

Independent Recourse Mechanism (IRM)

Problem-solving Completion Report (PsCR) Complaint: BTC Georgia/Atskuri Village, Georgia

EXECUTIVE SUMMARY

1. Following the registration and assessment of a complaint received under the IRM concerning alleged damage to property and crops in Atskuri village, Georgia, resulting from the construction of the Baku-Tbilisi-Ceyhan pipeline, a Problem Solving Initiative (PsI) was approved by the President of the EBRD on 23rd January 2008. The PsI required the appointment of a Problem Solving Facilitator (PsF) to undertake a process of independent fact finding and facilitation in order to help restore an effective dialogue between the Parties to the IRM Complaint comprising the 7 members of the Affected Group and the project sponsor BP/BTC.
2. The individual complaints brought under the IRM procedure in connection with Atskuri village covered the following issues:
 - clearance work and damage to land on the oil pipeline construction route exceeded the area indicated in the proposal package for which compensation was available;
 - the area covered by the pipeline passage on an ongoing basis exceeds the area indicated in the proposal package for which compensation was available;
 - loss due to vibration, and subsidence damage to dwelling houses and other buildings caused by heavy construction traffic and road improvements carried out during construction of the pipeline;
 - loss of harvests due to damage caused to the irrigation channel of the village during construction of the pipeline;
 - loss of harvests due to the lack of economic viability of ‘orphan’ land¹;
 - undue delay and uneven treatment in the payment of compensation for damage to land and plants and for uncollected harvests; and
 - lack of responsiveness and undue delay in the project grievance procedure and inadequate application of that procedure.
3. Previous attempts to carry out a Problem Solving Initiative under the IRM in relation to two other complaints concerning alleged impacts of the BTC pipeline construction on residents in a) Gyrah Kesemenli village in Azerbaijan and b) in Akhali Samgori village in Georgia had both been unsuccessful.
4. However, during a visit to Georgia in March 2008 by the Chief Compliance Officer (“CCO”) and the PsF, BP/BTC agreed to cooperate in the PsI for the Atskuri village and productive meetings took place both with BP/BTC representatives in Tbilisi and, separately, with the Affected Group in Atskuri village.
5. Following these meetings, BP/BTC undertook to re-examine certain outstanding elements of the IRM Complaint and to keep the PsF informed of any developments. Having regard to several of the individual complaints BP/BTC

¹ In the context of the BP/BTC Project, “orphan land” is explained in this Report in **Annex E**

maintained its position that the complaints had already been fully addressed and provided documentation to the PsF to support its position.

6. Following the review of the individual complaints by BP/BTC during March/April 2008, BP/BTC subsequently made an additional compensation payment to one complainant for crop loss relating to the years 2004/05, and also commissioned a geological survey to investigate the damage to property allegedly arising from road widening in connection with the pipeline project. BP/BTC also undertook a field survey of alleged damage to the irrigation channel serving one of the agricultural plots and subsequently agreed that construction had indeed impacted on the irrigation channel. BP/BTC has since advised the particular complainant that it will compensate her for the work required to re-build the channel. BP/BTC also reviewed its records in relation to several of the claims regarding alleged crop loss, and presented evidence from satellite imagery of pre and post pipeline construction to the PsF supporting its rejection of several of the individual claims for compensation.

7. In relation to alleged vibration damage to three properties from the passage of heavy construction vehicles, BP/BTC considered that a technical review conducted by the IFC's Office of Compliance Advisor/ Ombudsman (OAC) and the decision of OAC in June 2006 to close the complaints concerning cultural monuments in the village had adequately dealt with the issue of vibration damage. In the light of BP/BTC's reliance on that review and its view that complaints to the IRM concerning alleged damage to property as a result of vibration damage during construction of the pipeline should be similarly dealt with, the PsF decided it would not be productive to pursue this aspect of the IRM Complaint any further.

8. In several other individual complaints, BP/BTC provided the PsF with copies of recent correspondence showing that the complainants in question had already accepted offers of payments from BP/BTC for crop loss and had no further claims against BP/BTC. **Table 1** included on pages 18-19 of this Report summarises the status and outcomes of the Problem Solving Initiative for each of the ten individual complainants.

9. Overall, the PsI achieved the required outcome of restoring an effective dialogue between the Parties. It resulted in the resolution of several of the individual complaints and brought clarity in the reasons and background for the closing of the remaining complaints following their review by BP/BTC. In the opinion of the PsF and the CCO, there is no scope for further dialogue or new² compensation offers from BP/BTC and the PsI is now satisfactorily completed. The full and active cooperation of all members of the Affected Group and the project sponsor BP/BTC throughout the PsI is hereby acknowledged.

² The amount of compensation to be paid for damage to the irrigation channel on Mrs Chernievi's plot is subject to agreement following further proposed meetings between the complainant Mrs Chernievi and BP/BTC.

Independent Recourse Mechanism (IRM)

Problem-solving Completion Report (PsCR) Complaint: BTC Georgia/Atskuri Village, Georgia

I. Background

1. This Problem-solving Completion Report (PsCR) follows-on from earlier stages in the EBRD's Independent Recourse Mechanism (IRM³) process as summarised below:

a) Receipt of the Complaint submitted to the IRM in July 2007 relating to the Main Baku-Tbilisi-Ceyhan (BTC⁴) Oil Pipeline project as implemented in the vicinity of Atskuri village, Akhaltsikhe District, Georgia (hereafter referred to as the "Complaint"). The full IRM Complaint is included in this Report as part of **Annex B**. The Complaint submitted to the IRM was comprised of the individual complaints of seven residents of Atskuri village and covered a range of issues, summarised below:

- clearance work and damage to land on the oil pipeline construction route exceeded the area indicated in the proposal package for which compensation was available;
- the area covered by the pipeline passage on an ongoing basis exceeds the area indicated in the proposal package for which compensation was available;
- loss due to vibration, and subsidence damage to dwelling houses and other buildings, caused by heavy construction traffic and road improvements carried out during construction of the pipeline;
- loss of harvests due to damage caused to the irrigation channel of the village during construction of the pipeline;
- loss of harvests due to the lack of economic viability of 'orphan' land⁵;
- undue delay and uneven treatment in the payment of compensation for damage to land and plants and for uncollected harvests; and

³ Acronyms use in this report are explained in **Annex A**

⁴ "The BTC project" is strictly the name of the oil pipeline project which transports crude oil from Azerbaijan through Georgia to Turkey. The pipeline was built by BTC Co, a company owned by a group of eight companies including BP. BP is the largest shareholder and was chosen by BTC Co to manage the oil pipeline construction project. A second pipeline known as the South Caucasus Pipeline (SCP) was also constructed in parallel with the BTC pipeline and construction was also managed by BP. "BTC" has been used in this and previous IRM reports as "the project sponsor", the term used in the IRM Rules of procedure for the company or other entity that is responsible for carrying out and implementing a Bank-financed project. Strictly, the project sponsor is BP not BTC but for simplicity, the terms BTC, project sponsor and BP are used interchangeably in this report to represent the company or other entity responsible for carrying out and implementing a Bank-financed project in relation to the IRM process has been used. Generally the term BP/BTC has been adopted for simplicity.

Discussions on the resolution of the various complaints in March 2008 in Tbilisi took place with representatives of BP Exploration (Caspian Sea) Ltd.

References in this report to "the pipeline" refer to the twin BTC and SCP pipelines.

⁵ In the context of the BP/BTC Project, "orphan land" is explained in **Annex D**

- lack of responsiveness and undue delay in the project grievance procedure and inadequate application of that procedure.
- b) The Eligibility Assessment Report (EAR) prepared with respect to the Complaint. The EAR, a copy of which is attached at **Annex B** to this report, contains a recommendation of the Eligibility Assessors to declare the Complaint “*eligible for further processing towards a Problem-solving Initiative (PsI) but not warranting a compliance review*”. On 23rd November 2007 the EBRD Board of Directors approved the EAR and this recommendation.
- c) The Problem-solving Initiative Report (PsIR) dated 18th January 2008, and approved by the EBRD President on 23rd January 2008, recommended that a PsI be undertaken in accordance with the Terms of Reference (ToR) attached to the PsIR. The PsIR and the ToR are included in this Report at **Annex C**. The PsIR took the view that a process of independent fact finding and limited dialogue facilitation may well assist in bringing about an effective dialogue between the parties and identified Graham Cleverly⁶ as the Problem-solving Facilitator (PsF) for this initiative.

II. Scope of the Problem-solving Initiative

2. In accordance with the ToR annexed to the PsIR, the scope of the initiative included the following considerations:

- The processes shall be conducted in accordance with the ToR subject to such modification as the PsF and the Chief Compliance Officer (CCO) may, at any time, expressly agree in writing⁷, unless such modification prejudices the interests of any Relevant Party or is inconsistent with accepted international practice.
- The PsI shall involve a process of independent fact-finding and limited dialogue facilitation.
- The PsI shall remain within the scope of the Complaint and shall not go beyond the parameters of the Complaint to address other issues⁸.

3. Further, the ToR, in accordance with IRM, RP 44 (d), set out the scope and time frame of the PsI and provided an estimate of the budget, and a description of additional resources required to complete the initiative.

⁶ Mr. Cleverly is a civil engineer, a member of the IRM panel of experts and is familiar with the BTC pipeline project having previously assisted the Chief Compliance Officer with respect to the assessment of a Complaint received from an affected group located in Gyrakh, Kesemenli Village, Azerbaijan in respect of the BTC Pipeline project implementation there.

⁷ For the purposes of these ToR, ‘writing’ may include electronic methods of communication in accordance with accepted international practice.

⁸ Thus any additional issues, not included in the original Complaint but raised during the fact finding visit to Georgia in March 2008 would not be included in the initiative.

III. Time Frame for Initiative

4. Following discussions between the PsF and the project sponsor, BP/BTC, on 14th March 2008, additional time has been included in the revised programme below to allow the project sponsor to undertake further investigations on specific issues concerning the complaints which were raised in the meetings (or were already ongoing at the time of the March 2008 visit) and to allow reasonable time to correspond with the complainants where appropriate.

Problem-solving Initiative-key activities

- Fact finding visit by PsF, Mr Graham Cleverly, to Georgia and drafting of fact-finding section of Report: 11th-18th March 2008
- Further investigations and correspondence from project sponsor to complainants: mid March to mid April 2008
- Problem-solving Completion draft report including details of any developments regarding resolution of dialogue, submitted to CCO: May 2008,
- Problem-solving Completion Report (PsCR) finalised and submitted to the President and circulated to Board for information: August 2008,
- Circulation of the PsCR to the relevant Parties (allowing for period for translation: August 2008
- Publication of PsCR⁹ on EBRD website: September 2008

⁹ Or Summary Report only, if the parties do not agree to make the Report public.

IV. PsI ACTIVITIES IN GEORGIA¹⁰

Summary of participants, meetings and site activities in March 2008

5. A visit to Georgia was undertaken by the PsF Graham Cleverly from 11th to 18th March 2008. Ms Enery Quinones, the EBRD's Chief Compliance Officer (CCO), participated in the visit to Atskuri village and discussions with members of the Affected Group on 12th March 2008 and in the initial meeting with BP/BTC representatives in Tbilisi on 13th March 2008. Ms Nataly Mouravidze, Principal Banker in the EBRD's Resident Office in Tbilisi acted as interpreter during the meeting with the Affected Group in Atskuri village on 12th March 2008.

6. The PsF also met Ms Kety Gujaraidze from the NGO *Green Alternative* on 17th March 2008. Ms Gujaraidze has played an active role in supporting the Affected Group in relation to the IRM Complaint.

The PsF took part in all the programmed meetings during the period 12-18th March 2008 comprising:

In Atskuri village

- 12th March 2008: Meeting with members of the Affected Group and site visit to land plots and properties located near Atskuri village.

In Tbilisi

- 13th March 2008: Introductory meeting with BP/BTC representatives
- 14th March 2008: Further detailed meeting with BP/BTC representatives
- 17th March 2008: Meeting with Ms. Kety Gujaraidze
- 17th March 2008: Final "wrap-up" meeting with BP/BTC representatives

Meeting in Atskuri village on 12th March 2008

7. The visit to Atskuri village comprised structured meetings with each of the members of the Affected Group in turn and a site visit to the fields owned by some of the complainants and situated close to the village. The three properties allegedly affected by heavy construction traffic/ road widening in Atskuri village were also visited. The following people participated in the meeting on 12th March 2008 in the house of one of the Authorised Representatives, Mrs Leila Sesadze in Atskuri village:

Affected Group members

Mrs Leila Sesadze (Authorised Representative and mother of Natela Khugashvili one of the complainants¹¹)

Mr Jemal Tenoshvili (Authorised Representative and complainant)

Mr Tamar Labadze (complainant)

Mrs Rusiko Chernievi (complainant)

Mr Valerian Labazde (complainant)

Mrs Labasze, the wife of Vashtang Labadze (complainant)

Mr Badri Gasitashvili (complainant)

¹⁰ In order to inform the following sections of this Report, a brief summary of relevant land acquisition and compensation issues relevant to the Complaint are summarised in this report in **Annex D**.

¹¹ Mrs Natela Khugashvili was infirm and was thus unfortunately unable to participate in the meeting.

EBRD

Ms Enery Quinones (EBRD CCO)

Mr Graham Cleverly (IRM expert and PsF)

Ms Nataly Mouravidze (EBRD Principal Banker-Tbilisi office/ Georgian-English-Georgian Interpreter)

The complaint of Mrs Natela Khugashvili (represented by her mother Mrs Leila Sesadze):

8. The complaint concerns an area of land owned by the complainant comprising 420 m² which was allegedly occupied by the contractor during the construction of the pipeline, of which 170 m² of land remains in dispute and which is categorised by the complainant as “useless¹²”. (See paragraphs 13-17 of the Complaint). In addition, the complaint concerns alleged damage to the property of the complainant’s mother, Mrs Leila Sesadze, arising from the passage of heavy vehicles during the construction of the pipeline (see paragraph 18 of the Complaint).

9. Mrs Sesadze provided 10 photographs showing the condition of her daughter’s land under dispute following construction of the pipeline. Mrs Sesadze indicated that the disputed land area comprising 170 m² of a 420 m² area plot categorised by BTC/BP as “Category B¹³” land has limitations on its use and is thus according to the complainant effectively “useless”. Mrs Sesadze also indicated that BP/BTC had offered her daughter compensation for limitation on use of the 170 m² of land but her daughter had refused to sign the contract.

10. Mrs Sesadze maintained that the allocation of “good will” payments by BP/BTC had been arbitrary and some villagers with no plots had received compensation. Further, Mrs Sesadze reported that several trees had been cut down on her daughter’s plot within the pipeline corridor but these had not been included on the inventory and her daughter had not been compensated for the crop loss¹⁴. The PsF informed Mrs Sesadze that as this specific issue was not included in the Complaint, it could not be dealt with as part of the PsI. Mrs Sesadze also confirmed during the meeting that her own property had suffered damage as a result of the heavy construction traffic passing along the road adjacent to her property.

¹² The disputed land is assumed to be “newly affected land” outside the 44m wide pipeline corridor-see **Annex D** of this report for a definition of newly affected land and the various parcel categories A, B, C and D.

According to the schedule of payments to Mrs Khugashvili kept by BP/BTC, crop compensation was paid for the 420 m² area of orphan land for 2004/2005 and subsequently for a smaller area of orphan land comprising 250 m² for crop compensation for 2006. The implication is that the remaining 172 m² is “newly affected land” outside the construction corridor of Zone 1 but inside Zone 2 with (limited) restricted use, Category B.

¹³See **Annex D** for land use categories”. Note that in recent correspondence with BTC/BP (26th March 2008) concerning “orphan land”, BTC/BP referred to “newly restricted land” (*i.e.* not newly affected land”) as the preferred term. This Report however uses the term “newly affected land” in accordance with the BP booklet “Pipeline Land: Use and Restrictions”.

¹⁴ This issue was not included in the IRM Complaint dated July 2007 and was therefore not considered as part of this PSI. See PSI TOR Article 4 in **Annex C**. This was explained to Mrs Leila Sesadze during the meeting.

The complaint of Mrs Tamar Labadze

11. The complaint concerns alleged damage to the complainant's property arising from the passage of heavy construction vehicles during the pipeline construction in 2004. Vibration tests had been carried out in Atskuri village in January 2006 and a Traffic Vibration Monitoring Assessment Report (hereafter called the "Vibration Assessment Report") was produced by international consultants, Mott McDonald, dated January 2006. Subsequently, Mrs Labadze received a letter dated 30th July 2006 from BP/BTC and a copy of the Vibration Assessment Report indicating that BP/BTC considered the matter "settled and intended no additional activities".

12. Mrs Labadze stated that she did not consider the Vibration Assessment Report to have been undertaken by independent experts and maintained that the tests carried out by the consultants had been in a different zone to her house on the other side of the Mtkvari river and related only to wooden properties whereas her house is of stone and concrete construction. Mrs Labadze also advised that her house is over 100 years old and that a fire in 1982 had weakened the structure. She pointed out that her letter from BP/BTC dismissing her claim had used a standard template and did not take account of the actual nature of her property.

The complaint of Mr Jemal Tenoshvili

13. Mr Tenoshvili's complaint concerns land occupied by the pipeline contractor "in excess" of the area (*i.e.* assumed to be outside the 44 metre wide pipeline corridor) envisaged under the proposal package. He received compensation in 2005-2006 from BP/BTC for uncollected harvests (*i.e.* on "orphan land") but not for "land occupied in excess"¹⁵. (See also the complaint of Natela Khugashvili whose land is adjacent to Mr Tenoshvili)

14. Mr Tenoshvili acknowledged that he had received and accepted the BP/BTC document "Consent to Free Use of plot"¹⁶ but as at July 2007 (date of the IRM Complaint), he had not received a visit from BP/BTC to discuss the terms and conditions and had not received any payment from BP/BTC in connection with the

¹⁵ The disputed land is assumed to be "newly affected land"-see **Annex D** of this report for a definition. According to the schedule of payments to Mr Tenoshvili, provided by BP/BTC, orphan crop compensation was paid for $630+160 = 790 \text{ m}^2$ of orphan land for 2004/2005 and subsequently for a plot 200 m^2 in area in 2006 and a plot 620 m^2 in area in 2007. The details were checked with BTC/BP subsequently and BTC/BP confirmed on 26th March 2008 that the payment to Mr Tenoshvili in 2007 refers to orphan land compensation applicable for the year 2006. BTC/BP also noted in the aforementioned correspondence that "payment for "orphan land" means compensation for the crop which was not seeded or collected outside the 44 metre wide corridor because of construction activity within the corridor. BTC/BP advise using the term "newly restricted land" (servitude) outside the 44m wide corridor rather than newly affected land. It is not affected land". BP/BTC records also show "Servitude" payment to Mr Tenoshvili (*i.e.* for "newly affected land") for an area of 157.5 m^2 land in 2007.

¹⁶ BTC/BP confirmed in correspondence dated 26th March 2008 "that "consent to free use of plot" means that the former owner Mr Tenoshvili can use the land (now owned by BP/BTC) with restrictions within the 44m wide pipeline corridor and he is free from any charges".

“Consent to free use of the plot¹⁷”. Furthermore, according to Mr Tenoshvili, the pipeline security guards prevented him from entering the disputed land until agreement on the land has been finalised. He also maintained that his right of access to farm the plot as well as the opportunity to harvest the crop was restricted in 2007.

15. On the other hand, Mr Tenoshvili confirmed that access is now allowed to the plot comprising a 500 m² area of land but use is restricted and there are piles of earth (left by the contractor) which affect the agricultural use of the plot. Mr Tenoshvili also advised that BP/BTC has offered to pay compensation on the basis of a corn crop-not for beans which have a higher premium. Finally, he confirmed that a “good will” payment has now been paid to him by BP/BTC.

The complaint of Mrs Rusiko Chernievi

16. The complaint by Mrs Chernievi concerns one apple tree and four plum trees which she alleges were present on the land acquired for the pipeline corridor. However, these trees are not shown on the record photograph taken by BP/BTC prior to construction (which shows her daughter standing on the plot). Mrs Chernievi’s daughter had been informed during the inventory process that a satellite photograph of the plot had already been taken and if any plants (*i.e.* bushes/trees) were damaged in the course of the construction process, consideration would be paid. Mrs Chernievi alleges that the trees were destroyed during the pipeline construction. Furthermore Mrs Chernievi maintains that she only received compensation for uncollected harvests in 2006 but not in 2005¹⁸.

17. Mrs Chernievi also alleges that the construction company damaged the irrigation system supplying water to her plot during construction of the pipeline which resulted in loss of harvest. In addition, Mrs Chernievi claims that the construction company promised to repair the irrigation system but that the promise remains unfulfilled.

18. Mrs Chernievi confirmed the details of her complaint included in the IRM Complaint. In addition she confirmed that the 5 trees she alleges were cut down prior to construction of the pipeline comprised one small apple tree and four established plum trees. Mrs Chernievi also provided a copy of an (undated) satellite photograph showing her plot (ref 6204474) and adjacent plots with the part of her plot affected by the pipeline corridor coloured in yellow. Finally, Mrs Chernievi indicated that the alleged damage to the irrigation system referred to in her complaint also affected several of the other complainants with adjoining plots.

The complaint of Mr Valerian Labadze

19. The complaint by Mr Valerian Labadze concerns five fruit trees which were allegedly cut down on his plot prior to the pipeline construction but for which he only

¹⁷ “Consent to free use of land” relates to private land purchased by BP/BTC within the 44m wide pipeline corridor *i.e.* Zone 1 acquired land. There is no payment from BP/BTC associated with this consent.

¹⁸ This is correct according to the schedule of payments to Mrs Chernievi provided by BP/BTC. Crop compensation was paid for 200 m² of orphan land in 2006 but no payments were made for 2005 (or 2004).

received compensation for three trees. He therefore alleges that further compensation is owed to him for the outstanding two apple trees. He also referred to crop loss through damage to the irrigation system (see Mrs Chernievi's complaint above).

The complaint of Mr Vakhtang Labadze

20. The complaint by Mr Vakhtang Labadze concerns several¹⁹ fruit trees on his plot which were allegedly cut down "in excess" prior to the pipeline construction. Mr Labadze maintained that his demand could easily be proven by means of satellite photographs of his plot taken before the pipeline construction.

21. Mr Labadze was represented by his wife during the meeting. Mrs Labadze indicated that there were about 9 apple trees on the plot before construction of the pipeline and that her husband had received compensation for only three. Therefore the claim by her husband was for compensation for six apple trees. Mrs Labadze also pointed out that the correspondence from BP/BTC referred to the wrong plot of land (*i.e.* it referred incorrectly to plot 6204476 instead of plot 6204498)

The complaint of Mr Badri Gasitashvili

22. The complaint of Mr Badri Gasitashvili concerns alleged damage to his property resulting from the passage of heavy vehicles along the road adjacent to his property during the construction of the pipeline. Furthermore, he alleges that the construction company excavated material at the foot of the embankment on which his property is located in order to widen the road, and that this excavation, together with the vibration resulting from vehicular traffic, have resulted in settlement of the embankment and damage to his property comprising cracks in his house and the collapse of his cattle shed in 2006. Mr Gasitashvili maintained that at the time of the alleged damage the construction company was transporting huge cobbles along the road and the vibrations were very strong. Further, Mr Gasitashvili confirmed that he had moved his wooden boundary fence at the top of the embankment some 0.5 m nearer to his property following the initial road widening referred to above, to avoid the fence collapsing. Mr Gasitashvili advised that 22 photographs had been sent to BP/BTC with an (undated) cover letter (included in Annex 7 of the Complaint) setting out the basis of his claim.

Site visits on 12th March 2008

23. Following individual discussions with each of the complainants, a site visit was undertaken to plots of land owned by several of the complainants situated within about 1km of the village,²⁰ and photographs were taken of the existing conditions including the remains of the earth irrigation channels and tree stumps.

¹⁹ The exact number of fruit trees in question was not specified in the Complaint

²⁰ The plots of Natela Khugashvili and Jemal Tenoshvili were located about 10km from the village and were difficult to access due to poor road conditions following recent rain and were therefore not visited.

24. Following the visit to the plots near the village, each of the three²¹ properties alleged to have been damaged by vibrations from heavy vehicles during the pipeline construction were also visited and photographs taken of the alleged damage to them.

Meetings with Project Sponsor on 13th, 14th and 17th March 2008

25. Three meetings were held with the project sponsor. An introductory meeting took place on 13th March 2008 between the CCO, the PsF and representatives of the project sponsor comprising Communications and External affairs Manager, Mr Matt Taylor, the Regulatory Coordinator, Mr David Maisuradze, and the Lead Community Liaison officer for the region which includes Atskuri village, Mr Vasil Ioramashvili.

26. At this meeting, the CCO explained the background to the IRM process and the history of Complaints concerning BTC in Azerbaijan and Georgia. Mr Matt Taylor indicated that BP/BTC had over 1,000 complaints in their database concerning over 4,000 plots of land and that over 99% of the grievances had been satisfactorily resolved.

27. Mr Taylor then summarised BP/BTC's position regarding the various complaints registered under the IRM. BP/BTC had records of 148 Complaints²² from Atskuri village concerning compensation for crops and property damage. BTC wrote to the Atskuri Gangabeli²³ in November 2005 regarding the various complaints, explaining the background to the compensation arrangements in place and pointing out that approximately 1.1 million GEL (approximately USD 730,000²⁴ or 470,000 euros²⁵) had by then been paid by BP/BTC to the villagers for land acquisition, orphan land, community land, and for crop compensation. Further significant payments not included in the above figures had also been made by BP/BTC in relation to community investment projects for the benefit of the village.

28. In addition, Mr. Taylor pointed out that Land Community Officers (LCOs) had been in touch regularly with all village communities affected by the pipeline construction in Georgia including Atskuri village and the village communities (Gangebels) continued to have weekly meetings with BP/BTC as well as access to the BP/BTC grievance procedure and/or resolution of the claims through the Georgian courts.

29. Mr Taylor confirmed BP/BTC's willingness to cooperate fully with the IRM procedure. It was agreed that the issues raised in the IRM Complaint should be considered in detail by the PsF in cooperation with Mr David Maisuradze and other BP/BTC staff as necessary the following day (14th March 2008).

²¹ *i.e* the properties of Mrs Leila Sesadze, Mrs Tamar Labadze and Mr Badri Gasitashvili.

²² BTC, the pipeline contractor and the pipeline sub contractor had all been involved in compensation claims during the construction period and after. The individual logs had been amalgamated into one log in November 2006.

²³ Gangebels refers to the local village administration.

²⁴ Assuming 1 USD = 1.513 GEL

²⁵ Assuming 1 euro = 1.545 USD

30. At the meeting on 14th March, each of the complaints was examined in detail together with information provided by the project sponsor relevant to the Complaint including correspondence, satellite photographs and schedules of earlier BP/BTC payments to the complainants. These discussions are summarised below (in the same order as listed in the Complaint, at Annex B to this report). In addition, BP/BTC provided a schedule of payments made to the complainants. Following this meeting, the PsF and BP/BTC corresponded on several occasions during March, April and early May 2008 to clarify some specific issues.

31. A final wrap-up meeting was held with the project sponsor on 17th March 2008 at which time miscellaneous outstanding queries were clarified and some further documents, including the “Pipeline Land: Use and Restrictions” booklet were provided to the PsF.

The Claimant Mrs Natela Khugashvili

a) Land Compensation claim

32. BP/BTC provided a colour photograph of the plot showing a field of wheat dated 27th July 2002. The person shown in the photo is believed to be Mrs Khugashvili’s sister. A copy of the land inventory was also provided by BP/BTC, signed by Mrs Khugashvili’s sister. Payments to Mrs Khugashvili by BP/BTC were reviewed during the meeting but are not disclosed in this Report to maintain confidentiality.

33. BP/BTC maintained that the total payments/offer for crop compensation for “orphan land” (plus the amount rejected by the complainant for the disputed 170 m² area in May 2007 which is categorised as “newly affected land”), for the three years 2004-2006 significantly exceed the value of the plot of land calculated by using the same unit rate adopted for the purchase by BP/BTC of adjoining and similar land for the pipeline corridor. Furthermore BP/ BTC confirmed that there are no significant agricultural restrictions on the 170 m² of the “newly affected land²⁶” and it should not therefore be characterised as “useless” by Mrs Khugashvili.

34. BP/BTC therefore undertook to write again to Mrs Khugashvili before mid-April 2008 confirming the earlier BP/BTC offer of May 2007 for “orphan land” crop compensation for 2006 and confirming that there are no significant limitations on the land regarding agricultural use (*i.e.* it is not “useless” land). Subsequently, in April 2008, BP/BTC forwarded to the PsF a copy of the letter addressed to BP/BTC from Mrs Khugashvili dated 11th April 2008 which confirms that Mrs Khugashvili has received all the land compensation sought and has no further complaints against the company.

b) Compensation for alleged damage to Mrs Leila Sesadze’s property arising from vibration of passing heavy pipeline construction vehicles

35. BP/BTC provided a copy of the letter sent to all the residents of Atskuri village from Ms Meg Taylor, Compliance Advisor/Ombudsman for the Office of

²⁶ See **Annex D** for description of “newly affected land” restriction details for “Category B”.

Compliance Advisor/ Ombudsman (CAO) of the International Finance Corporation (IFC), dated June 16th 2006. The letter officially notifies all residents of Atskuri village that the CAO had closed its file regarding the alleged impact of construction traffic on the cultural monuments of Atskuri. The letter states that “*although the Mott Macdonald Report concluded there were shortcomings in the adequacy of the monitoring when subject to International scrutiny, construction vibration was unlikely to be the cause of cracking to the buildings. CAO therefore determined that no further progress could be made with the parties and has formally closed the Complaint*”.

36. BP/BTC confirmed its view that the closing of the complaint to the IFC by the CAO is definitive with respect to any allegation of damages resulting from vibration during construction of the pipeline. Given this position, the opinion of the PsF was that it would not be productive to pursue this aspect of the IRM Complaint any further. This component of the Complaint by Mrs Khugashvili, as well as the two other similar complaints by Mrs Tamar Labazde and Mr Badri Gasittashlivi (see below) are therefore considered closed.

The complaint of Mrs Tamar Labazde

a) Compensation for alleged damage to Mrs Tamar Labadze’s property arising from vibration of passing heavy pipeline construction vehicles

37. For the reasons noted above concerning alleged vibration damage to Mrs Leila Sesadze’s property, this complaint is now considered closed.

The complaint of Mr Jemal Tenoshvili

a) Compensation for additional fruit trees allegedly cut down within the pipeline corridor

38. BP/BTC has provided the PsF with a copy of the letter from Mr Tenoshvili to BP/BTC dated 27th November 2007 confirming acceptance of payment²⁷ from BP/BTC. BP/BTC also provided the PsF with a translation into English of a letter from Mr Tenoshvili to BP dated 13th July 2007, as follows: “*I would like to inform you that I am the owner of the a land parcel (ref 6204267) through which the pipeline passed. By now I have been paid all kinds of compensation in full and have no pretensions to anything*”.

39. BP/BTC’s position is that Mr Tenoshvili’s complaint has been resolved and no further action is necessary.

The complaint of Mrs Rusiko Chernievi

a) “Orphan Land” Crop Compensation for 2006

²⁷ According to the schedule of payments to Mr Tenoshvili kept by BP/BTC, compensation was paid to Mr Tenoshvili in 2007, characterised as “Servitude” payment *i.e.* for “newly affected area” land comprising Zone 2. See **Annex D**

40. BP/BTC's records confirmed that Mrs Chernievi received compensation for crops on "orphan land" comprising an area of 200 m² in 2006, but received no payments for crop compensation for the years 2004/2005. BP/BTC therefore undertook to make Mrs Chenievi a new "good will" offer for orphan crop compensation in 2004/2005.

41. Subsequently, in April 2008, BP/BTC forwarded to the PsF a copy of its letter dated April 4th 2008 to Mrs Chernieva²⁸ offering the claimant an additional amount as compensation for the crop loss for the years 2004-2005 and advised the PsF that Mrs Chernievi had accepted the offer but had refused to sign the letter. BP/BTC's communication to the PsF also noted that it does not accept Mrs Chernieva's claim for loss of trees (1 No apple tree and 4 plum trees) but that it was prepared to consider the issue of restoring the irrigation channel further.

b) Damage to Irrigation System

42. BP/BTC has no record of damage to the irrigation system or related correspondence from Mrs Chernievi or her neighbours and maintained that the irrigation earth channels are not evident on the satellite photographs of the plot taken before or after the pipeline construction. BP/BTC also made the point that only Mrs Chernievi had made a claim in connection with alleged damage to the irrigation system - even though the irrigation system also served the neighbouring plots.

43. In April 2008, BP/BTC representatives comprising land and liaison officers undertook a site visit to Atskuri village, including a meeting with Mrs Chernievi, to further consider the claim. Thereafter, on 6th May 2008, BP/BTC wrote to the PsF advising, "*We have agreed that construction did have an impact on the irrigation channel and have said to Mrs Chernievi that we will compensate her for the work required to rebuild the channel. Further meetings will be held shortly to agree what work is required and how this will be done*".

The complaint of Mr Valerian Labadze

a) Compensation for additional fruit trees allegedly cut down within the pipeline corridor

44. BP/BTC provided the PsF with copies of a satellite photograph (Drg Ref No 04180-SHT004) indicating that, prior to the pipeline construction, the plot (ref 6204475) owned by Mr Labadze had only one identifiable tree located within the construction corridor. BP/BTC pointed out that Mr Labadze had already been compensated for the loss of three trees and therefore it was not prepared to compensate Mr Labadze further for this claim.

45. Subsequently, in late April 2008, BP/BTC forwarded to the PsF a copy of the letter addressed to Mr Labazde confirming that no extra land had been occupied adjacent to his land and that no extra trees could therefore have been removed as a result of construction (of the pipeline). The letter also referred to the evidence in the

²⁸ The spelling of the complainants name as used by BP/BTC ie Mrs Chernieva is reproduced here. Elsewhere the alternative spelling of Mrs Chernievi has been used in accordance with the IRM Complaint.

land inventory form. BP/BTC has therefore advised that it does not propose taking any further action with respect to this complaint.

The complaint of Mr Vakhtang Labadze

a) Compensation for additional fruit trees allegedly cut down outside the pipeline corridor

46. BP/BTC referred the PsF to earlier correspondence from BP/BTC to Mr Vakhtang Labadze and to Mrs Zoia Khutsishvili regarding the plot No 6204498 dated 29th November 2005, 9th February 2006, and 6th August 2005, which rejected Mr Vakhtang Labadze's claim for additional fruit trees outside the pipeline corridor allegedly destroyed during construction. In addition, BP/BTC produced a letter dated 20th March 2003 from Mr Vakhtang Labadze to BP/BTC "in acceptance of total land compensation".

47. BP/BTC also provided a colour copy of a satellite photograph (Drg No 04180-SHT005) taken prior to the pipeline construction showing the plot (ref. 6204498) owned by Mr Vakhtang Labadze with several (3 or 4) identifiable trees located within the construction corridor together with several (3 or 4) more on the boundary running at approximately right angles to the pipeline corridor and several more (3 or 4) adjacent to the pipeline corridor (located to the right of the corridor in the satellite photo).

48. BP/BTC then provided a satellite photograph (Drg No 04180-SHT005b) of the plot²⁹ following pipeline construction. Although the features are poorly defined in this latter photograph, it is still possible to identify images of 3 or 4 trees adjacent to the pipeline corridor (located to the right of the corridor in the satellite photo). Further, whereas the English translation of the land inventory for the above plot indicated "illegible" regarding the number and description of trees on the plot, the original Georgian version of the inventory indicated 3 trees were included in the inventory.

49. As a matter of principle, BP/BTC has been reluctant to re-open negotiations with land owners who have signed their acceptance of total land compensation following the signing of the land inventory "as a true record of the crops and perennial plants existing within the construction corridor at that time". It argues that the satellite photographs indicating that the trees located to the right of the pipeline corridor and within Mr Vakhtang Labadze's plot are still identifiable on the photograph taken after the pipeline construction and that the 3 or 4 trees on the boundary running at right angles to the pipeline corridor are located on the boundary between the two land parcels and are just bushes, having no value³⁰.

50. Subsequently, in April 2008, BP/BTC, forwarded to the PsF a copy of the letter from Mr Vakhtang Labadze dated 15th April 2008 to BP/BTC confirming that

²⁹ See EM correspondence with BP dated 22/03/08 and reply dated 24/03/08. BP/BTC confirmed the pre construction images were taken in 2000 and post construction images (with the reference "b" added to the reference number) taken in 2007.

³⁰ Photo provided to the PsF by BP/BTC.

he has received all compensation owing up to date and has no further claims towards the company.

The complaint of Mr Badri Gasitashvili

a) Compensation for alleged damage to Mr Badri Gasitashvili's property arising from the vibration of passing heavy pipeline construction vehicles

51. For the reasons noted above in relation to the claim for vibration damage by Mrs Leila Sesadze, BP/BTC was not amenable to re-considering its position relative to this claim and it was accordingly not pursued.

b) Compensation for alleged damage to property arising from the excavation of the base of the embankment supporting Mr Gasitashvili's property for road widening to allow passage of above heavy vehicles.

52. It was established that BP/BTC has no records of any complaint by Mr Gasitashvili in relation to this specific alleged damage to his property. BP/BTC has no record of the (undated) letter allegedly written to BP/BTC included in the IRM Complaint or any record of photographs or of any discussions with Tamar Tandashvili, Enver Khvitia or Dato Gogoladze referred to specifically by Mr Gasitashvili in his complaint.

53. BP/BTC's Mr Giorgi Okromchedlishvili pointed out that neither whilst employed by the pipeline contractor in 2003, nor since his employment by BP/BTC as from 2006, had he been approached by Mr Gasitashvili in connection with this issue or any other matter despite the fact that in August 2007, the road adjacent to Mr Gasitashvili's property had been further widened. Notwithstanding, BP/BTC agreed to look further into the matter.

54. Following its review, BP/BTC forwarded to the PsF a copy of the letter from BP/BTC to Mr Gasitashvili dated April 16th 2008 enclosing the results of a brief engineering report which examined whether road improvement repairs had contributed to cracks in the complainant's property. The report, attached at Annex G, concluded that there were no indications that the (road) works had caused instability in either the rock cutting adjacent to the road or the overlying side slope. The letter further indicated that there are a number of different possible causes of the cracks in Mr Gasitashvili's property. The report considered that much of the cracking pattern observed can be attributed to the presence of nearby trees and to settlements induced by the concentrated discharge from the roof gutters to the subsoil beneath the corners of the buildings. Consequently BP/BTC has advised that it is not prepared to consider this claim any further.

V. Conclusions and recommendations following the PsI

55. The status of the complaints, including recent correspondence between BP/BTC and each of the complainants, is summarised in **Table 1** below and copies of relevant recent correspondence is included at **Annex F**.

56. In the view of the PsF and the CCO, the PsI succeeded in restoring an effective dialogue between the Parties in accordance with the ToR. The PsI exercise resulted in the resolution of several of the outstanding individual complaints brought under the IRM and provided clarity on the reasons for closing the remaining complaints by BP/BTC. The PsF and the CCO agree that there is no further scope for continuation of the IRM Complaint and consider the PsI undertaken with respect to the Complaint to have been satisfactorily completed.

Table 1-Current Status of the Complaints (May 2008)

Complainant	Main issues of Complaint	Project sponsor's response	Final outcome to IRM Complaint
Natela Khugashvili	Compensation for 170 m ² "useless" land	BP/BTC undertook to repeat their earlier May 2007 offer and to confirm there are no significant restrictions on land use.	Confirmation recently received that complainant has no claim. complaint closed
Leila Sebadze	Vibration damage to property	Report of international consultant had previously determined that vibration caused by construction traffic was not the cause of damage and therefore BP/BTC is unwilling to consider the claim further.	complaint closed
Tamar Labadze	Vibration damage to property	Report of international consultant had previously determined that vibration caused by construction traffic was not the cause of damage and therefore BP/BTC is unwilling to consider the claim further.	complaint closed
Jemal Tenoshvili	Compensation for additional fruit trees allegedly cut down within pipeline corridor	Receipt of letter from complainant acknowledging receipt of compensation for all claims. BP/BTC considers this claim closed	complaint closed

Rusiko Chernievi	a) Orphan Land Crop Compensation for 2004/5	BP/BTC has recently made an offer to Mrs Chernievi for crop compensation in orphan land for 2004/5.	BP/BTC has advised that Mrs Chernievi accepted the offer. complaint closed
	b) Damage to irrigation system	BP/BTC has acknowledged that construction did have an impact on the irrigation channel and have agreed to compensate her for the work required to re-build the channel. (Further meetings will be held shortly between BP/BTC and complainant to agree what work is required and how this will be done)	complaint closed
Valerian Labadze	Compensation for additional fruit trees allegedly cut down within the pipeline corridor	Satellite photographs do not support claim. BP/BTC does not propose taking any further action	complaint closed
Vakhtang Labadze	Compensation for additional fruit trees allegedly cut down outside the pipeline corridor	Letter from Mr Vakhtang Labadze to BP/BTC dated 15 th April 2008 which acknowledges receipt of all compensation owing. BP/BTC considers this claim closed	complaint closed
Badri Gasitashvili	a) Vibration damage to property	Report of international consultant had previously determined that vibration caused by construction traffic was not the cause of damage and therefore BP/BTC is unwilling to consider the claim further. BP/BTC considers this claim closed	complaint closed
	b) Compensation for alleged damage to property arising from the excavation of the base of the embankment supporting Mr Gasitashvili's property for road widening to allow passage of above heavy vehicles	BP/BTC undertook a survey to investigate the report of cracking. The survey concluded that the road works had not caused instability to the rock cutting adjacent to the road or to the overlying slope. BP/BTC is unwilling to consider the claim further.	complaint closed

ANNEXES

ANNEX A

SCHEDULE OF ACRONYMS

Acronym	Full title
BP	British Petroleum
BTC	Baku-Tbilisi-Ceyan (Pipeline)
CAO	Compliance Advisor/Ombudsman (to IFC)
CCO	Chief Compliance Officer
EAR	Eligibility Assessment Report
GEL	Georgian currency unit
IFC	International Finance Corporation
IRM	Independent Recourse Mechanism
NGO	Non Governmental Organisation
PsCR	Problem-solving Completion Report
PsF	Problem-solving Facilitator
PsI	Problem-solving Initiative
SCP	South Caucasus Pipeline
TOR	Terms of Reference

ANNEX B

ELIGIBILITY ASSESSMENT REPORT (EAR) AND IRM COMPLAINT JULY 2007 (TRANSLATION OF LETTER FROM COMPLAINANTS)

Independent Recourse Mechanism (IRM)

Eligibility Assessment Report

Complaint BTC Georgia / Atskuri (Request No. 2007/02)

1. On 6 July 2007, the IRM received a complaint relating to the Main Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline Project, as implemented in the vicinity of Atskuri Village, Akhaltsikhe District, Georgia (the “Project”). On 18 July 2007, in accordance with Paragraph 17 of the IRM Rules of Procedure (“IRM, RP”), Mrs Enery Quinones, the Chief Compliance Officer (CCO) notified the Affected Group of the registration of 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 (7)¹, who are residents of Atskuri Village in the Akhaltsikhe District of Georgia (the “Affected Group”), claim that they have suffered losses as a result of the implementation of the BTC Oil Pipeline Project. More particularly, the members of the Affected Group variously complain that:
 - 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;
 - the area covered by the pipeline passage on an ongoing basis exceeds the area indicated in the proposal package for which compensation was available;
 - they have suffered loss due to vibration and subsidence damage to dwelling houses and other buildings caused by heavy construction traffic and road improvements carried out during construction of the pipeline;

¹ Natela Khugashvili; Tamar Labadze; Jemal Tenoshvili; Rusiko Chernievi; Valerian Labadze; Vakhtang Labadze; Badri Gasitashvili.

- they have suffered loss of harvests due to damage caused to the irrigation channel of the village during construction of the pipeline;
 - they have suffered loss of harvests due to the lack of economic viability of 'orphan' land²;
 - they have been disadvantaged as a result of undue delay and uneven treatment in the payment of compensation for damage to land and plants and for uncollected harvests; and
 - they have been disadvantaged as a result of a lack of responsiveness and undue delay in the project grievance procedure and inadequate application of that procedure.
3. The members of the Affected Group have, since 2004, made various individual complaints and requests for further information and compensation to BTC Co., to its construction contractor, Spie Capag-Petrofac International, and to the Association for the Protection of Rights of Landlords in Akhaltsikhe.
 4. The Complaint sets out in detail the adverse impacts which implementation of the Project is alleged to have had (and continues to have) on the interests of each member of the Affected Group³. The Affected Group has made the present Complaint to the IRM requesting an examination of the problems raised in the Complaint with a view to obtaining final clarification of the position in relation to their entitlement to fair and adequate compensation for their losses⁴.

Steps Taken to Conduct an Eligibility Assessment

5. On 18 July 2007 the CCO notified the Affected Group that its Complaint had been registered, and on 31 July the Project Sponsor was similarly notified and provided a copy of the Complaint⁵.
6. Following registration of the Complaint, on/about 1 August 2007, the CCO appointed Dr. Owen McIntyre as the Eligibility Assessment Expert. Dr. McIntyre, together with the Bank's CCO, Mrs. Enery Quinones, are the IRM Eligibility Assessors for purposes of the present report.
7. In the course of the previous IRM Complaint No. 2006/01 *BTC Pipeline (Georgia)*, the IRM Eligibility Assessors have had extensive contacts with representatives of the Project Sponsor in Georgia, and have been provided with background documentation on the BTC Project, including the March 2006 and September 2005 Social and Resettlement Action Plan (SRAP)

² In the context of the BTC Project, "orphan land" is taken to refer to 'additional land areas beyond the construction corridor ... which, due to minority of the size, are referred to as "economically infeasible"'. See letter from Stuart Duncan to members of the Affected Group in IRM Complaint No. 2006/1 *BTC Pipeline (Georgia)* re 'Compensation against orphan land and inflicted loss', Complaint No. 2006/1, Annex 15.

³ Complaint, paras. 13-41.

⁴ Complaint, paras. 56-57.

⁵ Ultimately, the Project Sponsor declined to provide any comments or response to the allegations or subject matter of the Complaint.

Reports setting out the results of an independent expert review of the operation of the BTC grievance procedure and land acquisition programme.

8. The Eligibility Assessors were therefore of the opinion that they were in receipt of sufficient information to consider the eligibility of the Complaint and that no additional steps, such as a Project site visit or retaining of additional expertise, were warranted at this stage.

Findings

Eligibility for Registration

9. On 18 July 2007, the CCO determined that the Complaint contained the mandatory requirements of a complaint in accordance with IRM, RP 8, and was not otherwise manifestly ineligible for registration. More specifically, the Complaint:

- Sets out the date of the Complaint, *i.e.* 6 July 2007;
- Provides the name and contact details of each member of the Affected Group⁶;
- Provides the name and contact details of the two Authorised Representatives of the Affected Group⁷, (Ms. Leila Sesadze and Mr. Jemal Tenoshvili) and evidence of their authority to represent and to act on behalf of the Affected Group in relation to the Complaint⁸;
- Confirms that both Authorised Representatives are locally based, one being a member of the Affected Group (Mr. Jemal Tenoshvili) and the other being the mother of a member of the Affected Group (Ms. Leila Sesadze)⁹. Further, the Complaint confirms that the Authorised Representatives are fluent in Georgian, the native language of the Affected Group¹⁰;
- Confirms that the Authorised Representatives must act jointly (*i.e.* that neither of the Authorised Representatives is empowered to act alone)¹¹;

⁶ Complaint, paras. 1 and 3.

⁷ Complaint, paras. 4 and 62.

⁸ Notarised documents dated 18-25 June 2007, contained in Annex 9 to the Complaint conferring Power of Attorney on the Authorised Representatives. Notarised documents have been provided conferring Power of Attorney on behalf of Natela Khugashvili, Rusiko Chernievi, Valerian Labadze, Vakhtang Labadze and Badri Gasitashvili. The complainant Jemal Tenoshvili is one of the Authorised Representatives and so does not require any formal Power of Attorney. The Complaint informs us, at para. 4, that complainant Tamar Labadze was too infirm to attend at the office of a notary but, equally, that she remains prepared to certify, in writing or verbally, the authority of the Authorised Representatives to act on her behalf, if requested to do so.

⁹ Complaint, para. 5.

¹⁰ Complaint, para. 6.

¹¹ Each of the individual notarised documents conferring Power of Attorney on the Authorised Representatives, translated and reproduced in Annex 9 to the Complaint, though not entirely clear on this issue, provides that such power is conferred on Leila Sesadze *and* Jemal Tenoshvili, thus suggesting that they must act jointly. Also, in respect of their authority to act as Authorised Representatives granted under the notarised documents reproduced in Annex 9, the Authorised Representatives themselves declare, at para. 62 of the Complaint, that 'The group of victims, in order to protect the interests of the group, has granted us the right for *joint* activity'. Further, 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.

- Provides the name and a summary description of the Project¹²;
 - 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 Group¹³;
 - Provides a description of the good faith efforts made by the Affected Group to resolve the issues raised in the Complaint with the Project Sponsor and with the Bank¹⁴ and an explanation of why the Affected Group believes that there is no reasonable prospect of resolving the issues through the continuation of such efforts¹⁵;
 - Attaches copies of all available material correspondence and other relevant material supporting the Complaint¹⁶.
10. Furthermore, in accordance with IRM, RP 9(e), the Complaint indicates the steps the Affected Group expects to be taken by the IRM 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 Affected Group requests:

‘...the examination of the problematic matters raised by them in this claim, determination and assessment of the damage inflicted to them and payment of the relevant compensation, if the said damage is determined’¹⁷.

11. In addition, as per IRM, RP 9(f), the Complaint suggests that the EBRD violated a Relevant EBRD Policy in that:

‘the relevant representatives of European Bank for Reconstruction and Development did not respond timely and adequately in order to ensure consistent and fair implementation of the resettlement action plan’¹⁸.

¹² Complaint, paras. 7-11.

¹³ Complaint, paras. 13-41.

¹⁴ Complaint, paras. 42 and 43. These have included: the establishment of a group made up of representatives of the village Sakrebulo and the Akhaltsikhe Land Management Service to examine and report on alterations and irregularities in relation to land measurement (see Complaint, Annexes 1 and 4); the making of a complaint in May 2005 to the IFC/CAO (see Complaint, Annex 2); and the making of a complaint on 15 June 2007 to the EBRD Representative in Georgia, Mr. Nikolay Hajinski (see Complaint, Annex 8). The Complaint also highlights that the Affected Group often applied to the representatives of the Project Sponsor by means of verbal claims, which it claims was in accordance with the guidance issued in the village by the Project Sponsor (see Complaint, para. 45).

¹⁵ The Complaint sets out in detail, at paras. 13-41, the various individual and collective efforts of members of the Affected Group, dating back to 2004, 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. David Morgan to Mr. Gela Mumladze and Mrs. Tamar Labadze dated 30 June 2006, (Ref. BTC/OUT/2340/06), reproduced in Annex 2 to the Complaint; the letter from Mr Stuart Duncan to Mr. Tenoshvili dated 27 September 2004 (Ref. BTC/OUT/980/04), reproduced in Annex 3 to the Complaint; the letter from Mr Stuart Duncan to Ms. Rusudan Cherniev dated 5 November 2004 (Ref. BTC/OUT/1030/04), reproduced in Annex 4 to the Complaint.

¹⁶ See Annexes 1 to 9 of the Complaint.

¹⁷ Complaint, para. 56. This strongly suggests that the Affected Group expects the IRM to engage in a Problem-solving Initiative.

¹⁸ Complaint, para. 55.

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 designed to compensate displaced persons for their losses at full replacement cost were clearly developed¹⁹. It would also appear that a special resettlement unit was created within the project entity and that nongovernmental organisations (NGOs), including the Association for Protection of Rights of Landlords, were involved in planning, implementing and monitoring resettlement²⁰. Nor does the Complaint allege that EBRD officials failed to inform the Project Sponsor of the Bank's resettlement policy²¹, failed to assist the Project Sponsor's efforts through, for example, assistance in designing and assessing resettlement policy, strategies, laws, regulations, and specific plans²², or failed to have the adequacy of the resettlement plan reviewed by appropriate social, technical and legal experts²³. Similarly, it is not clear from the Complaint whether the Affected Group considers that the Bank had failed to require submission by the Project Sponsor of a time-bound resettlement plan and budget that conforms to Bank policy²⁴, that Bank officials had failed to conduct an adequate appraisal mission²⁵, or that they failed to supervise the resettlement process throughout implementation using the requisite social, economic and technical expertise.²⁶ Further, it is not clear whether the failure of the relevant representatives of EBRD to respond timely or adequately in order to ensure consistent and fair implementation of the resettlement action plan, would, in any event amount to a breach of any Relevant EBRD Policy warranting a Compliance Review.

¹⁹ Pursuant to World Bank / IFC O.D. 4.30, paragraphs 3(b) and 14. See, for example, the letter from Mr. Hugh G. McDowell dated 7 March 2007 to Mr. Jemal Tenoshvili, reproduced in Annex 3 to the Complaint, referring to the 'informational brochure' setting out, *inter alia*, 'the table of amounts payable against the relevant categories of lands' in the conclusion of servitude agreements, etc.

²⁰ As recommended under World Bank / IFC O.D. 4.30, paragraph 6. See, for example, the letter from Mr. Hugh G. McDowell dated 7 March 2007 to Mr. Jemal Tenoshvili, reproduced in Annex 3 to the Complaint, referring to the availability of representatives of the Association for Protection of Landlords' Rights 'in order to answer your questions, discuss the proposal and clarify whether you intend accepting it'.

²¹ As required under World Bank / IFC O.D. 4.30, paragraph 24.

²² As recommended under World Bank / IFC O.D. 4.30, paragraph 23.

²³ As required under World Bank / IFC O.D. 4.30, paragraph 25.

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

²⁵ As required under World Bank O.D. 4.30, paragraph 30.

²⁶ As required under World Bank O.D. 4.30, paragraph 31.

12. Further, pursuant to IRM, RP 9(e), the Complaint indicates that the steps the Affected Group expects to be taken by the IRM involve a Problem-solving Initiative (PSI) rather than a Compliance Review. Though the Complaint does not expressly state that the Affected Group is not requesting a Compliance Review it is clear that by requesting the IRM to facilitate the examination of the matters raised in the Complaint and the determination and assessment of any damages due, it expects a PSI²⁷. Further, the Complaint states that:

‘The *sole* objective of the claims brought by the complainants is to obtain a final clarification regarding the situation related to their plots and to receive fair and adequate compensation against the damages inflicted to them’²⁸.

This statement suggests that the Affected Group are more concerned with reaching a mutually acceptable resolution of the issues raised, rather than any finding of formal non-compliance by the Bank with a Relevant EBRD Policy²⁹.

Eligibility for Further Processing

13. 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 Complaint³⁰. 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)]

14. As required under IRM RP 18(a), the Eligibility Assessors have determined that the BTC Oil Pipeline Project is a ‘Project’ within the meaning of IRM, RP 1³¹. As required under IRM RP 18(a)(i), the Project received Board Approval

²⁷ As a matter of practice, it has been agreed 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, 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. Hence, the decision that a Compliance Review is not warranted.

²⁸ Complaint, para. 57. (Emphasis added).

²⁹ It should be noted that IRM RP 35 expressly provides in relation to a 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.’

³⁰ 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.

³¹ IRM RP 1(x) defines a ‘Project’ to mean :

on 11 November 2003. Further, as required under IRM, RP 18(a)(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.

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

15. As required under IRM RP 18(b), the complainants 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)³², who have a common interest and claim that the Project has a direct adverse and material effect on that common interest.
16. 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 ...’³³.

In turn, the relevant World Bank / IFC policy document (OD 4.30)³⁴, which sets out EBRD’s policy on Involuntary Resettlement, includes within its scope ‘projects that cause involuntary displacement’³⁵, which include those in which ‘productive assets and income sources are lost’³⁶. 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’³⁷. 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’³⁸;

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

‘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’.

³² IRM RP 1(p) defines the ‘Impacted Area’ to mean

‘Any geographical area which is, or is likely to be, affected by a Project’.

³³ EBRD Environmental Policy. 29 April 2003, paragraph 3.

³⁴ World Bank / IFC Operational Directive 4.30, 1 June 1990.

³⁵ *Ibid.*, paragraph 1.

³⁶ *Ibid.*, paragraph 2.

³⁷ *Ibid.*, paragraph 15.

³⁸ *Handbook for Preparing a Resettlement Action Plan* (IFC, 2002), at ix.

(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 temporarily³⁹.

17. 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).

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

18. The correspondence received from the Affected Group provides *prima facie* evidence that the Project has had a direct adverse and material effect on the Affected Group’s common interest⁴⁰.

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 interest⁴¹:

- clearance work and damage to their land on the oil pipeline construction route which exceeded the area indicated in the proposal package, for which compensation was available;
- the area covered by the pipeline passage on an ongoing basis exceeds the area indicated in the proposal package, for which compensation was available;
- they have suffered loss due to vibration and subsidence damage to dwelling houses and other buildings caused by heavy construction traffic and road improvements carried out during construction of the pipeline;
- they have suffered loss of harvests due to damage caused to the irrigation channel of the village during construction of the pipeline;
- they have suffered loss of harvests due to the lack of economic viability of ‘orphan’ land;
- they have been disadvantaged as a result of undue delay and uneven treatment in the payment of compensation for damage to land and plants and for uncollected harvests;
- they have been disadvantaged as a result of a lack of responsiveness and undue delay in the project grievance procedure and inadequate application of that procedure.

19. 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 a group’s common interest as required under IRM, RP 18(b), it is useful to have regard to the correspondence supplied by the Affected Group, which, *inter alia*:

- sets out evidence of disagreement relating to the occupation of excess areas of land⁴²;

³⁹ *Ibid.*, at p. x.

⁴⁰ See Complaint, at pp.2-7 and the relevant annexes.1-8.

⁴¹ See Complaint, at pp.2-7 and the relevant annexes.1-8.

- sets out evidence of disagreement as to the entitlement of members of the Affected Group to compensation for loss of additional fruit trees⁴³;
- sets out evidence of concern as to the causing of vibration or subsidence damage to buildings⁴⁴;
- sets out evidence of the delays experienced by members of the Affected Group in having their claims dealt with by the Project Sponsor⁴⁵;
- sets out evidence of alterations in respect of the area of land used during construction of the pipeline⁴⁶;

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

20. 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 noted that members of the Affected Group approached a group made up of representatives of the village Sakrebulo and the Akhaltsikhe Land Management Service established to examine and report on alterations and irregularities in relation to land measurement⁴⁷. One member of the Affected Group made a complaint in May 2005 to the IFC CAO⁴⁸. It is also noted that on 15 June 2007, the Affected Group requested that the EBRD Representative in Tbilisi, Mr. Nikolay Hadjiyski, examine their complaint⁴⁹. The Complaint also states that, in addition to the various written applications made to the Project Sponsor, the Affected Group often applied to the representatives of the Project Sponsor by means of verbal claims, which it asserts was in accordance with the guidance issued in the village by the Project Sponsor⁵⁰.

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

21. 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, the final and definitive tone of much of the recent correspondence from the Project Sponsor clearly suggests that it is not prepared to entertain the further claims of the local residents.⁵¹ In addition, the apparent delay in the Project

⁴² See, for example, the letter from Mr Stuart Duncan to Mr. Tenoshvili, dated 27 September 2004 (Ref. BTC/OUT/980/04), reproduced in Annex 3 to the Complaint.

⁴³ See, for example, the letter from Mr. Stuart Duncan to Ms. Rusudan Cherniev, (Ref No. BTC/OUT/1076/04), dated 5 November 2004, reproduced in Annex 4 to the Complaint.

⁴⁴ See, for example, the letter from Mr Badri Gasitashvili to Mr. Stuart Duncan, reproduced in Annex 7 to the Complaint.

⁴⁵ See, for example, the letter from Ms. Natela Khugashvili, dated 20 March 2007, Complaint, Annex 1, setting out the delays regarding the handling of her claim dating back to 3 August 2004.

⁴⁶ See, for example, the Acts issued by the group made up of representatives of the village Sakrebulo and the Akhaltsikhe Land Management Service established to examine and report on alterations and irregularities in relation to land measurement (see Complaint, Annexes 1 and 4)

⁴⁷ See Complaint, Annexes 1 and 4.

⁴⁸ See Complaint, Annex 2.

⁴⁹ Complaint, paras. 54 and 55. For the full text of this request, see Complaint, Annex 8.

⁵⁰ See Complaint, para. 45

⁵¹ 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

Sponsor responding to certain claims of the members of the Affected Group⁵² might reasonably affect the confidence of the Affected Group in the likelihood of reaching an acceptable resolution of the issues involved.

IRM, Rules of Procedure 19

22. 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 Complaint and the efforts of the Affected Group and Project Sponsor and of bodies such as the IFC/CAO to resolve various of its constituent elements 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)], and;
 - 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)].

Position of the Bank

23. Based on discussions with members of the Environment and Sustainability Department (ESD), the Operations Team, and the Resident Office, the position of the EBRD in response to the Affected Group’s complaints can be summarized as follows. The EBRD reviewed the Project, including social issues and resettlement impacts, as part of a large group of lenders including

issue being revisited by BTC Co. See, for example, the letter from Mr. David Morgan to Mr. Gela Mumladze and Mrs. Tamar Labadze dated 30 June 2006, (Ref. BTC/OUT/2340/06), reproduced in Annex 2 to the Complaint; the letter from Mr Stuart Duncan to Mr. Tenoshvili dated 27 September 2004 (Ref. BTC/OUT/980/04), reproduced in Annex 3 to the Complaint; the letter from Mr Stuart Duncan to Ms. Rusudan Cherniev dated 5 November 2004 (Ref. BTC/OUT/1030/04), reproduced in Annex 4 to the Complaint.

⁵² See, for example, the letter from Ms. Natela Khugashvili, dated 20 March 2007, Complaint, Annex 1, setting out the delays regarding the handling of her claim dating back to 3 August 2004.

numerous export credit agencies, commercial banks and the IFC. Social due diligence was assessed by independent lender consultants (Mott MacDonald Ltd.), as well as specialist staff from the various lender institutions. A framework for compensation for the effects of physical and economic displacement expected to be incurred as a result of the implementation of the project was presented in a Resettlement Action Plan (RAP), which was made public and approved by the group of lenders, including EBRD.

It should be noted that an independent group of social specialists has been established for external monitoring of social and resettlement issues. This panel is referred to as the SRAP Panel, and its reports are available in the public domain. This panel currently conducts six-monthly visits to each country of the project. EBRD social staff accompany the SRAP at least once per year to both Georgia and Azerbaijan to assess these issues, and continue to monitor them. Monitoring is done on the implementation of the RAP, as well as with respect to the Grievance Procedures agreed with the Project Sponsor. The latest site visit on social issues in Georgia was in 2006 (26/9-5/10 2006). EBRD social experts have been to the specific village of Atskuri (4/9/05) and, together with the SRAP panel member, met with the Gangabeli and community members and heard similar issues to those being raised in the Complaint. The SRAP panel follows up on the social issues as part of monitoring, and has also been providing technical advice to the Project Sponsor, to ensure compliance with project commitments and the requirements under OD 4.30, including implementation of the grievance procedure. SRAP panel will continue until resettlement is complete, that is until a point in time when they can carry out an assessment to determine that project affected people are not worse off after resettlement related activities have been completed.

Recommendations and observations of the Eligibility Assessors

24. 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 CCO to recommend a PSI in accordance with IRM, RP 44.
25. Furthermore, although 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 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 IRM⁵³.

⁵³ As set out in *Independent Recourse Mechanism: The guide to making a complaint about an EBRD-financed project* (July 2004), at p. 2.

26. As noted above, the decision to recommend a PSI is within the discretion of the CCO and shall be the subject of a separate Problem-solving Initiative Report as provided for at IRM, RP 44. As a preliminary matter, however, in the consideration and determination as to whether a PSI would likely have a positive result⁵⁴ and whether the Relevant Parties are likely to be amenable to such an initiative⁵⁵, the Eligibility Assessors are of the view that it is important to distinguish the present Complaint from the previous IRM Complaint No. 2006/1, *BTC Georgia / Akhali Samgori*, in respect of which the same Project Sponsor has declined to participate in a Problem-solving Initiative under the auspices of the IRM.
27. Firstly, whilst a number of the grievances listed by individual members of the Affected Group relate to damage allegedly caused to the village irrigation system during construction of the pipeline as is also the case in Complaint No. 2006/1, there is no related litigation pending before the Georgian civil courts in which members of the present Affected Group or other residents of Atskuri Village are involved. Further, there is no risk that the outcome of the ongoing civil litigation in respect of damage alleged in Akhali Samgori Village could influence the outcome of a PSI in relation to the present Complaint or vice versa .
28. Secondly, as regards those grievances concerned with encroachment by BTC in excess of the areas indicated in the proposal package either during pipeline construction or by the pipeline passage, possible deficiencies in the Georgian Government's system of land registration records, and the Government's ongoing review of such records should not obstruct the initiation of a Problem-solving Initiative process. The relevant World Bank policy document (OD 4.30),⁵⁶ which sets out the EBRD policy on Involuntary Resettlement, makes it quite clear that difficulties in establishing clear legal title or other problems relating to the applicable legal system of land tenure do not obviate a Project Sponsor's responsibilities.⁵⁷ Similarly, the obligation to examine claims

⁵⁴ See, IRM RP 43(b).

⁵⁵ See, IRM RP 43(c).

⁵⁶ World Bank Operational Directive 4.30, (1 June 1990). See EBRD Environmental Policy (April 2003), para. 3.

⁵⁷ For example, para. 3(e) of World Bank Operational Directive 4.30 provides that:

‘Land, housing, infrastructure, and other compensation should be provided to the adversely affected population ... The absence of legal title to land by such groups should not be a bar to compensation’.

Indeed, para. 12 would appear to place a duty on the Project Sponsor to make an effort to better understand the national legal framework applicable to questions of land title and land tenure:

‘A clear understanding of the legal issues involved in resettlement is needed to design a feasible resettlement plan. An analysis should be made to determine the nature of the legal framework for the resettlement envisaged, including ... (c) land titling and registration procedures’.

Para. 17 of OD 4.30 further elaborates on the nature of the duty on a Project Sponsor to take steps to deal with problems arising from deficiencies in the local system for registering and recording land title and land tenure:

‘Resettlement plans should review the main land tenure and transfer systems ... The plan should address the issues raised by the different tenure systems found in a project area ... Plans should contain provisions for conducting land surveys and regularizing land tenure in the earliest stages of project development.’

relating to ‘orphan land’ cannot be delayed on the basis of uncertainty over land title or land tenure.

29. Thirdly, a number of grievances raised by members of the Affected Group relate to inherently local issues, such as vibration and subsidence damage to dwelling houses or the loss of fruit trees in excess of those for which compensation was paid, which require an assessment of the facts on the ground in each case and could never impact any ongoing civil litigation or be dependent on a Government review of land registration records.
30. Finally, it is quite clear from the Complaint that a number of the members of the Affected Group believe that the project grievance procedure has not operated according to the standards that might have been expected. Once again, this is an issue which might clearly benefit from a Problem-solving Initiative and would not impact any ongoing civil litigation or be dependent on a review of land registration records.

IRM COMPLAINT JULY 2007

Chief Compliance Officer
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Fax: +44 20 7338 7633
E-mail: irm@ebrd.com

1. About the affected group

Name of members of the affected group: Manana Kochladze
What the common interest of the group is: non-governmental organization "Green Alternative"
Where the affected group lives (city, country): Tbilisi, Georgia

Name of members of the affected group: Mirvari Gahramanli
What the common interest of the group is: Oil Workers Rights Protection Organization
Where the affected group lives (city, country): Baku, Azerbaijan

Name of members of the affected group: Galina Chernova
What the common interest of the group is: non-governmental organization "Globus"
Where the affected group lives (city, country): Atirau, Kazakstan

2. About the EBRD-financed project

Project name: BTC Oil Pipeline Project

Country: Georgia/Azerbaijan

1. Project description:

The BTC pipeline is a dedicated crude oil pipeline system, 1760 kilometres long, with a capacity of 1 million barrels per day. The pipeline will extend from the ACG field in the Caspian Sea through Azerbaijan and Georgia, to a terminal at Ceyhan on the Mediterranean coast of Turkey.

The EBRD's investment in the BTC pipeline consists of a loan up to \$125 million for its own account and a loan of up to \$125 million in commercial syndication. The total project cost of BTC was approximately \$4.2 billion. The physical completion date of the project is 13th July, 2006⁵⁸

⁵⁸ EBRD IRM, Eligibility assessment report, complaint BTC Georgia/Akhali Samgori, pg 6.

It should be underlined that BTC Oil pipeline where the part of the overall Caspian Sea hydrocarbon development, that consists from number of projects, in which BP, the BTC Project operator, together with some of the other BTC Project partners, have a major stake. These have been grouped together as part of the Caspian Development and Export programme, and outlined in a Regional Review document that is found on the same website as the BTC Project, and is also outlined in the Project Benefit's summary of the SLIP:

- ✚ Azeri-Chirag-Gunashli Full Field Development: This involves drilling, installation of offshore
- ✚ platforms and sub-sea pipelines in the Caspian Sea, and expansion of the existing Sangachal Terminal
- ✚ Baku-Tbilisi-Ceyhan pipeline: This will transport oil from the Sangachal Terminal through Azerbaijan, Georgia, and Turkey
- ✚ Shah Deniz Gas Export Project: This will exploit world-class gas and condensate fields under the Caspian Sea, involving drilling, a fixed production platform, and sub-sea pipelines to an extended Sangachal Terminal.
- ✚ South Caucasus Pipeline: This will transport gas from the Shah Deniz field through Azerbaijan and Georgia to Erzurum in Turkey.

Together with BTC Oil Pipeline construction, EBRD also financed other projects that are part of the overall Caspian Development and Export programme.

1. The early oil project, financed by EBRD in 1998, provided US\$200 million
2. Socar Shah-Deniz Gas condensate field development financed by EBRD in 2003, provided US\$110 mln. USD
3. Lukoil overseas Shaah Denize Gas condensate field development, financed by EBRD in 2005, provided US \$110 mln
4. ACG phase 1, financed by EBRD in 2004, provided US\$ 61 mln

2. Please state how the group's common interest is affected or likely to be affected, and possibly harmed by this project:

- ✚ The increased tanker traffic and/or construction of undersea pipeline to fill the BTC oil pipeline with oil from Kazakstan could have significant impact on already heavily polluted and sensitive Caspian Sea.
- ✚ The problem with regard of the access necessary documentation - limited possibility for public, including the complainants, for public participation, as well as our ability to provide local public full information about the project⁵⁹. As a result no studies or hearings has

⁵⁹ As groups established under the respective country national legislation, that work to ensure principles of Sustainable Development, to ensure and support public participation in decision-making process, to safeguard Human Rights and advocacy public interests, and our groups represent "The public concerned" in accordance with Aarhus Convention.

been arranged to discuss the impacts on BTC pipeline over Caspian Sea in connection with traffic of oil from Kazakhstan.

- ✚ While above mentioned is a clear violation of EBRD Environmental Policy , it also restricts public rights to access to information and public participation under the Aarhus Convention that EBRD commits to implement.

3. Justification

i). Oil and gas extraction, along with transportation and industrial production has been the source of soil, air and water pollution in the Caspian region. The contamination from phenols, oil products particularly oil extraction and pipeline construction has contributed to the pollution of about 30,000 hectares of land. The Caspian is an ecosystem under stress. Existing pollution has damaged marine terrestrial communities. The Caspian sturgeon and Caspian seal, one of two freshwater species in the world, have been dying in large number as a result of polluters and poachers since the collapse of the former Soviet Union.

ii) In June 16, 2006 the pipeline agreement has been signed between Kazakhstan President Nursulta Nazarbaiev and Azeri President Ilham Aliyev. Kazakhstan will transport around 3 million tones of oil from 2006 and will increase it to 7,5 million tones by 2010. after that Kazakhstan has pledged to transport 25 million tones via BTC annually. Thus the increased impact of tanker traffic (at least initially)and/or the construction of undersea pipeline will drastically impact a sensitive Caspian sea environment.

iii) According to the information released under the Freedom of Information Act UK for Friends of the Earth UK in 2005, the memorandum A Memorandum of Understanding on BTC was signed by Kazakhstan in 2001 (see attachment). Memorandum never has been released public⁶⁰.

iv) Meanwhile, itself BTC Co actively continues to promote the connection of Kazakhstan and Azerbaijani governments⁶¹, while publicly maintaining that the economic viability were based only on the Azeri Oil.

v) The fact that BTC project sponsors knew about the memorandum and discuss possibilities about connection of BTC and Kazak oil fields, but did not include this information in the EIA or otherwise inform EBRD while the agency was performing its environmental due diligence on the EIA, demonstrates that project sponsors failed to make critical representations, that leads to the situation when the EBRD staff can easily dismiss requirement of 39 para of environmental policy (see below) and

⁶⁰ FOE UK FOIA request to DTI's Trade Division, 2004, on their input on BTC, Documents released in early 2005 see attachment

⁶¹ “Discussions to link Kazakhstan with Azerbaijan have taken place with the encouragement of USG - A Negotiations Protocol between Authorised Representatives of the Republic of Kazakhstan and the Azerbaijan Republic has been signed” - **The Implications of BTC**
Thomas J Dimitroff., Legal Manager, BTC Co , International Energy Agency Roundtable on Caspian Oil & Gas Scenarios
Florence, 14 April 2003

requirements of Aarhus Convention, to keep the picture related to BTC pipeline more simple.

4. The violation of EBRD Safeguard Policies

i) EBRD (Environmental Policy, para. 39), and EC (Directive 2001/42/EC) have environmental assessment procedures in situations where a project is part of a much larger development. In this case, procedures of these entities first require the preparation of a Strategic Environmental Assessment (SEA) of the likely overall environmental consequences, before a project specific EIA is prepared. The purpose of the SEA is to address larger issues, the findings of which are to be used in scoping and addressing specific issues in a project EIA.

The EBRD (Environmental Policy, para. 39) requires that *in addition to EIAs on specific projects, the EBRD may also carry out strategic environmental assessments (SEAs) on the likely environmental consequences of proposed sector or country/regional plans or programmes which have the potential to significantly affect the environment.*

EBRD defines SEA in accordance with the UNECE definition, which was included in the *Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context* (Espoo Convention) signed in Kyiv on 21 May 2003. Art. 2 (6) of the Protocol describes SEA as the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme. Art. 4 (2) of the Protocol states that a SEA shall be carried out for plans and programmes which are prepared for energy and other large developments and which set the framework for future development consent for projects that requires an EIA.

Taking into account above mentioned the EBRD staff was obliged to undertake the SEA in a way to assess the overall impact of ongoing/planned development over the region (see above the projects financed by EBRD under the Caspian Development and Export program).

ii) the 10th para of Annex 2 , Consultation with the public, EBRD Environmental Policy defines that “For projects involving transboundary impacts, the notification and consultation guidelines in the working papers to the UNECE Convention on EIA in a Transboundary Context must be taken into account in the planning process and followed in principle. Bank staff will summarise how these guidelines have been followed to management, the Board, and in the Project Summary Document. The EBRD may, according to circumstances, provide guidance to, and assist, the project sponsors at this and other stages of the public consultation process, recognizing the Convention obligations are between governments with the aim of finding practical solutions to implementation of the principles, particularly for those projects in countries which are not party to the Convention.”

However, the BTC pipeline project assessment from the EBRD due diligence project never discusses transboundary impacts of the project on Caspian Sea, not to even

speaking about fact that both Azerbaijan and Kazakstan are parties of UNECE convention of the transboundary EIA.

In addition, USAID assessment report ⁶² also underline “the issue of potential cumulative negative impacts of non-ACG oil (which may not be produced following relevant MDB and/or international environmental and social standards) transported via BTC pipeline” have not been resolved through the ESIA process.

iii) If EBRD knew of BTC Co’s plans to secure oil from Kazakhstan and was aware of the 2001 memorandum between BP and Kazaks producers, but did not undertake the full environmental impact assessment, it was in clear violation of Environmental Policy para 15 - “Screening is carried out to identify potential environmental issues associated with a proposed project and to specify the types of environmental information required in order to assess environmental risks, liabilities, regulatory compliance, any adverse environmental impacts and other concerns”.

iv) In addition, the EBRD public disclosure policy para 1.5 and para 10th of of Annex 2, Consultation with the public, EBRD Environmental Policy requires that “For all projects involving Environmental Impact Assessments according to the Bank’s requirements, the Bank will take guidance from the principles of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, as committed in the EBRD *Public Information Policy*”.

In this particular case we could assume violation of following articles of Aarhus Convention:

- ✚ article 6.2 “The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner”
- ✚ article 6.6 “ Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4.

5. What the affected group has done so far to resolve the problem

The issue has been number of the times raised by different International and National organizations in communications with EBRD and BP during the BTC oil pipeline due diligence process. The full detail of our concerns can be found in the documents submitted to EBRD during the disclosure period.

Despite the number of the requirements from the side of different NGOs to publish all relevant documentation related to BTC oil pipeline , as well as to discuss the increased transport traffic in Caspian Sea during the due diligence process has not

⁶² Multilateral development Bank Likely to Have adverse impacts on the environment, natural resources, public health and indigenous people”, September 2002 – October 2004,

been addressed properly by EBRD staff. In terms of decision-making, the ignorance of this fact and related issues conveniently simplifies the existing picture around the BTC pipeline. Meanwhile EBRD was requested to undertake the SEA for planned development in Caspian Sea by different groups during the due diligence process. Indeed it appears that one of the reasons for not conducting an SEA and a proper macro-economic analysis of BTC pipeline was to keep the picture as trouble free as possible.

During the due diligence process, international NGOs commissioned and published "Building Tomorrow's Crisis? The Baku-Tbilisi-Ceyhan Pipeline and BP" A Financial analysis by Mark Mansley, Claros Consulting, 2003. The analysis has been submitted to the EBRD staff. The report argued that BTC would not be commercially viable without Kazakh oil: "The BTC project is likely to require significant volumes of non-ACG oil to make the returns reasonable, particularly to equity investors. With Azerbaijani oil finds failing to live up to expectations, BP has had to look for Kazakhstan to identify sufficient volumes (page4)... The Kazakhstan government is in negotiations with Azerbaijan, aiming for an intergovernmental agreement by late 2003 (committing to anything from 100,000 bpd to 400,000 bpd)."

However, the EBRD denied that BTC's financial viability depended on Kazakh oil. In its response to the report, it stated: "The EBRD is carry out the detailed finance and economic due diligence, which is based on proprietary information... our judgment is that the project is commercially viable ⁶³".

5. Facts and evidence

✚ DTI's Trade Division released documents under the FOE UK FOIA

List of the previous communication with EBRD

✚ Independent Review of the Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline EIA, Turkey Section

Prepared by WWF Turkey, 9 October 2003 Disclosure Period on ESIA

Documentation for

Proposed BTC Oil Pipeline:

- ✚ *WWF Comment on Application by BTC to IFC and EBRD for Finance, 9th October 2003,*
- ✚ *NGOs Issue Paper EBRD Annual Meeting, Bucharest, May 2002, Baku-Tbilisi-Ceyhan Pipeline*
- ✚ *Letter to the EBRD's executive director, calling on the Bank to complete an independent review of the pipeline's Environmental and Social Impact Assessment (March 15, 2003) CEE Bankwatch Network, Green Alternative*
- ✚ *Response from EBRD Energy Business Group Director, Peter Reiniger, to the independent financial analysis of the BTC pipeline project, (June 30, 2003)*
- ✚ *Response from EBRD ED for the UK, John Kerby, to the independent financial analysis of the BTC pipeline project (June 30, 2003)*
- ✚ *The Baku-Tbilisi-Ceyhan Pipeline and BP: A Financial Analysis. Building Tomorrow's Crisis? (May 12, 2003), CEE Bankwatch Network, PLATFORM*
- ✚ *Quality Analysis of the Environmental and Social Impact Assessment Draft Report for the Baku-Tbilisi-Ceyhan Oil Pipeline: Georgian section, CEE Bankwatch Network*

⁶³ Letter from Peiter Reinger

- ✚ Quality Analysis of the Environmental and Social Impact Assessment Draft Report for the Baku-Tbilisi-Ceyhan Oil Pipeline: Azerbaijan section , CEE Bankwach Network
- ✚ Quality Analysis of the Environmental and Social Impact Assessment Draft Report for the Baku-Tbilisi-Ceyhan Oil Pipeline: Turkish section, CEE Bankwach Network
- ✚ NGO Proposals on IFIs' Loan or Guarantee Approval for the Baku-Tbilisi-Ceyhan Main Export Pipeline Project and Related Fossil Fuel Development Projects, from 64 non-governmental organizations from 37 countries, June 25, 2002

2. How you would like the problem to be solved

We request the IRM:

- ✚ to undertake the compliance review with regard of the BTC oil pipeline project due diligence relevance towards EBRD Environmental and Public disclosure policy
- ✚ Set up the steps to undertake the thorough and accurate assessment of the environmental and social impacts of the BTC pipeline in connection of Kazakh oil. It should include, the impacts of additional tanker traffic on the Caspian Sea, the impacts of constructing a pipeline from Kazakhstan to connect to BTC, the risks of oil spills in the Caspian Sea and the areas along the pipelines and laying out responsibility for spills.
- ✚ to undertake the compliance review with regard of the BTC oil pipeline project due diligence relevance towards EBRD Environmental and Public disclosure policy;

3. Previous complaints

Have you made a previous complaint about a similar or related matter? No

4. Preferred language for receiving communications from the IRM

English

5. Confidentiality for group members

Not Required

Declaration and signatures

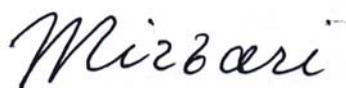
we are making this complaint as the authorized representative of the affected groups.

Manana Kochladze, Chairwoman of Association Green Alternative

Your signature:

Mirvari Garahmanli , Chairwoman of Oil Workers Rights Protection Organization

Your signature:



Galina Chernova, Chairwoman of Globus

Your signature:

A handwritten signature in black ink, appearing to read "Галина Чернова" (Galina Chernova), with a horizontal line extending to the right.

Address for correspondence: Chavchavadze av.62, 0162, Tbilisi, Georgia

Daytime telephone number: +995 32 2216 04

fax number: +995 32 22 38 74

E-mail: manana@wanex.net, globus-caspi@mail.ru, gmirvari@azeronline.com

ANNEX C

ELIGIBILITY ASSESSMENT REPORT (EAR)

Independent Recourse Mechanism (IRM)

Eligibility Assessment Report

Complaint BTC Georgia / Atskuri (Request No. 2007/02)

1. On 6 July 2007, the IRM received a complaint relating to the Main Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline Project, as implemented in the vicinity of Atskuri Village, Akhaltsikhe District, Georgia (the “Project”). On 18 July 2007, in accordance with Paragraph 17 of the IRM Rules of Procedure (“IRM, RP”), Mrs Enery Quinones, the Chief Compliance Officer (CCO) notified the Affected Group of the registration of 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 (7)¹, who are residents of Atskuri Village in the Akhaltsikhe District of Georgia (the “Affected Group”), claim that they have suffered losses as a result of the implementation of the BTC Oil Pipeline Project. More particularly, the members of the Affected Group variously complain that:
 - 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;
 - the area covered by the pipeline passage on an ongoing basis exceeds the area indicated in the proposal package for which compensation was available;
 - they have suffered loss due to vibration and subsidence damage to dwelling houses and other buildings caused by heavy construction traffic and road improvements carried out during construction of the pipeline;
 - they have suffered loss of harvests due to damage caused to the irrigation channel of the village during construction of the pipeline;

¹ Natela Khugashvili; Tamar Labadze; Jemal Tenoshvili; Rusiko Chernievi; Valerian Labadze; Vakhtang Labadze; Badri Gasitashvili.

- they have suffered loss of harvests due to the lack of economic viability of ‘orphan’ land²;
 - they have been disadvantaged as a result of undue delay and uneven treatment in the payment of compensation for damage to land and plants and for uncollected harvests; and
 - they have been disadvantaged as a result of a lack of responsiveness and undue delay in the project grievance procedure and inadequate application of that procedure.
3. The members of the Affected Group have, since 2004, made various individual complaints and requests for further information and compensation to BTC Co., to its construction contractor, Spie Capag-Petrofac International, and to the Association for the Protection of Rights of Landlords in Akhaltsikhe.
 4. The Complaint sets out in detail the adverse impacts which implementation of the Project is alleged to have had (and continues to have) on the interests of each member of the Affected Group³. The Affected Group has made the present Complaint to the IRM requesting an examination of the problems raised in the Complaint with a view to obtaining final clarification of the position in relation to their entitlement to fair and adequate compensation for their losses⁴.

Steps Taken to Conduct an Eligibility Assessment

5. On 18 July 2007 the CCO notified the Affected Group that its Complaint had been registered, and on 31 July the Project Sponsor was similarly notified and provided a copy of the Complaint⁵.
6. Following registration of the Complaint, on/about 1 August 2007, the CCO appointed Dr. Owen McIntyre as the Eligibility Assessment Expert. Dr. McIntyre, together with the Bank’s CCO, Mrs. Enery Quinones, are the IRM Eligibility Assessors for purposes of the present report.
7. In the course of the previous IRM Complaint No. 2006/01 *BTC Pipeline (Georgia)*, the IRM Eligibility Assessors have had extensive contacts with representatives of the Project Sponsor in Georgia, and have been provided with background documentation on the BTC Project, including the March 2006 and September 2005 Social and Resettlement Action Plan (SRAP) Reports setting out the results of an independent expert review of the operation of the BTC grievance procedure and land acquisition programme.

² In the context of the BTC Project, “orphan land” is taken to refer to ‘additional land areas beyond the construction corridor ... which, due to minority of the size, are referred to as “economically infeasible”’. See letter from Stuart Duncan to members of the Affected Group in IRM Complaint No. 2006/1 *BTC Pipeline (Georgia)* re ‘Compensation against orphan land and inflicted loss’, Complaint No. 2006/1, Annex 15.

³ Complaint, paras. 13-41.

⁴ Complaint, paras. 56-57.

⁵ Ultimately, the Project Sponsor declined to provide any comments or response to the allegations or subject matter of the Complaint.

8. The Eligibility Assessors were therefore of the opinion that they were in receipt of sufficient information to consider the eligibility of the Complaint and that no additional steps, such as a Project site visit or retaining of additional expertise, were warranted at this stage.

Findings

Eligibility for Registration

9. On 18 July 2007, the CCO determined that the Complaint contained the mandatory requirements of a complaint in accordance with IRM, RP 8, and was not otherwise manifestly ineligible for registration. More specifically, the Complaint:
- Sets out the date of the Complaint, *i.e.* 6 July 2007;
 - Provides the name and contact details of each member of the Affected Group⁶;
 - Provides the name and contact details of the two Authorised Representatives of the Affected Group⁷, (Ms. Leila Sesadze and Mr. Jemal Tenoshvili) and evidence of their authority to represent and to act on behalf of the Affected Group in relation to the Complaint⁸;
 - Confirms that both Authorised Representatives are locally based, one being a member of the Affected Group (Mr. Jemal Tenoshvili) and the other being the mother of a member of the Affected Group (Ms. Leila Sesadze)⁹. Further, the Complaint confirms that the Authorised Representatives are fluent in Georgian, the native language of the Affected Group¹⁰;
 - Confirms that the Authorised Representatives must act jointly (*i.e.* that neither of the Authorised Representatives is empowered to act alone)¹¹;
 - Provides the name and a summary description of the Project¹²;

⁶ Complaint, paras. 1 and 3.

⁷ Complaint, paras. 4 and 62.

⁸ Notarised documents dated 18-25 June 2007, contained in Annex 9 to the Complaint conferring Power of Attorney on the Authorised Representatives. Notarised documents have been provided conferring Power of Attorney on behalf of Natela Khugashvili, Rusiko Chernievi, Valerian Labadze, Vakhtang Labadze and Badri Gasitashvili. The complainant Jemal Tenoshvili is one of the Authorised Representatives and so does not require any formal Power of Attorney. The Complaint informs us, at para. 4, that complainant Tamar Labadze was too infirm to attend at the office of a notary but, equally, that she remains prepared to certify, in writing or verbally, the authority of the Authorised Representatives to act on her behalf, if requested to do so.

⁹ Complaint, para. 5.

¹⁰ Complaint, para. 6.

¹¹ Each of the individual notarised documents conferring Power of Attorney on the Authorised Representatives, translated and reproduced in Annex 9 to the Complaint, though not entirely clear on this issue, provides that such power is conferred on Leila Sesadze and Jemal Tenoshvili, thus suggesting that they must act jointly. Also, in respect of their authority to act as Authorised Representatives granted under the notarised documents reproduced in Annex 9, the Authorised Representatives themselves declare, at para. 62 of the Complaint, that 'The group of victims, in order to protect the interests of the group, has granted us the right for *joint* activity'. Further, 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.

¹² Complaint, paras. 7-11.

- 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 Group¹³;
- Provides a description of the good faith efforts made by the Affected Group to resolve the issues raised in the Complaint with the Project Sponsor and with the Bank¹⁴ and an explanation of why the Affected Group believes that there is no reasonable prospect of resolving the issues through the continuation of such efforts¹⁵;
- Attaches copies of all available material correspondence and other relevant material supporting the Complaint¹⁶.

10. Furthermore, in accordance with IRM, RP 9(e), the Complaint indicates the steps the Affected Group expects to be taken by the IRM 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 Affected Group requests:

‘...the examination of the problematic matters raised by them in this claim, determination and assessment of the damage inflicted to them and payment of the relevant compensation, if the said damage is determined’¹⁷.

11. In addition, as per IRM, RP 9(f), the Complaint suggests that the EBRD violated a Relevant EBRD Policy in that:

‘the relevant representatives of European Bank for Reconstruction and Development did not respond timely and adequately in order to ensure consistent and fair implementation of the resettlement action plan’¹⁸.

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

¹³ Complaint, paras. 13-41.

¹⁴ Complaint, paras. 42 and 43. These have included: the establishment of a group made up of representatives of the village Sakrebulo and the Akhaltsikhe Land Management Service to examine and report on alterations and irregularities in relation to land measurement (see Complaint, Annexes 1 and 4); the making of a complaint in May 2005 to the IFC/CAO (see Complaint, Annex 2); and the making of a complaint on 15 June 2007 to the EBRD Representative in Georgia, Mr. Nikolay Hajinski (see Complaint, Annex 8). The Complaint also highlights that the Affected Group often applied to the representatives of the Project Sponsor by means of verbal claims, which it claims was in accordance with the guidance issued in the village by the Project Sponsor (see Complaint, para. 45).

¹⁵ The Complaint sets out in detail, at paras. 13-41, the various individual and collective efforts of members of the Affected Group, dating back to 2004, 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. David Morgan to Mr. Gela Mumladze and Mrs. Tamar Labadze dated 30 June 2006, (Ref. BTC/OUT/2340/06), reproduced in Annex 2 to the Complaint; the letter from Mr Stuart Duncan to Mr. Tenoshvili dated 27 September 2004 (Ref. BTC/OUT/980/04), reproduced in Annex 3 to the Complaint; the letter from Mr Stuart Duncan to Ms. Rusudan Cherniev dated 5 November 2004 (Ref. BTC/OUT/1030/04), reproduced in Annex 4 to the Complaint.

¹⁶ See Annexes 1 to 9 of the Complaint.

¹⁷ Complaint, para. 56. This strongly suggests that the Affected Group expects the IRM to engage in a Problem-solving Initiative.

¹⁸ Complaint, para. 55.

prima facie clear what such breach might have involved, as resettlement plans designed to compensate displaced persons for their losses at full replacement cost were clearly developed¹⁹. It would also appear that a special resettlement unit was created within the project entity and that nongovernmental organisations (NGOs), including the Association for Protection of Rights of Landlords, were involved in planning, implementing and monitoring resettlement²⁰. Nor does the Complaint allege that EBRD officials failed to inform the Project Sponsor of the Bank's resettlement policy²¹, failed to assist the Project Sponsor's efforts through, for example, assistance in designing and assessing resettlement policy, strategies, laws, regulations, and specific plans²², or failed to have the adequacy of the resettlement plan reviewed by appropriate social, technical and legal experts²³. Similarly, it is not clear from the Complaint whether the Affected Group considers that the Bank had failed to require submission by the Project Sponsor of a time-bound resettlement plan and budget that conforms to Bank policy²⁴, that Bank officials had failed to conduct an adequate appraisal mission²⁵, or that they failed to supervise the resettlement process throughout implementation using the requisite social, economic and technical expertise.²⁶ Further, it is not clear whether the failure of the relevant representatives of EBRD to respond timely or adequately in order to ensure consistent and fair implementation of the resettlement action plan, would, in any event amount to a breach of any Relevant EBRD Policy warranting a Compliance Review.

¹⁹ Pursuant to World Bank / IFC O.D. 4.30, paragraphs 3(b) and 14. See, for example, the letter from Mr. Hugh G. McDowell dated 7 March 2007 to Mr. Jemal Tenoshvili, reproduced in Annex 3 to the Complaint, referring to the 'informational brochure' setting out, *inter alia*, 'the table of amounts payable against the relevant categories of lands' in the conclusion of servitude agreements, etc.

²⁰ As recommended under World Bank / IFC O.D. 4.30, paragraph 6. See, for example, the letter from Mr. Hugh G. McDowell dated 7 March 2007 to Mr. Jemal Tenoshvili, reproduced in Annex 3 to the Complaint, referring to the availability of representatives of the Association for Protection of Landlords' Rights 'in order to answer your questions, discuss the proposal and clarify whether you intend accepting it'.

²¹ As required under World Bank / IFC O.D. 4.30, paragraph 24.

²² As recommended under World Bank / IFC O.D. 4.30, paragraph 23.

²³ As required under World Bank / IFC O.D. 4.30, paragraph 25.

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

²⁵ As required under World Bank O.D. 4.30, paragraph 30.

²⁶ As required under World Bank O.D. 4.30, paragraph 31.

12. Further, pursuant to IRM, RP 9(e), the Complaint indicates that the steps the Affected Group expects to be taken by the IRM involve a Problem-solving Initiative (PSI) rather than a Compliance Review. Though the Complaint does not expressly state that the Affected Group is not requesting a Compliance Review it is clear that by requesting the IRM to facilitate the examination of the matters raised in the Complaint and the determination and assessment of any damages due, it expects a PSI²⁷. Further, the Complaint states that:

‘The *sole* objective of the claims brought by the complainants is to obtain a final clarification regarding the situation related to their plots and to receive fair and adequate compensation against the damages inflicted to them’²⁸.

This statement suggests that the Affected Group are more concerned with reaching a mutually acceptable resolution of the issues raised, rather than any finding of formal non-compliance by the Bank with a Relevant EBRD Policy²⁹.

Eligibility for Further Processing

13. 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 Complaint³⁰. 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)]

14. As required under IRM RP 18(a), the Eligibility Assessors have determined that the BTC Oil Pipeline Project is a ‘Project’ within the meaning of IRM, RP 1³¹. As required under IRM RP 18(a)(i), the Project received Board Approval

²⁷ As a matter of practice, it has been agreed 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, 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. Hence, the decision that a Compliance Review is not warranted.

²⁸ Complaint, para. 57. (Emphasis added).

²⁹ It should be noted that IRM RP 35 expressly provides in relation to a 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.’

³⁰ 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.

³¹ IRM RP 1(x) defines a ‘Project’ to mean :

on 11 November 2003. Further, as required under IRM, RP 18(a)(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.

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

15. As required under IRM RP 18(b), the complainants 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)³², who have a common interest and claim that the Project has a direct adverse and material effect on that common interest.
16. 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 ...’³³.

In turn, the relevant World Bank / IFC policy document (OD 4.30)³⁴, which sets out EBRD’s policy on Involuntary Resettlement, includes within its scope ‘projects that cause involuntary displacement’³⁵, which include those in which ‘productive assets and income sources are lost’³⁶. 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’³⁷. 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’³⁸;

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

‘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’.

³² IRM RP 1(p) defines the ‘Impacted Area’ to mean

‘Any geographical area which is, or is likely to be, affected by a Project’.

³³ EBRD Environmental Policy. 29 April 2003, paragraph 3.

³⁴ World Bank / IFC Operational Directive 4.30, 1 June 1990.

³⁵ *Ibid.*, paragraph 1.

³⁶ *Ibid.*, paragraph 2.

³⁷ *Ibid.*, paragraph 15.

³⁸ *Handbook for Preparing a Resettlement Action Plan* (IFC, 2002), at ix.

(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 temporarily³⁹.

17. 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).

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

18. The correspondence received from the Affected Group provides *prima facie* evidence that the Project has had a direct adverse and material effect on the Affected Group’s common interest⁴⁰.

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 interest⁴¹:

- clearance work and damage to their land on the oil pipeline construction route which exceeded the area indicated in the proposal package, for which compensation was available;
- the area covered by the pipeline passage on an ongoing basis exceeds the area indicated in the proposal package, for which compensation was available;
- they have suffered loss due to vibration and subsidence damage to dwelling houses and other buildings caused by heavy construction traffic and road improvements carried out during construction of the pipeline;
- they have suffered loss of harvests due to damage caused to the irrigation channel of the village during construction of the pipeline;
- they have suffered loss of harvests due to the lack of economic viability of ‘orphan’ land;
- they have been disadvantaged as a result of undue delay and uneven treatment in the payment of compensation for damage to land and plants and for uncollected harvests;
- they have been disadvantaged as a result of a lack of responsiveness and undue delay in the project grievance procedure and inadequate application of that procedure.

19. 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 a group’s common interest as required under IRM, RP 18(b), it is useful to have regard to the correspondence supplied by the Affected Group, which, *inter alia*:

- sets out evidence of disagreement relating to the occupation of excess areas of land⁴²;

³⁹ *Ibid.*, at p. x.

⁴⁰ See Complaint, at pp.2-7 and the relevant annexes.1-8.

⁴¹ See Complaint, at pp.2-7 and the relevant annexes.1-8.

- sets out evidence of disagreement as to the entitlement of members of the Affected Group to compensation for loss of additional fruit trees⁴³;
- sets out evidence of concern as to the causing of vibration or subsidence damage to buildings⁴⁴;
- sets out evidence of the delays experienced by members of the Affected Group in having their claims dealt with by the Project Sponsor⁴⁵;
- sets out evidence of alterations in respect of the area of land used during construction of the pipeline⁴⁶;

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

20. 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 noted that members of the Affected Group approached a group made up of representatives of the village Sakrebulo and the Akhaltsikhe Land Management Service established to examine and report on alterations and irregularities in relation to land measurement⁴⁷. One member of the Affected Group made a complaint in May 2005 to the IFC CAO⁴⁸. It is also noted that on 15 June 2007, the Affected Group requested that the EBRD Representative in Tbilisi, Mr. Nikolay Hadjiyski, examine their complaint⁴⁹. The Complaint also states that, in addition to the various written applications made to the Project Sponsor, the Affected Group often applied to the representatives of the Project Sponsor by means of verbal claims, which it asserts was in accordance with the guidance issued in the village by the Project Sponsor⁵⁰.

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

21. 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, the final and definitive tone of much of the recent correspondence from the Project Sponsor clearly suggests that it is not prepared to entertain the further claims of the local residents.⁵¹ In addition, the apparent delay in the Project

⁴² See, for example, the letter from Mr Stuart Duncan to Mr. Tenoshvili, dated 27 September 2004 (Ref. BTC/OUT/980/04), reproduced in Annex 3 to the Complaint.

⁴³ See, for example, the letter from Mr. Stuart Duncan to Ms. Rusudan Cherniev, (Ref No. BTC/OUT/1076/04), dated 5 November 2004, reproduced in Annex 4 to the Complaint.

⁴⁴ See, for example, the letter from Mr Badri Gasitashvili to Mr. Stuart Duncan, reproduced in Annex 7 to the Complaint.

⁴⁵ See, for example, the letter from Ms. Natela Khugashvili, dated 20 March 2007, Complaint, Annex 1, setting out the delays regarding the handling of her claim dating back to 3 August 2004.

⁴⁶ See, for example, the Acts issued by the group made up of representatives of the village Sakrebulo and the Akhaltsikhe Land Management Service established to examine and report on alterations and irregularities in relation to land measurement (see Complaint, Annexes 1 and 4)

⁴⁷ See Complaint, Annexes 1 and 4.

⁴⁸ See Complaint, Annex 2.

⁴⁹ Complaint, paras. 54 and 55. For the full text of this request, see Complaint, Annex 8.

⁵⁰ See Complaint, para. 45

⁵¹ 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

Sponsor responding to certain claims of the members of the Affected Group⁵² might reasonably affect the confidence of the Affected Group in the likelihood of reaching an acceptable resolution of the issues involved.

IRM, Rules of Procedure 19

22. 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 Complaint and the efforts of the Affected Group and Project Sponsor and of bodies such as the IFC/CAO to resolve various of its constituent elements 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)], and;
 - 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)].

Position of the Bank

23. Based on discussions with members of the Environment and Sustainability Department (ESD), the Operations Team, and the Resident Office, the position of the EBRD in response to the Affected Group’s complaints can be summarized as follows. The EBRD reviewed the Project, including social issues and resettlement impacts, as part of a large group of lenders including

issue being revisited by BTC Co. See, for example, the letter from Mr. David Morgan to Mr. Gela Mumladze and Mrs. Tamar Labadze dated 30 June 2006, (Ref. BTC/OUT/2340/06), reproduced in Annex 2 to the Complaint; the letter from Mr Stuart Duncan to Mr. Tenoshvili dated 27 September 2004 (Ref. BTC/OUT/980/04), reproduced in Annex 3 to the Complaint; the letter from Mr Stuart Duncan to Ms. Rusudan Cherniev dated 5 November 2004 (Ref. BTC/OUT/1030/04), reproduced in Annex 4 to the Complaint.

⁵² See, for example, the letter from Ms. Natela Khugashvili, dated 20 March 2007, Complaint, Annex 1, setting out the delays regarding the handling of her claim dating back to 3 August 2004.

numerous export credit agencies, commercial banks and the IFC. Social due diligence was assessed by independent lender consultants (Mott MacDonald Ltd.), as well as specialist staff from the various lender institutions. A framework for compensation for the effects of physical and economic displacement expected to be incurred as a result of the implementation of the project was presented in a Resettlement Action Plan (RAP), which was made public and approved by the group of lenders, including EBRD.

It should be noted that an independent group of social specialists has been established for external monitoring of social and resettlement issues. This panel is referred to as the SRAP Panel, and its reports are available in the public domain. This panel currently conducts six-monthly visits to each country of the project. EBRD social staff accompany the SRAP at least once per year to both Georgia and Azerbaijan to assess these issues, and continue to monitor them. Monitoring is done on the implementation of the RAP, as well as with respect to the Grievance Procedures agreed with the Project Sponsor. The latest site visit on social issues in Georgia was in 2006 (26/9-5/10 2006). EBRD social experts have been to the specific village of Atskuri (4/9/05) and, together with the SRAP panel member, met with the Gangabeli and community members and heard similar issues to those being raised in the Complaint. The SRAP panel follows up on the social issues as part of monitoring, and has also been providing technical advice to the Project Sponsor, to ensure compliance with project commitments and the requirements under OD 4.30, including implementation of the grievance procedure. SRAP panel will continue until resettlement is complete, that is until a point in time when they can carry out an assessment to determine that project affected people are not worse off after resettlement related activities have been completed.

Recommendations and observations of the Eligibility Assessors

24. 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 CCO to recommend a PSI in accordance with IRM, RP 44.
25. Furthermore, although 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 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 IRM⁵³.

⁵³ As set out in *Independent Recourse Mechanism: The guide to making a complaint about an EBRD-financed project* (July 2004), at p. 2.

26. As noted above, the decision to recommend a PSI is within the discretion of the CCO and shall be the subject of a separate Problem-solving Initiative Report as provided for at IRM, RP 44. As a preliminary matter, however, in the consideration and determination as to whether a PSI would likely have a positive result⁵⁴ and whether the Relevant Parties are likely to be amenable to such an initiative⁵⁵, the Eligibility Assessors are of the view that it is important to distinguish the present Complaint from the previous IRM Complaint No. 2006/1, *BTC Georgia / Akhali Samgori*, in respect of which the same Project Sponsor has declined to participate in a Problem-solving Initiative under the auspices of the IRM.
27. Firstly, whilst a number of the grievances listed by individual members of the Affected Group relate to damage allegedly caused to the village irrigation system during construction of the pipeline as is also the case in Complaint No. 2006/1, there is no related litigation pending before the Georgian civil courts in which members of the present Affected Group or other residents of Atskuri Village are involved. Further, there is no risk that the outcome of the ongoing civil litigation in respect of damage alleged in Akhali Samgori Village could influence the outcome of a PSI in relation to the present Complaint or vice versa .
28. Secondly, as regards those grievances concerned with encroachment by BTC in excess of the areas indicated in the proposal package either during pipeline construction or by the pipeline passage, possible deficiencies in the Georgian Government's system of land registration records, and the Government's ongoing review of such records should not obstruct the initiation of a Problem-solving Initiative process. The relevant World Bank policy document (OD 4.30),⁵⁶ which sets out the EBRD policy on Involuntary Resettlement, makes it quite clear that difficulties in establishing clear legal title or other problems relating to the applicable legal system of land tenure do not obviate a Project Sponsor's responsibilities.⁵⁷ Similarly, the obligation to examine claims

⁵⁴ See, IRM RP 43(b).

⁵⁵ See, IRM RP 43(c).

⁵⁶ World Bank Operational Directive 4.30, (1 June 1990). See EBRD Environmental Policy (April 2003), para. 3.

⁵⁷ For example, para. 3(e) of World Bank Operational Directive 4.30 provides that:

‘Land, housing, infrastructure, and other compensation should be provided to the adversely affected population ... The absence of legal title to land by such groups should not be a bar to compensation’.

Indeed, para. 12 would appear to place a duty on the Project Sponsor to make an effort to better understand the national legal framework applicable to questions of land title and land tenure:

‘A clear understanding of the legal issues involved in resettlement is needed to design a feasible resettlement plan. An analysis should be made to determine the nature of the legal framework for the resettlement envisaged, including ... (c) land titling and registration procedures’.

Para. 17 of OD 4.30 further elaborates on the nature of the duty on a Project Sponsor to take steps to deal with problems arising from deficiencies in the local system for registering and recording land title and land tenure:

‘Resettlement plans should review the main land tenure and transfer systems ... The plan should address the issues raised by the different tenure systems found in a project area ... Plans should contain provisions for conducting land surveys and regularizing land tenure in the earliest stages of project development.’

relating to ‘orphan land’ cannot be delayed on the basis of uncertainty over land title or land tenure.

29. Thirdly, a number of grievances raised by members of the Affected Group relate to inherently local issues, such as vibration and subsidence damage to dwelling houses or the loss of fruit trees in excess of those for which compensation was paid, which require an assessment of the facts on the ground in each case and could never impact any ongoing civil litigation or be dependent on a Government review of land registration records.
30. Finally, it is quite clear from the Complaint that a number of the members of the Affected Group believe that the project grievance procedure has not operated according to the standards that might have been expected. Once again, this is an issue which might clearly benefit from a Problem-solving Initiative and would not impact any ongoing civil litigation or be dependent on a review of land registration records.

ANNEX D

THE PROBLEM SOLVING INITIATIVE REPORT AND TERMS OF REFERENCE

Independent Recourse Mechanism (IRM)

Problem-solving Initiative Report (PsIR)

Complaint: BTC Georgia/Atskuri Village, Georgia

Background

This Problem-solving Initiative Report (PsIR) is further to the Eligibility Assessment Report (EAR) prepared with respect to the complaint submitted to the IRM in July 2007 relating to the Main Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline project as implemented in the vicinity of Atskuri Village, Akhaltsikhe District, Georgia (the “Complaint”). The EAR, a copy of which is attached as Annexe A to this report, contains a recommendation of the Eligibility Assessors to declare the Complaint eligible for further processing towards a Problem-solving Initiative (PsI) but not warranting a compliance review. On 23rd November 2007 the Board of Directors approved the EAR and the recommendation above-mentioned.

Recommendation

IRM, RP 45 requires that all PsIRs shall be submitted for the President’s consideration and decision. It is a mandatory requirement of IRM, RP 44 that the report contains my recommendation as to whether, or not, to proceed with a PsIR. For the reasons set out below, I am of the view that a PsI should be undertaken and therefore include, in this PsIR proposed Terms of Reference and a recommendation for the appointment of Mr. Graham Cleverly as the Problem-solving Facilitator for this initiative.

Considerations

In making my aforesaid recommendation I am mindful of the considerations to be made pursuant to IRM, RP 42 and 43. In addressing these considerations, I relied on the findings noted in the EAR; no further investigation was undertaken.

As a preliminary matter, it is worth distinguishing the present Complaint from the previous IRM complaint number 2006/1 (BTC Georgia/Akhali Samgori) in respect of which the same project sponsor declined to participate in a PsI resulting in my recommendation that a PsI should not be undertaken.

Firstly, whilst one element of the Complaint relates to damages allegedly caused to the village irrigation system during construction of the pipeline as is also the case with respect to complaint number 2006/-1, unlike the earlier complaint, there is no related litigation pending before the Georgian Civil Courts in relation to this Complaint. As such, there is no risk that the outcome of a PsI in relation to the present Complaint

could influence the outcome of the ongoing civil litigation in respect of the damage claim to the village irrigation system in the Akhali Samgouri village, or vice versa.

Further, various elements of the Complaint relate to inherently local issues, such as vibration and subsidence to dwellings and loss of fruit trees in excess of those for which compensation was paid. These claims require an assessment of the facts on the ground in each case and could never impact, or be impacted upon by, ongoing civil litigation, albeit of a similar nature but in a different location.

Having regard to the considerations required pursuant to IRM, RP 43 I am of the view that:

- a. The nature of the Complaint i.e. damages resulting from the implementation of the project, including damages to properties and roadway arising from construction traffic and vibration, loss of harvest and lack of economic viability of orphan land, lend themselves to good faith resolution and, if appropriate, the payment of adequate financial compensation, without seeking to attribute blame or fault to any party;
- b. A PsI and, in particular, a process of independent fact finding and restricted dialogue facilitation may well assist in bringing about effective dialogue between the parties leading to the resolution of the issues;
- c. Given its ongoing relationship with BP, who are the main shareholders of the project sponsor BTC, the Bank continues to have sufficient leverage to facilitate effective dialogue between the parties;
- d. To the extent that the EAR did not recommend a Compliance Review, there is no risk that the undertaking of the PsI may interfere with the conduct of any such review;
- e. With regard to those elements of the Complaint concerned with alleged encroachment by BTC in excess of the area indicated in the proposal package either during pipeline construction or by pipeline passages, possible deficiencies in the Georgian government system of land registration records and/or the government's ongoing review of its land registration records should not obstruct or impact upon any PsI. The relevant World Bank policy document (OD 4.30) which sets out the EBRD policy on involuntary resettlement makes it quite clear that difficulties in establishing clear legal title or other problems relating to the applicable legal system of land tenure do not obviate the project sponsor's responsibilities; and
- f. Notwithstanding the fact that, at the early stages of processing this Complaint, BTC indicated that it was not prepared to entertain further claims of local residents, given that the time delay within which complaints related to the pipeline could be registered under the IRM has now lapsed¹ and no other claims are pending, BTC should be more amenable to participating in a PsI than before.

¹ The pipeline commenced transportation of commercial oil from Baku to Ceyhan on 13th July 2006 .

Conclusion

A PSI should be initiated along the lines outlined in the Terms of Reference attached as Annexe B.

In accordance with IRM, RP 44 and 47, I recommend the appointment of IRM Expert Graham Cleverly as the Problem-solving Facilitator for this initiative. Mr. Cleverly is a member of the IRM panel of experts and is very familiar with the BTC pipeline project having previously assisted me with respect to the assessment of a complaint received from an affected group located in Gyrah, Kesemenli Village, Azerbaijan in respect of the BTC Pipeline project implementation there.

Independent Recourse Mechanism (IRM)

Annexe B Terms of Reference²

Scope

1. These Terms of Reference apply to any process conducted as part of this Problem-solving Initiative³ with a view to assisting in the resolution of the issues underlying the complaint relating to the Main Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline Project as implemented in the vicinity of Atskuri Village, Akhaltsikhe District, Georgia (“the Complaint”), a copy whereof forms part of the Eligibility Assessment Report attached at Annexe A.
2. Such processes shall be conducted in accordance with these Terms of Reference subject to such modification as the Problem-solving Facilitator and the Chief Compliance Officer may, at any time, expressly agree in writing,⁴ unless such modification prejudices the interests of any Relevant Party or is inconsistent with accepted international practice.
3. For the purposes of the present Complaint, the Problem-solving Initiative shall involve a process of independent fact-finding and limited dialogue facilitation.⁵
4. The Problem-solving Initiative shall remain within the scope of the Complaint and shall not go beyond the parameters of the Complaint to address other issues.
5. In accordance with IRM, RP 44 (d) the Terms of Reference shall set out the scope and time frame of such Problem-solving Initiative and shall provide a an estimate of the budget, and a description of additional resources, required to complete the initiative.

Time Frame

6. After the recommendation to undertake the Problem-solving Initiative has been approved by the President, the Problem-solving Initiative shall commence when the PsIR including these Terms of Reference is forwarded by the Chief

² These Terms of Reference have been prepared having regard to international best practice in the area of dispute resolution and are loosely based on a range of rules of procedure employed by a variety of international institutions, including, *inter alia*, the Permanent Court of Arbitration's Optional Rules for Conciliation of Disputes relating to Natural Resources and/or the Environment, UNCITRAL Conciliation Rules, the World Intellectual Property Organisation's Mediation Rules, *etc.*

³ Defined terms used in these Terms of Reference shall have the meanings ascribed to them in the IRM unless the context suggests otherwise.

⁴ For the purposes of these draft Terms of Reference, ‘writing’ may include electronic methods of communication in accordance with accepted international practice.

⁵ The dialogue facilitation element of the present Problem-solving Initiative is described as ‘limited’ because it will essentially be confined to the holding of a meeting(s) with the Parties, jointly or separately, to explain the findings of the fact-finding exercise and to elaborate upon the implications of those findings for the central issues underlying the current Complaint.

Compliance Officer to all of the Relevant Parties and to the heads of the relevant Bank departments.

7. Every effort shall be made to ensure that this Problem-solving Initiative shall be conducted as expeditiously as circumstances permit and it is intended that it shall be concluded within 90 business days following its commencement, within which period the Problem-solving Initiative Completion Report shall be finalised. However, pursuant to IRM, RP 14, this time period may be extended by the Chief Compliance Officer (CCO) following consultation with the Problem-solving Facilitator for as long as is strictly necessary to ensure full and proper conduct of the Problem-solving Initiative including the finalisation of the Completion Report. Any such extension shall be promptly notified to all Relevant Parties.
8. The provisional timescale for the preparation of the Problem-solving Initiative Report and the undertaking of the Problem-solving Initiative key activities including completion of the Problem-solving Completion Report are summarised below:

A. Preliminary Problem-solving Initiative activities

- PSI Report and draft TOR finalised: mid January 2008,
- PSI Report and TOR submitted to EBRD President: mid January 2008,
- PSI and TOR approved by President: end January 2008 and notified to relevant parties end January.

B. Problem-solving Initiative-key activities

- Fact finding visit by Problem-solving Facilitator, Mr Graham Cleverly, to Georgia: late February/ early March 2008 (depending on weather conditions and other relevant factors⁶),
- Completion report drafted and submitted to CCO: late March 2008,
- Problem-solving Completion Report finalised and circulated to parties for comment: early April 2008,
- Problem-solving Completion Report submitted to the President and circulation to Board for information: mid April 2008,
- Publication of Problem-solving Completion Report⁷ on EBRD website: end April 2008.

Additional Resources

9. It is expected that additional expert resources will be required to investigate the agricultural elements of the Complaint concerning the loss of harvests and economic viability of orphan land, and that the Problem-solving Facilitator and

⁶ In addition to the above, the timing of the site visit will need to take account of the practical problems of travelling to the village of Atskuri in the winter months and the programming of parliamentary elections in Georgia in the spring of 2008. Advice will be sought from EBRD on security issues and any effect on timing of the proposed site visit.

⁷ Or Summary Report only if the parties do not agree to make the Report public.

the Agricultural Specialist will conduct at least one site visit for which transportation, translation and other support services will be required.

10. The estimated overall budget for the Problem-solving Initiative shall be less than €50,000.

Problem-solving Facilitator

11. In accordance with IRM, RP 44 and 47, IRM Expert, Mr. Graham Cleverly shall be appointed Problem-solving Facilitator for this Initiative.
12. The Problem-solving Facilitator shall undertake the Initiative in a neutral, independent and impartial manner in an attempt to assist the parties to reach an amicable resolution of the Complaint.

Procedure: Identification of eligible complainants

13. The Problem-solving Facilitator may request either party or any member of the Affected Group to submit a further written statement of its position and/or the facts and grounds in support thereof as supported by any documents and other evidence that such party deems appropriate. A copy of such statement and all supporting documentation shall be sent to the other party.

Procedure: Fact-Finding

14. As soon as possible following commencement of the Problem-solving Initiative, the Problem-solving Facilitator, accompanied by such officials of the Bank as he may consider necessary or appropriate, and an Agricultural Specialist to be appointed by the Problem-solving Facilitator, shall make a visit to Georgia in order to better understand and/or verify the facts alleged in the Complaint, and to assess the appropriate means and any additional expertise required, to verify these facts. The site visit will include meetings with the project sponsor and other parties in Tbilisi and a site visit to Atskuri village for meetings with the representatives an/or members of the Affected Group.
15. The Problem-solving Facilitator shall seek the assistance of a suitable and appropriately qualified agricultural specialist to help in the determination of a number of central issues, including:
 - a. the loss of harvest for which compensation is sought;
 - b. economic viability of orphan land; and
 - c. the likely impact of any damage to irrigation facilities.

16. The Problem-solving Facilitator shall have total discretion in the selection and appointment of suitable experts and shall set out appropriate Terms of Reference for each expert appointed. The Terms of Reference shall include as a minimum:
 - d. clear specifications in relation to the final report to be produced;
 - e. details of any site visits required; and

- f. a clear timeframe for examination of the issues and preparation of the final report.
17. Both the Project Sponsor and the Representatives of the Affected Group shall be given notice of any site visits planned in the course of the defined PsI, and shall be given the opportunity to accompany the Problem-solving Facilitator or any expert during the course of any such site visit. Each Party is expected to cooperate with the Problem-solving Facilitator or any expert during the course of any site visit and to act in good faith in accordance with paragraph 20 (f) of these draft Terms of Reference.
18. In accordance with IRM, RP 63 the Problem-solving Facilitator shall take care to minimise the disruption to the daily activities and operations of all of the parties involved, including relevant Bank staff
19. As soon as possible after the submission of the final report of any expert appointed, the Problem-solving Facilitator shall furnish a copy of the report to both the Project Sponsor and the Representatives of the Affected Group. The Problem-solving Facilitator may arrange a meeting(s) with the Parties, jointly or separately, to explain the findings of the fact-finding exercise and to elaborate upon the implications of those findings for the issues underlying the Complaint.

Procedure: General

20. The Problem-solving Facilitator may conduct the Problem-solving Initiative proceedings in such a manner as he considers appropriate, taking into account the Rules of Procedure of the Independent Recourse Mechanism, the circumstances of the Complaint, the wishes of the Parties, and any special need for a speedy settlement of the Complaint. Specifically:
 - g. the Problem-solving Facilitator may engage in whatever fact-finding activities he considers appropriate;
 - h. the Problem-solving Facilitator may meet with the Parties, or may communicate with them orally or in writing;
 - i. the Problem-solving Facilitator may communicate with the Parties together or with each of them separately;
 - j. the Problem-solving Facilitator may fix the location of any meetings after consulting with the Parties;
 - k. when the Problem-solving Facilitator receives information concerning the Complaint from one Party, he may disclose the substance of that information to the other Party in order that the other Party may present an explanation. However, when a Party gives any information to the Problem-solving Facilitator subject to a specific legitimate condition that it be kept confidential, the Problem-solving Facilitator shall not disclose that information to the other Party;
 - l. the Parties shall co-operate in good faith with the Problem-solving Facilitator to advance the Problem-solving Initiative as expeditiously as possible and, in particular, shall endeavour to comply with requests by the Problem-solving Facilitator to permit timely access to sites, submit written materials, provide information and attend meetings;

- m. the Problem-solving Facilitator may, at any stage, make proposals for the successful outcome of the Problem-solving Initiative, but shall have no authority to impose a settlement on the Parties. Such proposals need not be in writing and need not be accompanied by any statement of reasons;
- n. the Problem-solving Facilitator may assist the Parties in drafting the terms of a formal agreement dealing with the resolution of the Complaint and/or in establishing such further arrangements or mechanisms which may be required to assist the Parties to implement the terms of Resolution Agreement
- o. each Party may, on its own initiative or at the invitation of the Problem-solving Facilitator, submit to the Problem-solving Facilitator suggestions for the successful outcome of the Problem-solving Initiative; and
- p. no admission, or proposal formulated during the course of the Problem-solving Initiative, either by the Parties to the Complaint or by the Problem-solving Facilitator, can be considered as prejudicing the rights or the contentions of any Party in the event of the ultimate failure of the Problem-solving Initiative.

21. At any stage of the Problem-solving Initiative proceedings the Problem-solving Facilitator may request that a Party submit additional information.

22. During the course of the Problem-solving Initiative, the Parties may be represented or assisted by their Authorised Representatives. The names and addresses of such persons are to be communicated in writing to the Problem-solving Facilitator and to the other relevant Parties.

Termination of the Problem-solving Initiative

23. The Problem-solving Initiative shall be terminated:

- q. by the signing of an agreement by the Parties relating to resolution of the issues underlying the Complaint; and
- r. by the decision of the Problem-solving Facilitator if, in his judgement, further efforts are unlikely to lead to a resolution of the Complaint.

Problem-solving Completion Report

24. Further to IRM, RP 48, once the Problem-solving Initiative is completed including as Annexes the final Reports from any additional experts or specialists its findings and/or results shall be set out in a Problem-solving Completion Report, which shall be prepared by the Problem-solving Facilitator and shall be submitted to the President.

Exclusion of Liability

25. Without prejudice to the privileges and immunities enjoyed by IRM Experts, the Problem-solving Facilitator shall not be liable to any party for any act or omission in connection with the Problem-solving Initiative activities undertaken pursuant to these Terms of Reference.

ANNEX E

EXPLANATION OF LAND ACQUISITION AND COMPENSATION PROCESS

The construction corridor for the two pipelines normally comprised a 44 metre wide strip of land (also termed “acquired land”) which BTC purchased from private and State-owned sources. On average BP estimated in the Guide that the project would purchase between 20 and 45% of the area of affected land parcels.

The Guide categorises the land impact into temporary and permanent impacts. **Temporary impact** covers a) loss of access to the land in the 44m wide corridor during pipeline construction, b) potential loss of livelihood if the sub-divided land is categorised as “orphan land” and uneconomic, and c) loss of access to land used for temporary facilities.

The Guide acknowledges that all these temporary impacts result in loss of income and livelihood from that piece of land during the pipeline construction period. Note: Payments were made for “acquired land” by BTC initially for the years 2004 and 2005 but due to delays in completing the construction, additional payments for temporary impacts were made by for the year 2006.

Compensation paid for “orphan land” is relevant to several of the Complaints. Small uneconomic areas where the construction corridor has passed directly through some plots of land leaving smaller sections of land on either side of the construction corridor that will not be required for use by the project during the construction phase and where agricultural activities on these sections of land can be continued but where the remaining plot is in some cases too small to make cultivation economically worthwhile, are defined in the Guide as “orphan land”. Similarly the Guide notes that access across the construction corridor may be unreasonably restricted to some small plots. These small uneconomic areas have been named “orphan land” and are compensated by the project. Whether or not an area of land qualifies as “orphan land” and is therefore entitled to compensation is determined however on a case by case basis.

Permanent Impacts cover permanent loss of land (*e.g.* where new permanent access roads are required and at the above ground installations (AGIs) or, where resumption of use of private land following the construction is allowed, subject to observance of certain safety restrictions.

Resumption of land use following pipeline construction, but subject to observance of certain safety restrictions is relevant to several of the Complaints detailed in this report and is further described below:

Such rights of re-use are at no charge to the former owner or user. The safety restrictions applicable to the 44m wide construction corridor for pipeline construction are included in agreements entered into with the owner or user and according to the Guide, and not expected to interfere with the majority of land use practices in place before the construction process began. In respect of a wider safety

zone beyond the 44 meter corridor, appropriate compensation will be paid according to the Guide to the extent that the safety restrictions impose a genuine loss not previously compensated for.

Two pipeline protection zones have been adopted according to the Guide to maintain safety and protect the pipeline structure. These are shown on Figure 2 in the Guide and summarised below in accordance with the Guide and discussions with project sponsor staff in March 2008:

Zone 1 extends four metres either side of each pipeline and requires additional restrictions. This Zone lies entirely within the construction corridor land already owned by the project.

Zone 2 has a maximum overall width of 58 metres. Restricted use covers a) the 44 meter wide construction corridor together with b) a further strip on either side of the pipeline corridor extending from the limit of the 44 meter wide construction corridor to a boundary-line measured 15 meters from either side of the (outermost) pipeline centre line and amounting in practice to a strip either side of the 44 meter corridor of maximum width of 7 meters (and a minimum width in places of zero depending on the actual location of the twin pipes within the construction corridor).

The strip of land on either side of the construction corridor is defined as Zone 2 in Figure 2 of the Guide and in Diagram 3 in the handbook. Habitable buildings are forbidden to be constructed, but the conditions for re use allow “normal agricultural activities to proceed”.

Within Zone 2, limitations are imposed by BTC on future usage. Cash compensation is available where the landowner can demonstrate that the restriction on land use imposes a loss. The exact area covered by restrictions depends on the exact location of the pipes within the 44 m wide construction corridor which varies but the limit of the area is located 15 metres beyond the centre line of each pipeline. .

In the booklet, Diagram 3, plots of land in Zone 2 which may be affected by the pipeline construction are characterised as Parcels A, B, C or D depending on the juxtaposition of the particular Parcel and the pipeline construction corridor boundaries. The use restrictions and corresponding payment eligibility (typical) is defined in the booklet (Diagram 3) as follows:

Parcel A: restricted use, no payment¹

Parcel B: Restricted use, plus payment² for restrictions on newly affected land area (shown coloured in Diagram 3)

¹ This category of land parcel lies entirely within the pipeline construction corridor (Zones 1 and 2) and is thus already owned by BP/BTC. Previous owners have the opportunity to have restricted use of the land. No payments are made for use of this land.

² This category of land parcel lies partly inside and partly outside the pipeline corridor (Zones 1 and 2) but within the 58 metre wide zone (Zone 2). The “**newly affected land**” land outside the pipeline construction corridor but within Zone 2 is subject to use restrictions and restrictions are paid for at fixed rates shown in Table 5 of the booklet.

Parcel C: Payment³ for restrictions on newly affected land area (shown coloured in Diagram 3)

Parcel D: Unrestricted use, no payment⁴

Table 1 of the Guide showing compensation for private land is reproduced below:

Type of land	Compensation
Private land/ 44 meters	Purchase price to be paid to registered owners for acquired land using State Land Replacement Fee (SLRF) as basis for value Cash compensation for standing crop, regardless of the stage in their growth cycle Cash compensation for lost crops on orphaned land decided on a case by case basis Return land for use, with restrictions, post construction Replace or compensate at full replacement value all non-movable assets (sheds etc)
Private land/ 58 meters (use restrictions)	Cash compensation where the landowner can demonstrate that the restriction imposes a loss

Table 1 Compensation for Private Land reproduced from the BP Guide

According to the Guide, a detailed Inventory of the land and assets of all landowners and users whose land fell within the 44 meter corridor was expected to be compiled in 2002 for the affected parcels of land in order to provide a written record of all assets and income that will be affected on each of the plots within the pipeline corridor. The inventory agreement forms the basis for calculating the compensation offer. According to the Guide a copy of the inventory was expected to be signed by the registered landowner/ user (or his representative) and independently witnessed immediately upon completion of the survey⁵

³ This category of land parcel lies outside the pipeline construction corridor within the Zone 2 boundary.

⁴ This category of land lies within the pipeline construction corridor but outside Zone 2 boundary

ANNEX F

CORRESPONDENCE BETWEEN PROBLEM SOLVING FACILITATOR AND PARTIES

March 25th 2008

Ms Leila Sesadze and Mr Jemal Tenoshvili
Atskuri Village
Akhaltsikhe District
GEORGIA

Dear Ms Leila Sesadze and Mr Jemal Tenoshvili

IRM: BTC Pipeline Project-Atskuri Village, Georgia
Problem-solving Initiative: Update following fact finding visit 11th to 18th March 2008

Please pass on my thanks to all the residents and their representatives for the hospitality and cooperation shown during the visit of the EBRD Chief Compliance Officer and myself to your village on 12th March 2008. I appreciate the time taken by everyone to explain the circumstances of each complaint and the opportunity provided to visit some of the land plots and properties referred to in certain of the individual complaints.

Following constructive meetings held during the week beginning 10th March 2008, with the members of the Affected Group and their Authorised Representatives in Atskuri village and subsequently with representatives of BTC/BP in Tbilisi, in connection with the “fact-finding” stage of the problem-solving Initiative, I can confirm that BP has undertaken to review the complaints where appropriate, and to carry out further investigations as may be warranted with a view to attempting to resolve all of the outstanding issues. Indeed, BP may contact complainants individually with updated position statements and/or offers, as appropriate.

In due course, a draft Problem-solving Completion Report, containing details of the fact finding exercise for each complainant together with any developments arising from BP’s review of the complaints, will be forwarded to you and to BTC/BP for comment, in advance of submission to the President of the EBRD, and to its Board of Directors for information (IRM, RP 48 refers).

In the interim, and if necessary, I am available to return to Georgia in April or May for further discussions before the report is finalised.

Yours sincerely,

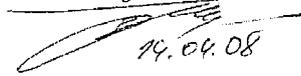
Graham Cleverly
Problem-solving Facilitator

Cc Mr Rashid Javanshir, CEO, BTC Pipeline Company, Baku, Azerbaijan
Cc Mr Matt Taylor BP, Tbilisi, Georgia
Cc Ms Eney Quinones, Chief Compliance Officer, EBRD, London, UK

ANNEX G

RECENT CORRESPONDENCE BETWEEN PROJECT SPONSOR AND
COMPLAINANTS/PsF FOLLOWING FACT FINDING VISIT IN MARCH 2008

BTC/INC/3747
To: The management of
Baku-Tbilisi-Ceyhan Pipeline Company

B. D. Masruda
M. Taylor

14.04.08

STATEMENT

of the resident of Village Atskuri
in Akhaltsikhe District
Ms. Natela Sesadze

Please be advised that my land parcel 6204263 was affected by the pipeline corridor.

I have fully received all types of compensation up to date and I have no complaints towards your company.

N. Sesadze
11.04.2008

To: D. Marsuradze

18.09.2007

BTC/INC/3497/07

13.07.07

To: The Management of BTC Co.

From: Mr. J. Tetroshvili
resident of Satskuri village -
Akhaltsikhe district

A P P L I C A T I O N

I would like to inform you that I am an owner of a land parcel (№ 6204267),
through which the pipeline has passed.

By now I have been paid all kinds of compensations in full and have no
pretensions to anything.

J. Tenoshvili

Matt Taylor
Communications and External Affairs Manager - Georgia



Date: April 16, 2008
Our reference: BP/OUT/0348/08

Mr. Badri Gasitashvili,
Atskuri village, Akhaltsikhe District

Dear Mr Gasitashvili,

In response to your letter to the EBRD chief compliance officer last summer and their recent visit in March 2008, we asked a technical expert to go and visit your property to determine whether road improvement repairs had contributed to cracks in your property.

We attach the results of the survey which confirm that there were no indications that these works had caused instability in either the rock cutting adjacent to the road or the overlying sideslope. There are number of different possible causes of the cracks in your property. We consider that much of the cracking pattern observed can be attributed to the presence of nearby trees and to settlements induced by concentrated discharge from roof gutters to the subsoil beneath the corners of the buildings.

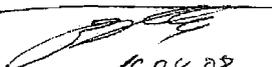
As regards the cracks caused by vibration induced by the company vehicles, we have made the EBRD aware of the report that was conducted in 2006 by Mott McDonald which concluded that although there were shortcomings in the adequacy of the monitoring when subject to international scrutiny, construction vibration was unlikely to be the cause of cracking to the buildings. The IFC ombudsman accepted this assessment in their letter to the residents of the village in 2006.

Please be advised that BP now considers this matter closed.

Yours sincerely,

A handwritten signature in black ink that reads 'Matt Taylor'.

Matt Taylor

R. D. Maisuradze

16.04.08

BTC/INC/3749

To: The management of
Baku-Tbilisi-Ceyhan Pipeline Company

STATEMENT

of the resident of Village Atskuri
in Akhaltsikhe District
Mr. Vakhtang Labadze

Please be advised that my land parcel 6204498 was affected by the pipeline corridor.

I have fully received all types of compensation up to date and I have no complaints towards your company.

[signed]
15.04.2008

Gia Gvaladze
Head of Government & Regulatory Affairs



Date: April 21, 2008
Ref: BTC/OUT/3016/08

Mr Valerian Labadze
Village Atskuri, Akhaltsikhe District

Dear Mr Labadze,

The Baku-Tbilisi-Ceyhan Pipeline Company (BTC Co) wishes to inform you that the meeting was held between BTC Co and EBRD representatives at BTC Co's offices on March 13-14, 2008.

As a result of the meeting, BTC Co undertook to further investigate the complaints raised by you. With this respect BTC Co wishes to confirm to you in writing as follows:

BTC Co has been acting in full compliance with the provisions of the Guide for Land Acquisition and Compensation (GLAC).

Several field surveys which were carried out on your parcel during the construction confirmed that no extra land had been occupied adjacent to your land and no extra trees could therefore have been removed as a result of construction. The veracity of the fact is evidenced through the land inventory form, as well as the formal offer produced using the land inventory details and the Notary Act on Land Purchase based on which you received the compensation payment of GEL 18168. You further received the payment of GEL 1862 for the crop loss during the construction.

BTC Co therefore considers that it has fully addressed any disputable matters raised by you and your earlier complaint is not subject to further consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gia Gvaladze', is written over a faint, circular stamp or watermark.

Gia Gvaladze

Gia Gvaladze
Head of Government & Regulatory Affairs



Date: April 4, 2008
Ref: BTC/OUT/3005/08

A resident of Village Atskuri in Akhaltsikhe District
Ms. Rusudan Chernieva,

Dear Ms. Chernieva,

BTC Co. would like to inform you that a meeting with the representatives of the Bank of Reconstruction and Development of Europe was held in our office on March 13 – 14, 2008.

As a result of the meeting the Company expressed its readiness to additionally study your complaints and correspondingly would like to advise you the following:

On February 21, 2003 the Company purchased 266 sq. meters of land from you and paid 7161 GEL. (Grounds: an inventory document confirmed by your signature).

On April 26, 2006 you received 800 GEL as compensation for the crop loss on 200 sq. meter land parcel section which remained in your ownership.

Resulting from the abovementioned the Company would like to offer you **900 GEL** as a compensation for the crop loss for the years 2004-2005 on the remaining 200 sq. meter land parcel.

The company does not agree with your statement regarding the damage of the trees (1 Apple tree and 4 Plum trees) during the construction. The issue of restoring the irrigation channel will be additionally addressed.

Sincerely,

A handwritten signature in black ink, appearing to be 'Gia Gvaladze', written in a cursive style with a prominent flourish at the end.

Gia Gvaladze

1 of 1

The Baku-Tbilisi-Ceyhan Pipeline Company

BTC Co
38, Saburtalo str, Tbilisi, 0177, Georgia

Switchboard: [995 32] 593400
Direct Fax: [995 32] 593480

From: Taylor, Matt [Matthew.Taylor@uk.bp.com]
Sent: 06 May 2008 14:28
To: Graham Cleverly
Cc: graham.cleverly@wwro-ks.org; Maisashvili, Iuri; Maisuradze, David
Subject: [!! SPAM] RE: Atskuri complaint: Mrs Chernievi and Mr Gasitashvili's complaints
Graham,

Just a quick update on the two points that you raise.

1. We have agreed that construction did have an impact on the irrigation channel and have said to Mrs Chernievi that we will compensate her for the work required to re-build the channel. Further meetings will be held shortly to agree what work is required and how this will be done.

2. Mr Gasitashvili has received the letter but has not replied.

We look forward to receiving your draft report.

Kind regards

Matt

From: Graham Cleverly [mailto:graham@cleverly.co.uk]
Sent: 01 May 2008 13:29
To: Maisuradze, David
Cc: Taylor, Matt; graham.cleverly@wwro-ks.org
Subject: Atskuri complaint: Mrs Chernievi and Mr Gasitashvili's complaints

David,

Many thanks for your Em dated 24th April 2008 concerning Mrs Chernievi's claim alleging damage to the irrigation channel supplying water to her plot near Atksuri village.

Please see my comments below:

1. Mrs Chernievi's complaint re irrigation channel

My understanding of the complaint following the site visit on 12th March 2008 is that Mrs Chernievi claims that the bed of the local stream adjoining her plot was lowered during construction of the pipeline. Thus, the previous irrigation water take-off point where the irrigation channel intercepted the stream is no longer appropriate and the irrigation channel now needs to be extended some distance further upstream to allow irrigation water to be taken from the stream to take account of its lowered bed level.

Photos

The scale of the earthen irrigation channel is shown on the two attached photos taken during the site visit.

BP/BTC Records

Could you please check your records to determine whether the stream was indeed lowered during pipeline construction and if so by how much in the vicinity of Mrs Chernievi's plot, and also whether the construction company promised to repair the irrigation system as alleged by Mrs Chernievi in her original complaint under the IRM?

Further actions by BP/BTC

You indicate in your Em that "anyway the liaison officer will take care to maintain the flow". Could you please provide some details of how BP/BTC expect this activity to be carried out by the liaison officer in practice so that the IRM has the opportunity to monitor this proposed activity in the future.

2. Mr Gasitashvili's complaint

Could you please let me know if Mr Gasitashvili has replied to your letter to him dated April 16th 2008?

3. EM Correspondence

Please copy any correspondence to this EM address (graham@cleverly.co.uk) and also to my Kosovo EM address (graham.cleverly@wwro-ks.org)

I look forward to hearing from you shortly. Once this outstanding issue concerning the alleged damage to Mrs Chernievi's irrigation channel is resolved I expect to complete my draft Report.

Regards

Graham Cleverly

Report on Cracking to Mr Badri Gasitashvili's Residence in Atskuri Village – 28 March 2008

A field investigation of the above site was carried out on 28 March 2008 with the purpose of investigating the owner's claims that Project access road upgrade works and traffic during BTC/SCP construction had induced the cracking observed in the various residential and outbuildings on this property. Anecdotal reports from the owner claimed that the cracking commenced in 2004 and was coincident with commencement of minor construction works/heavy vehicle trafficking on the road below the property which leads from Atskuri to Tiseli.

The walkover inspection of the property was carried out by Mr Nick Jackson, a Senior Engineering Geologist who is presently contracted to the SPU Engineering Team on the AGT Pipelines Project in the role of Geohazard Manager.

The following observations were made on the site:

- There was no evidence to suggest that the profile of the sandstone rock above the road had been modified as part of the road improvement works carried out in 2004 during the pipeline construction period. More importantly there were no indications that these works had caused instability in either the rock cutting adjacent to the road or the overlying sideslope.
- Cracking patterns observed in the Mr Gasitashvili's residential property and outbuildings are consistent with differential movements most probably resulting from one or more of the following mechanisms:
 - Root-jacking and soil desiccation effects from nearby trees (see attached sketch and site photos.)
 - Settlement of the foundations due to variable strength and thicknesses of the subsurface materials.
 - Thermal effects (shrinkage/restraint cracks) due to differing expansion/contraction behaviour of the various construction materials used in the exterior walls (mortar, stone, timber etc.).
 - Shrink/swelling effects from changes to moisture condition of timber material incorporated in the structures.
 - Seismic activity. See attached tabulated seismic history for the Atskuri area.
- All cracking appeared to be old with evidence of partial repairs having been carried out.
- The natural sideslope between the property and the crest of the access road cut is steep and is prone to on-going soil creep movements which may cause settlement effects to structures located adjacent to the crest of the sideslope (such as the cow shed). These creep movements are a natural process and there is no evidence that historic road construction works or traffic have accelerated this process.

The investigation found that there are multiple potential causes of the cracking observed on the property but that the road works and project traffic, carried out as part of the BTC/SCP construction works, have not had an effect on the site. Much of the "corners-down" cracking pattern observed can be attributed to root-jacking and desiccation effects from nearby trees and to settlements induced by concentrated discharge from roof gutters to the subsoil beneath the corners of the buildings.