

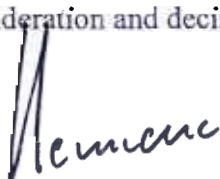
MEMORANDUM FROM THE PRESIDENT

On 16 August 2005, the Chief Compliance Officer received a complaint under the Independent Recourse Mechanism (IRM) from an Affected Group located in Gyrakh Kesemenli village, Azerbaijan in respect of the BTC Pipeline operation. The Complaint was registered on 22 August 2005. The Chief Compliance Officer, together with Graham Cleverly, one of the IRM Independent Experts appointed to act as an Eligibility Assessor, reviewed the complaint to determine whether it is (i) eligible and (ii) if eligible, whether the complaint warrants a compliance review.

Following their review, a summary of which is set out in the attached Eligibility Assessment Report, the Eligibility Assessors recommend that the complaint be declared eligible, but that no compliance review is warranted as there is no indication that the Bank has failed to comply with the Bank's Environmental Policy and the project specific provisions of the Public Information Policy in a material way. This recommendation is made without prejudice to the ability of the Chief Compliance Officer to recommend to the President that a problem-solving initiative be pursued.

Since the BTC Pipeline operation is a Board approved operation, the IRM Rules of Procedure require that the recommendation contained in the Eligibility Assessment Report be submitted to the Board of Directors for approval, rejection or remittance back to the Eligibility Assessors for reassessment.

In accordance with Rule 30(b) of the IRM Rules of Procedure, I submit the attached Eligibility Assessment Report for consideration and decision by the Board of Directors.

A handwritten signature in dark ink, appearing to read 'Jean Lemierre', is positioned above the printed name.

Jean Lemierre

Independent Recourse Mechanism

Eligibility Assessment Report

Complaint: BTC Pipeline construction- Damage to Property in Gyrakh Kesemenli village, Azerbaijan

1. The Complaint

1. On 2nd August 2005, the Independent Recourse Mechanism (IRM¹) of the European Bank for Reconstruction and Development (EBRD) received a preliminary complaint relating to damage to property allegedly arising from construction traffic associated with the construction of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline project, in Gyrakh Kesemenli village, Azerbaijan (the “Project”). Following clarification of the complaint details, a finalised Complaint was received by the Chief Compliance Officer on 16th August 2005. On 22th August 2005, in accordance with paragraph 17 of the IRM Rules of Procedure (“IRM, RP”), the Chief Compliance Officer registered the complaint and on 23rd August 2005 designated one of the IRM Experts to assist in making an Eligibility Assessment of the registered Complaint (the “Complaint”). The Complaint, translated into English, is at Annex 1 to this Report.

2. The Complaint maintains, inter alia, that “BTC is not fulfilling the obligations it assumed in the Environmental and Social Impact Assessment (ESIA) and the Forced Resettlement Plan as agreed with EBRD” and in addition, maintains that: “the system for lodging complaints is not viable leading to a situation in which, when the project harms people, mitigation measures are not carried out, leading to a violation of World Bank Operational Policy 4.30”². The Complaint adds: “Moreover, the appeal to the EBRD has not led to the appropriate results since the complainants have received only a general reply”.

2. Background

2.1 Details of the Project

3. The Baku-Tbilisi-Ceyhan (BTC) oil pipeline is a \$3.6 billion investment to exploit the Azeri, Chirag, Gunashli (ACG) oil field, located in the Caspian Sea off the coast of Azerbaijan. The pipeline is 1,768 km long and provides the first direct pipeline link from the Caspian Sea through Azerbaijan, Georgia and Turkey, to the Mediterranean. The planned peak output for the pipeline is approximately 1 million barrels per day. The Project is being developed by an International Consortium of 11

¹ Acronyms used in this Report are summarized at the end of the Report.

² The Policy Document (correctly termed the Operational Directive on Involuntary Resettlement OD 4.30 from the World Bank Operational Manual and dated June 1990) referred to above is mentioned in the latest (July 2003) version of the EBRD Environmental Policy in footnote No 2 in connection with the definition for involuntary resettlement.

partners known as the Baku-Tbilisi-Ceyhan Pipeline Company (BTC Co) hereafter referred to generally as the “Project Sponsor”. BP is the largest stakeholder in the project and is leading the design and construction phases. The Project uses two prime Contractors: Consolidated Contractors International Company (CCIC) who are responsible for the pipeline construction and valves, and Spie-Capag Petrofac Joint Venture (SPJV) who are responsible for the main Above Ground Installations (AGIs).

4. Construction of the BTC pipeline commenced in the Spring of 2003. The Azerbaijan section of the pipeline extends for 442 km and the pipe is 42 inches in diameter. For the Azerbaijan section of the pipeline, the construction right of way is generally 32 metres wide, the pipeline protection zone (restrictions on use) is 58 metres wide and the operations width is 8 metres over the pipeline.

5. Construction of the pipeline and associated facilities was substantially completed by February 2005 in Azerbaijan³ and Georgia and filling of the pipeline with oil commenced in May 2005. Export Operations from the Ceyhan marine terminal in Turkey are scheduled to commence in the last quarter of 2005.

2.2 Summary of Environmental and Social IFI Source Documents

6. This Eligibility Assessment Report (EAR) refers to a number of Environmental and Social Source Documents. Annex 2 contains a brief summary of these documents.

2.3 Steps taken to Conduct an Eligibility Assessment

7. Upon registration of the Complaint, the Chief Compliance Officer appointed Mr Graham Cleverly, one of the EBRD’s independent IRM experts, as the Eligibility Assessment Expert on 23rd August 2005. Mr Cleverly, together with the Bank’s Chief Compliance Officer, Ms Enery Quinones, are the IRM Eligibility Assessors for this Complaint. On 31st August and on 7 and 8th September the Eligibility Expert conducted a number of meetings in London with the Chief Compliance Officer and Deputy Chief Compliance Officer (Mr Lee Marler) and held individual meetings with relevant EBRD officials comprising: Director, Environment Department; Head, Operational Support Environment Department; Senior Environmental Advisor, Environment Department; Principal Social Specialist, Environment Department; Principal Environmental specialist, Environment Department; Manager, Outreach and NGO Relations; Senior Banker, Natural Resources; and two Principal Economists. The Eligibility expert was provided with background documentation on the Project and was given full access to all relevant documentation through the Bank’s “ProjectLink” system.

8. The Office of the Chief Compliance Officer notified the Project Sponsor of the Complaint on 22nd August 2005 and invited the Project Sponsor to submit its views and comments so that they could be taken into account by the Eligibility Assessors in the preparation of the Eligibility Assessment Report. The Project Sponsor’s response to the

³ At the end of July 2005 the pipeline was 98.5% complete in Azerbaijan and the line was entirely operational.

Complaint and to the facts set out therein was accordingly forwarded to the Office of the Chief Compliance Officer on 2nd September 2005 and is attached as Annex 3.

9. Pursuant to IRM, RP 15 and to avoid duplication of efforts, the Eligibility Assessors liaised with the other international financial institutions where similar complaints have been filed for alleged vibration damage arising from construction of the BTC pipeline. These complaints did not cover damage claims for housing in Azerbaijan.

10. 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 extra steps, such as a Project site visit or retaining of additional expertise, were warranted at this stage.

3. Eligibility for Registration

11. On the 22rd of August 2005, the Chief Compliance Officer determined that the Complaint submitted by the Affected Group was eligible for Registration in accordance with IRM, RP8, which sets out the mandatory contents of a Complaint.

The Complaint:

- Indicates the date of the Complaint *i.e.* 16th August 2005⁴;
Provides the name⁵ of each member of the Affected Group, comprising seven names;
- Provides the name and contact details of the Authorised Representative of the Affected Group who is a rights defender and is based in Baku, and evidence of her power to represent and to act on behalf of the Affected Group in relation to the Complaint. The Power of Attorney is attached as Annex 1 to the Complaint, dated 16th June 2005 and signed by all the seven members of the Affected Group; Explains, in relation to the Authorised Representative, who is not locally based, that the Complainants have asked her to represent their interests in connection with the Complaint. The Complaint confirms that the Authorised Representative and the Complainants have Azeri as their native language;
- Sets out a summary description of the Project;
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;

⁴ 16th August 2005 is the date of the E-mail from the Authorized Representative to the Chief Compliance Officer which clarified all outstanding aspects of the original Complaint as raised in earlier correspondence dated 3rd August 2005, by the Chief Compliance Officer. The final Complaint clarified the following outstanding points to the satisfaction of the Chief Compliance Officer: a) the date of the Complaint, b) the contact details of the Affected Group and c) copies of relevant correspondence. The date this final correspondence was sent by the Authorized Representative, *i.e.* 16th August 2005 is taken to be the date of the Complaint in accordance with IRM, RP 8(a).

⁵ Specific contact details are not provided. It can be assumed from the report on alleged damage to properties by a third party expert engaged by CCIC, dated 14th December 2004 (and reproduced in Attachment 2 to the Project Sponsor's Response) that the village is small and the houses are not individually numbered or named.

Provides a description of the good faith efforts used by the Affected Group to resolve the issue with the Project Sponsor and with the Bank and an explanation of why the Group believes that there is no reasonable prospect⁶ of resolving the issue through the continuation of such efforts;

- Attaches copies of all material correspondence with the Bank and Project Sponsors supporting the Complaint.

Under “other information” the Complaint states: “World Bank Policy 4.30, the procedures for the preparation of the Resettlement Plan and the obligations assumed by BTC under the ESIA were all infringed during the project”.

12 Furthermore, in accordance with IRM, RP 9, the Complaint describes the steps the Affected Group expects to be taken by the Bank in order to address the direct and adverse and material effect that the Project has, or is likely to have, on the common interest of such group. The final section in the Complaint indicates that “During implementation of the project, the EBRD did not properly assess the damage caused to the population and has depended on the opinion of BTC”. In order to resolve this problem the Complaint requests the Bank “to verify compliance with established standards (this means verifying the EBRD’s activity in compliance with its own guideline documents “Environmental Policy” and/or “Public Information Policy”), and also to carry out measures to resolve the problems, including establishing the facts, mediation, conciliation procedures, organising the negotiating process, carrying out investigations and preparation of a report on these activities. An independent assessment of the situation, establishment of the facts and adoption of measures to remove inequality in the calculation and allocation of compensation would constitute an acceptable solution”.

13. Although the Complaint does not expressly state whether the Affected Group is requesting a Compliance Review or a Problem Solving Initiative (or both), it is clear from this final section of the Complaint that a Compliance Review *and* a Problem Solving Initiative are both requested.

4. Eligibility for Further Processing

14. 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 (final) Complaint. Eligibility for further processing is determined by IRM, RP18 and 19. These are considered in turn below:

⁶ The Complaint asserts that “the system for lodging complaints is not viable....Moreover, the appeal to EBRD has not lead to the appropriate results, since the complainants have received only a general reply”.

Does the Complaint relate to a Project [IRM, Rule of Procedure 18 (a)]?

15. IRM, RP 1(x) defines a 'Project' as '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'. In the context of determining eligibility, IRM, RP 18(a) provides either (i) 'the Bank must have provided...a clear indication of its interest in financing the Project; or (ii) 'the Bank must maintain a financial interest in the Project and the Complaint must have been filed within twelve (12) months after the physical completion of the Project....'.

16. On 11th November 2003, the EBRD Board approved a recommendation by the President in favour of the Baku-Tbilisi-Ceylan Finance BV (the "Company") for part-funding of the construction of the portion of the BTC pipeline that runs through Georgia and Azerbaijan. Construction of the pipeline and associated facilities was substantially completed by February 2005 in Azerbaijan and Georgia and filling of the pipeline with oil commenced from the start of the pipeline in Saganchal oil terminal, Azerbaijan in May 2005. Export Operations from the Ceyhan marine terminal in Turkey are scheduled to commence in the second half of 2005. The Bank clearly retains a financial interest in the project and the Complaint was filed within 12 months of the date of physical completion of the Project. The nature of the pipeline construction project means that the actual completion date is difficult to establish accurately but it is assumed to be mid-2005.

Is the complaint from an Affected Group [IRM, Rule of Procedure 18 (b)]?

17. 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), *i.e.* they are residents of the village of Gyrakh Kesemenli where the Complainants allege their property has sustained vibration damage caused by the passing of trucks involved in the construction of BTC pipeline.

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

18. In its Complaint, the Affected Group alleges that the Project Sponsor's construction activities have resulted in the following direct, adverse and material effects on their common interest. As stated in the Complaint under "Facts and evidence":

"When the construction commenced⁷, about 30-40 heavy loaded vehicles (60-70 tonnes) passed through the village of Gyrakh Kesemenli. As the road is narrow and the houses close to it, they passed within 1-5 metres of the houses, causing cracks to appear in the houses owned by the Complainants. These are in a dangerous situation and may collapse"

⁷ Construction of the BTC pipeline commenced in Spring 2003. However, the reference to a grievance first being lodged with the local authorities is dated some months earlier, in October 2002, in the Complaint.

19. For the purpose of establishing if there is *prima facie* evidence that the project has or is likely to have, a direct adverse and material effect on such group's common interest, as required under IRM, RP 18(b), the report of a third party expert engaged by CCIC to provide an independent opinion, dated 14th December 2004, and the subsequent payments of compensation by CCIC to 7 out of the 24 villagers whose properties were reviewed during the visit indicate that there is *prima facie* evidence to support the Complaint.

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

20. The Eligibility Assessors determined that there is sufficient evidence to confirm that the Affected Group had initiated good faith efforts to resolve the issue, as summarised below:

- During October 2002, residents of the village of Gyrakh Kesemenli first lodged complaints with the Local representative of the Executive council of Gytrakh Kesemenli in the Agstafa region of Azerbaijan, concerning damage allegedly caused to private property by contractors' traffic during construction of the BTC pipeline. The residents tried to submit a declaration in court but the court refused to hear the case on the grounds that it was not within its competence.
- On the 10th November 2002 the residents appealed directly to the President of British Petroleum-Azerbaijan with copies of correspondence sent to BTC and their sub-contractor CCIC. In October 2004 declarations were also submitted to CCIC.
- On 27th January 2005 a declaration was sent to the EBRD⁸ from 26 village representatives.
- A letter was sent by the Authorised Representative on behalf of the residents to the EBRD representative for Outreach and NGO relations on 27th February 2005. This matter was also raised during the EBRD's Annual meeting in Belgrade, Serbia in May 2005.
- The residents also sent a statement to the Procurator General of Azerbaijan⁹. (No reply was received).

The letter of the Project Sponsor in Annex 3 summarises the steps taken in response to these events.

⁸ It is not clear from the Complaint documents which EBRD office/ Department was contacted.

⁹ No further details are provided in the Complaint.

IRM, Rule of Procedure 19

21. Even where a Complaint fulfils the requirements of IRM, RP 18, a Complaint shall not be eligible for IRM processing if it falls foul of the restrictions of IRM, RP 19. The restrictions of IRM, RP 19 are considered below in turn:

- 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 clear that the primary purpose of the Complaint is clearly not to “seek competitive advantage through the disclosure of information or through impeding or delaying the Project or 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 matters upon which an Eligibility Assessment report has already been approved by the Board or the President. [IRM, RP 19(g)]

22. Consequently, the Eligibility Assessors are minded to recommend that the complaint be declared eligible.

5. Determination of Whether a Compliance Review is Warranted

IRM, Rule of Procedure 22

23. In accordance with IRM RP 22, if the Eligibility Assessors are minded to recommend that a Complaint be declared eligible, they shall continue to review the Complaint for up to 30 Business Days of the receipt of the Complaint to determine whether the Complaint is eligible for a Compliance Review¹⁰. In this Complaint, it is clear that the Affected Group are requesting a Compliance Review and a Problem Solving Initiative.

¹⁰ In accordance with the policy established in the first Eligibility Assessment report for Sakhalin 2 Phase 2 Calypso, even where the affected Group expressly or implicitly indicate the steps it expects to be taken by the IRM *e.g.* a Compliance Review and/or Problem Solving Initiative, pursuant to IRM RP 9, the Eligibility Assessors shall 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.

IRM, Rule of Procedure 23

24. In accordance with IRM RP 23, the Eligibility Assessors shall consider whether any EBRD actions, or failure to act, in any respect of the Bank Operation may have involved a material violation of a relevant EBRD Policy and in such a case, shall conclude that a Compliance Review is warranted. In considering whether there may have been such a violation, the Eligibility Assessors shall examine:

- The Environmental Policy that was in effect on the date on which the Bank Operation was submitted for Concept Review and;
- In respect of any other Relevant EBRD Policy¹¹, the policy that was in effect on the date which the relevant act was taken, or if an act was required to be taken and was omitted, the date on which such an act should have been taken

25. The BTC Project was submitted to the Bank for Concept Review on 12th September 2001. At this time the Bank's Environmental Policy was set out in the superseded EBRD document entitled "Environmental Procedures", dated 1992, revised 1996. However the EBRD has confirmed that the Bank's current Environmental Policy¹² document dated July 2003 is applicable to the BTC Project.

26. The current EBRD Environmental Policy Objective states "the term 'environment' is used in this Policy in its broadest sense to incorporate not only ecological aspects but also worker protection issues, and community issues, such as cultural property, involuntary resettlement and impact on indigenous peoples, in line with its mandate to promote environmentally sound and sustainable development". For definitions of the terms cultural property, involuntary settlement and indigenous peoples, footnote 2 in the EBRD Environmental Policy document refers to IFC Operational Policy Note OPN 11.03 for cultural property and Operational Directives OD 4.30 (June 1990) for involuntary resettlement and OD 4.20 (September 1991) for indigenous peoples.

27. The Complaint asserts that "EBRD did not properly assess the damage caused to the population and has depended on the opinion of BTC", and in order to resolve the problem the Complaint "requests EBRD verify compliance with established standards (this means verifying the EBRD's activity in compliance with its own guideline documents "Environment Policy" and/or "Public Information Policy") and to carry out measures to resolve the problems..." Elsewhere in the Complaint, it is alleged that "the BTC company is not fulfilling the obligations it assumed in the Environmental And Social Assessment (ESIA) and Forced Resettlement Plan, as agreed with the EBRD. In addition the system for lodging complaints is not viable, leading to a situation in which, when the project harms people, mitigation measures are not carried out, constituting a violation of World Bank Operational Policy 4.30"

¹¹ That is, the project specific provisions of the Public Information Policy. This Policy is not considered relevant to this Complaint and not considered further in this Report.

¹² As confirmed during discussions with the Director of EBRD Environmental Department on 8th September 2005.

28. It would appear from the above, that the Affect Group is not questioning the adequacy of the ESIA and supporting documents¹³ *per se*, but whether:

- the procedures for assessing damage have been carried out properly
- EBRD has depended on the opinion of BTC
- the BTC is fulfilling its obligations in the ESIA and Forced Resettlement Plan¹⁴
- the system for lodging complaints is viable
- when the project harms people, mitigation measures are not carried out, constituting a violation of World Bank Operational Policy 4.30

29. It is not the purpose of the Eligibility Assessment Report to consider these allegations in detail. The Eligibility Assessment Report should, however, consider whether any EBRD actions or failure to act in respect of the Bank Operation *may* have involved a material violation of a Relevant EBRD policy (and in such a case conclude that a Compliance Review is warranted). Therefore, for the purposes of this Eligibility Assessment Report, the relevant sections of the EBRD Environmental Policy (July 2003) to be considered in this Report are as follows:

- The requirements relating to Environmental and Social Impact Assessments Plans (ESIAs)
- The requirements relating to Environmental and Social Action Plans (ESAPs)
- The requirements relating to independent Monitoring of Environmental and Social issues and in particular the provisions for Grievance and Dispute resolution and their effectiveness.

The World Bank Group Operational Policy to be considered is:

- The requirements of World Bank Operational Policy 4.30 for Involuntary Resettlement (as referred to in footnote 2 of the EBRD Environmental Policy (July 2003))

EBRD Environmental Policy section 16

30. In the EBRD's Board Document, the BTC project is screened as A/O; i.e., a project requiring an Environmental and Social Impact Assessment (ESIA) but not requiring an

¹³ The full ESIA for the BTC Project comprises many volumes of documents totaling some 11,000 pages. The supporting documents to the ESIA include Environmental and Social Action Plans (ESAPs) which describe how to implement, manage and monitor the environmental social commitments in the ESIA, Resettlement Action Plans (RAPs) for each Country including Part B: Azerbaijan. The RAP has been designed with the aim of complying with the World Bank Group's Operational Directive 4.30 on Involuntary Settlement, The Environmental and Social Action Plan (ESAP) which sets out how to implement, manage and monitor the environmental and social commitments in the ESIA, and Contractor Control Plans (CCPs) for each country including Azerbaijan comprising eleven separate documents including Community Liaison and Transport Management.

¹⁴ The Resettlement Action Plan (RAP).

environmental audit. The EBRD's Concept Review for the BTC project (dated 12th September 2001) had initially indicated the original project screening as A/1¹⁵; a project requiring an environmental audit. Upon Final Review, the EBRD's position was that given that the project involved a major pipeline construction and that the environmental risks of such activities could not be readily identified, assessed and mitigated, an ESIA was required. As the Sponsor had already carried out extensive baseline studies for its ESIA and the development was on a Greenfield site, EBRD decided that no environmental audit was formally required.

31. The ESIA package was officially disclosed by the EBRD on 16th June 2003 for a 120 day public consultation and disclosure period¹⁶.

EBRD Environmental Policy section 17

32. The EBRD Environmental Policy indicates that for many projects it is necessary to develop Environmental Action Plans (EAPs) and that the EAPs are agreed between the EBRD and the Project Sponsor and become part of the legal agreement with the Bank. It also notes that the EAP should be satisfactory¹⁷ to the Bank prior to Final Review of the Project by EBRD Management.

33. For the BTC Project, an Environmental *and Social* Action Plan (ESAP) was developed by the Project Sponsors in accordance with IFC requirements to take account of the wide variety of social issues associated with the Project. The ESAP is part of the legal documentation and Loan Agreement¹⁸ for each project. The BTC Common Terms Agreement (CTA) contains a covenant requiring compliance of the Sponsor with the ESAP.

EBRD Environmental Policy section 27

34. The EBRD Environmental Policy states that "Operations are monitored on an ongoing basis by the operation team and the Environment Department throughout the Bank's relationship with the project. EBRD uses a range of environmental monitoring

¹⁵ Environmental Audits are required for Category 1 projects according to section 16 of the EBRD Environmental Policy but not required for Category 0 projects.

¹⁶ According to EBRD procedures, the Bank only discloses the ESIA when the environmental documentation is "fit for meaningful consultation" *i.e.* it contains all necessary information that allows the public to make a meaningful comment. The documents are however released without any comment or endorsement and there is no official "sign-off" by the Bank's Environmental Department. Once the public consultation period is over, the EBRD collects and reviews the comments and presents a summary of comments/ opinions to the EBRD Boards of Directors and the Management's response. The Board ultimately take the final decision on the project.

¹⁷ The decision of whether the ESAP is satisfactory to the EBRD Environmental Department is normally taken by the Bank's Environmental Department on the basis of negotiations and agreement with the Project Sponsor, as well as other lenders. There is no formal template for documenting the decision. EBRD Environmental Department retain e-mail correspondence and an Issues Matrix which documents closure of various issues by lenders.

¹⁸ In the case of the BTC Project, a Common Term Agreement (CTA) was adopted as there was a group of Lenders.

mechanisms for Bank-financed projects including review of periodic environmental reports and other progress reports, monitoring visits by the Bank's environmental specialists or consultants and periodic third party audits to ensure the project sponsor is implementing against agreed programmes, policies and actions as defined in the legal agreements. For each project the Bank will define a monitoring programme specifying the appropriate tools, based on the results of due diligence, the results of any public consultation that has taken place and within the framework of legal agreements with the client".

35. The Project Sponsor's response to the Complaint, dated 2nd September 2005, indicated 10 layers of Project monitoring on the BTC Project, comprising 4 layers of internal monitoring and 6 levels of external monitoring. Layer 9: "Lenders Group Environmental and Social Monitoring" by the Independent Environmental Consultant (IEC) D'Appolonia S.p.A ("D'Appolonia"), is described below in relation to the Complaint.

36. D'Appolonia were appointed as post-financial close IEC to the Lender Group for the BTC pipeline Project (and the ACG Phase 1 Project) in early 2004 following a competitive procurement process. The overall role of D'Appolonia within the BTC (and ACG) projects is "to assess and report to the Lender Group on the compliance with the environmental and social provisions contained within the respective project ESAPs, the associated Contractor Control Plans (CCPs) and BTC/ACG Management Plans and with HSE management systems".

37. At the request of the Lender Group, D'Appolonia was asked to visit the village of Girakh Kesemenli during a site visit in February 2005. Section 2.9.1 of their report is reproduced in full below.

"At the request of the Lender Group, the IEC¹⁹ was asked to visit the village of Girakh Kesemenli²⁰ as the President²¹ of the EBRD had received a complaint from a citizen of this village. It was contended that 24 houses were significantly damaged from heavy project traffic along an access road passing through the town and that they are in risk of collapse. CCIC was reported by this villager to have provided only limited compensation for seven houses²². The village is located along the Kura River between about KP 405 and KP 410 in the Agstafa region of Azerbaijan. The IEC visited the site on 15th February (2005). Villagers were not interviewed, but the houses along the access road reported to be affected were looked at in the context of their village setting and if there was any apparent structural damage to buildings near the main road.

¹⁹ ie D'Appolonia.

²⁰ Alternate spelling for Girakh Kesemenli village referred to in the Complaint and used elsewhere in this report for consistency.

²¹ There is no record of the President of EBRD receiving this complaint. It may refer to the President of Azerbaijan or to the President of BTC.

²² This agrees with the details provided in the Complaint.

Observations collected by IEC include:

- Complaints have been properly registered by the project
- The Director of the Architectural Department of the University of Baku has been appointed to assess the validity of the complaints
- Three out of 26 cases had been considered by the Director as possibly caused by the movement of heavy machinery along the adjacent road
- Seven families have been compensated by CCIC
- The condition of the site is similar to other locations where houses are close to the road used by the Project
- The houses do not seem to have any specific characteristics that would make them different from the houses observed with similar conditions
- Damage to house walls and fence walls were observed. The IEC did not investigate if they corresponded to the families that had received compensation.
- IEC had observed similar conditions at other locations not affected by the project Activities

Based on these field observations, IEC confirms that the procedure for the management of complaints has been applied by the Project's social staff. The IEC did not investigate the validity of the remaining complaints and/or the appropriateness of the delivered compensation.

The basic conclusion is that the situation in Girakh Kesaman has been recognised by the Project and procedures have been in place to manage the complaints according to the ESAP.”²³

38. The above findings were presented at the Closeout meeting in Baku, Azerbaijan on 17th February 2005, together with 11 images of the properties showing the alleged vibration damage to house and fence walls.

39. E-Mail correspondence from the EBRD Outreach and NGO Relations Manager to one of the Affected Group from Girakh Kesemenli village dated 4th March 2005 states: “I would like to inform you that EBRD has checked the issue through its independent monitoring and raised it with BTC management. According to the Bank's knowledge the issue is being addressed in line with the relevant commitments under the project agreement”

²³ The full D'Appolonia Report is available on the project website: <http://www.caspiandevlopmentandexport.com> .

World Bank Operational Policy 4.30 for Involuntary Resettlement

40. The World Bank Group Operational Manual Operational Directive 4.30 on Involuntary Resettlement²⁴ (June 1990), as its title suggests is concerned with Involuntary Resettlement and has no specific reference to mitigation measures or grievance procedures in relation to alleged vibration damage to properties. However, OD 4.30 and the corresponding Handbook set out the overall requirements for a Resettlement Action Plan (RAP) and these requirements have been followed in the Project RAP, specifically in relation to Grievance and Dispute Resolution (section 8).

41. Having reviewed all the relevant documentation, it is the view of the Eligibility Assessors that there is no indication that any EBRD actions or failure to act, in respect of the Bank operation may have involved a material violation of a relevant EBRD Policy. The particular issues raised in the Complaint and which have been addressed in this Report, all relate to either the independence and effectiveness of the Project Monitoring and Grievance procedures or to the provisions of OD 4.30 on Involuntary Resettlement.

6. Conclusions and Recommendations of the Eligibility Assessors

42. The Eligibility Assessors determined on 12th September 2005, that they were minded to recommend that the Complaint be declared eligible but that a Compliance Review was not warranted. In accordance with IRM, RP 22, the Eligibility Assessors wrote to the Authorised Representative on 12th September 2005 giving her 10 business days to comment upon the finding that a Compliance Review is not warranted and asking for a response by close of business Monday 26th September 2005. No response was received by the Chief Compliance Officer from the Authorised Representative by that date.

43. Further to the interim determination described above, and in accordance with IRM, RP 27(b)(ii), the Eligibility Assessors jointly recommend to declare the Complaint eligible for further processing, but not warranting a Compliance Review. This recommendation is made without prejudice to the authority of the Chief Compliance Officer to recommend a Problem Solving Initiative in accordance with IRM, RP 44.

²⁴ This document was superseded by OP and BP 4.12 produced by the World Bank Group and which are effective after January 1st 2002. The World Bank Involuntary Resettlement Instruments dated December 2001 refers to OP 4.12 and includes a brief section on Grievance procedures. However the Source Documents, the EBRD Environmental Policy (July 2003) and the Complaint all refer to Operational Directive 4.30 which is deemed to be the relevant document in relation to this Complaint.

Glossary

ACG	Azeri-Chirag-Gunashli oilfield
AGIs	Above Ground Installations
BP	British Petroleum
BTC	Baku-Tbilisi-Ceyhan Pipeline
CCPs	Contractor Control Plans
CCIC	Consolidated Contractors International Company
CIPPs	Contractor Implementation Plans and Procedures
CoM	Cabinet of Ministers
CTA	Common Terms Agreement
EBRD	European Bank for Reconstruction and Development
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Management Systems
HSE	Health and Safety Executive
IEC	Independent Environmental Consultant
IFI	International Funding Institution
IRM	Independent Recourse Mechanism
MGF	Multi-Stakeholder Forum
NGOs	Non Government Organisations
OD	Operational Policy
OPN	Operational Policy Note
RAPs	Resettlement Action Plans
RP	Rules of Procedure
SLIPs	Supplementary Lenders' Information Packages
SOCAR	State Oil Company of the Azerbaijan Republic
SPJV	Spie Capag Petrofac Joint Venture
USD	United States Dollar

Annex 1
BTC Pipeline Complaint

Translated from Russian

Chief Compliance Officer
European Bank for Reconstruction and Development
London

1. Information on the group affected by the project:

Names:

The common interest of the group relates to damage to their property during construction of the Baku-Tbilisi-Ceyhan Pipeline (BTC).

Gyrak Kesemenli, Agstafa district, Azerbaijan.

2. Information on authorized representatives:

I am a rights defender. The complainants have asked me to represent their interests in connection with the complaint to the EBRD (see annex 1).
The complainants and I have Azeri as our native language. They express their extreme concern that the BTC company is not fulfilling the obligations it assumed in the Environmental and Social Assessment (ESIA) and Forced Resettlement Plan, as agreed with the EBRD.

In addition, the system for lodging complaints is not viable, leading to a situation in which, when the project harms people, mitigation measures are not carried out, constituting a violation of World Bank Operational Policy 4.30.

Moreover, the appeal to the EBD has not led to the appropriate results, since the complainants have received only a general reply.

3. Information on the project financed by the EBRD

Name of the project: Baku-Tbilisi-Ceyhan Pipeline
Countries: Azerbaijan, Georgia, Turkey

Description of the project:

The Baku-Tbilisi-Ceyhan Pipeline project is intended for the transportation of oil from the Caspian Sea to the Black Sea coast of Turkey, is 1,777 km long from Baku to Ceyhan and uses seven pumping stations. According to the specifications it will have a capacity of 1.011 million barrels a day.

The sponsor of the project is the Baku-Tbilisi-Ceyhan Consortium, together with BTC Finance B.V. They have received a 12-year A loan of US\$ 125 million and a 10-year B loan of US\$ 125 million from the EBRD. The decision was taken in November 2003.

The Baku-Tbilisi-Ceyhan Pipeline project is owned by the Baku-Tbilisi-Ceyhan Consortium, which consists of the following participants: Amerada Hess (2.36%), British Petroleum (30.10%), Conoco Phillips (2.50%), ENI (5.00%), INPEX (2.50%), ITOCHU (3.40%), SOCAR (25.00%), Statoil (8.71%), Total (5.0%), TPAO (6.53%) and Unocal (8.90%).

4. What has been done by the group affected by the project to resolve the problems?

1. According to the BTC resettlement plan in Azerbaijan, any complaint about violations by the company or damage caused must be lodged with the local authorities. The local population tried several times to lodge a complaint with the local authorities but no action was taken. *A complaint was first lodged in October 2002 with a representative of the executive council of Gyrakh Kesemenli.*
2. The residents tried to submit a declaration to the court, but the court did not accept the case. *The court refused to accept the case on the grounds that it was not within its competence. The grounds were stated orally.*
3. On 15 November they appealed to the President of British Petroleum-Azerbaijan. Copies of the appeal were sent to BTC and CCIC (a subcontractor of BTC). Ten letters were sent to British Petroleum and 24 to CCIC. *In October 2004 declarations were also submitted to the construction company CCIC.*
4. A declaration in Azeri from 26 village representatives was sent to the EBRD on 27 January 2005.
5. A letter was again sent by the Authorised Representative on behalf of the residents on 27 February 2005 to the EBRD representative for NGO relations.
6. This matter was also raised at the EBRD Annual Meeting in Belgrade.
7. The residents also sent a statement to the Procurator General of Azerbaijan. No reply was received.

5. Facts and evidence

1. When construction commenced, about 30-40 heavy loaded vehicles (60-70 tonnes) passed through the village of Gyrakh Jesemenli. As the road is narrow and the houses close to it, they passed within 1-5 metres of the houses, causing cracks to appear in the houses owned by the complainants. These are in a dangerous situation and may collapse.

In chapter 11 of the BTC ESIA, it is stated that vibration damage due to the use of heavy vehicles may occur to houses located close to roads and cracks may appear. As a mitigation measure, during preparation of the traffic management plan the contractor was obliged to assess and document the impact on houses close to traffic routes. That documentation had to be agreed with the house owner/occupants and a copy provided to them²⁵.

In fact, the baseline report for the village of GyraKh Kesemenli²⁶ states that the negative impact would be land loss, damage to land and roads, and noise. Thus, it was clear from the outset that there would be intensive traffic there.

2. The resettlement plan advises residents to lodge complaints with the local authorities for transmission to BTC, but the system does not work and local authorities do not transmit complaints to BTC.

3. In the BTC reply of 3 February 2005 it was stated that the independent expert's report of 14 December had been approved. As a result, representatives of CCIC arrived at the village on 30 December and paid 50-60 US dollars to seven of the 24 complainants for the damage. The remaining residents in the same situation, however, received neither compensation nor any explanation of why they had not received it or how it had been calculated.

Despite many letters, no answer has been received.

4. This matter was raised in a letter to the local EBRD office in January 2005 and to Head Office in February. The representative for NGO relations sent a reply on 4 March, stating that the EBRD had checked the facts through its own independent monitoring and raised these issues with the BTC management. In the Bank's view, measures had been taken in the matter in accordance with the essential obligations under the project agreement. Once again, however, there were no explanations of any kind. *It should also be pointed out that the local residents do not recall any independent investigation and express their displeasure at the inactivity. They remember that a foreigner arrived (the local population think that this was a CCIC worker), saw how the houses had been shaken through the use of heavy vehicles, expressed his regret to them and went away. It*

²⁵ "Any houses or other buildings located close to the construction corridor and to access roads may be impacted by vibration damage due to the use of heavy vehicles. Most likely damage would be cracking to walls. The areas of impact will not be determined until the contractor has finalized the traffic management plan. Based on current knowledge, this impact could occur at housing close to heavily used access roads. – Where damage can not be avoided cash compensation based on full replacement cost (as required by the World Bank), or replacement structures/facilities will be provided. ... In addition, the construction contractor will assess and document the likely impact on houses adjudged to be close enough to traffic routes where there is a risk of vibration-induced impacts. This documentation will be agreed with the house owner/occupants and a copy of documentation provided to the house owner/occupants". BTC Pipeline ESIA, Azerbaijan, Final ESIA, Chapter 11, Social Impacts and Mitigation, December 2002, www.caspiandevlopmentand export.com

²⁶ BTC ESIA BASELINE SECTION 11, Socio-Economic Baseline, www.caspiandevlopmentand export.com

is possible that he was an expert, but the local residents did not see any independent investigation or expert who should have been introduced to them.

6. Other information

World Bank Policy 4.30, the procedures for the preparation of the Resettlement Plan and the obligations assumed by BTC under the ESIA were all infringed during the project.

What grounds do you have for considering that the EBRD did not comply with its guidelines during the preparation, finalisation and implementation of the project?

During implementation of the project, the EBRD did not properly assess the damage caused to the population and has depended on the opinion of BTC.

In order to resolve this problem, we request you to verify compliance with established standards (this means verifying the EBRD's activity in compliance with its own guideline documents "Environmental Policy" and/or "Public Information Policy"), and also to carry out measures to resolve the problems, including establishing the facts, mediation, conciliation procedures, organizing the negotiation process, carrying out investigations and preparation of a report on these activities).

An independent assessment of the situation, establishment of the facts and adoption of measures to remove inequality in the calculation and allocation of compensation would constitute an acceptable solution.

Authorised Representative

Defender of the rights of Azerbaijani oil workers

Annex 2

Summary of Environmental and Social IFI Source Documents

The scale of the BTC Pipeline Project has resulted in a complex inter-related set of Source Documents²⁹ for all three countries including Azerbaijan, and covering: Environmental and Social Impact Assessments (ESIAs), Supplementary Lenders Information Packages (SLIPS), Environmental and Social Action Plans (ESAPs), Environmental and Social Management Systems (ESMS), Routing Reports, Resettlement Action Plans (RAPs), and Contractor Control Plans (CCPs). The CCPs comprise eleven separate volumes including several *i.e.* Community Liaison and Transport Management, which are relevant to this Complaint.

The purpose of each document and its relevance to the Complaint are summarised briefly below:

a) Environmental and Social Impact Assessments (ESIAs)

The ESIA for the Project was prepared by the Project Sponsors over a 4 year period and contains a detailed discussion of the development and evaluation of project alternatives, rationale for selecting a pipeline, process of route selection, design process and construction planning, identification of environmental and social impacts and selection of mitigation and management measures with respect to the BTC project's design, construction and operation. This document provides the overall framework for the Project.

In addition to government and regulatory review, the ESIAs were reviewed by the potential Senior External Finance Parties including EBRD. In response to comments from this review, and to ensure that the Project Sponsor's future disclosure package complied with the requirements of the Senior External Finance Parties, the BTC project prepared a SLIP package including: Part A covering the BTC pipeline and Part B covering Azerbaijan.

b) Supplementary Lenders Information Package (SLIP)

The SLIP addresses key issues identified in the review of the draft ESIA. The SLIP was publicly disclosed by the BTC Project and by certain External Finance Parties in both electronic and hard copy formats.

c) Routing Reports

²⁹ The country-specific ESIAs, amended ESIA or ESIA addenda, as applicable, the SLIP, the RAP, Public Consultation and Disclosure Plans and an Invitation to Tender Document (ITT) outlining certain Contractor requirements together constitute the "Source Documents"

The Routing reports comprise the justification for the BTC pipeline route selection.

d) Resettlement Action Plans (RAPs)

The RAP describes the framework and procedures that are to be followed to address land acquisition, compensation and measures for restoration of livelihood for populations affected by construction of the BTC pipelines³⁰. The RAP has been designed with the aim of complying with World Bank Group Operational directive OP 4.30 on Involuntary Resettlement. The RAP includes an important chapter in relation to the BTC Complaint dealing with **Grievance and Dispute Resolution**. Under “Other Types of Grievance” the document includes “*cracking and damage to adjoining houses/ structures*”.

e) Environmental and Social Action Plans (ESAPs)

The ESAP describes how to implement, manage and monitor the environmental and social commitments in the ESIA. It includes sections on Source Documents and sets-out the Construction ESMS features including Audit, Inspection and Monitoring of Performance. A chapter on “Project Reporting to Lenders and Lender Monitoring” includes the Audit Programme and **Project Quarterly Reporting (Construction)** as well as other periodic reporting. The Common Terms Agreement includes a covenant requiring compliance of the Sponsor with the ESAP.

f) Environmental and Social Management Systems (ESMS)

The Construction ESMS concentrates on the ESMS components that are in place to manage the construction phase. The primary functions of the Construction ESMS are to ensure that i) the BTC pipeline is constructed in accordance with relevant legal and regulatory standards and ii) the commitments made in the Source Documents relating to construction are implemented either by BTC Co directly or by the construction contractors in all material respects.

The Operations ESMS will ensure that i) the BTC pipeline is operated in accordance with relevant legal and regulatory standards in all material respects and ii) the commitments made in the Source Documents relating to operations are implemented in all material respects.

g) Contract Control Plans (CCPs)

The set of eleven separate CCPs are management documents that:

- translate project commitments originally developed during the ESIA and contracting processes³¹.
- Serve as a key tool by which BTC Co can check the Contractor Implementation Plans and Procedures (CIPPs). This includes the procedures and method

³⁰ The South Caucasus Pipeline (SCP) gas pipeline will transport up to 7.3 billion cubic metres of gas per year from the Sangachal Terminal in Azerbaijan, through Georgia to the Georgian/ Turkish border for onward distribution to Turkish domestic customers. The SCP pipeline will be constructed in parallel to the BTC pipeline through Azerbaijan and Georgia

³¹ As defined in the ESIA-draft for Disclosure, Addendum, SLIP, RAP and the AGT HSE Requirements-Major Contracts.

statements that specify how the activities described in their contracts will be carried out to ensure compliance with project commitments.

- Provide transparency and assurance to lenders that commitments made through the ESIA process are being translated through to the construction contractor who is responsible for implementation.

The two CCPs most relevant in relation to the BTC Complaint are:

- Community Liaison
- Transport management

i) Community Liaison

The Objectives of the Community Liaison CCP are to:

- Describe the approach and procedures that will be used to ensure that the environmental and social mitigation measures described in the various source documents³² generated as part of the Azerbaijan ESIA and contracting processes, are successfully applied during the construction phase of the Project.
- Assist BTC Co in ensuring that the intended outcomes of the proposed community liaison mitigation measures are achieved, thereby, at a minimum, reducing the environmental and social impacts to the level predicted in the ESIA-Draft for disclosure, ESIA-Addendum, the SLIP and the RAP.
- Provide a mechanism for legal and policy obligations, including Lender requirements, to be implemented

The complaints procedure is set out in Section 3.2.4 of the Community Liaison CCP. In summary, the contractor is required to minimise formal complaints through the liaison mechanism by the deployment of Community Liaison Officers (CLOs). However the CCP requires the Contractor to set up a formal complaints procedure managed by the CLOs for settlements to individuals to apply for compensation for damage caused by the contractor.

ii) Transport Management

The Objectives of the Transport Management CCP are to:

- Describe the approach and procedures that will be used to ensure that the environmental and social mitigation measures described in the various source documents generated as part of the Azerbaijan ESIA and contracting processes, are successfully applied during the construction phase of the Project.
- Assist BTC Co in ensuring that the intended outcomes of the proposed traffic and transport mitigation measures are achieved, thereby, at a minimum, reducing the environmental and social impacts to the level predicted in the ESIA-Draft for disclosure, ESIA-Addendum, the SLIP and the RAP.
- Provide a mechanism for legal and policy obligations, including Lender requirements, to be implemented

³² i.e. ESIA-draft for Disclosure, Addendum, SLIP, RAP, Contract requirements in the Invitation to Tender and Consent Conditions-collectively termed "Source Documents"

Section 3.2.2 of the Transport Management CCP includes the following commitment: "In addition, the construction contractor shall assess and document the likely impact on houses that are close to traffic routes and may be affected by vibration-induced impacts. This documentation will be agreed with the house owner/occupants and a copy of documentation provided to the house owner/ occupant".