

# Transparency, Participation and Accountability in Kazakhstan

An action-research case  
study of the extractive  
industry



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# Transparency, Participation and Accountability in Kazakhstan

## An action-research case study of the extractive industry

November 2020<sup>1</sup>

Extractive (oil, gas and mining) companies incorporated and/or publicly listed in Canada, the European Union, Norway and the United Kingdom are required by law to publish their payments to governments annually for every country of operation.<sup>2</sup> In Kazakhstan, extractive companies and the government also disclose their respective payments and receipts, with related information about the governance of the sector, under the Extractive Industries Transparency Initiative (EITI).<sup>3</sup>



This case study reports on an action-research collaboration between Echo ([www.echo.kz](http://www.echo.kz)) and Civil Expertise ([www.facebook.com/civilexpertise](http://www.facebook.com/civilexpertise)) (both Publish What You Pay member organisations in Kazakhstan), Publiez Ce Que Vous Payez (PCQVP) France/Oxfam France ([www.pwyp.org/pwyp\\_members/france](http://www.pwyp.org/pwyp_members/france) ; [www.oxfamfrance.org](http://www.oxfamfrance.org)) and PWYP UK ([www.pwyp.org/pwyp\\_members/united-kingdom](http://www.pwyp.org/pwyp_members/united-kingdom)).<sup>4</sup> We report on using mandatory payments-to-governments data as a starting point to investigate Kazakhstan's extractive sector and to promote transparency, public participation and accountability in the sector.

1 This case study report is one of three such studies planned for co-publication in 2020-1 focused on Brazil, Kazakhstan and Nigeria. Please cite this study as Echo, Civil Expertise, PCQVP France/Oxfam France, PWYP UK and PWYP International Secretariat, Transparency, participation and accountability in Kazakhstan: an action-research case study of the extractive industry, 2020.

2 A similar United States law dating from 2010 has not yet been implemented, nor at the time of publication has the recent Swiss law of June 2020.

3 <https://eiti.org/kazakhstan> ; <https://bit.ly/2JfsRg> (EITI international data).

4 "Action research ... seeks transformative change through the simultaneous process of taking action and doing research, ... linked together by critical reflection": [https://en.wikipedia.org/wiki/Action\\_research](https://en.wikipedia.org/wiki/Action_research)

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Oil, gas and solid minerals are inherited wealth; extraction is their sale. Extraction-related taxes, royalties, etc. are government receipts in exchange for selling non-renewable mineral wealth. Because of intergenerational equity concerns, this case study therefore avoids the more problematic term “revenue(s)” as far as possible.<sup>5</sup>

### Box 1. KAZAKHSTAN COUNTRY CONTEXT<sup>6</sup>

“Kazakhstan’s extractive sector plays an important role in the country’s development, contributing 18.6% to GDP in 2017 [and 35% of total government income in 2016]. Coal, oil, gas and metal ore are the main industries in Kazakhstan’s extractive sector. The country has the largest recoverable crude oil reserves in Central Asia and its current oil production is approximately 1.8 million barrels a day. According to the 2017 EITI Report, Kazakhstan has produced ... 86.2 million tonnes of oil since 1991. Having rich energy resources, Kazakhstan has developed trade relations all over the world. Its largest commodity importers are Russia, Uzbekistan, Ukraine, China, Poland and Switzerland” – EITI.

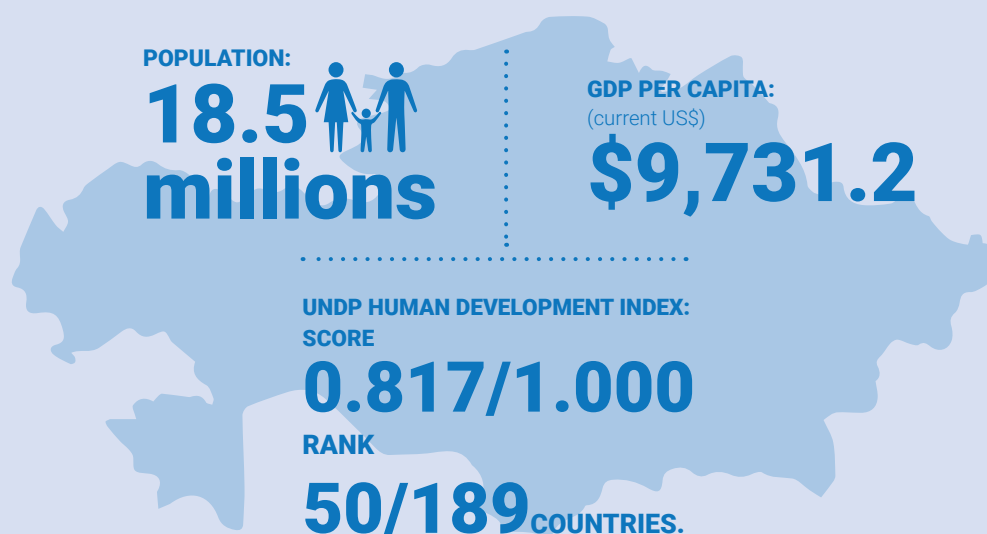
Natural resource ownership: “Property shall impose obligations, and its use must simultaneously benefit the society ... The land and underground resources, waters, flora and fauna, other natural resources shall be owned by the state” – Constitution of the Republic of Kazakhstan.

**Extractive Industries Transparency Initiative (EITI) status:** Meaningful progress.

**NRGI Resource Governance Index:** Score (oil and gas) 56/100. Rank 25/89 countries.

**NRGI country profile:** <https://www.resourceprojects.org/country/Kazakhstan>

**Transparency International Corruption Perceptions Index:** Score 34/100. Rank 113/180 countries.



<sup>5</sup> On the term “revenue(s)”: R. Basu, Mitigating the resource curse by improved governmental accounting, Goa Foundation, India, 2016, <https://bit.ly/2WqdzxE>

<sup>6</sup> Sources: EITI, <https://eiti.org/kazakhstan>; <https://eiti.org/blog/keeping-transparency-on-track>; Constitution of the Republic of Kazakhstan, [https://online.zakon.kz/Document/?doc\\_id=1017178#pos=5-108](https://online.zakon.kz/Document/?doc_id=1017178#pos=5-108), articles 6.2, 6.3; Natural Resource Governance Institute (NRGI), <https://resourcegovernanceindex.org/country-profiles/KAZ/oil-gas,2017>; Transparency International, [https://www.transparency.org/files/content/pages/2019\\_CPI\\_Report\\_EN.pdf](https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf); World Bank, <https://data.worldbank.org/country/kazakhstan?view=chart>, <https://data.worldbank.org/indicator/NY.GDPPCAPCD?locations=KZ>, 2019; UNDP, <http://hdr.undp.org/en/countries/profiles/KAZ>, 2018.

# EXECUTIVE SUMMARY

In 2019-20 Echo, Civil Expertise, PCQVP France/Oxfam and PWYP UK undertook joint transparency, public participation and advocacy work on issues relating to Kazakhstan's extractive sector. We focused on two large joint venture oil and gas fields: Karachaganak, jointly operated onshore by Royal Dutch Shell and Eni for the partially state-owned Karachaganak Petroleum Operating (KPO) consortium; and Kashagan, operated offshore by the partially state-owned North Caspian Operating Company (NCOC) consortium, with Total as a major partner.

We compared mandatory payments-to-governments reports with EITI data; made

contextualised assessments of government receipts for each field; wrote to government ministers and subnational authorities seeking disclosure of fiscal terms and information about subnational social and infrastructure projects ("SIPs"); and wrote to Shell and Total seeking certain clarifications and advocating contract disclosure. Echo and Civil Expertise consulted with Kazakh civil society, and we received helpful insights from other civil society sources. We sent a draft version of the report to representatives of the Kazakh government, industry (KPO, NCOC, Shell, Total, Lukoil, Eni) and civil society and took all comments into careful consideration in revising the report for publication.

## Key findings summary (for the key findings in full see page 38)

- The disclosure and accessibility of extractive industry information in Kazakhstan are ambiguous. Various transparency regimes and legal requirements are in place, but implementation by the government and companies does not fully inform stakeholders or sufficiently facilitate public understanding.
- Kazakhstan's fiscal framework for extractives is public, but the terms of production sharing agreements (PSAs) are not.
- Comparison between mandatory payment disclosure data and EITI data yielded few insights but highlighted concerns regarding sector governance, openness and accountability.
- KPO's and NCOC's SIPs are paid for out of operating costs and therefore in effect by Kazakhstan and its citizens, but public consultation around them is limited. Many SIPs deliver questionable value and are suspected to involve corruption.
- A conflict of interest surrounds NCOC, which does not report to the Kazakh EITI but nevertheless was until recently an EITI



Multi-Stakeholder Group (MSG) member involved in decisions about how other companies must report.

- Kazakhstan appears so far to have achieved only at best marginal economic benefits from the two fields. The operators and joint venture consortia appear to incur and deduct unusually high costs in calculating profit oil from which the government obtains receipts.
- Incorporation in the Netherlands by KPO, NCOC and many of the participating

subsidiaries hinders Kazakh citizens' access to company financial information and raises concerns about tax avoidance.

- Dialogue with Kazakh civil society highlights a deficit of information and accountability.
- Communities affected by Karachaganak and Kashagan see few benefits, and activists report uncompensated and unremedied environmental and social costs, and concerns about civic space and personal security.

## Key recommendations

(for the recommendations in full see page 40)

### To the Kazakhstan government

- Make comprehensive efforts to disclose PSAs and begin a public debate on their terms.
- Strengthen cost control, auditing and public oversight of the extractive industries; determine whether Kazakhstan has incurred losses resulting from companies incorporating abroad; and ensure the effectiveness of anti-abuse provisions governing the double taxation agreement with the Netherlands.
- Maximise transparency and accountability, including consultation with women's groups, relating to the selection, planning, execution and reporting of SIPs.
- Fully and inclusively assess social and environmental impacts and provide appropriate compensation.
- Protect citizens' right to speak out about issues of public concern.

### To other governments

- European Union member states and the UK should ensure and maintain timeliness, open and machine-readable data format, and free online public access to fully disaggregated payments-to-governments reporting by extractive companies, with effective compliance monitoring by government, implementing changes recommended by European civil society to ensure full accessibility, clarity and comparability of extractive payments data.
- EU member states should urge the EU Commission to complete its delayed review of Chapter 10 of the Accounting Directive (reports on payments to governments).
- The US government should ensure that its forthcoming rule for payments-to-governments disclosure (covering such companies as Chevron and Exxon) fully aligns with global extractives transparency standards.

### **To the KPO and NCOC consortia**

- Promote dialogue with the Kazakh government to achieve disclosure of PSAs and fiscal terms.
- Ensure clear, timely, fully disaggregated and proportionate payments-to-governments reporting at both consortium level and participating company (joint venture partner) level.
- Maximise transparency and accountability, including consultation with women's groups, relating to the selection, planning, execution and reporting of SIPs.
- Fully and inclusively assess social and environmental impacts and provide appropriate compensation.
- Use leverage with the government to defend citizens' right to freedom of expression.

### **To Kazakh civil society**

- Campaign publicly for the disclosure of extractive PSAs and of fully disaggregated and proportionate payments-to-governments data at both consortium level and participating company (joint venture partner) level, with free public access.

- Advocate a participatory regulatory framework to prevent corruption and mismanagement relating to SIPs.
- Investigate and document social, environmental, human rights and gender impacts of Kazakh extractive projects and advocate necessary reforms.
- Use data from payments-to-governments disclosures, EITI reports and other sources to promote public dialogue on the extractive industries, the resulting public receipts, fiscal terms, and social and environmental impacts.

### **International and multilateral institutions and institutional donors**

- Use leverage with the Kazakh government to defend citizens' right to freedom of expression.
- Fund more civil society initiatives directed to securing more equitable, accountable and sustainable outcomes from resource extraction.
- Increase support for civil society capacity building on extractive sector issues.
- Speed up the redirection of international funding away from fossil fuels and into the low-carbon energy transition and economic diversification.

# PROJECT OBJECTIVES AND APPROACH

## This project set out to:

- Use extractive companies' mandatory payments disclosures as an entry point for civil society analysis, discussion and awareness raising, to promote public participation and to hold government entities and selected companies to account for their stewardship of non-renewable natural resources, including for the resulting payments and receipts.
- Generate a useful example of transparency, participation and accountability work on the resource extraction sector, promoting progress towards more equitable and sustainable natural resource stewardship for citizens and affected communities.

To achieve fair and sustainable outcomes when a country's non-renewable natural resources are extracted involves addressing a range of governance, environmental and human rights challenges.<sup>7</sup> In January 2019 Echo, Civil Expertise and PWYP UK began to discuss collaborating on issues relating to Kazakhstan's extractive sector, with PCQVP France/Oxfam France soon joining the conversation.

- Echo seeks to involve Kazakh citizens in governmental decision-making, defends and promotes human rights and

freedoms, undertakes public oversight of government activity, supports the development of Kazakh civil society and participates in Kazakhstan's EITI.

- Civil Expertise works to promote a democratic society through research. Its main areas of activity are participation in the implementation of the EITI in Kazakhstan, election monitoring and digital rights protection.
- PCQVP France, coordinated by Oxfam France, leads PWYP's work in France. The coalition focuses on advocating for greater transparency on the part of French-based extractive companies and making use of data available in payments-to-governments reports to support civil society in countries where such companies operate.
- PWYP UK, a coalition of 30 UK civil society organisations, is working to use payments-to-governments reporting by oil, gas and mining companies, and disclosure of receipts by governments, long advocated by civil society, to improve public outcomes in addressing the "resource curse" in the global South and transition countries;<sup>8</sup> to demonstrate that transparency can make a difference; and to collaborate effectively with PWYP coalitions and coalition members overseas.

<sup>7</sup> UN Environment Programme, <https://www.unenvironment.org/explore-topics/extractives/why-does-extractives-matter>

<sup>8</sup> NRG, 2015, <https://resourcegovernance.org/analysis-tools/publications/primer-resource-curse>



The project partners recognise the complexity of making a broad cost-benefit analysis of oil, gas and/or solid minerals extraction. As a recent UN University study states: “[R]evenue from extractives is not income but an exchange of below-ground resource assets for above-ground cash ... [T]he process of reshuffling has costs – environmental ... and often also social ... For extraction to be worthwhile ... its long-term value must exceed these costs.”<sup>9</sup> As noted above, the term “revenue(s)” raises its own issues.<sup>10</sup>

Kazakhstan’s upstream extractive sector comprises many companies (see next section) and projects. We decided to focus on a small number of European-based extractive companies’ joint venture interests and the payments and receipts these projects generate. We set out to assess the quality of outcomes from a citizens’ perspective and opportunities for better government and industry policy and practice. Our approach included:

- Analysis of payments to the Kazakh government disclosed by selected companies in mandatory reports and via Kazakhstan’s EITI.

- Identification of key financial and other issues arising from transparency reporting, project operations and stakeholder dialogue.
- Engaging with Kazakhstan government officials to verify receipt and use of payments, clarify fiscal terms and/or discuss other issues.
- Engaging with companies to clarify issues relating to payments and/or fiscal terms and/or to discuss other issues.
- Dialogue with civil society actors about company payments, government receipts and issues of concern.

To help ensure the accuracy of this case study, and to promote informed dialogue, we sent a draft version of the report to representatives of the Kazakh government, industry (KPO, NCOC, Shell, Total, Lukoil, Eni) and civil society ahead of publication and invited comments. We have taken all comments received into consideration in revising the report for publication.

9 G. Lahn and P. Stevens, chapter 5 in T. Addison and A. Roe (eds), *Extractive industries*, UNU-WIDER, Oxford University Press, 2018, <https://www.wider.unu.edu/publication/extractive-industries>. p.108

10 See footnote 5.

## Box 2. DATA AND INFORMATION SOURCES

Payments-to-governments and government receipt data used in this report comes mainly from three sources:

- NRGi's searchable [www.resourceprojects.org](http://www.resourceprojects.org) online platform collates, visualises in HTML and republishes in open and machine-readable CSV format extractive companies' payments-to-governments data as disclosed under Canadian, European Union, Norwegian and UK law. [www.resourceprojects.org](http://www.resourceprojects.org) directly incorporates companies' payments data where this is available via an application programming interface (API) (e.g. in the UK from <https://extractives.companieshouse.gov.uk>). It scrapes or incorporates other data from company and government PDF, Excel and HTML files. [www.resourceprojects.org](http://www.resourceprojects.org) also provides links to original (and back-up, where applicable) sources of company payments data.
- Many extractive companies publish payments-to-governments reports (as required by Chapter 10 of the EU Accounting Directive and equivalent Canadian, Norwegian and UK law) on their own websites, e.g. Total at <https://www.total.com/sites/g/files/nytnzq111/files/atoms/files/ddr2018-en.pdf>
- Kazakhstan EITI reports and data are published at <https://bit.ly/2IJfsRg> (EITI international data) and <https://egsu.energo.gov.kz/webapp/pages/home.jsf><sup>11</sup>
- Research sources also include Kazakh government publications and websites, online media reports, and civil society publications and websites.

Footnotes in the text provide links to relevant reports and data. All online sources were last accessed in August 2020.

Use of "\$" denotes USD throughout this report.

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<sup>11</sup> For Kazakh EITI reports and data downloaded by the authors, see <https://drive.google.com/drive/folders/0B9B174fkjArzOm5sVExLZGQ0cUU>

# ACTIVITIES AND OUTPUTS

## Scoping and selection

Using NRGi's [www.resourceprojects.org](http://www.resourceprojects.org) platform, we found 31 extractive companies reporting under Canadian, European Union (EU) and UK law payments made to the Kazakh government from 2015 to 2018. These are large private incorporated companies and/or companies with shares publicly traded on regulated markets in these jurisdictions.<sup>12</sup> Of these, Echo and Civil Expertise selected two European-based multinational extractive companies with a large economic footprint that are of particular interest to Kazakh civil society:

- **Royal Dutch Shell:** through its subsidiary BG Karachaganak a joint venture partner in, and joint operator of, one of the country's three largest oil and gas fields, Karachaganak (see Box 3). Shell is incorporated in the UK and headquartered in the Netherlands with shares traded on the London Stock Exchange (LSE) and in the EU and USA.
- **Total:** through its subsidiary Total E&P Kazakhstan a joint venture partner in another of the country's three largest oil and gas fields, Kashagan (see Box 4). Total is incorporated in France with shares traded on the Paris Bourse and the LSE, elsewhere in the EU and in the USA.

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<sup>12</sup> Our search can be replicated at <https://www.resourceprojects.org/entities?tab=0&countries=Kazakhstan>

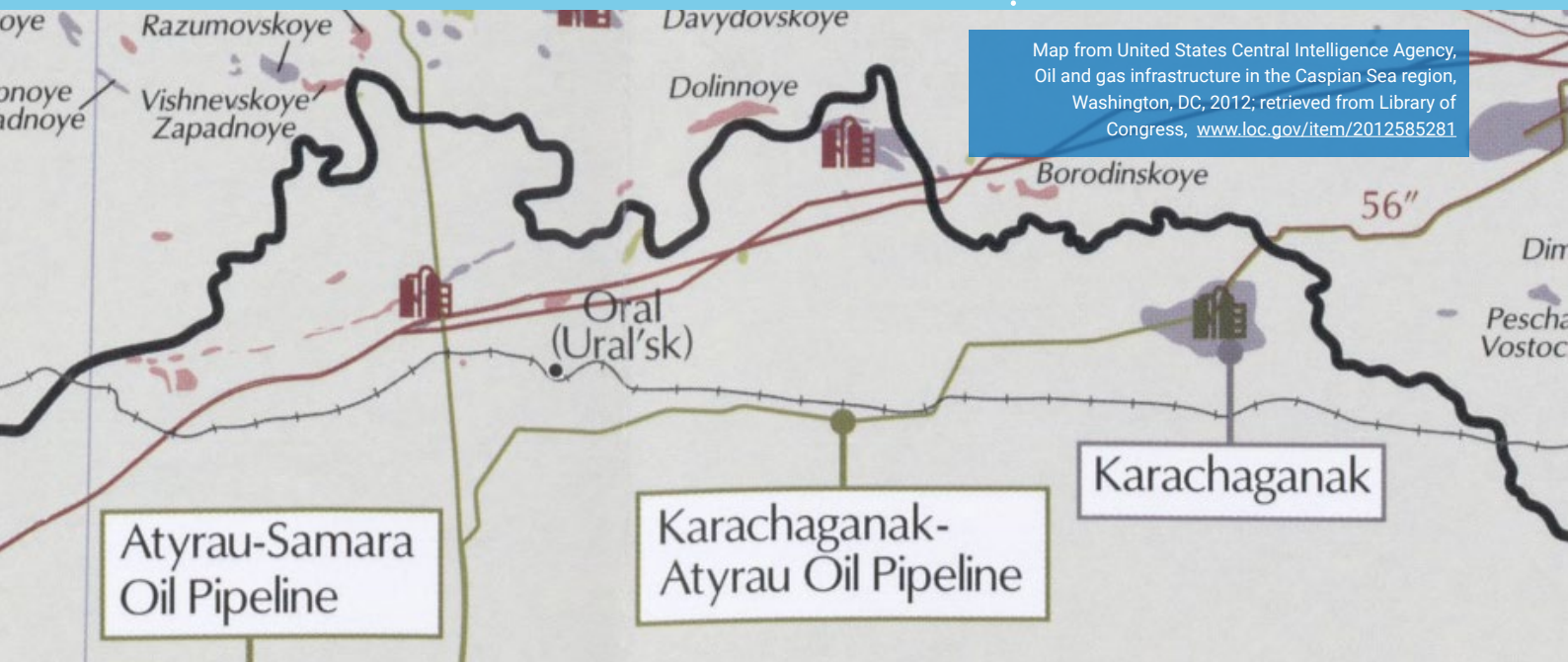
### Box 3. KARACHAGANAK<sup>13</sup>

Located onshore in northwest Kazakhstan, close to the country's border with Russia, Karachaganak is, with Kashagan and Tengiz, one of the country's three largest oil and gas fields. The project is managed by a joint venture consortium incorporated in the Netherlands as the private company Karachaganak Petroleum Operating BV (KPO). Shell (UK/Netherlands) and Eni (Italy) are, via their respective local subsidiaries BG Karachaganak and Agip Karachaganak, joint operators with a **29.25%** share each in the project. Chevron (US) and Lukoil (Russia) subsidiaries own **18%** and **13.5%** respectively. The Kazakh government owns **10%** via KazMunayGas, a subsidiary of the state-owned Samruk-Kazyna national holding company (see Box 6)


**1979**   
oil and gas discovery


**1991**   
Kazakhstan declares independence

**1997**   
40-year production sharing agreement (PSA) was signed



After oil and gas discovery in **1979**, state-controlled production began in **1984/85**, several years before Kazakhstan became the last Soviet republic to declare independence in **1991**. A **40-year** production sharing agreement (PSA) was signed by Agip/Eni, BG Group (since 2016 part of Shell), Texaco/Chevron, Lukoil and the Kazakh government in **1997**, with the licence running to **2037**. Karachaganak is one of the largest gas condensate fields in the world, and since **2004** a gas reinjection programme has been implemented using associated gas to support reservoir pressure, making the project technically complex. Production was around **399,000** boe/day (crude oil and gas condensate) in **2018**, and staged expansion is envisaged.

**2004**   
gas reinjection programme implemented using associated gas to support reservoir pressure

**2018**   
production around **399,000** boe/day (crude oil and gas condensate)

<sup>13</sup> Sources: KPO BV, <https://www.kpo.kz/>, <https://www.kpo.kz/en/about-kpo.html> and Annual report 2018; Kazakhstan PSA authority, <http://psa.kz/>; Royal Dutch Shell, <https://reports.shell.com/annual-report/2018/strategic-report.php>; Kazakh EITI report 2017, <https://bit.ly/2LJfsRq> (EITI international data); Netherlands Embassy in Kazakhstan, Special energy issue on Kazakhstan, 2018, <http://bit.ly/3dgvTU6>; 2B1st Consulting, 2014, <https://www.2b1stconsulting.com/bg-and-eni-prepare-karachaganak-expansion-project-stage-1/> On the Tengiz field, see <http://www.tengizchevroil.com/en/about/overview>.

## Box 4. KASHAGAN<sup>14</sup>

Located offshore in the Northern Caspian Sea, Kashagan is, with Karachaganak and Tengiz, one of the country's three largest oil and gas fields. One of the largest oil discoveries in the past decades, the project is managed and operated by a joint venture consortium incorporated in the Netherlands as the public company North Caspian Operating Company NV (NCOC). In 2015 NCOC assumed project operator responsibilities as successor to the NC Production Operations Company BV. Total E&P Kazakhstan, subsidiaries of ExxonMobil (US) and Shell (UK/Netherlands), and Eni (Italy) each hold a **16.81%** share in the project, with the rest held by subsidiaries of state-owned KazMunayGas (**16.88%**), China National Petroleum Corporation (CNPC; **8.33%**) and Inpex (Japan; **7.56%**).

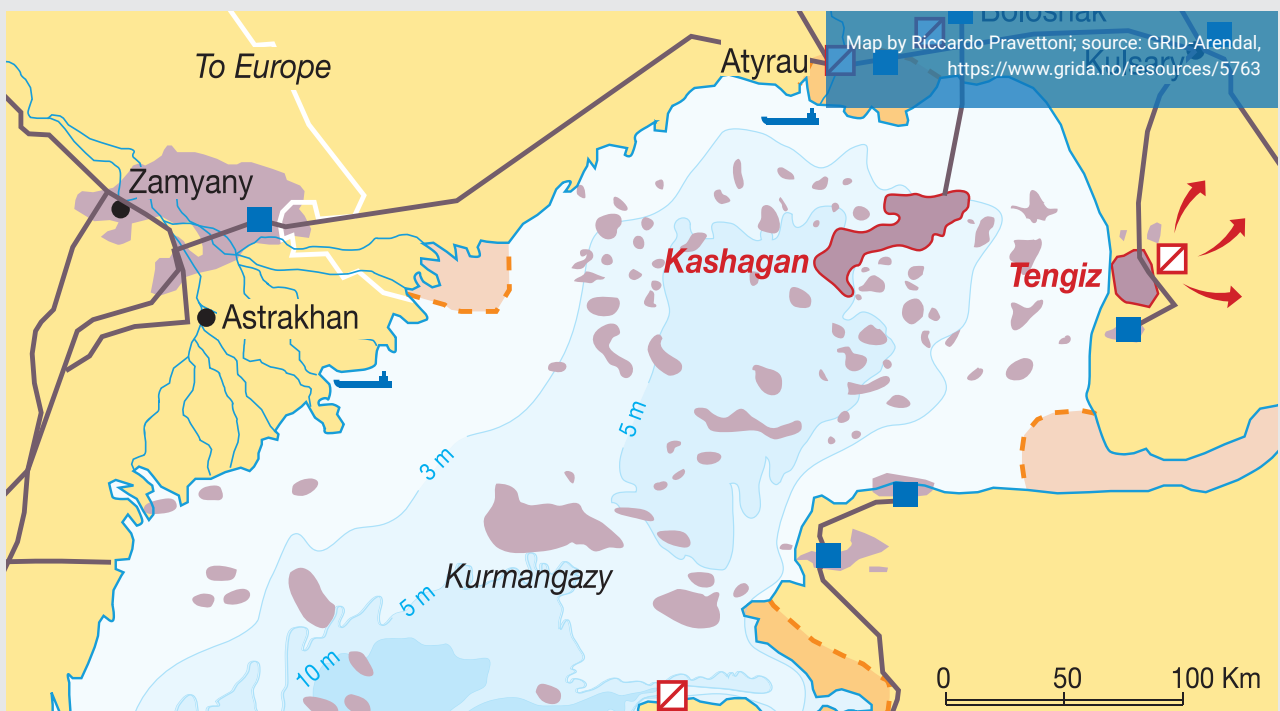
**1997** 

production sharing agreement (PSA) first signed between the consortium partners and the government





Between

**9 & 13 bn** 

barrels of high sulfur oil and associated gas field reserves



### Oil and gas

-  Fields
-  Main pipelines
-  Main industrial infrastructure
-  Tanker terminal

### Environmental and health risks

-  Environmental sensitive areas
-  Cities or villages with documented high impact on health or reported mortalities, caused by oil extraction and processing

-  Displacement of people and relocation of villages caused by pollution

Sources: EIA maps, 2002; Friends of the Earth mission report: Kazakhstan, 2007; UNEP, Environment and security. The case of the Eastern Caspian region, 2008.

<sup>14</sup> Sources: NCOC NV, <https://www.ncoc.kz/en/ncoc/about>; Kazakh PSA authority, <http://psa.kz/>; Kazakh EITI reports 2016 and 2017, <https://bit.ly/2lJfsRg> (EITI international data); Caspian Pipeline Consortium, <http://www.cpc.ru/en/about/>; OpenCorporates, <https://opencorporates.com>



#### Box 4. KASHAGAN (cntd)

Kashagan is governed by a production sharing agreement (PSA) first signed in **1997** between the consortium partners and the government and renegotiated in **2008**. Field reserves are estimated between 9 and 13 billion barrels of high-sulphur oil and associated gas. The project was delayed by 8 years and required 16 years of development. Production started in **2016** after costs had reached about \$50 billion. Various problems including environmental concerns have affected the project from the onset: although the deposit is deep subsea, the Caspian is shallow where the formation is, incurring major risks to the ecosystem. Kashagan oil is transported through a pipeline operated by the Caspian Pipeline Consortium (CPC) and state-owned KazTransOil running **1,500 km** from the northern Caspian to Novorossiysk on the Black Sea. KazMunayGas owns **19%** of CPC shares, Eni **2%** and ExxonMobil's subsidiary Mobil Caspian Pipeline Company **7.5%**.

**2016** 

production started after costs had reached about **\$50 bn**



Kashagan oil is transported through a pipeline running

**1,500km**

## Desk research and data analysis

Civil society's understanding of extractive projects and the payments and receipts generated is assisted by knowledge of the fiscal terms governing individual projects.<sup>15</sup> However, although Kazakhstan law requires publication of all official legal documents,<sup>16</sup> secrecy surrounds the country's extractive PSAs, and our efforts to discover the fiscal terms for either field were unsuccessful (see below). Under the EITI 2019

Standard, legal agreements between companies and the Kazakh government signed or amended after 1 January 2021 must be published, but this will not apply to the Karachaganak and Kashagan PSAs unless they are amended after that date. Available documents nevertheless reveal the legal and fiscal framework governing Kazakhstan's extractive sector, without revealing the precise contractual terms (see Box 5).

<sup>15</sup> EITI, <https://eiti.org/contract-transparency>

<sup>16</sup> Government of Kazakhstan, Access to Information Act 2015, <http://adilet.zan.kz/eng/docs/Z1500000401>: "The right of access to information can be limited only by laws and only to the extent necessary for the safety of the constitutional order, the defence of public order, human rights and freedoms, public health and morality" (art. 5); "Access to the following information shall not be restricted ... texts of normative legal acts of the Republic of Kazakhstan, with the exception of normative legal acts containing state secrets and other secrets protected by law, as well as their projects" (art. 6) (authors' trans.).

## Box 5. KAZAKHSTAN'S LEGAL AND FISCAL FRAMEWORK FOR MINERALS EXTRACTION<sup>17</sup>

Kazakhstan's Code on Subsoil and Subsoil Use of 2017 defines the legal framework for minerals extraction including oil and gas, while the country's Tax Code, revised in 2017, includes the standard fiscal framework summarised below. Article 720-3 lists all taxes and related payments applicable to subsoil users, in addition to corporate income tax and other taxes, although not the rates determined for each payment category or how rates may be applied in individual PSAs:

- **Signature bonus.**
- **Repayment of historic costs incurred by the state to undertake geological studies.**
- **Royalties.**
- **Production entitlements: the state's share of profit oil – that is, its share of oil production after cost recovery by joint venture partners (cost oil), a standard feature of PSAs, paid either in cash or in kind.**
- **Mineral extraction tax (MET).**
- **Excess profits tax: applicable to operations under PSAs signed after 1 January 2009.**
- **Alternative subsoil use tax: an alternative to the repayment of historic costs/MET/excess profit tax.**

A stability clause, article 722-1, establishes that tax regimes specified in PSAs from before 1 January 2009 remain valid for the entire contracting period. Karachaganak and Kashagan, whose PSAs were signed before that date, therefore appear to be exempt from the excess profits tax. The previous Tax Code included a commercial discovery bonus, which was subsequently abolished.

Royalties and production entitlements are to be defined in contracts. They can be paid in kind according to article 772, but no formula to determine government share is specified in the Code.

Mineral extraction tax (MET) is based on the volume of oil/gas produced during a given period (articles 740-1-2-3). Rates vary according to annual production volume (similar to a royalty based on a sliding scale). Article 741 specifies that production should be valued using the Platts Crude Oil Marketwire reference average of daily price quotations.

The Ministry of Energy is responsible for the oil and gas industry and related policies on behalf of the state, while the Ministry of Finance determines fiscal policy including in relation to the National Fund (see Box 7) that receives designated moneys from the sector.<sup>18</sup> The Budget Code states that extractive industry taxes, including corporate income tax, bonuses, production entitlements and MET, are collected by the National Fund.<sup>19</sup> Other extractive company payments are directed to various government bodies (see below).

Tax Code article 399 details reasons to exempt companies from Value Added Tax (VAT), but oil and gas projects are not explicitly mentioned (see discussion of Total's Kashagan payments below).

Government income may be affected by clauses on withholding tax rates on dividends and interest payments in double taxation agreements,<sup>20</sup> when companies operating in Kazakhstan are incorporated in another country (discussed below).

Kazakhstan has begun to disclose beneficial ownership data for new extractive industry licences.<sup>21</sup>

17 Sources: Government of Kazakhstan, On Subsoil and Subsoil Use, <http://adilet.zan.kz/eng/docs/K1700000125>; Tax Code, <http://adilet.zan.kz/eng/docs/K1700000120>; Budget Code, <http://adilet.zan.kz/eng/docs/K0800000095>; Kazakh EITI report 2017; IIED, How to scrutinise a production sharing agreement ... experience from the Caspian region, 2012, <https://pubs.iied.org/pdfs/16031IIED.pdf>

18 Kazakh EITI report 2017.

19 Budget Code, art. 22. In 2017 the National Fund collected 52.4% of total state direct tax income from oil and gas companies, approx. \$5.65 billion: Kazakh EITI report 2017.

20 OECD model convention and commentary, [https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version\\_g2g972ee-en](https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_g2g972ee-en); and UN commentary, [https://www.un.org/esa/ffd/wp-content/uploads/2015/10/TT\\_Introduction\\_Eng.pdf](https://www.un.org/esa/ffd/wp-content/uploads/2015/10/TT_Introduction_Eng.pdf)

21 EITI, <https://eiti.org/kazakhstan#beneficial-ownership-disclosure>

Our understanding of the legal context of Karachaganak and Kashagan was also informed by information about Kazakhstan's state holding company, Samruk-Kaznya (Box 6).

**Box 6. STATE HOLDING COMPANY SAMRUK-KAZYNA<sup>22</sup>**

The joint stock company Samruk-Kazyna was created by presidential and government decree in 2008 and formed through the merger of two large state conglomerates. The government is the sole shareholder. Samruk-Kazyna is commercially structured as an investment holding company whose mission is to increase the welfare of the country and to support economic modernisation. The Samruk-Kazyna Group includes enterprises in the oil and gas, transport and logistics, chemicals and nuclear, mining and metallurgical, energy, engineering and real estate sectors. It includes all the national companies of Kazakhstan, including KazMunayGaz, Kazatomprom (uranium) and Tauken Samruk (solid minerals). Samruk-Kazyna's advisory fund management council is led by the First President of the Republic, and the government as its sole shareholder appoints the chair of the board of directors.

Samruk-Kazyna participates in the Karachaganak and Kashagan fields through project shares owned by KazMunayGas subsidiaries (10% and 16.88% respectively). It receives dividends from KazMunayGas, including from profits from participation in the fields, and this money accumulates in the fund. Samruk-Kazyna independently decides on dividend payments to its one shareholder, the government. Thus elements of Samruk-Kazyna's income are held and spent separately, according to its own objectives, from the national budget.

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22 Sources: <https://www.sk.kz/>; <http://adilet.zan.kz/eng/docs/Z1200000550>

## Box 7. KAZAKHSTAN'S NATIONAL (OIL) FUND<sup>23</sup>

The National Fund of the Republic of Kazakhstan was established in 2000 with aims of savings, socioeconomic development and stabilisation, investing financial resources for future generations and reducing the country's dependency on world commodity markets. The Fund represents state financial assets held in the government account at the National Bank.

In March 2020 the National Fund held 27 trillion Kazakh tenge, or about \$70 billion. Payments by oil and gas sector companies account for more than 99% of receipts held in the Fund, excluding investment income. In 2018 payments from KPO comprised about 21% of all inflows to the Fund from the oil and gas sector, while payments from NCOC comprised 3%, according to Ministry of Finance data. In previous years, according to Kazakh EITI data (based on information from the Ministry of Finance), the respective percentages were:

2016 – KPO 10%, NCOC 11%

2017 – KPO 13%, NCOC 0.1%<sup>24</sup>

### Fund management

Decisions on the National Fund are made by the President of the Republic. There is no separate law regulating Fund activities apart from the presidential decree (“Concept of the formation and use of funds”), currently in its fourth iteration and easily changed by the President. Money in the Fund is withdrawn for either of two purposes:

- Guaranteed annual transfer to the national budget of 2.7 trillion Kazakh tenge (roughly \$7 billion), or about 25% of national budget income.
- Targeted transfers allocated by decision of the President for financing for (i) anti-crisis programmes during periods of economic downturn and (ii) national scale infrastructure projects lacking alternative funding. These have ranged from 0% to 16% of national budget income in recent years.<sup>25</sup>

The Council for the Management of the National Fund is an advisory body under the President whose functions are to develop proposals for the Fund's formation and use. The President determines the Council's membership and functions.

The National Bank manages the Fund's assets and reports on the Fund in annual reports compiled with the Ministry of Finance, approved by presidential decree and submitted to the government and parliament for information only. The report in aggregate form is available on the Ministry of Finance website for 2018 only.<sup>26</sup> Reports for other years are in a short form. There are also very brief monthly reports. None of these reports provide adequate transparency and accountability to society on the Fund's formation or uses, which are fully controlled by the President.

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23 Sources: Government of Kazakhstan, National Fund presidential decree, <http://adilet.zan.kz/rus/docs/U1600000385> ; Kazakh Ministry of Finance, National Fund receipts and allocations data, 2018, <https://bit.ly/2zxSuZd> ; <http://eiti.geology.gov.kz/>

24 To date we have been unable to ascertain why NCOC's percentage contributions show such large annual variances.

25 Links to data sources are available at <https://bit.ly/3fxZdSD>

26 Ministry of Finance, Formation and use of the National Fund of the Republic of Kazakhstan for 2018,

We undertook two data analysis exercises each for Karachaganak and Kashagan:

- A comparison between Kazakh EITI data and company payments-to-governments data reported under European/French/UK law (seven payment types are to be disclosed: production entitlements; income, production or profit taxes; royalties; dividends; bonuses; fees; and payments for infrastructure improvements).
- A contextualised assessment of the government's share of gross project receipts for Karachaganak in 2018 and its production entitlements (share of profit oil) for Kashagan in 2017-18). While useful, findings for single years or short periods can only be indicative compared with multi-year or full project lifetime analysis or financial modelling.

We report on findings and outcomes from these analyses below.

## Dialogue with government and companies

To amplify and clarify available information, and in pursuit of our advocacy aims of increasing transparency and accountability, we wrote to government ministers, subnational authorities and five of the companies. We summarise the content of our inquiries and requests here and report on **Project findings and outcomes** on page 21.

### Government and company dialogue: Karachaganak

Echo and Civil Expertise wrote in October/November 2019 to the Prime Minister of Kazakhstan and the Minister of Finance asking about the fiscal terms of the Karachaganak project. Our letters cited Kazakhstan's Access to Information Act 2015 and asked about a government decree, found online, whose title translates as "On some issues of the Karachaganak project", dated 2011 and revised 2015.<sup>27</sup> This decree sets out how, effective from 1997 to the end of the project, certain aspects of the Karachaganak PSA fiscal regime are to be interpreted. We asked if the terms of the decree are still in place, if any changes have subsequently been made, for access to any new

PSA document, and if any comparable decree exists for the Kashagan project.

We focused our inquiries to local government in connection with Karachaganak on extraction-related social and infrastructure projects (referred to in official sources as "SIP", henceforth SIPs) undertaken in West Kazakhstan.<sup>28</sup> Echo and Civil Expertise wrote to the akims (subnational government heads) of the West Kazakhstan region and the Burlinsky district, where Karachaganak production is located, requesting information on whether Shell subsidiary BG Karachaganak has agreements with subnational authorities to implement SIPs outside the framework of the KPO consortium. We asked about the allocation and size of any payments made and if citizens are involved in prioritising and monitoring the use of funds.

Seeking to understand better Kazakhstan's government share of project receipts from Karachaganak, in November 2019 we wrote to Shell in the Netherlands to ask about the fiscal terms governing the joint venture, whether the 2011/2015 government decree

<sup>27</sup> Government of Kazakhstan, Decree No. 1525, 2011, revised 2015, <http://adilet.zan.kz/rus/docs/P1100001525>

<sup>28</sup> Kazakh PSA authority, [http://psa.kz/proekty/?ELEMENT\\_ID=55](http://psa.kz/proekty/?ELEMENT_ID=55)



(mentioned above) was still in force, if any additional or subsequent documents cover the PSA's fiscal terms, and whether Shell – a supporter of principles of contract disclosure and tax transparency – would share such documents with us and/or encourage the Kazakh government to make the documents and/or fiscal terms public. Another letter, to joint venture participant Lukoil, requested confirmation that it has disclosed its payments for Karachaganak on a proportionate share basis (unlike Shell): this appears to be the case from Lukoil's 2018 payments-to-governments report and enables a calculation of the government share of receipts for the year.<sup>29</sup> We also sent both these companies and joint operator Eni a draft copy of this report for comment. For Shell and Eni's replies and comments, see **Project findings and outcomes** on page 21.

Echo and Civil Expertise emailed the Kazakh office of KPO in March 2020 to ask about the fiscal terms and for confirmation that SIPs spending is a recoverable cost.

### **Government and company dialogue: Kashagan**

The only known public document covering the fiscal terms for Kashagan was repealed in 2003.<sup>30</sup> Echo and Civil Expertise wrote to Kazakhstan's Prime Minister and Minister of Finance in October 2019 to inquire about the PSA terms, citing Kazakhstan's Access to Information Act 2015.

Inquiries to local government focused on Kashagan-related social and infrastructure projects (SIPs) undertaken in Atyrau and Mangistau regions.<sup>31</sup> Echo and Civil Expertise wrote to the akimat (subnational government) of Atyrau region, where Kashagan's onshore infrastructure is located, requesting information

on whether Total has agreements with subnational authorities to implement SIPs outside the framework of the NCOC consortium. We asked whether any of Total's subnational payments for Kashagan – including those the company reports as “payments for infrastructure improvements”<sup>32</sup> and those detailed in EITI reports – are for specific purposes. We also asked about the allocation and size of any payments made and if citizens are involved in prioritising and monitoring the use of funds.

Seeking to understand better Kazakhstan's government share of production value from Kashagan, in December 2019 we wrote to Total in France:

- Would the company – a strong supporter of contract disclosure<sup>33</sup> – encourage the Kazakh government to publish the Kashagan PSA, perhaps raising the issue at a Kazakh EITI Multi-Stakeholder Group (MSG) meeting?
- Could Total also provide information on its valuation method for production entitlement payments (to inform our estimates of government receipts, discussed below)?
- Why does Total make payments to the state budget via the Finance Ministry rather than to the National Fund as per the Budget Code and does Total pay mineral extraction tax (see Box 5), and if so why does Total not report this as royalties?
- Was there a similar document for Kashagan to the 2011/2015 government decree relating to Karachaganak (mentioned above)?
- Why do Total, other joint venture partners and NCOC receive large VAT refunds (Total is reported under the Kazakh EITI as

29 Lukoil, Report on payments for 2018, <https://go.aws/2ROYW2W>, section 1.5.

30 Government of Kazakhstan, On the Procedure for the Application of Certain Provisions of the PSA Tax Regime for the North Caspian Sea, 1998, repealed 2003, [https://online.zakon.kz/document/?doc\\_id=1012285#pos=1;-309](https://online.zakon.kz/document/?doc_id=1012285#pos=1;-309)

31 Kazakh PSA authority, [http://psa.kz/proekty/?ELEMENT\\_ID=54](http://psa.kz/proekty/?ELEMENT_ID=54)

32 Total, <https://www.total.com/investors/publications-and-regulated-information/regulated-information/report-payments-governments>

33 See Total's position at <https://www.sustainable-performance.total.com/en/business-ethics-0>

- receiving the equivalent of \$213 million in VAT refunds during 2015-18)?<sup>34</sup>
  - How were environmental emissions taxes calculated and allocated as reported under the EITI?
  - We also requested names and contact details for Total E&P in-country representatives.
  - For Total's replies to these inquiries and its comments on the draft text, and for joint venture partner Eni's comments, see **Project findings and outcomes**.
- Echo and Civil Expertise sent questions regarding contractual obligations and the fiscal regime to the NCOC office in Kazakhstan in November 2019.

## Dialogue with civil society

### Civil society dialogue: Karachaganak

Echo and Civil Expertise undertook an online questionnaire survey in November 2019, seeking views from civil society activists and journalists working on human rights and environmental issues in West Kazakhstan, near Karachaganak. Contacts were by email and in some cases follow-up phone calls. The questionnaire asked whether local residents could influence the choice of SIPs and/or participate in monitoring project implementation. It also asked about impacts of the consortium's operations on the health of the local population, the environment, daily life and gender relations.

We contacted and received information from Crude Accountability, a US-based environmental and human rights NGO (and PWYP US member) working with communities in the Caspian and Black Sea regions.<sup>35</sup>

### Civil society dialogue: Kashagan

Echo and Civil Expertise also undertook an online questionnaire survey in November 2019, seeking views from civil society activists working in Atyrau and Mangistau regions, onshore of the Kashagan field, including members of a public advisory body created by the consortium company NCOC to develop contacts with local communities. Contacts were by email and in some cases follow-up phone calls and in-person meetings. The questionnaire asked whether local residents could influence the choice of SIPs and/or participate in monitoring of implementation, also whether NCOC meets with representatives of local communities, what the agenda may be for such meetings and whether SIPs are discussed. It also asked respondents to describe impacts of NCOC's operations on the environment, local health, employment, etc.

Additionally, in January 2020 during a meeting with civil society representatives in Atyrau region, Echo consulted on the same questions as in the questionnaire.

Results of the above consultations and dialogue with civil society are reported in the next section.

<sup>34</sup> Data from Kazakh EITI reports, <http://eiti.geology.gov.kz/ru/national-reports>. VAT is a consumption tax and therefore excluded from mandatory payments-to-governments reporting.

<sup>35</sup> <https://crudeaccountability.org/>

# PROJECT FINDINGS AND OUTCOMES

## Findings from the data

Comparisons between payments-to-governments and EITI data as applied to both Karachaganak and Kashagan were constrained by lack of access to the fiscal terms but brought to light issues of concern. Our second strand of data analysis – assessment of the government share of project receipts (Karachaganak, 2018) or production value (Kashagan, 2017-18) – although only indicative, suggests that Kazakhstan has so far achieved only marginal economic benefits from the two fields. Our data-derived quantitative findings are supported by qualitative evidence, as we report below.

### Karachaganak data comparison

Shell's subsidiary BG Karachaganak and the Netherlands-incorporated consortium company

KPO both make payments to the Kazakh government centrally and at subnational level and both submit EITI reports. BG Karachaganak's payments to the government of \$616.9 million for 2016-18 as reported in the EITI (2016, 2017) and by the Ministry of Finance (2018) closely correspond to Shell's payments-to-governments reports of \$616.6 million for the same period.<sup>36</sup> KPO's payments over the same three years total \$3 billion,<sup>37</sup> of which approximately \$900 million would be attributable to Shell corresponding to its 29.25% share in the joint venture. Shell does not currently disclose its share of consortium payments made by KPO; nor does its operating partner Eni.<sup>38</sup>

*Shell's payments to Kazakhstan government (US \$000)*

Year	BG Karachaganak (Shell) EITI reports	Shell EU reports	KPO EITI reports	BG Karachaganak (Shell) 29.25% proportionate share of KPO payments
2016	178,860	178,635	368,098	107,669
2017	214,023	214,000	744,740	217,836
2018	224,031	223,985	1,945,870	569,167
Total	616,914	616,620	3,058,708	894,672

<sup>36</sup> Kazakh EITI reports, <https://bit.ly/2IJfsRq> (EITI international data), including Ministry of Finance 2018 data at <https://bit.ly/2RdwKqW>; Shell, Karachaganak disclosures, <https://bit.ly/2RacQNE>. Our understanding is that Shell's reported payments of \$616.9 million are entirely separate from KPO's payments. This would be consistent with Shell's current method of reporting only payments that it makes directly, to avoid a perceived risk of double counting.

<sup>37</sup> Kazakh EITI reports, including Ministry of Finance 2018 data.

<sup>38</sup> Karachaganak payments: Shell, Karachaganak disclosures; Eni, <https://bit.ly/33E24Ep>. Civil society argues that all joint venture partners should disclose their share of payments on a proportionate basis to ensure all reportable payments are transparent to the public, and should include an explanatory note of which company is the operator and/or who the other partners are to avoid double accounting: see PWYP UK reporting guidance, <https://bit.ly/38xMXyA>; Canadian government guidance, <https://www.nrcan.gc.ca/mining-materials/estma/18802>

KPO reports its payments to government under EU and Netherlands law. But KPO's payments reports in the Netherlands are not easy to access, and the latest report we could obtain in April 2020 was for 2017.<sup>39</sup> Under Netherlands law the payments reporting deadline is 12 months following the end of the financial year, so a report on 2018 should have been publicly available.<sup>40</sup> Moreover, KPO's payments reports do not disaggregate payments by recipient government entity, instead naming only the country of the government.<sup>41</sup>

Poor public access to such reports in the Netherlands, and insufficiently disaggregated data on government entities receiving payments, indicates a failure to meet the EU Accounting Directive's policy intention of "help[ing] governments of resource-rich countries to ... account to their citizens for payments such governments receive from undertakings active in the extractive industry".<sup>42</sup>

Direct comparison of mandatory and EITI data yielded few insights. However, consideration of the EITI data and other sources led us to look further into the social and infrastructure projects (SIPs) financed by KPO. The government's PSA authority reports that, in accordance

with the PSA terms, from 1998 to 2008 KPO paid \$10 million annually to implement SIPs in West Kazakhstan and that KPO's annual payment obligation for SIPs rose to \$20 million in 2009 (the sum was further raised to \$30 million in 2019).<sup>43</sup> The amount of KPO's SIPs spending reported via the EITI exceeded its obligated \$20 million in 2016 (\$24 million), 2017 (\$32 million) and 2018 (\$29 million).<sup>44</sup> This may be explained by the fact that KPO allocated additional funding of \$30 million for SIPs in Burlinsky district in 2014-16, with spending completed in 2018.<sup>45</sup> Burlinsky, a mainly rural district, is where Karachaganak is located, and we understand that the additional expenditure was intended as compensation for the Berezovka incident (discussed under civil society dialogue below). Spending on SIPs in Uralsk, West Kazakhstan's administrative capital (which is not in Burlinsky district), exceeded spending in Burlinsky by three times in 2016-18.<sup>46</sup> About 60% of KPO's SIPs spending in 2016-18 was allocated to road construction and repair, and 15% and 11% respectively to construction of educational and sports facilities.<sup>47</sup> We used these findings to inform our dialogue with Kazakh civil society, reported below.

39 In April 2020 the Centre for Research on Multinational Corporations (SOMO, <https://www.somo.nl/>, a PWYP member organisation in the Netherlands) obtained several KPO payments reports for us with some difficulty from the Netherlands Chamber of Commerce.

40 Netherlands government, Decree on reporting payments to governments, "Nota van toelichting" (explanatory note) on the reporting deadline, <https://zoek.officielebekendmakingen.nl/STB-2015-439.html>

41 The UK financial regulator has ruled for London Stock Exchange Main Market-traded companies that under the EU requirements disaggregation by recipient government entity is also required: see PWYP and NRG, Apr. 2019, <https://www.pwyp.org/pwyp-news/uk-financial-regulator-oil-gas-mining-companies-government-entities-payments/>

42 EU Accounting Directive 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0034>; recital 45. See also UK Reports on Payments to Governments Regulations 2014, Explanatory Memorandum, [https://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksem\\_20143209\\_en.pdf](https://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksem_20143209_en.pdf), para 7.1 ("The intention is to give citizens of resource-rich countries the information they need to hold their governments to account").

43 Kazakh PSA authority, [http://psa.kz/proekty/?ELEMENT\\_ID=55](http://psa.kz/proekty/?ELEMENT_ID=55); InBusiness.Kz, Nov. 2018 <https://inbusiness.kz/ru/last/karachaganak-petroleum-operating-na-10-mln-uvelichit-vyplat> We have tabulated KPO's EITI-reported SIPs in detail at <https://bit.ly/2vQMp8h>

44 Reported by the West Kazakhstan akimat (local government) at <https://bit.ly/39IN3Tf>

45 KPO, [https://kpo.kz/fileadmin/user\\_upload/pdf/kpo-sustainability-report-2018-final\\_en.pdf](https://kpo.kz/fileadmin/user_upload/pdf/kpo-sustainability-report-2018-final_en.pdf)

46 Calculations by Echo at <http://nedra.echo.kz/zko-reg.html>

47 Calculations by Echo at <http://nedra.echo.kz/zko-reg.html>

## Karachaganak: indications of a poor deal for the country and its citizens

Media, company and EITI reports refer to disputes between the Karachaganak PSA parties about cost recovery and the government's profit oil share.<sup>48</sup> As noted below in the context of Kashagan, by 2008 the government had become disillusioned with the PSA model.<sup>49</sup> In 2018 the consortium agreed a \$1.1 billion dispute settlement payment to the government, and to a \$1 billion infrastructure development loan, with new terms giving the government a larger share of future proceeds; but in 2019 the government rejected the deal, deeming the settlement offer insufficient.<sup>50</sup>

Working with PWYP UK member Global Witness,<sup>51</sup> we analysed company payments and Kazakh government receipts associated with Karachaganak for the year 2018 and found that government receipts for 2018 appear to be well below industry norms for a comparable project.<sup>52</sup> Lukoil's 2018 payments-to-governments report states that it discloses payments for Karachaganak as its proportionate share (13.5%) of all the joint venture's payments made and that it paid equivalent to \$115.4 million gross in tax to the government relating to Karachaganak in 2018.<sup>53</sup> By extrapolation this yields \$855 million in total gross 2018 payments to the government for Karachaganak by all project partners.<sup>54</sup> Industry estimates indicate gross project receipts for Karachaganak in

2018 as \$5.2 billion<sup>55</sup>, resulting in a percentage of 16.4% (\$855 million ÷ \$5,200 million) of gross receipts reaching the government (and a loss to the people of Kazakhstan of the remaining 83.6% of the oil and gas's sales value). We understand that about 35% would be a reasonable industry average government share for a mature onshore oil and gas project.<sup>56</sup> A share of only 16.4%, implying very modest returns to the government over the lifetime of the project, appears to be the result of Karachaganak's technical complexity, high cost, low profitability and unfavourable terms (from the government's viewpoint) originally agreed with the consortium companies.<sup>57</sup> Our assessment of Kashagan below, although focusing on the government's production entitlements (share of profit oil) rather than gross project receipts, produced comparable findings.

## Kashagan data comparison

Comparison between Total's 2017 Kashagan-related payments-to-government disclosures and the EITI 2017 data revealed anomalies. Consortium participant Total E&P Kazakhstan and consortium operator NCOC both make payments to the government centrally and at subnational level. All subsoil users pay corporate income tax to the Ministry of Finance, which then redirects to the National Fund taxes paid by organisations on the official list of oil companies approved by a joint decree published annually by

48 Astana Times, Oct. 2018, <https://astanatimes.com/2018/10/kazakhstan-to-receive-1-1-billion-compensation-from-karachaganak-shareholders/>; Kazakh EITI report 2017; Samruk-Kazyna, Annual report 2018, <https://bit.ly/3dkXyPI>

49 Reuters, Jul. 2008, <https://www.reuters.com/article/us-kazakhstan-kashagan/kazakhstan-to-review-kashagan-psa-energy-minister-idU5L2380609520080723>; Kazakh government quoted in IIED, How to scrutinise a production sharing agreement, p. 21.

50 Samruk-Kazyna, Annual report 2018; Reuters, Oct. 2018, <https://uk.reuters.com/article/uk-kazakhstan-karachaganak/energy-majors-to-pay-kazakhstan-1-1-billion-to-settle-karachaganak-row-idUKKCN1MB20E>; and Nov. 2019, <https://www.reuters.com/article/uk-kazakhstan-karachaganak/kazakhstan-says-1-1-billion-karachaganak-settlement-offer-insufficient-idUKKBNIY00EB>

51 <https://www.globalwitness.org/>

52 As previously noted, findings for single years or short periods can only be indicative compared with multi-year or full project lifetime analysis or financial modelling.

53 Lukoil, Report on payments for 2018, section 1.5 and table 1 (taxes not disaggregated).

54 Lukoil reports 2018 Karachaganak payments as 7,254 million RUB; converted to USD at rate \$0.0159157142, this gives \$115.4 million. \$115.4 million = 13.5% of \$855 million.

55 Information obtained by Global Witness by subscription to an oil and gas industry research and information service. KPO does not report sales receipts for "confidentiality" reasons, but sales are realised at international "benchmark" prices: Karachaganak sustainability report, 2017, <https://bit.ly/3mODDgF>, pp. 52, 12.

56 Industry analysts' estimates obtained by Global Witness include average government shares of total project receipts such as 42.1% for Chad, 27.2% for Colombia, 33.6% for DR Congo and 44.9% for Nigeria.

57 Shell's co-operator Eni, in its comments on a draft version of this report, cited below, states: "The level of taxation of corporate profits in Kazakhstan might seem lower than in other jurisdictions, however ... petroleum operations are particularly complex and costly in Kazakhstan due to environmental factors and therefore also the mineral risk is higher than in other countries; therefore it could be a way of attract foreign investments" – Eni email to PWYP UK, Jun. 2020.

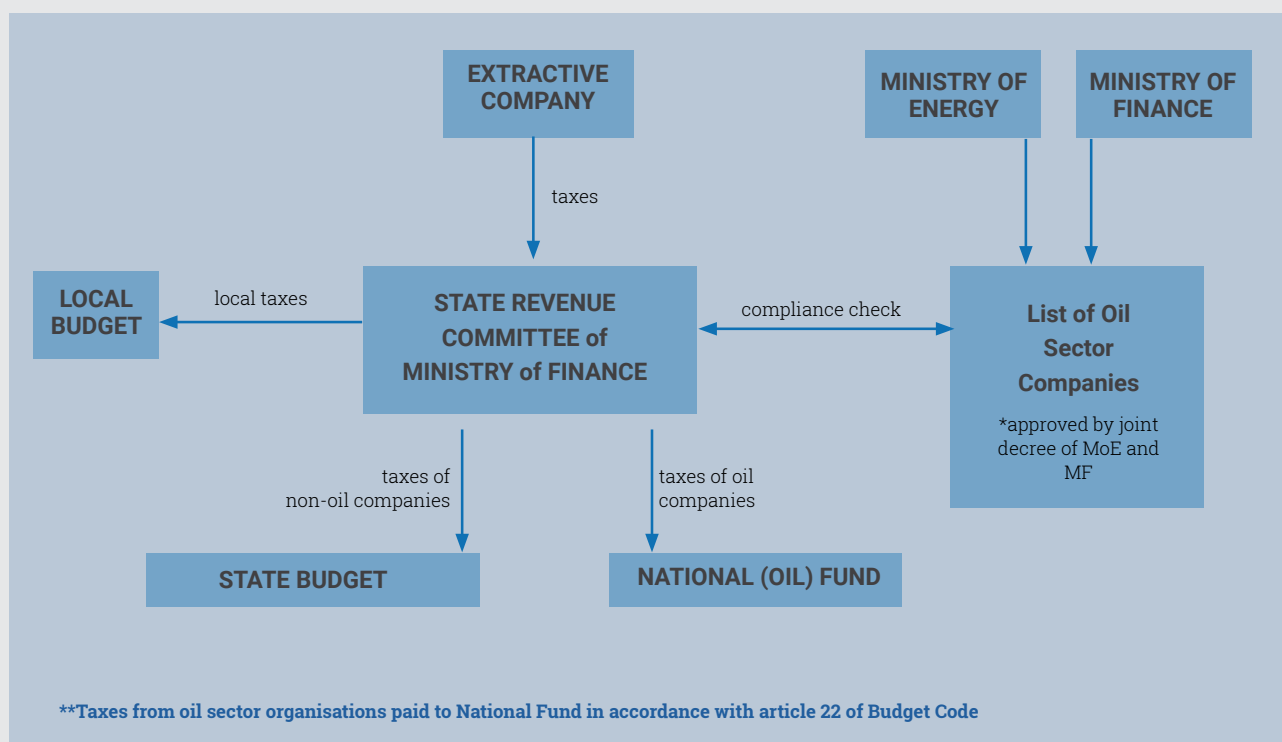


the ministries of Finance and of Energy. NCOC is included in this list of oil companies, whereas Total and other joint venture participants, for unknown reasons, are not,<sup>58</sup> and this would indicate that payments by Total and others are redirected to the state budget (see diagram). (However, both NCOC and Total are considered oil companies by the Ministry of National Economy's statistical committee.)<sup>59</sup>

NCOC does not report payments via the EITI, despite NCOC being included in the official list of oil companies, and despite the EITI requiring payment disclosure by operators or agents including of payments made on behalf of partner companies. Instead the Ministry of Finance reports NCOC's payments unilaterally for the EITI, while akimats (local government heads) where NCOC production occurs provide unilateral information on NCOC's subnational

payments. NCOC's seat in 2017 on the Kazakh EITI Multi-Stakeholder Group (MSG) that determined the terms of reference under which companies had to disclose payments that year via the EITI indicates a clear conflict of interest. (NCOC is not currently represented on the MSG.)

Our payments data comparison revealed different levels of disaggregation and different names for payment categories between Total's reporting and the Kazakh EITI reports.<sup>60</sup> There are probably genuine variations in definition or interpretation of payment types, with EITI reporting categories defined by the country's MSG. VAT is not included in EU payments reporting but represents a large part of financial flows disclosed via the EITI. Comparing total payments excluding VAT reported in the two systems reveals a modest difference of \$6.4 million over the years 2016-18, out of total payments of more than \$150 million, i.e. approx. 4% variance, with the EITI reports showing larger amounts. (see following table).<sup>61</sup>



58 The list at <http://adilet.zan.kz/rus/docs/D16E0000664> is approved annually, but NCOC's inclusion and Total's exclusion have not changed.

59 Information provided by Total in email to PCQVP France/Oxfam France, Jul. 2020.

60 Details of our data comparison are available at <https://bit.ly/2VqLogU>

61 Kazakh EITI reports and data, <https://bit.ly/2LJfsRg> (EITI international data)

Total's payments to Kazakhstan government, EU vs EITI data (US \$ million)

	2016	2017	2018	Total
EU payments-to-governments data	66.3	24.4	74.3	165.0
Kazakh EITI reports data	79.0	17.4	62.2	158.6
Difference	12.7	-7.0	-12.1	-6.4

We have not inquired into reasons for the discrepancy. Exchange rate differences and/or technical errors may be factors.

NCOC's social and infrastructure projects (SIPs) spending in the Atyrau and Mangistau regions, where its onshore infrastructure is located, as reported unilaterally by subnational authorities via the EITI is significantly lower than the \$50 million annual target agreed between NCOC and the government in 2015: \$42.7 million in 2016, \$30.2 million in 2017, \$41 million in 2018.<sup>62</sup> The EITI reports and NCOC's sustainability reports list SIPs construction and repairs in Atyrau and Mangistau, including schools, hospitals, housing, sports and cultural facilities, and roads; in Atyrau the main focus is medical, cultural and educational institutions, in Mangistau sports and cultural facilities.<sup>63</sup> NCOC states in its sustainability reports that SIPs are proposed by local government, checked for compliance with the PSA and, once approved, implemented by NCOC (see discussions with civil society reported below).

### Kashagan: indications of a poor deal for the country and its citizens

As context for our assessment of Kashagan's economic benefits, we noted a 2007 NGO report on Kashagan that cites the PSA signed in 1997 as Kazakhstan sought to develop its oil industry and attract foreign investment.<sup>64</sup> The NGO report mentions the absence of royalty payments – confirmed to us by Total (below) – and the high

cost recovery threshold (80%), and also that 90% of profit oil would go to the consortium partners until either (i) the internal rate of return (IRR) was higher than 17.5%, (ii) the cumulated receipts vs expenses ratio was greater than 1.4 or (iii) cumulated production exceeded 3 billion boe. This meant that during the development phase the government's share of production would be as low as 2% (20% after cost recovery x 10%): “[A]lmost no revenues [would] be received until the consortium has achieved its profits”, and the question arose whether the PSA terms had struck “the right balance between benefits to the consortium and to the Republic of Kazakhstan”.<sup>65</sup>

A 2007 amendment to Kazakhstan's Code on Subsoil and Subsoil Use empowered the government to modify or break any contract it considered contrary to the national interest.<sup>66</sup> By 2008 the government viewed the PSA model as “ineffective”, stating that “the country has not received adequate returns from these projects, even with the prices for raw materials being high”.<sup>67</sup> Following tensions between the consortium and the government, the PSA was renegotiated in 2008. A Kazakh investment bank modelled the project economics, drawing on analysis undertaken at Harvard Business School, and reached several tentative conclusions:<sup>68</sup> development phase investment costs had ballooned from the planned \$10.3 billion to \$50 billion; production sharing starts only when the barrel price is \$45-plus; the royalty rate is 3.5%;

62 Kazakh PSA authority, [http://psa.kz/proekty/?ELEMENT\\_ID=54](http://psa.kz/proekty/?ELEMENT_ID=54); Kazakh EITI, <https://bit.ly/2JfsRg> (EITI international data) including Ministry of Finance 2018 data at <https://bit.ly/2RdwKqW>

63 NCOC sustainability reports 2017, 2018, <https://www.ncoc.kz/en/sustainability/2017>, <https://www.ncoc.kz/en/sustainability/2018>. We have tabulated NCOC's EITI-reported social and infrastructure projects (SIPs) in detail at <https://bit.ly/2U5gzxE>

64 Friends of the Earth Europe and others, 2007; [https://www.foeeurope.org/sites/default/files/publications/foee\\_kashagan\\_oil\\_field\\_development\\_1207.pdf](https://www.foeeurope.org/sites/default/files/publications/foee_kashagan_oil_field_development_1207.pdf)

65 Friends of the Earth Europe and others, p. 17.

66 N. Reich, The 2008 renegotiation of Kazakhstan's Kashagan PSA field, 2010, International Association for Energy Economics, <http://www.iaee.org/documents/2010SummerEnergyForum.pdf>

67 Reuters, Jul. 2008, <https://www.reuters.com/article/us-kazakhstan-kashagan/kazakhstan-to-review-kashagan-psa-energy-minister-idUSL2380609520080723>; Kazakh government quoted in IIED, How to scrutinise a production sharing agreement, p. 21.

68 Halyk Finance, Economics of Kashagan, 2016, <http://history.halykfinance.kz/en/site/index/research/report:104100>

cost oil recovery is 80% until recovery of initial investment costs and then reduces to 55%; 10% of profit oil is allocated to the government and 90% to the consortium, although this will change as production and profitability increase; consortium profit oil is subject to corporate income tax at 30% when internal rate of return (IRR) is low and at 60% after IRR reaches 20%; payback would be achieved in 2030 and the project would then eventually bring economic benefits to Kazakhstan.

Our analysis was assisted by Total’s policy, which civil society supports, of disclosing its proportionate share of all joint venture payments regardless of whether it is the operator or not (as Lukoil also does, as noted above).<sup>69</sup>

This is a more transparent approach than that of Shell and Eni, noted above, of not reporting their share of payments made by joint venture operators or consortia. We applied the proportionate share principle to Total’s payments-to-governments reporting, cross-checked with Kazakhstan’s EITI data, to estimate the effective share of Kashagan production going to the Kazakh government and to inform our dialogue with Total.<sup>70</sup>

Total reported the following payments to the Kazakh government from 2015 (the first year reported under EU and French mandatory disclosure laws) to 2018 for both Kashagan and Dunga (another Kazakh oil field, which Total operates).<sup>71</sup>

Total’s payments to Kazakhstan government, Kashagan and Dunga, 2015-18 (US \$000)

Year	Bonuses	Fees	Production entitlements	Taxes	Payments for infrastructure improvements	Total
2015	20,200	120	0	0	11,600	31,920
2016	58,853	0	818	0	6,627	66,298
2017	0	0	17,400	0	6,980	24,380
2018	504	0	52,838	41,081	10,406	104,829
Total	79,557	120	71,056	41,081	35,613	227,427

While Total reports various types of payment to the government, we focus our analysis here on Kazakhstan’s production entitlements under the terms of the PSA – that is, the percentage share of profit oil going to the government.

69 PCQVP France, Oxfam France, ONE and Sherpa, La transparence à l’état brut – décryptage de la transparence des entreprises extractives, 2017, <http://bit.ly/3dfqLEW>, p. 30; English version at <https://bit.ly/3g74b89>

70 As previously noted, findings for limited periods can only be indicative compared with full project lifetime analysis or financial modelling.

71 Data from <https://resourceprojects.org> and Total registration documents for each year.

Total's reported annual production entitlement payments for Kashagan only were:<sup>72</sup>

Year	Production entitlements payments (US \$000)
2015	0
2016	818
2017	17,353
2018	22,275
Total	40,446

According to Kazakhstan's EITI, the NCOC consortium paid a total of 84.1 trillion (84,111,107 thousand) Kazakh tenge as production entitlements to the government in 2018 (no NCOC payments were reported for previous years, and we assume that payments reported for 2018 covered 2015-18).<sup>73</sup> This equates to about \$243 million,<sup>74</sup> which is consistent with the \$40.45 million reported by Total, or about 17%, and confirms that Total's reported payments (at 16.81% of total consortium payments) can be generalised to the full Kashagan contract regime. Total's 2018 report indicates that it paid production entitlements in kind and values them at a "net-back" price (final oil price minus certain costs, whose calculation we asked Total to clarify).<sup>75</sup>

We assume that the formula to determine the net-back price is included in the PSA. Total confirmed (see below) the net-back price as the "average selling price (minus transport costs)" determined as per the PSA terms. The higher the costs deducted to determine the net-back, the lower the government receipts.<sup>76</sup> So we calculate as follows:<sup>77</sup>

- Total's 2017 share of production for Kashagan was 42,000 boe/day, corresponding to 15,330 kboe/year.<sup>78</sup> This is broadly consistent with the total production figure of 270,000 boe/day in the 2017 EITI report, given Total's 16.81% stake.
- The average closing price for a barrel of Brent Crude<sup>79</sup> in 2017 was \$54.71.<sup>80</sup> Total's share of production value in 2017 would therefore be 15,330,000 x \$54.71 = \$838.7 million. Total's 2017 production entitlement payment to the government (see table above) of \$17.35 million ÷ \$838.7 million (production value) = 2.1% of the company's production share (see diagram on next page).

72 Data from <https://resourceprojects.org> and Total registration documents for each year.

73 NCOC payments as reported by Ministry of Finance at <https://bit.ly/2lJfsRg> (EITI international data)

74 Average 2018 conversion rate KZT 345\$: <https://www.boursorama.com/bourse/devises/taux-de-change-dollar-tenge-USD-KZT/>

75 Total, Registration document 2018, <https://www.total.com/sites/default/files/atoms/files/ddr2018-en.pdf>, p.388 (footnote): production entitlements paid in kind correspond to "the valuation of 426 kboe at average net-back for production entitlements"; so the net-back price is \$ 52.3/barrel.

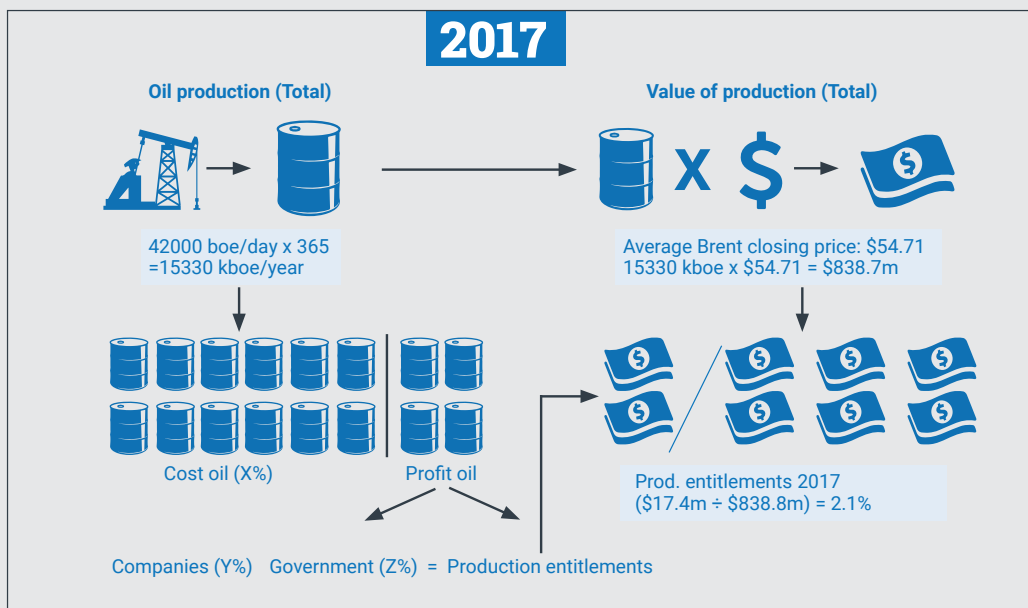
76 Kazakhstan Business Magazine, Delivering value from Kazakhstan's oil, 2004, <http://www.investkz.com/en/journals/38/156.html>

77 Here we have applied one of the tests in Global Witness, 2018, [https://www.globalwitness.org/documents/19593/Finding\\_the\\_missing\\_millions\\_English\\_-\\_final\\_online.pdf](https://www.globalwitness.org/documents/19593/Finding_the_missing_millions_English_-_final_online.pdf) (test 7: verifying early production entitlements), which analyses the share of production going to the government.

78 Total, Registration document 2018, p. 42.

79 While the EITI report 2017, p. 39, states that the world oil price is "the arithmetic average of the daily price quotations for the tax period" and the "price quotation means the price quotation of oil ... of each individually standard grade of oil 'Urals Mediterranean' (UralsMed) or 'Dated Brent' (BrentDtd)", we used Brent Crude as the benchmark. UralsMed is calculated at a discount to Brent: on average \$-1.44/barrel in 2017 and \$-1.58/barrel in 2018 (<https://www.neste.com/corporate-info/investors/market-data/urals-brent-price-difference>). Calculations using UralsMed as the benchmark did not result in a significant difference from what is presented here.

80 <https://www.macrotrends.net/2480/brent-crude-oil-prices-10-year-daily-chart>



- The total value of production for Kashagan can also be calculated: 270,000 boe/day at a price of \$54.71/barrel gives an estimated total production value of \$5,392 million for all partners in 2017. Extrapolating from Total's 2017 total reported payments to governments, on the basis that they represent 16.81% of all payments, gives a figure of \$24.38 million ÷ 16.81% = \$145 million. So proceeds collected by the government represents only an estimated 2.7% of total production value.
- In 2018 Total reported its total share of production in Kazakhstan as 70 kboe/day, mainly from the Kashagan field but also from its other operated Kazakh project, Dunga (the exact project shares are unspecified).<sup>81</sup> This corresponds to 25,550 kboe/year.
- The average closing price for a barrel of Brent Crude in 2018 was \$71.34.<sup>82</sup> Total's share of production value in 2018 would therefore be 25,550,000 x \$71.34 = \$1,822.7 million. Total's 2018 production entitlement payments to the government for Kashagan and Dunga combined of \$52.84 million<sup>83</sup> ÷ \$1,822.7 million (production value) = 2.9% of the company's production share.
- Total paid the government its production entitlements in kind, using the net-back value, which the company indicated was \$52.3/barrel.
- Applying the net-back value (rather than the Brent Crude price) to 2018 production: Total's share of production value = 25,550,000 x \$52.3 = \$1,336.3 million; and its share of production entitlement payments of \$52.84 million ÷ \$1,336.3 million = 3.95%.

Government percentage shares in 2017 of 2.1% (of Total's share of production for Kashagan) or 2.7% (of gross production value for Kashagan), and in 2018 of 2.9% (of Total's share of production for Kashagan plus Dunga) or 3.95% (of gross production value for Kashagan plus Dunga, using the netback price) are low. Although Kashagan began production only in 2013 and started exporting in 2016, it has been ramping up towards full capacity and exceeded forecasts in 2018.<sup>84</sup> This corroborates the view of others in civil society cited above that the country has to date received a poor deal from Kashagan. While the share of production going to the government represents only one form of proceeds, when calculated for 2017, as shown above, total estimated government receipts including taxes represent only 2.7% of annual gross production value.

81 Total, Registration document 2018, p. 42, and Apr. 2019, <https://www.total.com/en/media/news/press-releases/kazakhstan-total-launches-phase-3-dunga-field>

82 <https://www.macrotrends.net/2480/brent-crude-oil-prices-10-year-daily-chart>

83 Total, Registration document 2018, p. 381.

84 Fircroft, Dec. 2018, <https://www.fircroft.com/blogs/kazakh-oil-field-massively-exceeds-expectations-in-2018-83481410131>



## Civil society concerns about double taxation arrangements

The Karachaganak and Kashagan consortium companies in which the joint venture partners own shares – KPO and NCOC respectively – are both incorporated in the Netherlands. So are several of the shareholding subsidiaries: Eni’s Agip Karachaganak BV, Lukoil Overseas Karachaganak BV, Agip Caspian Sea BV, Shell Kazakhstan Development BV, China National Petroleum Corporation’s CNPC Kazakhstan BV and KMG Kashagan BV. These companies are therefore within scope of the double taxation agreement (DTA) between Kazakhstan and the Netherlands.<sup>85</sup> Many in civil society and the European Parliament’s special tax committee consider the Netherlands a tax haven jurisdiction that facilitates aggressive corporate tax avoidance.<sup>86</sup> Eni (and presumably other extractive companies) contends this view.<sup>87</sup> It is beyond the scope of this study to assess whether or how far losses may have occurred to Kazakhstan’s public finances as a result of the country’s DTA with the Netherlands. DTAs with a legitimate objective of avoiding double taxation may sometimes be used for “double non-taxation”, for which the OECD’s encouraged anti-abuse clauses may offer only a partial remedy.<sup>88</sup>

Kazakhstan, however, has a duty to ensure that its tax treaties are not being abused and that it maintains domestic resource mobilisation at a sufficient level for essential public services such as health. In 2018 Kazakhstan was reported

as spending only 3% of GDP on public health services, compared to an OECD average of 8.9%, and pledging to reach 10% within five years.<sup>89</sup>

## Outcomes of dialogue with government officials and companies

### Government and company dialogue – Karachaganak

Echo and Civil Expertise received a reply from the Ministry of Energy stating that there have been no changes to Karachaganak’s tax regulatory details since the 2011/2015 decree. The PSA itself is not available. A letter from the Deputy Minister of Finance said that information about taxpayers is secret and cannot be disclosed without written consent from the taxpayer, and that no party to the PSA has the right to disclose its terms without the other parties’ consent.

The West Kazakhstan and Burlinsky subnational authorities wrote that BG Karachaganak (Shell) does not implement independent social and infrastructure projects (SIPs) in the region and makes no payments for infrastructure development into local budgets. All SIPs are carried out by KPO in kind; KPO builds facilities whose ownership is subsequently transferred to the local authorities.

Shell informed us that to encourage the government to publish the PSA would not

85 Governments of the Netherlands and Kazakhstan, Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, 1996, <http://www.itc-leiden.nl/UserFiles/Documents/Kazakhstan%20ENG.pdf> Other countries to have signed DTAs with Kazakhstan include France, Italy, the UK and USA.

86 Oxfam International, May 2016, <https://www.oxfam.org/en/research/netherlands-tax-haven>; Tax Justice Network, May 2019, <https://www.taxjustice.net/2019/05/28/new-ranking-reveals-corporate-tax-havens-behind-breakdown-of-global-corporate-tax-system-toll-of-uks-tax-war-exposed/>; European Parliament, Feb. 2019, <https://www.europarl.europa.eu/news/en/press-room/20190225IPR28727/tax-crimes-special-committee-calls-for-a-european-financial-police-force>; International Consortium of Investigative Journalists, Mar. 2014, <https://www.icij.org/investigations/luxembourg-leaks/seven-eu-countries-labeled-tax-havens-in-parliament-report/>. On whether tax avoidance is always “legal”, see Tax Justice Network, May 2019, <https://www.taxjustice.net/2019/05/16/no-corporate-tax-avoidance-is-not-legal/>

87 Eni email to PWYP UK, Jun. 2020, <https://bit.ly/2VARdij>

88 Tax Justice Network, <https://www.taxjustice.net/topics/corporate-tax/tax-treaties/>

89 Eurasianet, Nov. 2018, <https://eurasianet.org/as-kazakhstans-economy-regains-vigor-concerns-shift-to-healthcare>



be “a straightforward process, as we are not authorised in the centre/HQ to make statements on behalf of Shell Kazakhstan or the JV”.<sup>90</sup> Shell’s subsidiary BG Karachaganak wrote subsequently that “the agreements pertaining KPO are subject to confidentiality restrictions with the Republic of Kazakhstan (RoK) as well as with the other KPO shareholders and we are unable to divulge information on these agreements. However, given that RoK is an EITI implementing country we would be supportive of RoK in their implementation of the revised [EITI] standard on contract transparency.”<sup>91</sup>

Shell International and Eni both provided comments on a draft version of this report, which readers can access at [https://drive.google.com/file/d/1FtI39s0lOZDp3s\\_fhxUI0AVkh4P96Fhh/view](https://drive.google.com/file/d/1FtI39s0lOZDp3s_fhxUI0AVkh4P96Fhh/view)<sup>92</sup> and <https://bit.ly/2VARdlj><sup>93</sup> respectively. The companies’ comments cite their transparency commitments, and in Shell’s case its corporate responsibility initiatives. Both companies voluntarily publish country-by-country tax disclosures, which civil society welcomes.<sup>94</sup> Lukoil did not reply to our letter or comment on the draft report.

### Government and company dialogue – Kashagan

The Ministry of Finance replied to our inquiries that Kashagan’s fiscal terms are as stated in the project PSA and that no party to the agreement has the right to disclose the terms without the consent of the other parties. The finance department of Atyrau region responded that Total does not make payments for SIPs to local budgets, and the construction department stated that Total does not implement independent projects. All SIPs are carried out in kind by NCOC, which undertakes projects as requested by the Atyrau akimat following proposal gathering from regional departments

and city and district akimats. Once built by NCOC, ownership of facilities is transferred to the local akimats.

Total provided a detailed response to our letter:<sup>95</sup>

- Total confirmed its policy of encouraging governments to publish contracts<sup>96</sup> and said it had sought agreement with consortium partners on a joint approach to the Kazakh government: “If consensus is not achieved reasonably soon, Total intends to approach the State directly in an appropriate forum ... Total is available to consent to such publication and encourages the State to do so.”
- On the valuation of production entitlements, the average net-back price was as per the PSA and currently not public. Total broadly agreed with our analysis of the payments figures.
- On payments to the national budget, “Payments in USD by foreign investors must be made to the national treasury at the Ministry of Finance ... under ... the tax code ... The further distribution of proceeds is the internal responsibility of the authorities.”
- Total does not report mineral extraction tax or royalty payments in Kazakhstan because the PSA does not provide for royalties or MET but only for (other) taxes.
- The Kashagan PSA provides its “own complete applicable tax regime. No specific tax decrees have been issued reproducing these terms and conditions.”
- Contracting companies under Kazakh PSAs benefit from full reimbursement of VAT paid on the purchase of domestic goods and services and imported services.
- On environmental emissions taxes, “Fines and environmental taxes are calculated by

90 Shell International email to PWYP UK, Mar. 2020.

91 BG Karachaganak letter to PWYP UK, Civil Expertise and Echo, Jun. 2020.

92 Shell International email to PWYP UK, Jun. 2020.

93 Eni email to PWYP UK, Jun. 2020.

94 Shell, <https://reports.shell.com/tax-contribution-report/2018/>; Eni, <https://www.eni.com/assets/documents/documents-en/Country-by-Country-2018-eng.pdf>

95 Total letter (replies in English) to PCQVP France/Oxfam France, Echo and Civil Expertise, Feb. 2020.

96 Total, <https://www.sustainable-performance.total.com/en/business-ethics-0>

the concerned taxpayer and transmitted to authorities, who can challenge them. In the case of Kashagan, NCOC is acting for the taxpayers. The entity then pays them, and in the case of NCOC backcharges them to contracting companies through billing/cash calls." Total "has only minimum charges corresponding to the use of company vehicles".

- Total asked us to put any further question intended for its Kazakh subsidiary to the French headquarters.

A written response received from NCOC stated that the Kashagan tax regime is regulated by the terms of the PSA, which are confidential and cannot be disclosed to third parties without the prior consent of the other parties.

## Insights from civil society dialogue

### Civil society dialogue – Karachaganak

Echo and Civil Expertise's online survey about Karachaganak received 17 responses from civil society activists and journalists, in some cases followed up with phone calls.<sup>97</sup> For personal security reasons, we did not ask respondents to disclose personal data. The main findings and outcomes from the survey are as follows.

While civil society organisations are reasonably well informed about Karachaganak, activists believe that other citizens know little about it. KPO's website provides only basic information in the Kazakh language, although more in Russian, which disadvantages the many local people who have no or only limited Russian. The website includes a list of social and infrastructure projects (SIPs) but without cost data; information on a complaints procedure has not been translated into Kazakh, and information about environmental impacts is outdated.<sup>98</sup>

Activists consider that local communities are largely excluded from discussions about KPO's SIPs, although a few mentioned information meetings on completion of projects, opportunities to provide feedback by mail/email/

survey and/or consultations with local NGOs. The akimat of West Kazakhstan has reportedly set up a working group, ostensibly including civil society representatives, to prioritise and oversee SIPs, but there is no public schedule of meetings, and it appears that only subnational government and industry participate.<sup>99</sup> Activists also report that the quality of information on SIPs on the West Kazakhstan regional government's website is deteriorating; for example, a section describing all the SIPs, disaggregated by stages of implementation, was removed in 2018. KPO and the local authorities are thought to be uninterested in dialogue with communities: a meeting between KPO and the West Kazakhstan authorities in 2019 was held in Almaty, Kazakhstan's former capital city, more than 2,000 kilometres to the east.<sup>100</sup>

Not only is there a lack of public accountability and little voice for citizens in the implementation of SIPs. In addition, KPO recovers the full costs of its SIPs spending from the value of oil extracted.<sup>101</sup> "In long-term period, these will

97 Our compilation of survey questions and responses on Karachaganak is at <https://bit.ly/3dulyzR> (in Russian).

98 KPO consortium, <https://www.kpo.kz>

99 <http://eiti.geology.gov.kz/ru/about-us/meetings-in-akimats>

100 Reported briefly at <https://bit.ly/2xaqq5t>

101 Kazakh EITI report 2014; <http://eiti.geology.gov.kz/images/stories/IPDO/Otchety/2014/otch-14-en.pdf>; p. 110 ("costs are refundable"); Kazakh Ministry of Justice, government orders, 1997, [http://adilet.zan.kz/rus/docs/P100000839\\_](http://adilet.zan.kz/rus/docs/P100000839_), [http://adilet.zan.kz/rus/docs/P090001922\\_](http://adilet.zan.kz/rus/docs/P090001922_), and [http://adilet.zan.kz/rus/docs/P090001223\\_](http://adilet.zan.kz/rus/docs/P090001223_) annual \$20 million or \$10 million social and infrastructure project costs are "reimbursable".

be the costs incurred by Kazakhstan.”<sup>102</sup> The country’s citizens, rather than the consortium partners, are the ones who ultimately have to pay, so at minimum they should have a say in project selection and opportunities to monitor implementation.

Survey respondents believe that KPO should enter into dialogue with affected communities about the consortium’s operations, such as about project expansion involving construction of new plants and pipelines. Major construction undertakings in Kazakhstan require environmental impact assessments (EIAs) and approval at public hearings, and EIAs must be published on local authorities’ websites.<sup>103</sup> But these can be difficult to find, and after several local authorities combined websites this information is no longer accessible for KPO. Hearings exclude civil society and communities and permit participation by only one journalist each time and by members of local public councils, who citizens generally do not trust, and local government and industry.<sup>104</sup> Hearings are usually held during working hours, which in this case, in the largely rural district of Burlinsky, makes it difficult for local people to attend.

KPO’s operations have significant negative impacts on the ecology of West Kazakhstan and on human health, according to activists. In 2018, 42 gas-odour-related grievances were registered, and KPO reports: “A follow-up meeting was subsequently held with each individual who made the complaint, with Community Liaison Specialist sharing information as to what exact actions had been taken as part of the grievance investigation and the environmental monitoring details. Communities, who expressed a

concern about the gas odor, were also briefed on KPO’s ongoing monitoring activities as part of Operational Environmental Monitoring Programme.”<sup>105</sup> KPO’s report provides no indication of measures taken to address causes of poor air quality, such as technological improvements to reduce gas leaks, or compensation payments. KPO’s approach appears bureaucratic and unresponsive in light of press reports a few years earlier linking a release of untreated waste gases from the plant on 28 November 2014 to the “mass poisoning of children” in Berezovka village, the closest community to Karachaganak, with toxic hydrogen sulphide emissions (discussed further below).<sup>106</sup>

Most people responding to the survey associate Karachaganak with negative environmental and health impacts. Survey responses refer to local surface water pollution, water bodies drying out, biodiversity deterioration, and headaches, dizziness, fainting and breathing problems caused by hydrogen sulphide emissions. Some mention the controversial relocation of villagers from Berezovka and Bestau, who were forced to move as a result of local environmental degradation, an issue that the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises commented on and that led to alleged police harassment of environmental defenders.<sup>107</sup> Even after being forced to resettle, residents are said to be still at risk of polluting emissions, and their physical surroundings are little better than before. In activists’ view the consortium has not accepted responsibility for these harms.

102 Kazakh EITI report 2014, p. 110.

103 Kazakh Environmental Code, 2007, <http://adilet.zan.kz/rus/docs/K070000212>, article 41; Rules for public hearings, 2007, <http://adilet.zan.kz/rus/docs/V070004687>, article 7.

104 Minutes of local hearings: [https://kpo.kz/fileadmin/user\\_upload/obshestv-slushaniya/2020/02.04.2020\\_Protokol\\_obshchestvennykh\\_s.pdf](https://kpo.kz/fileadmin/user_upload/obshestv-slushaniya/2020/02.04.2020_Protokol_obshchestvennykh_s.pdf) and [https://kpo.kz/fileadmin/user\\_upload/obshestv-slushaniya/2020/10.03.2020\\_Protokol\\_OS\\_ot\\_05.03.2020g.pdf](https://kpo.kz/fileadmin/user_upload/obshestv-slushaniya/2020/10.03.2020_Protokol_OS_ot_05.03.2020g.pdf)

105 KPO sustainability report 2018, [https://kpo.kz/fileadmin/user\\_upload/pdf/kpo-sustainability-report-2018-final\\_en.pdf](https://kpo.kz/fileadmin/user_upload/pdf/kpo-sustainability-report-2018-final_en.pdf), p. 122.

106 Tengrinews, Dec. 2014, <https://en.tengrinews.kz/emergencies/hydrogen-sulphide-emissions-at-karachaganak-before-mass-257776/>; Mail Online (UK), Feb. 2016, <https://uk.news.mail.com/k3c60u>

107 KPO consortium, <https://bit.ly/2UkNgYm>; UK NCP, Follow up statement: Crude Accountability complaint to UK NCP about KPO consortium, 2019, <https://bit.ly/2UA3wDJ>; Crude Accountability, <https://crudeaccountability.org/campaigns/karachaganak>, <https://www.youtube.com/user/CrudeAccountability> and <https://crudeaccountability.org/increasing-threats-to-environmental-defenders-crude-accountability-intervention-at-the-hdim-2019/>

The gas alert system at Karachaganak, which failed when a toxic gas release badly affected children and adults in the nearby village of Berezovka in Nov. 2014. Photo by Raul Uporov.



Several survey responses state that Karachaganak has created employment for local people and contributes tax to local budgets. However, local employee salaries are low compared to those of expats, and KPO's procurement and subcontracting processes are not transparent. While a reported 3,261 men and 1,232 women worked for KPO in 2018, there is no gender-disaggregated data about positions or salary levels.

Bringing together the issues of SIPs, pollution and human health, the US-based NGO Crude Accountability informed us that relocation of the community, "while in some regards a

success", was undertaken "without regard for many international standards, including those of the [International Finance Corporation], which financed the project until 2009".<sup>108</sup> Moreover, "the human rights violations at Karachaganak have had severe impacts on women, who often are the ones who tackle the difficulties related to the environment and their rights, as their husbands often work at the field. They also play the major caregiver role with their sick children." Crude Accountability is "not aware of any women's groups acting now – the community of Berezovka was relocated to two different places – Aksai and Araltal – thus, the fabric of the community was split when this happened".<sup>109</sup>

<sup>108</sup> Crude Accountability email to PWYP UK, Echo and Civil Expertise, Nov. 2019.

<sup>109</sup> Crude Accountability email.





Warning sign outside the ruins of Berezovka village, forbidding entry, Nov. 2019, five years after the poisonous release incident. Photo by Raul Uporov.

A Kazakh activist told us: “[R]esettlement of the residents of Berezovka was completed in December 2017. Some of the residents received apartments in city Aksai ... about 25 km from Berezovka. The rest got houses in the new village of Araltal ... on the outskirts of Aksai. The former rural community was split. People lost their homeland and habitual way of life. Plus, children (25 people) injured as a result of the poisoning on November 28, 2014, did not receive any compensation from the authorities or from the company for health damage ... the damage was significant, as parents raised the issue of granting children disabled status ... [On SIPs] the local population does not take a real part in the selection and evaluation of projects. The process of spending this money is not transparent to the local people and the public.

There were many corruption cases on these projects”; “At one time there were publications in the newspaper Uralsk Week about facts of corruption or suspicions of corruption in KPO social projects.”<sup>110</sup>

The Berezovka case became a reason for Kazakh environmental activists to prepare a report on children’s right to a clean environment.<sup>111</sup> In November 2019 Echo participated in a civil society roundtable meeting in Almaty about the report, where discussion highlighted difficulties faced by people in Kazakhstan in obtaining official recognition that their health has been harmed and in claiming their right to a clean environment.

<sup>110</sup> Kazakh activist emails to PWYP UK, Nov. 2019.

<sup>111</sup> Living Asia Online, Do children have a right to a clean environment?, Feb. 2020; <https://livingasiaonline.com/2020/02/26/est-li-u-detej-pravo-na-chistuyu-okruzhayushhuyu-sredu/>; and report in Russian at <https://bit.ly/3dIqjVK>

### Civil society dialogue – Kashagan

Echo and Civil Expertise’s online survey about Kashagan received 14 responses from civil society activists including 4 members of NCOC’s public advisory council.<sup>112</sup> Again for security reasons, we did not ask respondents to disclose personal data. The main findings and outcomes from the survey are as follows.

Most activists think there is little if any public participation in the selection, implementation or monitoring of NCOC’s social and infrastructure projects (SIPs). Some mention meetings on completion of projects or where information is provided on planned projects, and/or mail/email/survey feedback opportunities. Little discussion occurs between NCOC and local NGOs, and there is no dialogue about costs or public monitoring. Views on Kashagan’s environmental impacts are largely negative, with comments about hydrogen sulphide emissions, liquid waste discharges and declining sturgeon and Caspian seal populations. Any government monitoring of extractive operations at sea or on land is unknown, as is reliable data on ecological effects. Almost half the respondents mention negative health impacts such as early mortality, child mortality, cancer, headaches, high blood pressure, persistent drowsiness and loss of strength, and only one refers positively to better healthcare provision. Views are divided on local economic benefits and costs: positive mentions of job creation, training, grants, SIPs, sponsorship and infrastructure are balanced by negative comments about an exclusionary English-language requirement for online employment applications to NCOC, salary differentials between local and expat employees, rising prices and lack of economic diversification and opportunity outside the oil industry. Some activists comment that jobs are mainly for men, while women work mostly as cleaners and canteen staff.

Activists told us in follow-up telephone conversations that they are concerned about the lack of public accountability for both environmental impact assessments (EIAs) and SIPs. NCOC has published EIAs but without monetary estimates of environmental management costs (payments for emissions permits etc. are assumed to be in the fiscal terms and are not disclosed).<sup>113</sup> On SIPs, we heard that reconstruction of the Ural river embankment has been planned in Atyrau city ahead of much needed repairs to the central bridge. It is feared that subsequent bridge repairs may again damage the rebuilt embankment. A sanatorium kindergarten in Makatsky district, Atyrau region, is reportedly located more than 5 km from the nearby village it is meant to serve, impossible to reach by public transport, took eight years to build, began operating only in 2019 and already requires major repairs. A poorly constructed 60-apartment housing block, instead of providing social housing, has been privatised and sold off piecemeal to people who can afford mortgages.



Karabatan railway station, built as part of the Kashagan project to transport oil. Photo by Kate Watters, Crude Accountability

112 Our compilation of survey questions and responses on Kashagan is at <https://bit.ly/2WM2kzx> (in Russian).

113 The link that previously accessed NCOC’s 2020 EIA ceased to work in October 2020.



These examples indicate that lack of control by local authorities and the public over the work of contracting companies leads to poorly implemented SIPs. If, as we discuss above in the case of Karachaganak, and we have reason to believe here, SIPs costs are recovered by the implementing consortium, the government and the country's citizens bear the monetary cost despite having no say.

Local activists also see corruption risks in the way NCOC implements some sponsorship and charity projects. For example, the company has reported paying for summer camp vacations for orphans and children from poor families, and says that lists of such children are provided by local authorities. But it is suspected that local authorities sometimes arrange for the funds to be used for children from better-off families.

As noted above, NCOC has a public advisory council that includes civil society representatives, with whom it consults in preparing its annual sustainable development reports. Activists note that some of their recommendations have been taken into account. But their concerns about too much money being spent on certain SIPs – before Echo published this information, people did not know the amounts spent on individual projects<sup>114</sup> – and about the selection of contractors, a lack of general public accountability and corruption risks, have been ignored and reduce public confidence. NCOC's sustainability reports, moreover, do not provide data on the hydrogen sulphide emissions that are of considerable concern, and activists generally doubt whether local communities trust NCOC's environmental monitoring data. One respondent told us: "Production monitoring is both falsification of data and averaging of indicators to avoid fines for excess emissions and discharges, and does not reflect the real state of affairs with these indicators, so the public does not have confidence in these data."

114 Echo, Payments of subsoil users for social infrastructure projects, <http://nedra.echo.kz/>

## Early project impacts

Echo and Civil Expertise have begun to discuss our findings with civil society participants in Kazakhstan's EITI and with Kazakh civil society more widely. Civil society EITI MSG members have written to other MSG members to highlight the need for reporting of payments by all operators including NCOC. And conversations have begun about the impact of SIPs on women and girls and their priorities for social investing.

Following Echo and Civil Expertise's dialogue about Kashagan with civil society in the Atyrau region, when activists urged the participation of local people in planning NCOC's SIPs, activists have since begun to approach companies including NCOC, the Caspian Pipeline Consortium (see Box 4) and Tengizchevroil (a partnership between the government and Chevron operating the Tengiz field) to seek more accountability for SIPs.

Our research and dialogue with local civil society about Karachaganak received media coverage from Uralsk Week (Uralskaya Nedelya), a news website that is relatively critical of the government. According to the online article:<sup>115</sup> KPO's SIPs spending and that of other extractive companies comprises almost a tenth of the West Kazakhstan regional budget and "is something to inflame the appetite of corrupt officials". The subnational authorities fail to comply with the EITI and with government requirements to discuss SIPs proposals with business and civil society and to be accountable for funds spent. Public information about past spending is "nowhere to be found". Public hearings "have not been held". KPO is "not on the side of the population of the region, from the land of which it draws innumerable wealth". The quality and value for money of SIPs implementation are poor. "[T]he department

115 Uralsk Week (Uralskaya Nedelya), How is KPO money distributed, and why do we not see it?, Dec. 2019; <https://www.uralskweek.kz/2019/12/25/kak-raspredelyayutsya-dengi-kpo-i-pochemu-my-ix-ne-vidim/>

that orders social facilities is infected with corruption” and with conflicts of interest involving officials, KPO and contractors. A municipal official is quoted as saying that KPO itself decides which SIPs to undertake, “KPO itself designs [and] builds, and as a result we get a very expensive and useless object, for the most part, a palace, which we later maintain at the expense of the local budget [and] is very expensive”.<sup>116</sup>

As we prepared this case study for publication in mid-2020, the coronavirus crisis lockdown was in effect in Kazakhstan. We do not expect more significant impacts until the lockdown is eased. But we hope to see, and to achieve, additional impacts on the accountability of Kazakhstan’s extractive sector in the future.

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<sup>116</sup> All quotes translated from Uralsk Week (Uralskaya Nedelya), How is KPO money distributed...?

# CONCLUSIONS AND RECOMMENDATIONS

## Conclusions

This project set out to explore, and where possible to achieve greater government and company accountability for, the impact of selected Kazakh extractive industry projects on citizens and communities. We focused on the onshore Karachaganak and offshore Kashagan oil and gas fields. Royal Dutch Shell subsidiaries participate in both these joint ventures, including co-operating Karachaganak with Eni. A Total subsidiary participates in Kashagan. We sought to “follow the money”, based on payments-to-governments reporting by these companies under UK and EU/French law, and using EITI data, as one of several strands of informed dialogue with the government, companies and Kazakh civil society about the public outcomes of extraction.

Our starting point was the complexity and, in some respects, lack of transparency of Kazakhstan’s extractive sector. Contracts and fiscal terms for oil, gas and mining are undisclosed. Numerous state and part-state/part-private corporate structures are present. Despite Kazakhstan’s implementation of the EITI, and the extractive sector contributing close to a fifth of the country’s GDP and a third of government income, citizens know relatively little about the extent or distribution of any net benefits.

Over a period of months, we undertook desk research, data and issue analysis, dialogue with Kazakh government ministers and subnational officials, engagement with selected companies, and consultations with civil society.

## Key findings

- The situation regarding disclosure and accessibility of extractive industry data in Kazakhstan is ambiguous. Extractive companies are required to disclose data under the EITI; a number of companies report under European Union/UK transparency laws; and several companies voluntarily disclose some data in sustainable development reports. But government and industry information is often difficult to find, incomplete and hard to interpret and may require lengthy and sometimes unproductive correspondence with state and business structures. This limits opportunities for citizens to know what is being done with their country’s non-renewable natural resources or to engage in informed stakeholder dialogue – a serious obstacle to leveraging transparency to achieve genuine public accountability.
- While mandatory payments-to-governments data and Kazakh EITI data are difficult to compare, our study revealed anomalies and a conflict of interest in NCOC’s non-disclosure of payments via

the Kazak EITI while NCOC nevertheless has occupied an MSG position and co-determined how other companies must report.

- Company payments disclosed under European laws intended to “help governments of resource-rich countries to ... account to their citizens”<sup>117</sup> often lack the accessibility, comprehensiveness and clarity that citizens need. The non-availability of KPO’s payments report on 2018 under the Netherlands disclosure law is unsatisfactory. Additionally, companies’ interpretation of reporting obligations under Chapter 10 of the EU Accounting Directive and under UK law is inconsistent. Civil society advocates that all reportable payments should be made transparent to the public, preferably on a proportionate basis and with accompanying notes for joint ventures to avoid double accounting; and that reporting companies should identify each recipient government entity.
- A complex web of state-owned corporate structures, and frequent incorporation in the Netherlands, makes it extremely hard for Kazakh citizens to follow the money.
- Government officials in Kazakhstan appear reluctant to disclose fiscal terms. Total seems ready to proactively encourage contract transparency, and Shell supports the principle.
- There are indications that Kazakhstan has so far received poor value from its Karachaganak and Kashagan oil and gas. This may be because of the projects’ technical complexity, high costs, what appear from various studies to be high thresholds for cost oil and questionable fiscal terms.
- Incorporation of key Kazakh extractive industry actors in the Netherlands, which is considered a tax haven by many in civil society and by the European Parliament’s special tax committee, and the double taxation agreement existing between the two countries make it hard for Kazakh citizens and civil society to access information relevant to their country’s extractive sector and raise concerns that Kazakhstan may not be entirely well served by the way its oil and gas industry is structured.
- Subnational-level mandatory social and infrastructure (SIPs) spending by the KPO and NCOC consortia costing millions of dollars is highly discretionary, of poor quality, lacks public oversight and allegedly involves corruption. With SIPs costs deducted from declared profits, these projects are in fact paid for by the receipts from the sale of the country’s oil.
- The Kazakh authorities and company consortia have failed to prevent or to adequately address and compensate for environmental and social impacts on local communities. Women appear to have been more negatively impacted than men.
- Many members of Kazakh civil society fear to speak out publicly on several of these issues.

Our project achieved early impacts. Kazakh civil society has raised concerns with the EITI MSG about NCOC’s lack of public payments disclosure while occupying an MSG seat and has begun to discuss gender aspects of SIPs. Activists are now also seeking more accountability for SIPs on the part of consortium companies. And our research and dialogue with local civil society about Karachaganak received media coverage from the Uralsk Week news website.

<sup>117</sup> EU Accounting Directive, recital 45.

The international EITI Board judged in 2020 that Kazakhstan has made “meaningful progress” in implementing the 2016 EITI Standard.<sup>118</sup> However, the Board noted the need for further efforts to ensure transparency in licence allocations, production data, social expenditures and “comprehensive transparency” regarding contracts/licences and beneficial ownership of participating companies. The Board also noted that further efforts are required to make participation in Kazakhstan’s MSG open and transparent; for stakeholders to be adequately represented; and for MSG members to be able to freely “carry out their duties and undertake effective outreach”. There should be “no legal, regulatory or practical constraints” on full, free and effective civil society engagement.<sup>119</sup> These findings by the EITI Board largely confirm our conclusions.

We hope this case study will assist Kazakh civil society in achieving additional impacts on the sector’s accountability in the future.

## Recommendations

### To the Kazakhstan government

1. Increase public trust in, and transparency of, the Kazakh extractive sector by starting an open dialogue with participating extractive companies on the publication of all current Production Sharing Agreements (PSAs) and their fiscal terms in the Kazakh and Russian languages. This should be followed by a public review of current PSAs and fiscal terms with the involvement of independent expert advisers and civil society to ensure that the country gains fair and lasting value from the extraction of its non-renewable natural resources.
2. Strengthen cost control, auditing and public oversight in accordance with principle 4.2.2 of the IMF Fiscal Transparency Code pillar IV on natural

3. Ensure that all extractive consortia and participating subsidiaries publish financial statements and payments-to-governments reports in Kazakhstan in the Kazakh and Russian languages.
4. Commission and publish independent expert analysis and financial modelling to determine whether Kazakhstan has incurred tax or related losses resulting from extractive consortia, state-owned companies or international subsidiaries being incorporated abroad, including any losses from double taxation agreements or from offshore tax avoidance.
5. Regarding the double taxation agreement with the Netherlands, ensure the effectiveness of anti-abuse provisions under the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, ratified by Kazakhstan in 2020,<sup>121</sup> or through direct renegotiation.
6. Align the classification of companies by the Ministry of Finance, Ministry of Energy and Ministry of National Economy. Consistently include all companies involved in hydrocarbon production in Kazakhstan in the category of “oil sector companies” to prevent differences in reporting and to ensure all company payments from the production and sale of hydrocarbons are made into the National Fund.
7. Require NCOC to report its payments to government annually via the EITI.
8. Make data and other information about the extractive sector more accessible to the public in the Kazakh and Russian languages and publish prominently online the names, organisational positions and email addresses of responsible government officials who will respond promptly to questions and other communications from the public about the extractive sector.

118 EITI Board, Decision 2020-26/BC-288 on Kazakhstan, Apr. 2020, <https://eiti.org/board-decision/2020-26>

119 EITI Board, Decision 2020-26/BC-288 on Kazakhstan.

120 <https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues>

121 <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm>

9. Make Kazakhstan's National Fund (discussed in Box 7) a genuinely accountable sovereign wealth fund, based on the Norwegian model.<sup>122</sup>
10. Require by law that operating companies and consortia and subnational government authorities consult publicly with local communities, including women, men and youth, about social and infrastructure projects (SIPs). Local authorities should regularly facilitate wide public discussion about the selection, planning, execution and reporting of SIPs.
11. Ensure open and accountable investigations where the development of hydrocarbons and solid minerals results in negative social, environmental and human rights impacts, and set and enforce arrangements for operators to make adequate compensation to victims.
12. Respect and protect the rights of civil society and individual activists to speak out critically about the country's extractive sector and other issues of legitimate public debate in keeping with a broad and inclusive human-rights-based interpretation of the EITI Civil Society Protocol.<sup>123</sup>
13. Work with all sectors of industry and society to diversify away from fossil fuels towards becoming a low-carbon economy.

### To other governments

1. The Netherlands government should review its double taxation agreements and ensure that they include effective anti-abuse provisions and adequate withholding tax rates.
2. The Netherlands government should follow the UK government in making its repository/ies of payments-to-governments reports under EU law by Netherlands-incorporated and publicly listed extractive companies fully and readily accessible online to the public. And it should follow the UK government's financial regulator in requiring payments reports to fully disaggregate data by recipient government entity and not only name the country of the government.<sup>124</sup>
3. The UK and Netherlands governments should follow the Canadian government by issuing guidance to clarify that, in view of the transparency aims of the payments-to-governments legislation, joint venture partners should report proportionately any payments made on their behalf by the joint venture operator or consortium company so that reportable payments are transparent to the public.<sup>125</sup>
4. The US government should ensure that its forthcoming rule for payments-to-governments disclosure (covering such companies as Chevron and Exxon) fully aligns with global extractives transparency standards.<sup>126</sup>
5. All governments of countries where extractive companies are incorporated and/or publicly listed should require and ensure timely and freely/readily accessible online payments-to-governments reporting by such companies, in open

122 Norges Bank, <https://www.nbim.no/en/the-fund/about-the-fund/>

123 EITI, <https://eiti.org/document/eiti-protocol-participation-of-civil-society>; see PWYP, Jun. 2019, <https://www.pwyp.org/pwyp-news/protecting-civic-participation/>

124 PWYP and NRG, <https://www.pwyp.org/pwyp-news/uk-financial-regulator-oil-gas-mining-companies-government-entities-payments/>

125 The Canadian government recommends reporting of non-operating partners' indirect joint venture payments, including on a proportional basis, under its extractives transparency law, ESTMA, at <https://www.nrcan.gc.ca/mining-materials/estma/18802>

126 PWYP US, Mar. 2018, <http://www.pwypusa.org/pwyp-resources/pwyp-us-submission-to-the-sec-on-section-1504-2018-position-statement/>



and machine-readable data format and with effective compliance monitoring by government.

6. The European Union should revise Accounting Directive Chapter 10 and Transparency Directive Article 6 (“Report on payments to governments”) under its “fitness check” on public corporate reporting<sup>127</sup> by implementing changes recommended by European civil society to ensure full accessibility, clarity and comparability of payments reports submitted by European extractive companies.<sup>128</sup>

### To the KPO and NCOC consortia and partners

1. The KPO and NCOC consortia should ensure that their websites provide in both Kazakh and Russian languages comprehensive and up-to-date information about their activities. They should prominently display online the names, organisational positions and email addresses of responsible people who will respond promptly to questions and other communications from the public about their operations and business activities.
2. KPO and NCOC should file their payments-to-governments reports with the Netherlands authorities under EU law within applicable deadlines and also publish these reports accessibly on their own websites in Kazakh and Russian languages, keeping each report online for 10 years.<sup>129</sup>
3. KPO and NCOC should, together with subnational government authorities, consult publicly with local communities about social and infrastructure projects (SIPs), including their selection, planning, execution and reporting. Together with all joint venture and consortium partners they should participate in open and accountable public investigations where the development of hydrocarbons results in negative social, environmental and human rights impacts and make adequate compensation to victims.
4. Royal Dutch Shell and Eni should follow the lead of Total and Lukoil and fulfil the transparency aims of the UK and EU legislation by proportionately reporting their share of payments made on their (and their subsidiaries’) behalf by any joint venture operators and consortium companies.<sup>130</sup>
5. Chevron and Exxon, as long-standing members of the EITI International Board, should voluntarily disclose their payments to governments for all countries of operation in line with global extractives transparency standards.
6. Total should pursue its dialogue with the Kazakh government to achieve full disclosure of PSAs and fiscal terms. All other extractive companies active in Kazakhstan should take clear public positions in favour of contract transparency.
7. All oil and gas companies and consortia present and/or operating in Kazakhstan should publish on their websites comprehensive information on environmental (and social) impact assessments, as well as resulting management plans and up-to-date information on environmental (and social) impacts, including those both planned and unforeseen.

127 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1577-Fitness-check-on-public-reporting-by-companies>

128 PWYP and others, 2018, <https://www.pwyp.org/wp-content/uploads/2018/07/EU-extractives-review-coalition-paper-final.pdf>

129 Ten years is the requirement in the UK’s payments-to-governments disclosure rules for London Stock Exchange Main Market–traded extractive companies: UK Financial Conduct Authority, Disclosure Guidance and Transparency Rules, <https://www.handbook.fca.org.uk/handbook/DTR/4/3A.html>

130 Inclusion in payments reports of explanatory notes identifying the operator and joint venture partners will help avoid double accounting.

8. All oil and gas companies and consortia present and/or operating in Kazakhstan should contribute meaningfully to the transition to a low-carbon energy future, with “business and society ... working together to respect and restore the planet”.<sup>131</sup>
9. All such companies should also use leverage with the Kazakhstan government to defend the rights of civil society and individual activists to speak out critically about the country’s extractive sector and other issues of legitimate public debate.

### **To Kazakh civil society**

1. Campaign for a public review of current PSAs and fiscal terms, involving independent expert advisers and civil society, to determine and implement with the operating consortia revised terms to ensure that the country gains fair and lasting value from the extraction of its non-renewable natural resources.
2. Call for all changes to current PSAs, and all new extractive industry contracts and agreements, to be published and for fully disaggregated and proportionate payments-to-governments data disclosure by all consortia and participating joint venture partners.
3. Continue to demand that NCOC report its payments to government annually via the EITI.
4. Call on the Kazakhstan government to promptly implement the 2019 EITI Standard requirement of contract/PSA publication by 2021, and publicly urge the disclosure of PSAs signed before that date.
5. Develop guidance and advocate a participatory regulatory framework to prevent corruption and mismanagement in social and infrastructure projects (SIPs) implemented by KPO, NCOC and other extractive companies and improve such projects’ selection, implementation, governance and accountability, publicly involving women, men and youth.
6. Investigate and document direct and indirect social, environmental and human rights impacts of Karachaganak, Kashagan and other Kazakh extractive projects, including results of associated social and infrastructure (SIPs) spending, with a focus on differential impacts on women/girls and men/boys, and promote necessary reforms.
7. Undertake research into the management of the National Fund and advocate greater transparency and accountability regarding its formation and uses.
8. Actively use data from the EITI, mandatory company transparency reports and other sources to promote public dialogue on the management of Kazakhstan’s extractive industries and of the resulting public receipts.
9. Research and report on the chain of state participation in the country’s extractive sector and on any effects on Kazakhstan’s extractive receipts from its double taxation agreement with the Netherlands.

### **To international financial and multilateral institutions and institutional donors**

1. Use leverage with the Kazakhstan government to defend the rights of civil society and individual activists to speak out critically about the country’s extractive sector and other issues of legitimate public debate.
2. Increase support to the Kazakhstan government to improve and enhance its extractive industry fiscal administration, cost auditing capacity, collection of extractive industry receipts, and domestic resource mobilisation.<sup>132</sup>
3. Seek out and fund more civil society transparency, participation and accountability (TPA) initiatives directed

<sup>131</sup> The B Team, <https://bteam.org/our-work/causes/climate>

<sup>132</sup> Oxfam, It’s not all about the money: domestic revenue mobilization, reducing inequality and building trust with citizens, May 2019 <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620754/bp-its-not-all-about-money-drm-080519-en.pdf>

at securing more accountable, equitable and sustainable outcomes in producer countries and subnational localities from the extraction of non-renewable natural resources.

4. Increase support for capacity building for civil society organisations working on extractive sector issues.
5. Speed up the redirection of international funding away from fossil fuels and into the low-carbon energy transition and economic diversification.

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The international Publish What You Pay civil society movement ([www.pwyp.org](http://www.pwyp.org)), comprising more than 1,000 members and 50 national chapters, campaigns for extractive companies to publish their payments to governments and for governments to disclose their receipts, to increase accountability across the sector. Transparency deters government and company corruption and mismanagement. It assists civil society in scrutinising transactions, assessing the quality of public financial management, judging how far extraction projects represent fair value, and demanding more equitable and sustainable outcomes for citizens and future generations.



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**Front cover photo:** Kazakh oil refinery and gas processing plant.

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