where land acquisition and resettlement are the responsibility of the government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this Performance standard. In addition, where government capacity is limited, the client will play an active role during resettlement planning, implementation and monitoring, as described below.

31. In the case of acquisition of land rights or access to land through compulsory means or negotiated settlements involving physical displacement, the client will identify and describe government resettlement measures. If these measures do not meet the relevant requirements of this Performance Standard, the client will prepare a Supplemental Resettlement Plan that, together with the documents prepared by the responsible government agency, will address the relevant requirements of this Performance Standard (the General Requirements and requirements for Physical Displacement and Economic Displacement above). The clients will need to include in its Supplemental Resettlement Plan, at a minimum (i) identification of affected people and impacts; (ii) a description of regulated activities, including the entitlements of displaced persons provided under applicable national laws and regulations (iii) the supplemental measures to achieve the requirements of this Performance Standard as described in paragraphs 19-29 in a way that is permitted by the responsible agency and implementation time schedule and (iv) the financial and implementation responsibilities of the client in the execution of its Supplemental Resettlement Plan.

32. In the case of projects involving economic displacement only, the client will identify and described the measures that the responsible government agency plans to use to compensate Affected Communities and persons. If these measures do not meet the relevant requirements of this Performance Standard, the clients will develop an Environmental and Social Action Plan to complement government action. This may include additional compensation for lost assets, and additional efforts to restore lost livelihoods where applicable.