

Independent Recourse Mechanism (“IRM”)

Eligibility Assessment Report

Complaint BTC Georgia / Akhali Samgori

1. On 6 October 2006, the IRM received a Complaint relating to the Main Baku-Tbilisi-Ceyhan Export Oil Pipeline Project, as implemented in the vicinity of Akhali Samgori Village (the “Project”). On 3 November 2006, in accordance with Paragraph 17 of the IRM Rules of Procedure (“IRM, RP”), the Chief Compliance Officer registered the complaint and subsequently designated one of the IRM Experts, Dr. Owen McIntyre, to assist in making an Eligibility Assessment of the Registered Complaint (the “Complaint”). The Complaint is at **Annex 1** to this Report.

Relevant Facts

2. In the course of the construction and operation of the BTC Oil Pipeline, it has been necessary for BTC Co. (the “Project Sponsor”) to purchase land and rights to land from landowners along the pipeline route. A number of landowners (10),¹ who are residents of Akhali Samgori Village in the Gardabani District of Georgia (the “Affected Group”), claim that they have suffered losses as a result of the implementation of the BTC Oil Pipeline Project. Specifically, the members of the Affected Group variously complain that:

- they have received no notice of, nor compensation for, damage to their land crossed by the oil pipeline construction route;
- clearance work and damage to their land on the oil pipeline construction route exceeded the area indicated in the proposal package, for which compensation was available;
- they have suffered loss of harvests due to damage caused to the irrigation channel of the village during construction of the oil pipeline;
- they have suffered loss of opportunity to construct private dwellings on their land, which is designated under the local land-use planning code as land on which the construction of dwelling houses is permissible, due to building restrictions applying on account of the proximity of the oil pipeline (or due to a lack of information as to the proper application of such restrictions);
- they have suffered loss of harvests from orphan land;²
- they were disadvantaged as a result of ineffective and uneven application of the project grievance procedure

3. The members of the Affected Group have made various complaints and requests for further information and compensation, individually and collectively, to BTC Co. and to their construction contractor, Spie Capag-Petrofac International, dating back to 2003. The Affected Group has made the present Complaint to the IRM

¹ Taniel Aptsiauri; Isak Obgaidze; Elguja Aptsiauri; Robinson Kavtaradze; Anzor Tsiklauri; Makvala Mamuladze; Nina Aptsiauri; Tina Aptsiauri; Gia Gogichaishvili; Amiran Tsiklauri.

² “Orphan land” refers to ‘additional land areas beyond the construction corridor ... which, due to minority of the size, are referred to as the “economically infeasible”’, see letter from Stuart Duncan re ‘Compensation against orphan land and inflicted loss’, Complaint, Annex 15.

with a view to obtaining final clarification of the position in relation to restrictions on the use of their land and their entitlement to compensation for any losses inflicted upon them.

4. In response to the Complaint, the Project Sponsor points out that many of the complaints received from landowners in Akhali Samgori have related to the accuracy of land ownership information supplied to the Project by the State Authorities,³ many of which have been followed up by the Project Sponsor with the State Authorities and, also, that detailed descriptions of the restrictions applying to the construction of private dwellings in the vicinity of the oil pipeline are contained in the Resettlement Action Plan (RAP) and Guide to Land Acquisition and Compensation (GLAC), which have been made widely available. The Project Sponsor also points out that orphan and land crop compensation payments provided for under the RAP and GLAC are intended to reflect the difficulty of operating agricultural machinery within limited or awkwardly shaped residual parcels of land and that, in the case of land used for pasture and tree saplings, as is much of the land which is the subject of the current Complaint, no such machinery is called for and orphan land payments are not due as long as the owners have access to the land in question. Further, the Project Sponsor contends that the irrigation system in Akhali Samgori had fallen into disuse prior to the commencement of construction of the oil pipeline and, therefore, that claims that the construction operations disrupted arable crop production by disrupting irrigation are demonstrably false.

5. The Complaint sets out in detail the adverse impacts which implementation of the Project is alleged to have had (and to be continuing to have) on the interests of each member of the Affected Group and suggests that it is seeking the IRM to exercise its problem-solving function with a view to facilitating independent fact-finding and, where appropriate, persuading the Project Sponsor to enter into negotiations on the provision of adequate compensation to those individuals found to be adversely affected.

Steps Taken to Conduct an Eligibility Assessment

6. Upon registration of the Complaint, the Chief Compliance Officer appointed Dr. Owen McIntyre as the Eligibility Expert on 6 November 2006. Dr. McIntyre, together with the Bank's Chief Compliance Officer, Eney Quinones, are the IRM Eligibility Assessors.

7. The Office of the Chief Compliance Officer notified the Project Sponsor of the Complaint on 3 November 2006 and invited it to submit its views and comments in order that these could be taken into account by the Eligibility Assessors in the preparation of the Eligibility Assessment Report. The Project Sponsor's Report/Comments in response to the Complaint, and to the facts as set out therein, attached as **Annex 2** to this EAR, was subsequently forwarded to the Office of the Chief Compliance Officer on 24 November 2006.

³ However, it is worth noting that the relevant IFC policy document, in setting out guidance on 'Valuation of and Compensation for Lost Assets', provides that "Compensation is facilitated by (a) paying special attention to the adequacy of the legal arrangements concerning land title, registration, and site occupation ..."

See, IFC Operational Directive 4.30, 1 June 1990, para. 14.

8. On 29 November 2006, the IRM Eligibility Assessors and the Deputy Chief Compliance Officer held a conference call with representatives of the Project Sponsor, including Mr. Martin Lednor of BP (UK), Mr. Stuart Duncan, the BTC Co. Land and Permitting Manager – Georgia, and Mr. David Glending, before commencing the Eligibility Assessment. The Eligibility Assessors were subsequently provided with background documentation on the BTC Project by Messrs Lednor and Duncan, including much of the relevant correspondence between BTC Co. and the individual members of the Affected Group and interested local public authorities, details of a related civil claim against BP lodged in December 2004 by the residents of Akhali Samgori before the Tblisi District Court (Collegiate Organ of Civil and Business Cases), and the March 2006 and September 2005 Social and Resettlement Action Plan (SRAP) Reports setting out the results of independent expert review of the operation of the BTC grievance procedure and land acquisition programme. In addition, the Eligibility Assessors had full access to all relevant project documentation through EBRD’s ‘ProjectLink’ system.

9. The Eligibility Assessors were of the opinion that sufficient information had been obtained in this manner to consider the eligibility of the Complaint and they determined that no additional steps, such as a Project site visit or retaining of additional expertise, were warranted at this stage.

Findings

Eligibility for Registration

10. On 3 November 2006, the Chief Compliance Officer determined that the Complaint submitted by the Affected Group was eligible for Registration according to IRM, RP 8, which provides the mandatory contents of a Complaint. The Complaint:

- Sets out the date of the Complaint, *i.e.* 5 October 2006;
- Provides the name and contact details of each member of the Affected Group;⁴
- Provides the name and contact details of the two Authorised Representatives of the Affected Group,⁵ (Mr. Tariel Aptsiauri and Mr. Kartlos Mamuladze) and evidence of their power to represent and to act on behalf of the Affected Group in relation to the Complaint;⁶
- Confirms that both Authorised Representatives are locally based, one being a member of the Affected Group (Mr. Tariel Aptsiauri) and the other being a son of a member of the Affected Group (Mr. Kartlos Mamuladze).⁷ Therefore, it is reasonable to assume and the Complaint confirms that the Authorised Representatives are fluent in Georgian, the native language of the Affected Group;⁸

⁴ Complaint, paras. 1 and 3.

⁵ Complaint, paras. 4 and 65.

⁶ Notarised documents dated May-June 2006 contained in Annex 18 to the Complaint conferring Power of Attorney on the Authorised Representatives.

⁷ Complaint, para. 5.

⁸ Complaint, para. 6.

- Confirms that each of the Authorised Representatives must act jointly (*i.e.* that each of the Authorised Representatives is not empowered to act separately);⁹
- Provides the name and a summary description of the Project;¹⁰
- Provides a description of how and why the Project has, or is likely to have, a direct adverse and material effect on the common interest of the Affected Group;¹¹
- Provides a description of the good faith efforts employed by the Affected Group to resolve the issue with the Project Sponsor and with the Bank¹² and an explanation of why the Group believes that there is no reasonable prospect of resolving the issue through the continuation of such efforts;¹³
- Attaches copies of all available material correspondence, notes of meetings and other relevant material supporting the Complaint.

11. Furthermore, in accordance with IRM, RP 9(d), the Complaint describes the steps the Affected Group expects to be taken by the Bank and other Relevant Parties in order to address the direct adverse and material effect that the Project has, or is likely to have, on the common interest of such group. The Complaint requests:

“the establishment of a committee which will include the complainants and representatives of local government, non-governmental organisations, the Association for Protection of Rights of Landlords, BTC Pipeline Co., its construction contractor Spie Capag-Petrofac International, and the European Bank for Reconstruction and Development.¹⁴”

⁹ The individual notarised documents conferring Power of Attorney on the Authorised Representatives, translated and reproduced in Annex 18 to the Complaint, are neither consistent nor clear on this issue. Seven of the documents provide that ‘Tariel Aptsiauri ... *and/or* ... Kartlos Mamuladze’ may act on behalf of the respective member of the Affected Group, thereby suggesting that that member has authorised each Authorised Representative to act on his/her behalf separately and independently. The remaining two notarised documents provide that ‘Tariel Aptsiauri ... *and* ... Kartlos Mamuladze’ may act on behalf of the respective member of the Affected Group, suggesting that they must act jointly. However, in respect of their authority to act as Authorised Representatives granted under the notarised documents reproduced in Annex 18, the Authorised Representatives themselves declare, at para. 65 of the Complaint, that ‘the group of victims has granted us the right to conduct *joint* action’. Though it might be technically possible, it is unlikely to be administratively feasible to determine the nature of the mandate granted to the Authorised Representatives in the case of each individual member of the Affected Group. In the case of any lack of clarity as to the nature of the mandate granted to two or more Authorised Representatives, it would appear appropriate to regard them as required to act jointly.

¹⁰ Complaint, paras. 7-11.

¹¹ Complaint, paras. 12-33.

¹² Complaint, paras. 34 and 35. These have included the establishment in May 2005 of a village committee to examine and report on alleged damage to the village irrigation system as a consequence of the BTC oil pipeline construction works, and the making of a complaint in April 2006 to the EBRD Representative in Georgia, Mr. Nikolay Hajinski.

¹³ The Complaint sets out in detail, at paras. 13-33, the various individual and collective efforts of members of the Affected Group, dating back to 2003, to raise the issues on which the current Complaint is based. It is apparent from correspondence received by several of the members of the Affected Group from BTC Co. that several of the claims for compensation have now been rejected with no prospect of the issue being revisited by BTC Co. See, for example, the letter from Mr Stuart Duncan to Mr. Aptsiauri dated 11 November 2004 (Ref. BTC/OUT/1076/04), reproduced in Annex 3 to the Complaint.

¹⁴ Complaint, para. 57.

12. The Compliant further identifies the particular issues, which the Affected Group would wish such a committee (or any other Problem-solving Initiative) to examine.¹⁵

13. Consistent with IRM RP 9(f), the Complaint expressly indicates the Relevant EBRD Policy that may have been violated by stating the belief of the Affected Group that the BTC Co:

“has breached Policy 4.30 of the World Bank on Forced Resettlement, which is mandatory for the EBRD in accordance with its Environmental policy.¹⁶”

14. It further points out that:

“the relevant representatives of the EBRD failed to provide a timely and adequate response to ensure consistent and fair implementation of the resettlement action plan.¹⁷”

15. However, the Complaint does not elaborate on the nature of the alleged breach of World Bank / IFC O.D. 4.30 on Involuntary Resettlement and it is not *prima facie* clear what such breach might have involved, as resettlement plans which aim to compensate displaced persons for their losses at full replacement cost were clearly developed.¹⁸ It would also appear that a special resettlement unit was created within the project entity and that nongovernmental organisations (NGOs), in the form of the Association for Protection of Rights of Landlords, were involved in planning, implementing and monitoring resettlement.¹⁹ Neither does the Complaint allege that EBRD officials failed to inform the borrower of the Bank’s resettlement policy,²⁰ failed to assist the borrower’s efforts through, for example, assistance in designing and assessing resettlement policy, strategies, laws, regulations, and specific plans,²¹ nor failed to have the adequacy of the resettlement plan reviewed by appropriate social, technical and legal experts.²² Similarly, it is not clear from the Complaint that the Affected Group consider that the Bank failed to require submission of a time-bound resettlement plan and budget that conforms to Bank policy,²³ that Bank officials failed to conduct an adequate appraisal mission,²⁴ or that they failed to supervise the resettlement process throughout implementation using the requisite social, economic and technical expertise.²⁵ In relation to the Affected Group’s charge that ‘EBRD failed to provide a timely and adequate response to ensure consistent and fair implementation of the resettlement action plan’, it is not at all clear that this statement of fact, even if confirmed, amounts to a breach of any Relevant EBRD Policy warranting a Compliance Review.

¹⁵ Complaint, para. 58.

¹⁶ Complaint, para. 56, referring to World Bank / IFC Operational Directive 4.30, 1 June 1990.

¹⁷ Complaint, para. 56.

¹⁸ Pursuant to World Bank / IFC O.D. 4.30, paragraphs 3(b) and 14.

¹⁹ As recommended under World Bank / IFC O.D. 4.30, paragraph 6.

²⁰ As required under World Bank / IFC O.D. 4.30, paragraph 24.

²¹ As recommended under World Bank / IFC O.D. 4.30, paragraph 23.

²² As required under World Bank / IFC O.D. 4.30, paragraph 25.

²³ As required under World Bank O.D. 4.30, paragraph 30.

²⁴ As required under World Bank O.D. 4.30, paragraph 30.

²⁵ As required under World Bank O.D. 4.30, paragraph 31.

16. However, consistent with IRM RP 9(e), the Complaint also strongly suggests that the steps the Affected Group expects to be taken by the IRM involve a Problem-solving Initiative rather than a Compliance Review. Though the Complaint does not expressly state whether the Affected Group requests a Compliance Review or a Problem-solving Initiative, it is quite clear that, by requesting the IRM to facilitate the establishment of a committee to examine the various claims, it expects a Problem-solving Initiative.²⁶ Also, the Complaint states unequivocally that:

“The *sole* objective of complaints by complainants is to obtain final clarification of the situation relating to their plots and to receive fair and adequate compensation for losses inflicted on them”.²⁷

17. This clearly suggests that the Affected Group are more concerned with reaching mutually acceptable resolution of the issues concerned, rather than any finding of formal non-compliance with a Relevant EBRD Policy.²⁸

Eligibility for Further Processing

18. Upon registration of a Complaint, the IRM requires the Eligibility Assessors to make an Eligibility Assessment of the Registered Complaint within 30 Business days of the receipt of the Complaint.²⁹ Eligibility for further processing is determined by IRM, RP 18 and 19.

IRM, Rules of Procedure 18

Does the Complaint relate to a Project [IRM, RP 18 (a)]?

19. As required under IRM RP 18(a), the Eligibility Assessors have determined that the Main Baku-Tbilisi-Ceyhan Export Oil Pipeline Project is clearly a ‘Project’ within the meaning of IRM, RP 1.³⁰ As required under IRM RP 18(a)(i), the project passed Approval / Final Review on 17 October 2003. Further, as required under IRM RP 18(ii), the Complaint has been filed within twelve months after the date of the physical completion of the project, which occurred on 13 July 2006.

²⁶ As a matter of policy, it is proposed that, even where the Affected Group expressly or implicitly indicates the steps that it expects to be taken by the IRM, *e.g.* a Compliance Review or Problem-solving Initiative or both, pursuant to IRM RP 9, the Eligibility Assessors be entitled to reserve the right to examine the Complaint in the light of all available steps and to recommend an alternative step where appropriate. This position would appear to be the only one consistent with IRM RP 22, 23, 25 and 27. On a more practical level, it would help to ensure that an Affected Group does not arbitrarily exclude itself from seeking the assistance of the IRM due to a lack of familiarity with the IRM Rules of Procedure. Notwithstanding, in this case, the Eligibility Assessors saw no evidence to suggest a material violation of a relevant EBRD policy.

²⁷ Complaint, para. 59. (Emphasis added).

²⁸ It should be noted that IRM RP 35 expressly provides in relation to Compliance Review that the “Compliance Review Report may not recommend the award of compensation or any other benefits to Affected Groups beyond that which may be expressly contemplated in a Relevant Bank Policy.”

²⁹ In this instance, the Chief Compliance Officer has found it necessary to rely on IRM 14 to extend this time period ‘for as long as is strictly necessary to ensure full and proper investigation’ of the issues relevant to the making of this Eligibility Assessment.

³⁰ IRM RP 1(x) defines a ‘Project’ to mean “a specific project or technical assistance that is designed to fulfil the Bank’s purpose and functions, and in support of which a Bank Operation is outstanding or may reasonably be expected”.

Is the Complaint from an Affected Group [IRM, RP 18 (b)]?

20. As required under IRM RP 18(b), the complainants clearly qualify as an ‘Affected Group’ within the meaning of IRM RP 1(a), as they consist of two or more individuals from the ‘Impacted Area’, as defined under IRM RP 1(p),³¹ who have a common interest and claim that the Project has a direct adverse and material effect on that common interest. Further, the correspondence received from both the Affected Group and the Project Sponsor provides *prima facie* evidence that the Project has had a direct adverse and material effect on the Affected Group’s common interest.

21. For the purposes of establishing the common interest of each of the members of the Affected Group, it is useful to have regard to the EBRD’s Environmental Policy, which states that:

“In line with its mandate to promote environmentally sound and sustainable development, the term “environment” is used in this Policy in a broad sense to incorporate not only ecological aspects but also ... community issues, such as ...involuntary resettlement ...”³²

22. In turn, the relevant World Bank / IFC policy document (OD 4.30),³³ which sets out EBRD policy on Involuntary Resettlement, includes within its scope ‘projects that cause involuntary displacement’,³⁴ which include those in which ‘productive assets and income sources are lost’.³⁵ Further, in setting out guidance on ‘Valuation of and Compensation for Lost Assets’, IFC OD 4.30 refers specifically to certain types of loss, ‘such as access to ... (c) grazing, and forest areas’.³⁶ Similarly, the IFC’s *Handbook for Preparing a Resettlement Action Plan*, in its glossary of terms, defines ‘economic displacement’ as:

“Loss of income streams or means of livelihood resulting from land acquisitions or obstructed access to resources (land, water or forest) resulting from the construction or operation of a project or its associated facilities”³⁷

and a ‘project-affected person’ as:

“Any person who, as a result of the implementation of a project, loses the right to own, use or otherwise benefit from a built structure, land (residential, agricultural or pasture), annual or perennial crops or trees, or any other fixed or moveable asset, either in full or in part, permanently or temporarily.”³⁸

23. Therefore, all members of the Affected Group would appear to belong to an ‘Affected Group’ sharing a ‘common interest’ for the purposes of IRM RP 18(b).

³¹ IRM RP 1(p) defines the ‘Impacted Area’ to mean “any geographical area which is, or is likely to be, affected by a Project”.

³² EBRD Environmental Policy. 29 April 2003, paragraph 3.

³³ World Bank / IFC Operational Directive 4.30, 1 June 1990.

³⁴ *Ibid.*, paragraph 1.

³⁵ *Ibid.*, paragraph 2.

³⁶ *Ibid.*, paragraph 15.

³⁷ *Handbook for Preparing a Resettlement Action Plan* (IFC, 2002), at ix.

³⁸ *Ibid.*, at x.

Is there evidence of a direct adverse effect on the common interest of the Group [IRM RP 18(b)]?

24. The members of the Affected Group variously allege that the Project Sponsor's construction activities have resulted in the following direct adverse and material effects on their common interest:³⁹

- they have received no notice of, nor compensation for, damage to their land crossed by the oil pipeline construction route;
- clearance work and damage to their land on the oil pipeline construction route exceeded the area indicated in the proposal package, for which compensation was available;
- they have suffered loss of harvests due to damage caused to the irrigation channel of the village during construction of the oil pipeline;
- they have suffered loss of opportunity to construct private dwellings on their land, which is designated under the local land-use planning code as land on which the construction of dwelling houses is permissible, due to building restrictions applying on account of the proximity of the oil pipeline (or due a lack of information as to the proper application of such restrictions);
- they have suffered loss of harvests from orphan land;
- they were disadvantaged as a result of ineffective and uneven application of the project grievance procedure.

25. For the purposes of establishing that there is *prima facie* evidence that the Project has, or is likely to have, a direct adverse and material effect on such a group's common interest, as required under IRM RP 18(b), it is useful to have regard to the correspondence supplied by both the Affected Group and the Project Sponsor, which, *inter alia*:

- sets out evidence of disagreement relating to the accuracy of public records as to title to land;⁴⁰
- sets out evidence of disagreement as to the entitlement of members of the Affected Group to compensation for loss of harvests from orphan land;⁴¹
- sets out evidence of disagreement as to the causing of any adverse effects on the operable irrigation channels and systems of Akhali Samgori Village;⁴²

³⁹ Complaint, paras. 13-33.

⁴⁰ See, for example, the Act certified by the Senior Specialist of Land Management Service of the Gardabani District and the Land Surveyor of the Akhali Samgori Sakrebulo, dated 4 February 2004, and the letter from Mr. Stuart Duncan to Mr. Tariel Aptsiauri, re claim no. APLR/44 (not dated), Complaint, Annex 1 [Project Sponsor copy dated 15 July 2005]. Further, it is worth noting that the relevant IFC policy document, in setting out guidance on 'Valuation of and Compensation for Lost Assets', provides that "Compensation is facilitated by (a) paying special attention to the adequacy of the legal arrangements concerning land title, registration, and site occupation ..."

See, IFC Operational Directive 4.30, 1 June 1990, para. 14.

⁴¹ See, for example, the letter from Mr. Stuart Duncan to Mr. Elguja Aptsiauri, re claim no. BTC/OUT/1076/04, dated 12 November 2004, Complaint, Annex 3; the letter from Mr. Stuart Duncan to Ms. Makvala Mamuladze, re claim no. APLR/637, dated 7 March 2005, Complaint, Annex 6; the letter from Mr. Stuart Duncan to Mr. Gia Gogichaishvili, re claim no. APLR/635, dated 18 July 2005; the letter from Mr. Stuart Duncan to Mr. Robinzoni Kavtaradze, re claim no. APLR/708, dated 18 July 2005; the letter from Mr. Stuart Duncan to Mr. Amiran Tsiklauri, re claim no. APLR/707, dated 18 July 2005.

- sets out evidence of the delays experienced by members of the Affected Group in having their claims dealt with by the Project Sponsor;⁴³
- sets out evidence of uncertainty among relevant public authorities as to the practical application of building restrictions in operation in the vicinity of the oil pipeline.⁴⁴

26. Therefore, it would appear that there is sufficient *prima facie* evidence that the Project has, or is likely to have, a direct adverse and material effect on the Affected Group's common interest.

Has the Group initiated good faith efforts to resolve the issue [IRM RP 18(c)]?

27. In relation to the requirement under IRM RP 18(c) that the Affected Group has initiated good faith efforts to resolve the issue with the Bank and other Relevant Parties, it is significant that in May 2005 members of the Affected Group established a village committee, which included the Land Management Officer of the Project Sponsor, Mr. Irakli Mamaladze, to perform an on-site examination of the state of the village irrigation system.⁴⁵ Prior to establishing this committee, the Head of Sakrebulo of Akhali Samgori had complained on behalf of the residents of the village to the Project Sponsor concerning damage to the village irrigation system.⁴⁶ It is also significant that on 24 April 2006, the Affected Group requested that the EBRD Representative in Tbilisi, Mr. Nikolay Hadjijski, examine their complaint.⁴⁷

Is there a reasonable prospect of resolving the issue through the continuation of such efforts [IRM RP 18(c)]?

28. In relation to the requirement under IRM RP 18(c) that there is no reasonable prospect of resolving the issue through the continuation of such efforts, it is useful to note the final and definitive tone of much of the recent correspondence from the

⁴² See, for example, the letters from the Head of Sakrebulo, Akhali Samgori Village, to Mr. Patrick Pullar, dated 13 May 2005 and 24 May 2005, Complaint, Annexes 11 and 12; the Act executed by the Sakrebulo of Akhali Samgori Village, dated 30 May 2005, Complaint Annex 13; the letter from Mr. Stuart Duncan to Mr. Amiran Rsiklauri, re claim no. APLR/648, dated 15 July 2005, Complaint, Annex 10; the letter from Mr. Stuart Duncan to Ms. Tina Aptsiauri, re claim no. APLR/650, dated 15 July 2005.

⁴³ See, for example, the letter from the Association for the Protection of Rights of Landlords to members of the Affected Group, dated 12 July 2005, Complaint, Annex 16, confirming that their claims were forwarded to the BTC Co. in February, May and June of 2004.

⁴⁴ See, for example, the letter from Mr. Koba Dzlierishvili, Rustavi City Local Self-Governance, Office of Architecture and City Construction, to Mr. Stuart Duncan, dated 9 June 2005; and the letter from Mr. Stuart Duncan to Mr. Koba Dzlierishvili, Rustavi City Local Self-Governance, Office of Architecture and City Construction, ref. BTC/OUT/1463/05, dated 28 June 2005; the letter from Mr. Stuart Duncan to Mr. Archil Lezhava, Georgian International Oil Corporation, ref. BTC/GIOC/OUT/546/05, dated 6 July 2005; the letter from Mr. Stuart Duncan to Mr. B. Kolbaia, Chief Architect, Rustavi City Local Self-Governance, Office of Architecture and City Construction, ref. BTC/OUT/2142/06 (re Mamuka Gogishvili Application), dated 5 May 2006;

⁴⁵ Complaint, para. 29.

⁴⁶ Letters from Head of Sakrebulo, Akhali Samgori, Mr. G. Kavtaradze, to Mr. Patrick Pullar, dated 13 and 24 May 2005, Complaint, Annexes 11 and 12.

⁴⁷ Complaint, para. 35. For the full text of this request, see Complaint, Annex 17.

Project Sponsor, suggesting that it has arrived at a final determination of many of the issues raised in the Complaint.⁴⁸

29. In addition, the apparent delay in handling claims relating to Zone 2 restrictions on the development of land adjacent to the oil pipeline is a cause for concern. Though certain claims date back to early-mid 2004,⁴⁹ the Project Sponsor has only undertaken to make a formal offer for such restrictions when the exercise of obtaining additional servitude rights is carried out in Akhali Samgori in early 2007.⁵⁰ Though the Project Sponsor ought to be commended for the efficient operation of the project grievance procedure and handling of the claims received through, *inter alia*, the nomination of a clearly identified officer with clear responsibility for liaising with the Affected Group, this delay might reasonably affect the confidence of the Affected Group in the likelihood of an acceptable resolution of the issues involved.

30. Further, it might be argued, in the context of the requirement under IRM RP 18(c) that there should be no reasonable prospect of resolving the issues through the continuation of previously initiated efforts, that this Complaint would appear quite clearly to request that the IRM exercise its problem-solving function, which could usefully operate in tandem with, and exercise a positive influence on, efforts to complete any ongoing processes, with a view to securing a mutually acceptable accommodation. Indeed, should the parties manage to resolve these issues in early 2007, the need to include claims relating to Zone 2 restrictions in any Problem-solving Initiative would be obviated.

31. Though the project Sponsor quite correctly points out that several of the members of the Affected Group are among the plaintiffs in a current court case against the Project Sponsor pending before the Tbilisi District Court (Collegiate Organ of Civil and Business Cases) and relating to certain aspects of the current Complaint,⁵¹ this does not preclude a finding of eligibility on behalf of the Affected Group. It may, however, impact on the determination of whether a Problem-solving Initiative is warranted or whether the claims of such members of the Affected Group

⁴⁸ See, for example, in relation to the accuracy of public records as to title to land, the letter from Mr. Stuart Duncan to Mr. Tariel Aptsiauri, re claim no. APLR/44 (not dated), Complaint, Annex 1 [Project Sponsor copy dated 15 July 2005]. See, for example, in relation to the entitlement of members of the Affected Group to compensation for loss of harvests from orphan land, the letter from Mr. Stuart Duncan to Mr. Elguja Aptsiauri, re claim no. BTC/OUT/1076/04, dated 12 November 2004, Complaint, Annex 3. See, for example, in relation to the responsibility of the Project Sponsor for the causing of any adverse effects on the operable irrigation channels and systems of Akhali Samgori Village, the letter from Mr. Stuart Duncan to Mr. Amiran Rsiklauri, re claim no. APLR/648, dated 15 July 2005, Complaint, Annex 10.

⁴⁹ See, for example, the claim of Mr. Tariel Aptsiauri (Plot No. 8113132), as evidenced by the letter from the Association for the Protection of Rights of Landlords to members of the Affected Group, dated 12 July 2005, Complaint, Annex 16, confirming that the claims listed were forwarded to the Project Sponsor in February, May and June of 2004.

⁵⁰ See Report/Comments received by EBRD Chief Compliance Officer from Project Sponsor, 24 November 2006, re claim of Mr. Tariel Aptsiauri (Plot No. 8113132).

⁵¹ Filed 18 November 2004, and involving, *inter alia*, Mr. Isak Ogbaidze (Plot No. 8113135), Mr. Robinson Kavtaradze (Plot No. 8113070), see Report/Comments received by EBRD Chief Compliance Officer from Project Sponsor, 24 November 2006.

ought to be excluded from any Problem-solving Initiative that might be recommended, consistent with IRM RP 43(f).⁵²

32. Also, many of the Project Sponsor's contentions, contained in the Reports/Comments submitted in response to the Complaint,⁵³ relate to the merits of the various claims made by the Affected Group rather than to the eligibility of the present Complaint.

IRM, Rules of Procedure 19

33. Even where a Complaint fulfils the requirements of IRM, RP 18, a Complaint shall not be eligible for IRM processing if it does not comply with the criteria listed under IRM RP 19:

- The carefully documented and recorded background to the dispute and the efforts of the Affected Group and others to resolve it would suggest that the complaint is neither 'frivolous nor malicious'. [IRM, PR 19 (a)]
- As the members of the Affected Group are not engaged in an area of economic activity similar or related to that of the Project Sponsor, it is difficult to see how the primary purpose of the Complaint could be to 'seek competitive advantage through the disclosure of information or through impeding or delaying the Project or the Bank Operation'. [IRM, PR 19 (b)]
- The Complaint does not relate to procurement matters. [IRM, PR 19 (c)]
- The Complaint does not relate to an allegation of fraud or corruption. [IRM, PR 19 (d)]
- The Complaint does not relate to Article 1 of the Agreement establishing the Bank, the Portfolio Ratio Policy or any other policy specified by the Board for the purposes for IRM, RP 19(e).
- The Complaint does not relate to the adequacy or suitability of EBRD policies. [IRM, PR 19 (f)]
- The Complaint does not relate to matters upon which an Eligibility Assessment report has already been approved by the Board or the President. [IRM, PR 19 (g)]

Recommendation of the Eligibility Assessors

34. In accordance with IRM, RP 27(b)(ii), the Eligibility Assessors recommend to declare the Complaint eligible, but not warranting a Compliance Review. This recommendation is without prejudice to the ability of the Chief Compliance Officer to recommend a Problem-solving Initiative in accordance with IRM, RP 44.

35. Furthermore, though IRM RP 22 requires that where 'the Eligibility Assessors are minded to recommend that a Compliance Review is not warranted ... the Eligibility Assessors shall give the Affected Group an opportunity ... to comment

⁵² IRM RP 43(f) provides that "In considering whether a Problem-solving Initiative should be recommended, the Chief Compliance Officer ... shall take into consideration: whether the Problem-solving Initiative may duplicate, or interfere with, or may be impeded by, any other process pending before a court, arbitration tribunal or review body (such as an equivalent mechanism at another co-financier) in respect of the same matter or a matter closely related to the Complaint".

⁵³ Report/Comments received by EBRD Chief Compliance Officer from Project Sponsor, 24 November 2006.

upon the finding that a Compliance Review is not warranted and include such comments in the Eligibility Report', this provision would appear to be anomalous in a case such as the present Complaint, where it would appear that the Affected Group is not seeking a Compliance Review. To give effect to IRM RP 22 would, in this instance, be time-consuming, confusing and could not in any way further the aims of the IRM as set out in *Independent Recourse Mechanism: The guide to making a complaint about an EBRD-financed project* (July 2004), at 2.

Annexes:

1. The Complaint
2. Comments of the Project Sponsor