



**BTC Pipeline –
An IFI Recipe for Increasing Poverty**

**Tbilisi
October 2005**

This report represents the joint efforts of the groups working on BTC oil pipeline issues.

Green Alternative thanks:

OXFAM GB and the CEE Bankwatch Network for financial support

Authors:

Manana Kochladze, Nino Gujaraidze, Kety Gujaraidze, Vasil Titvinidze

Contents

ABBREVIATIONS.....	3
INTRODUCTION.....	4
CHAPTER 1. STATUS OF ENVIRONMENTAL PERMIT IMPLEMENTATION	5
1.1 Condition No 9 of the Environmental Permit – Probability of Third Party Interference	6
1.2 Condition No. 1 “Risk Assessment” and No. 9 “Borjomi Zone” of the Environmental Permit	8
1.3 Environmental Permit Condition No. 9 “Borjomi Zone” – Alternative Water Supply	11
1.4 Environmental Permit Condition No. 12 “Additional Study of the Existing Environment” - Waste Management.....	13
CHAPTER 2. REMOVAL OF THE TREES FROM THE CONSTRUCTION CORRIDOR	17
2.1 Infringements in the Process of Felling	17
2.2 Corruption in the Distribution of Timber.....	17
CHAPTER 3. PROBLEMS RELATED TO THE WELDING AND THE FIELD JOINT COATING.....	17
CHAPTER 4. CULTURAL HERITAGE	20
CHAPTER 5. MONITORING OF BTC PIPELINE PROJECT IMPLEMENTATION	22
5.1 Project Monitoring by the Lenders	22
5.2 Project Monitoring by the NGOs	22
5.3 Governmental Monitoring of the Project.....	22
CHAPTER 6. VIOLATIONS OF WORLD BANK’S INVOLUNTARY RESETTLEMENT POLICY 4.30	24
6.1 Implementation of Construction Works without Prior Compensation	24
6.2 Damage due to Construction Activities	26
6. 3 Application of the Law of Neighboring Tenements instead of the Eminent Domain Law	28
CHAPTER 7. BTC CO.’S GRIEVANCE MECHANISM AND ACCESS TO JUSTICE	32
7.1 BTC Co.’s Grievance Mechanism	32
7.2 Community Liaison Officers	33
7.3 Complaints of the Project Affected Population	34
7.4 Problems Connected with the Grievance Registration	35
7.5 Access to justice	36
CHAPTER 8. COMPLAINTS SUBMITTED TO THE IFC COMPLIANCE ADVISOR/OMBUDSMAN	37
CHAPTER 9. AN INDEPENDENT MECHANISM FOR APPEALING UNSETTLED COMPLAINTS.....	41
CHAPTER 10. COMMUNITY INVESTMENT PROGRAMME	42
EPILOGUE	43

ABBREVIATIONS

BP	British Petroleum
BTC	Baku-Tbilisi-Ceyhan
BTC Co.	Baku-Tbilisi-Ceyhan Pipeline Company
CAO	IFC Compliance Advisor/Ombudsman
CIP	Community Investment Programme
CLO	Community Liaison Officer
EBRD	European Bank for Reconstruction and Development
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
ETIB	Energy Transit Institutional Building Project
HGA	Host Government Agreement
IFC	International Finance Corporation
IFIs	International Financial Institutions
MoE	Ministry of Environmental Protection and Natural Resources
RAP	Resettlement Action Plan
ROW	Right of Way
SLIP	Supplementary Lenders Information Pack
SCP	South Caucasus Pipeline
SPJV	Spie-Capag-Petrofac International Joint Venture

INTRODUCTION

The Azerbaijan-Georgia-Turkey pipeline system (the Baku-Tbilisi-Ceyhan Main Export Oil Pipeline along with the South Caucasus Gas Pipeline) represents the implementation of the US Energy Security Strategy.¹ Starting in 2005, the 1770 km-long Baku-Tbilisi-Ceyhan (BTC) pipeline will transport up to one million barrels per day (bpd) of crude oil from an expanded Sangachal terminal near Baku in Azerbaijan, and then through Georgia to a new marine terminal at Ceyhan, Turkish Mediterranean.

The initial costs of the BTC pipeline project were estimated at around USD 3.7 billion. The project is implemented by the international consortium known as the BTC Pipeline Company (BTC Co.), in which British Petroleum AMOCO maintains a leading role. About 70 per cent of project expenses are born by the International Financial Institutions (International Finance Corporation (IFC), European Bank of Reconstruction and Development (EBRD), export-credit agencies (US EX-IM, OPIC, ECDG, SACE, COFAS, JEXIM, and HERMES).

The IFC and the EBRD consider the BTC pipeline project as a model of development and poverty alleviation, claiming that it will help to protect human rights in the region; that the public participation in the decision-making process broke new ground in its transparency and inclusiveness; and furthermore assuring that “the involvement of the public sector multilateral institutions provided the best prospect [the pipeline] would be built and operated to the highest social and environmental standards”.²

Since the break-up of the Soviet Union, the South Caucasus and Caspian countries have been waiting for over ten years for an oil boom that will help to overcome their economic crises and to eradicate the poverty affecting the lives of millions of people living in those countries. Georgia once enjoyed strong social indicators and a remarkably high quality of life in comparison with other Soviet republics. Now, as a result of economic crisis, political turmoil and ethnic conflict, about 60 per cent of its population lives below the poverty level. This is coupled with the disruption of the countries’ health and educational systems, as well as malnutrition, extremely poor water supply and sanitation systems, and a severe energy crisis.

Resulting from long-term promotion, the majority of Georgian population strongly believed that the transit of oil from the Caspian Sea region through the territory of Georgia would facilitate the economic prosperity of Georgia and the elimination of poverty. However, for those communities living along the Baku-Tbilisi-Supsa and Baku-Tbilisi-Ceyhan pipelines, the project proved to cause only damage.

While the Georgian government boasts that “the moving power of economic growth in the country was the construction of Baku-Tbilisi-Ceyhan”³, and the International Monetary Fund (IMF) is proud to declare that increased direct investments in the country’s economy (though in the form of pipes), most of the population has not benefited at all from the implementation of the project, this is not to mention damaged houses and roads, or lost incomes.

¹ According to Bill Richardson, Former US Energy Secretary: “This is not just another pipeline; it is a strategic framework that advances America’s national security interests. It is a strategic vision for the future of the Caspian region.”

² ‘IFC Approves BP Oil Pipeline Project’, *Financial Times*, November 5, 2003

³ Annual Progress Report on the implementation programme of economic development and poverty reduction, Ministry of Economic Development, Tbilisi, January 2005

Green Alternative and the CEE Bankwatch Network continue the monitoring of the BTC Pipeline Project implementation and its compliance with the requirements of international financial institutions (EBRD, IFC) and the Georgian legislation.

The report presents the infringements detected in the construction phase of the Georgian section of the BTC pipeline project, and the problems and the reality the Georgian citizens faced during the implementation of the project. It should be mentioned that, unfortunately, some of the recorded violations will have long-term negative impacts upon the Georgian population and the environment.

CHAPTER 1. STATUS OF ENVIRONMENTAL PERMIT IMPLEMENTATION

On October 15, 2002, the BTC Co. submitted the Environmental and Social Impact Assessment (ESIA) report for the BTC pipeline project to the Ministry of Environment (MoE) of Georgia for consideration in obtaining an environmental permit. After consideration of the mentioned document, on November 30, 2002 the MoE issued environmental permit No. 0011 for the transport of oil through the territory of Georgia. It should be noted that the text of the permit was subject to negotiations with the BTC Co., and this does not represent "good practice".⁴ In the opinion of the Minister of Environment, even the process of granting an environmental permit was out of the scope of any negotiation; it was perceived, rather, as a result of pressure. In a letter dated November 22, 2002 to BP Executive Director Lord Brown, the Minister of Environment directly stated "BP representatives are requesting the Georgian government to violate our own environmental legislation".⁵

According to the Georgian legislation, the conditions attached to the abovementioned environmental permit are the integral part of the environmental permit; they are based on the ESIA report and are subject to obligatory implementation. Failure to meet the requirements of the permit conditions can result in cancellation of the permit. It should be stressed that the environmental policy of the IFC, as well as that of the EBRD, demands that the project sponsor completely fulfil requirements of the local legislation. However, the BTC Co. considers the permit's conditions as supplementary (and not obligatory); that is confirmed by the English version of the permit, placed on the project website,⁶ where the conditions are defined as "additional activities".⁷ Thus, it should not come as a surprise that part of the environmental requirements was not met by the BTC Co.

In some cases (condition No. 1 "Risk Assessment", condition No. 9 "Borjomi Zone", condition No. 12 "Additional Study of the Existing Environment") meeting the requirements of the permit conditions by the company still remains problematic. Unfortunately, from the Georgian government's perspective, there is also no uniform attitude towards assuring compliance, thus giving an opportunity to the BTC Co. to ignore the requirements of the permit conditions.

⁴ "From an unusually democratic governance point of view, the statutory document was actually negotiated with BP and the members of the BTC Consortium", letter of National Security Council Secretary Mr. Gela Bejuashvili to the EBRD President Mr. Jean Lemierre and IFC President Mr. Peter Woicke

⁵ Letter of Minister of Environment of Georgia Mrs. Nino Chkhobadze to the President of BP Mr. John Brown dated 11.22.2002, No 01/1893

⁶ www.caspia.developmentandexport.com

⁷ Interview with Minister of Environment of Georgia Mrs. Tamar Lebanidze, WWF Caucasian Office, Bulletin No 3, 2004

1.1 Condition No 9 of the Environmental Permit – Probability of Third Party Interference

Construction of the pipeline through the Borjomi region was the major concern of the officials, as well as to Georgian society during the issuance of the environmental permit for the project. There were several reasons for that:

- The construction of the pipeline in the Borjomi region established a precedent of ignorance of environmental legislation. As a result, in case of an oil spill, Borjomi Gorge, Borjomi-Kharagauli National Park's buffer zone, Ktsia-Tabatskuri Reserve, Nariani Swamps and the planned Erusheti National Park are under the risk of contamination;
- The Borjomi mineral water industry, which has national importance as its production forms one of the most significant parts of the country's export – 10 per cent – is under the threat;
- In this region the pipeline construction corridor crosses the high-mountain landscape, which is distinguished by seismic activity, steep slopes, and a great number of both active and "dormant" landslides. These circumstances increase the probability of pipeline damage which can cause irreplaceable damage to Georgian nature as well as to its economy;
- In the case of an oil spill, complex terrain will facilitate the fast movement of oil and the containment of the spill will be difficult.

With the consideration of the above-mentioned condition No. 9 ("Borjomi Zone") of the environmental permit states that the "Tskratskaro-Bakuriani-Kodiana, Tsalka and Ktsia-Tabatskuri sections of the proposed pipeline route cross areas of environmental, economic and historical significance for Georgia. Especially significant is the area of Borjomi Gorge (which at the same time involves a high risk, geologically hazardous section)".⁸ For this very purpose, the permit (condition No 9, paragraph "f") demanded that the BTC Co. "apply Best Available Technology, Best Practices and multiple lines of protection and redundancy in design, construction and operation to achieve as close to 'zero risk' as possible".⁹

On July 22, 2004, the MoE halted the BTC pipeline construction activities in the Borjomi region. The government stated that the company had not fulfilled the conditions of the environmental permit, namely paragraph "j" of condition No. 9, which requires the BTC Co to provide additional design and operational measures to secure the integrity of the pipeline in the event of third-party intervention.

The company had to fulfil this condition before commencement of the construction activities in Borjomi. However, in spite of a number of demands, the BTC Co. has not presented a security plan to the Georgian government, which would ensure those necessary measures in order to achieve a "close-to-zero risk". Therefore, the Georgian government engaged the services of Jane's Consultancy; an international company specialising in security issues. Having examined the issue, the company concluded that the probability of third party interference in Georgia is high, and an adequate response would take too much time. The company submitted the following recommendations to the Government of Georgia: the pipeline in the Borjomi region must be buried at a depth of at least 3 meters, together with the relevant protective constructions, in order to ensure the protection of the pipeline as well as to block and check valves.

⁸ Condition No 9 of the environmental permit No 0011, issued on November 30, 2002 by the Ministry of Environment

⁹ "Scientifically this standard ['close-to-zero risk'] cannot be determined and zero risks do not exist. In practical terms, 'close-to-zero risk' means: application of best available techniques, defensive design and multi-layer protection. In addition costs, as stated by the government, should not play any role in the decision to apply certain measures" Advisory Review on the Compliance of Project Implementation with the Environmental Permit for the Baku-Tbilisi-Ceyhan Oil Pipeline and South Caucasus Pipeline in Georgia, 1120-911, The Netherlands Commission on EIA, December 23, 2004

In response, the BTC Co. stated that due to the complicated terrain, increasing the burial depth of the pipeline in the Borjomi region, the Tskhatskaro-Kodiana section, would result in significant delays to completion of the project. It has to be noted that the company has not presented any documentary proof, with the exception of a letter from the coordinators of the BTC pipeline project from the EBRD and the IFC, stating that the EBRD and the IFC are satisfied with the measures already taken and have deemed the safety measures to be in line with international standards.¹⁰ At the same time, the authors of the letter declare that the decision to increase the burial depth might influence the lenders' financing of the pipeline project.

Thus, with the support of the EBRD and IFC, the BTC Co. refused to meet the legitimate demands of the Georgian government concerning the fulfilment of Condition No. 9 of the Environmental Permit.¹¹ Consequently, on July 22, 2004, the construction of the BTC pipeline in the Borjomi region was stopped. The halt was followed by visits of a number of high-ranking officials in Georgia, including USA Assistant Secretary of State for European and Eurasian Affairs Elizabeth Jones,¹² Deputy Prime Minister of Azerbaijan Abid Sharifov, Chairman of BTC Co. Natik Aliyev, and other investors.

The halting of construction was also the top issue during the informal visit of the President of Georgia to the USA. As the President stated, his administration will continue the monitoring of British Petroleum: "the BTC pipeline has very great value for us, because this project underlines the strategic importance of Georgia. But the health of my citizens is also important for me¹³....Our environment is fragile. BP has agreed to dig deeper and ensure over-the-surface protection....We won't be bullied by BP....Here in Washington they are pressuring us....We are not a banana state and we still have issues with them [BP]".¹⁴

Permission to re-commence the construction was issued by the MoE on August 4, 2004. As the Government of Georgia stated, according to the agreement, the BTC Co. has submitted guarantees that a safety plan for the Borjomi zone will be prepared and the pipeline will be buried at a depth of 2 meters. It should be mentioned that the above obligations have not been reflected in any official public documents of the BTC Co.¹⁵

¹⁰ "The lenders independent technical and environmental advisors carried out an in-depth assessment of the BTC pipeline system and its integrity. In this context, the additional pipeline protection measures in the Borjomi region were assessed in great detail since Lenders share [the] BTC Company and Government's desire to ensure that the highest international standards are applied for the pipeline in general, but in particular, for the environmentally sensitive Borjomi area, which has been subject to great public scrutiny. Based on site visits and assessments of technical data, Worley Parsons, The Lenders independent engineer, confirmed that the current measures are in line with international best practice and that the measures have fully considered the circumstances and particular sensitivities along pipeline route. We are willing to consider providing the Georgian government access to the conclusions of our advisors. Worley Parsons may also be prepared to review and render an independent third-party assessment of prior findings." Letter of July 22, 2004, of Felicia Swanson (IFC) and Charlotte Philipps (EBRD) to Mr. Michael Townshend, Chief Executive Officer, BTC Co.

¹¹ As the Executive Director of the BTC Co. Mr. Michael Townsend stated, "We have submitted all the required documents to the Government of Georgia. We are not going to perform any additional work. So many documents have already been prepared related to the EIA, that if we spread the pages, they would cover the whole pipeline route"; "BP Shames Georgian Government", *Mtavari Gazeti*, July 27, 2004,

¹² "U.S. official reviews S. Ossetia and BTC", By Christina Tashkevic, *The Messenger*, August 2, 2004, #143 (0067).

¹³ "Construction of BTC pipeline resumes", By Christina Tashkevich, *The Messenger*, August 10, 2004, #149 (0673)

¹⁴ "We Won't Be Intimidated", *Transitions Online*, August 9, 2004

¹⁵ "I learned that the BTC pipeline construction has been resumed at the beginning of August after British Petroleum (BP) agreed to increase the depth of a pipe burial and to prepare a report on the above-ground security measures, in response to the government's concerns about the security of the pipeline.", letter of World Bank Executive director Ad Melkert to Mrs. Keti Dgebuadze, East-West Energy Corridor Coalition, September 16, 2004

On October 10, 2004, the Government of Georgia signed a security protocol¹⁶ with the BTC Co. and confirmed that the conditions of the environmental permit were fulfilled by the BTC Co.¹⁷ It should be noted that the safety plan for the Borjomi region had not been submitted to the government by that time.¹⁸

According to the experts' considerations,¹⁹ the applied approaches and methods in the whole region do not represent the best available technology to prevent contamination resulting from an oil spill, especially in the sensitive areas (Tsalka, Ktsia-Tabatskuri, the river Borjomula water catchments area) and do not fulfil the requirements of Article No. 9 of the environmental permit. Concerning the spill-detection systems, a unified approach has been applied along the entire route in spite of the fact that natural, as well as landscape and climatic conditions greatly differ; and it could significantly impact the efficiency of oil spill response measures.

The BTC Co stated²⁰ that an "acoustic pig" will be used for spill-detection in highly-sensitive areas, which will detect a 20 l/h spill, and that the inspection by means of the pig would be carried out once a month, although better technologies are applied throughout the world for detection of oil spills, which enable the detection of a 1 l/h spill. It means that even in this case the company does not apply the best available technologies.²¹

1.2 Condition No. 1 "Risk Assessment" and No. 9 "Borjomi Zone" of the Environmental Permit



Landslide area in pipeline corridor

The Georgian government's advisor, the Netherlands Commission on Environmental Impact Assessment, in its report of December 2004, underlines that activities performed by the BTC Co. in some sections of the Borjomi region do not meet the standard for this area which is risk as close to zero as possible.

The Commission stressed that it is necessary to carry out additional investigations and activities before the commissioning of the pipeline, including:

¹⁶ Based on this so-called "provisional" protocol, on October 19, 2004 the agreement was signed between the BTC Co. and the Government of Georgia on the provision of security equipment, facilities and operations funding for the BTC Pipeline Project (BTC Co./BP press-release, October 11, 2004)

¹⁷ "the Government has requested and [the] BTC Co. hereby states in good faith that, as required by the ESIA Continuing Activities, 9 (f) "BTC Co. [has applied] Best Available Technology, Best Practice and multiple lines of protection and redundancy in design, construction, and operation to achieve as close to "zero risk" as possible" and 9 (j) "BTC Co. [is providing] additional design and operational measures to secure the integrity of the pipeline in [the] event of third party intervention in a manner which will allow sufficient time for information to reach project operations staff and State security services and enable access to [the] Borjomi Area based upon risks which are foreseeable under the prevailing conditions, including risks associated with attempts to tap the pipeline, acts of vandalism, and attempts to disrupt the project by small organised groups." (the Agreement between the BTC Co. and the Government of Georgia on the Provision of Security Equipment, Facilities and Operations Funding for the BTC Pipeline Project, Preliminary Statement)

¹⁸ Meeting of International Facts Finding Mission with the Minister of Environment Mrs. Tamar Lebanidze and the representative of Georgia Intergovernmental Commission on BTC and SCP Mr. George Vashakmadze, October 11, 2004

¹⁹ Expert Review, General and Detailed Comments, Recommendations to the MoE, 12.01.2004, Georgian-British Oil Service Consulting Company

²⁰ Annex to the letter dated November 28, 2003(Ref No: BTC/GIOC/OU T/276/03): Report on protection of the BTC pipeline and mitigation measures. Document # ACT002-2004-EN-REP-00003

²¹ Expert Review, General and Detailed Comments, Recommendations to the MoE, 12.01.2004, Georgian-British Oil Service Consulting Company

1. Static and dynamic slope stability analyses have to be carried out according to Eurocode 7 (Geotechnical design) and Eurocode 8 (Design provisions for earthquake resistance of structures; Parts 4 and 5) together with site-specific information on soil and rock together with geotechnical parameters in *worst case* scenarios.
2. To use quantitative risk criteria for landslides in the Borjomi area.
3. BP should carry out re-assessments of critical slopes in the Borjomi area and the Kodiana and Sakire areas with or without "dormant" landslides by adopting a static and dynamic geotechnical approach, which means using correct information on water pressures and rock and soil parameters.
4. The number and effectiveness of all installed drainage pipes should be recalculated the new measurements should be integrated in a static and dynamic slope stability analysis. The drainage systems should be maintained during the operational period of the pipeline to prevent clogging.
5. In order to prevent damage from landslides on the BTC pipeline it is recommended to use special stabilisation techniques, i.e. drainage of the soil above the landslides (uphill) in the Sakire area to protect the oil pipeline from damage by active landslides.
6. Continuing the measurement of groundwater pressure, slope deformation and site inspections in the Sakire and Kodiana areas during the lifetime of the pipeline while on-stream is needed to meet "as-close-to-zero" risk.
7. In order to avoid an increase of landslides due to slope erosion along the Right of Way (RoW) of the BTC pipeline in the Borjomi area, a plan for controlling deforestation should be complied and implemented within three years.²²

Unfortunately, no documents exist which reflect the response of either the Georgian government or the BTC Co. to this document and the recommendations made by the Netherlands Commission on Environmental Impact Assessment.

Box 1. The BTC Co.'s Grant Programme for Georgia

On October 19, 2004, BP, the BTC Co. and the Georgian government signed the following three agreements:²³

1. Agreement between the Baku-Tbilisi-Ceyhan Pipeline Company and the Government of Georgia on the Provision of Security Equipment, Facilities and Operations for the Baku-Tbilisi-Ceyhan Pipeline Project;
2. Agreement between the Baku-Tbilisi-Ceyhan Pipeline Company and the Government of Georgia on the Establishment of a Grant Programme for Georgia;
3. Protocol between the Government of Georgia and BP Exploration (Caspian Sea) Limited on the Provision of Security for the Baku-Tbilisi-Ceyhan Pipeline Project, South Caucasus Pipeline Project and the Western Route Export Pipeline and Related Installations Located at the Supsa Terminal.

²² Advisory Review on the Compliance of Project Implementation with the Environmental Permit for the Baku-Tbilisi-Ceyhan Oil Pipeline and the South Caucasus Gas Pipeline in Georgia; Netherlands Commission on Environmental Impact Assessment; December 23, 2004

²³ As it was mentioned earlier, first, on October 10, 2004 two provisional protocols were signed related to the provision of security, implementation of environmental permit conditions and the establishment of grant programme for Georgia. Later, on October 19, 2004, based on provisional protocols, the abovementioned agreements were signed.

Among the signed agreements we will focus on the agreement on the establishment of a grant programme for Georgia. According to the agreement, the BTC Co. has undertaken the allocation of a USD 40 million grant to the Georgian government. In accordance with the document, USD 9 million should be paid within 30 days from the signing of this agreement. The second grant – USD 11 million – would be allocated after the completion of pipeline construction.²⁴ From 2006 to 2010 annually, the company will allocate grants in the amount of USD 4 million. Also, the BTC Co. will additionally allocate USD 1 million from 2011 until the expiration of the 40-year period of the project.²⁵ The grants shall be used for funding of social and economic projects.

The preamble of the agreement states that the grant programme will serve “as a leading international model for engagement and support for development by multinational enterprises such as the BTC Co.”. It should be mentioned that at the moment of signing the agreement no law existed in Georgia regulating the receipt of grants by the government from commercial entities. According to the Law of Georgia on Grants of 1996, the Government of Georgia can receive grants only from foreign countries and IFIs.

In March 2005, by the initiative of the President of Georgia, draft of amendments to the law were submitted to the Parliament of Georgia, according to which, a grantor (donor) can be foreign business or non-business, as well as a Georgian business or non-business juridical individual.

The initiative had a negative response among experts, as well as among society. The concern was caused by the results which could be brought about by the enforcement of this law in Georgia. According to the experts' opinion,²⁶ (1) if a businessman on his own good will and intention gives a grant to the state, the state actually will become his/her contractor and will have an obligation to follow the conditions of the grant agreement and meet the requirements, set by the donor,... and it goes beyond the norms of the Constitution of Georgia; (2) The state and its bodies will get involved in the process of attracting funds from business... Such a process infringes and weakens the state's role as an institution; its function and prestige – not to mention the anti-constitutional nature of such processes.

At the same time, experts point to the potential threat of the mechanism. In particular, the experts note that such a mechanism could be used with the purpose of collection of informal charges from the entrepreneurs and/or lobbying of unlawful business interests. In their opinion, a corruption scheme can be formed as follows: an entrepreneur, lobbying his or her own business interests, bargains with the governmental body, allocates a grant to it in order to gain fictitious goals, and in return he receives unlawful service of a certain form.

In our opinion, the law modifications suggested by the government were prepared with the purpose of the establishment of a legal basis to receive from the BTC Co. the grant transfers. It is also confirmed by the fact that on March 11, 2005, the Parliament of Georgia adopted the modification in accordance with which, the grantor (donor) can be foreign business or non-

²⁴ In accordance with the Agreement, ““Pipeline completion” means the first date in which 1) Baku-Tbilisi-Cheyhan facilities have been installed within the territory of Georgia providing nameplate transport capacity for the pipeline within Georgia of at least 500 000 barrels of oil per day; and 2) at least 100 000 barrels of oil per day on average have been transported by BTC Co over 30 consecutive days from the Azerbaijani border through Georgia and across the Turkish border”– Agreement between the BTC Co And the Government of Georgia on establishment of Grant Programme for Georgia.

²⁵ Document stated, that “the grant programme is additional and separate from the Greater Borjomi Initiative to which the BTC Co. has separately committed US 5 million in funding”

²⁶ Conclusion of independent experts Vazha Salamadze, David Usupashvili on the introduction of modifications to the Law of Georgia on Grants, March 10, 2005, www.civilin.org.ge

business juridical person. At the same time, the Parliament of Georgia refused to admit Georgian business or non-business juridical person as a donor.

The above-mentioned threats refer particularly to multinational companies, taking into account their potential to lobby their own interests and financial abilities. Here again, it is noteworthy to remember the BTC Co.'s initiative of October 19, 2004, concerning the establishment of the grant programme for Georgia, which oddly coincided with the suspension of pipeline construction by the Government of Georgia and the restarting of construction in July-August, 2004.

In our opinion, the actions of the BTC Co., as well as the actions of the Government of Georgia overstep the limits of the principles of transparency and equal distribution of revenues presently recognised in the world.²⁷ It's one matter when the company invests money in the so-called social security investment programme, i.e. finances local communities, by itself or by means of the third party, for solving social or environmental problems; and another matter when the company finances the government, especially when the government lawfully requires conformity with state legislation. This is not a "constructive cooperation", as it is perceived by the CDAP,²⁸ but rather a matter conflicting with the Constitution and which threatens the development of democracy.

We again stress the fact that the BTC pipeline project is not profitable for Georgia, but this is the fault of the previous government. If the BCT Co./BP wants to demonstrate good will and help the population of Georgia, the best way would be the payment of taxes to the budget of Georgia, which are paid by other companies, operating within Georgia.

1.3 Environmental Permit Condition No. 9 "Borjomi Zone" – Alternative Water Supply

Condition No. 9 of the environmental permit ("Borjomi Zone") also included several important terms, among them the requirement that the BTC Co. shall carry out "preliminary studies of alternative water supply sources for the population of the Borjomi area to be utilised in the event of drinking water contamination resulting from an oil spill".

The Georgian government admitted that this condition was met by the BTC Co., though in reality substantial suspicion exists concerning the quality of performance of this condition. For example, during the process of pipeline construction in the summer of 2004, the water supply system of the village Tsemi, Borjomi district, was contaminated – resulting in cases of dysentery and the closure of the holiday season, causing heavy financial loss to the local community. At the same time, the water supply systems of the villages of Sadgeri, Libani and Tba were under threat. This problem arose from the fact that the company did not carry out adequate preliminary research of the water sources, used by the local population as potable water.

The population of the villages Tsemi, Sadgeri and Tba submitted a complaint to the IFC Compliance Advisor/Ombudsman (see also Chapter 7). The investigation, carried out by the IFC Compliance Advisor/Ombudsman (IFC CAO), showed that potable water of the village Tsemi had been contaminated due to construction activities. The IFC CAO also stated that the CAO found some confusion about the actual sources of water supplies for Tba, Tsemi and Sadgeri, and continuing concern about possible future contamination of the water table. CAO recommends that further analysis of the water supply to the four villages (Patara Tsemi, Libani,

²⁷ Such as Extractive Industry Transparency Initiative, Publish What You Pay, World Bank Extractive Industry Review

²⁸ Report of Caspian Development Panel, December 30, 2004; available at the websites: <http://www.caspsea.com> and <http://www.caspiandevelopmentandexport.com>

Didi Tsemi and the small railway settlement) should be undertaken by the BTC Co., based on the evidence of runoff contamination from construction. The CAO also recommends "given the confusion about sources of water supply identified by the community, and concerns about contamination from oil spills, the BTC Co. should review the Oil Spill Response documentation with local people, and, if necessary, revise the response".²⁹

In its assessment report, the IFC CAO points out limitations of the report (Preliminary Study of Alternative Water Supply for the Borjomi Area) prepared by the company in order to fulfil the requirement of the environmental permit condition, and states that while the company concluded that the Tsemi water supply was not connected to a catchment with the potential to be contaminated from an oil spill (or by interference, from construction runoff), the evidence is that the water was contaminated. In addition, the IFC CAO concludes that the company did not follow a number of specific sediment control commitments under the BTC Environmental and Social General Commitment Register. The IFC CAO calls on the company to undertake a further analysis to ensure that source documents for Oil Spill Management to protect water supplies following an oil spill are accurate.

This incident of water contamination due to construction activities in the Borjomi area has once again raised the issue of a risk of ground and surface water contamination in case of an oil spill. This issue was a subject of hot debates in 2002, when the environmental permit was granted to the BTC Co. and it still remains open. Georgian scientists have pointed out several times that all kinds of underground water in this area, whether fresh, low-mineral or mineralised – all having



Polluted Drinking Water in Tsemi Village

close hydro-geological links between them – will all be polluted in the event of an oil spill (which is evidently quite probable due to high geo-hazard risk in this area). Such a possibility was convincingly proved in the study of Georgian hydro-geologists,³⁰ where they state that in case of oil spill not only would the recreational industry and enterprises bottling the mineral and fresh water suffer, but also the population of the whole Borjomi Gorge.

It is known that to prevent possible oil spills the BTC Co. intends to build six special barriers (dams).³¹ In the opinion of the experts, the proposed project has so

many drawbacks that it is impossible to make any detailed assessment. However, even at this stage experts claim that in case of the solution of all technical problems, the proposed measures may even increase the catastrophic effects of oil spill. The Georgian experts are still convinced

²⁹ Assessment Report: Complaint regarding the Baku-Tbilisi-Ceyhan (BTC) Pipeline Project: Tba, Tsemi and Sadgeri, Georgia; Office of Compliance Advisor/Ombudsman, International Finance Corporation and Multilateral Investment Guarantee Agency; October 2004

³⁰ "Environmental Problems related to the Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline", U. Zviadadze, J. Gabechava, I. Lominadze, M. Mardashova; monthly journal of Academy of Science of Georgia *Science and Technology*, #10-12, 2002 (in Georgian)

³¹ "The Georgian government has already indicated that they will require that additional containment structures be constructed in the Borjomi valley area to contain spilled oil in the event of a pipeline rupture in this section and has also requested that a relief tack designed to hold spilled oil also be constructed at this location. There are differences in opinion of effectiveness of such measures and discussions on this issue continue. The containment structures will consist of six concrete structures that will form a barrier to oil flow and will be constructed in various locations selected by the government. The structures will not be ready for linefill so temporary earth berms will be constructed at each prior to linefill. A risk assessment on the implications of the addition of a relief tack is currently underway". Azerbaijan Republic, Georgia, Turkey: ACG Phase 1 and BTC Pipeline Projects: Update on Oil Spill Response Planning: IFC/SecM2005-0002; January 6, 2005

that the only reasonable way out of the situation is the construction of an alternative section of the pipeline that will bypass the Borjomi area, and not sit back and wait for tragic developments.³²

1.4 Environmental Permit Condition No. 12 "Additional Study of the Existing Environment" - Waste Management

Condition No. 12 of the environmental permit (Additional Study of the Existing Environment) requires the BTC Co. to "produce an optimal strategy, programme and plan of waste management, which will provide for treatment and/or disposal of pipeline-related waste, produced during the construction period, as well as the operations stage....Waste management strategy, programme and plan shall be provided to, and discussed with, the MoE".

The very same BTC ESIA report recognised that any activities related to waste must meet the requirements of EU legislation, namely, in accordance with Section 5.13 of the ESIA report, "the BTC project will aim to adopt the standards specified by the European Community (EC) directives and regulations on waste management"³³. The company undertook an obligation to minimise the volume of wastes requiring final disposal. As the company stated, inert and non-hazardous waste that cannot be reused or recycled may be incinerated in an incinerator designed and operated in general accordance with EC Directive 89/369/EEC on Municipal Incinerators"³⁴; and "hazardous waste may be incinerated in an incinerator designed and operated in general accordance with either EC Directive 1994/67/EEC or EC Directive 89/369/EEC, depending on the waste involved"³⁵.

According to the same section of the ESIA report, the BTC Co. undertook the responsibility that the transfer of wastes to the third party (contractor) would be "permitted if the part of their operation, that is used for [the] BTC project wastes meets specified EC standards"³⁶.

In the Waste Management Plan of the BTC Co.'s construction contractor, Spie Capag-Petrofac International Ltd. (SPJV), which was approved by the BTC Co. and MoE, it is clearly stated that: waste activities fall under the Category I Activities defined by the Law on Environmental Permit; and that Article 4 of the law requires the acquisition of an environmental permit for "waste disposal, land filling, incineration, waste storage and wastewater treatment plants". The MoE grants environmental permits upon submission by the operator of an application and all required information (including Environmental Impact Assessment report) sited in the law.³⁷

Part 7.1.1 of the Section 7 of the same document confirms that it is required to obtain permits for storage, transportation and the processing and disposal of wastes and with this purpose the company will apply to the relevant authorities, including the MoE. Section 7.4.9 of the same document refers specifically to incinerators and states that the design, construction and operation of incinerators will be carried out in accordance with EU Directive 1994/67/EC on hazardous waste incinerators.

³² 'Who is responsible? BTC Pipeline', Edisher Katsadze, Ucha Zviadadze; *Quarterly Journal of the Regional Environmental Center for Caucasus*, Issue 8, December, 2004

³³ ESIA Report, Section 5.13.3

³⁴ ESIA Report, Section 5.13.2

³⁵ ESIA Report, Section 5.13.2

³⁶ ESIA Report, Section 5.13.2

³⁷ Waste Management Plan; Spie Capag-Petrofac International Ltd., Section 5.1.1

Although both the BTC Co. and the SPJV clearly understood that for any activities, related to waste disposal they need to obtain both construction and environmental permits, in reality, the activities were performed in complete violation of the Georgian legislation.

On December 24, 2003, the MoE issued to SPJV environmental permit No 0122 “on temporary storage of municipal and household waste in special containers and operation of waste incinerator”. The project implied the disposal of waste, generated in the process of construction of the BTC pipeline at the worker camps and construction sites, in special containers on 1 hectare of land adjacent to the construction camp located at the entrance to Marneuli city and its further transfer with the purpose of processing the waste in the incinerator, located in the territory, adjacent to the village of Jandara in the Gardabani region.

The aforementioned permit was issued with complete disregard for the requirements of Georgian legislation – the Ministry took into account SPJV’s completely groundless request³⁸ and exempted it from the obligation to undertake EIA. The Law on Environmental Permit does not give to the MoE the right to grant exemptions from environmental permitting procedure, however, the Ministry did not demand the presentation of documentation determined by the Georgian legislation necessary to obtain an environmental permit and did not fulfil the law requirements regarding the provision of public access to environmental information and public participation in the decision-making process.

It has to be noted that the results of such a decision became obvious at once. In June 2004, in the initial phase of operation of the incinerator, as a result of incorrect estimation of the volume of waste generated during project implementation, and failure to meet the requirements determined by the Waste Management Plan, already developed for this period by the BTC Co.’s contractor SPJV, a critical situation developed on the territory adjacent to PSG-1 in Gardabani – a large volume of quickly degradable waste was generated, attracting snakes and other pests, thus creating risk for human health and safety.

The above-mentioned is confirmed by the letter of Georgian International Oil Corporation to the MoE,³⁹ which states: “Please, be informed that in the process of construction of the BTC pipeline the construction contractor experienced certain difficulties related to waste disposal. Despite the fact, that the reason of the problem is the improper estimation of waste volume and failure to follow the procedures specified in the plan by the construction company (the company recognises this), it’s necessary to regulate the problem as soon as possible in order to avoid the acute aggravation of the environmental and sanitary situation”.

The cause of the above-mentioned situation was the fact that the incinerator, put in operation in December 2003, was stopped in February 2004, as it did not meet the requirements of EU Directive 2000/76/EC. The incinerator did not have the treatment system for hazardous scrubber liquor water, and, at the same time, emissions did not comply with the Dutch standards, as it required under the Host Country Government Agreement.⁴⁰

³⁸ Despite its obligation, the construction contractor still requested the MoE to exempt from EIA and environmental permitting procedure. This is confirmed in the letter of SPJV Project Director to the MoE (dated August 2, 2003 #SPPT-STA-FAC-L-0031) where he requests from the MoE to exempt the company from the obligations defined under the Law on Environmental Permit. Specifically, the project director states: SPJV considers that additional permits for the construction and operation of the facilities are not required. In order to avoid any misunderstanding, SPJV would like to receive confirmation from the MoE that the existing permit granted to the BTC Co. includes such activity.

³⁹ Letter dated July 12, 2004 of Environmental Manager of GIOC Mr. M. Chelidze to the Deputy Minister of Environment, Mr. Z. Lomtadze

⁴⁰ Report of the Post-Financial Close: Independent Environmental Consultant (IEC): Baku-Tbilisi-Ceyhan (BTC) Pipeline Project: First Site Visit; Dappolonia, February-March 2004

In order to urgently address the problem, the BTC Co. first used the waste incinerator of a third party – Sarini, located in Rustavi.⁴¹ However, following protest expressed by the Rustavi population and interference from the MoE, the BTC Co. was forced to find other ways. As a result, by autumn, 190 tons of municipal waste had been placed in the Yalgudja landfill, the standards of which are very far below EU requirements,⁴² which is an additional infringement of the Environmental Action Plan.

In January 2005, the BTC Co. admitted that it would be impossible for the incinerator to comply with EU standards and therefore it will not be used for the project waste treatment. At present, non-hazardous waste produced by the project is again disposed of at the Yalgudja landfill in obvious violation of the environmental and social action plan. In addition, BP, as an offset, has taken the initiative to construct a municipal EU-compliant landfill in Georgia. However, according to the lenders' Independent Environmental Consultant,⁴³ the while the new landfill will be "a significant benefit to Georgia, but in any case, will not solve the immediate problems of non-hazardous domestic waste disposal for the construction phase of the BTC project".

In addition, the project has not yet solved the problem of hazardous waste treatment. As of December 30, 2004, the BTC Co. considered the construction of landfill for hazardous waste in Sagarejo that will conform to the EU legislation. As the BTC Co. states, it has already selected the land plot in Sagarejo and prepared the EIA report for public disclosure and submission to the MoE. However, until now EIA report has not yet been submitted to the MoE.

It should be mentioned that the residents of the village Giorgitsminda protested against the storage and disposal of hazardous waste on village territory (namely, in the area of a clay brick production factory). Protest was declared by the Sagarejo Local Administration as well, which on March 2, 2004 applied to the Premier Minister of Georgia, Mr. Zurab Zhvania, with a petition to find another place for the landfill.⁴⁴

At this moment the BTC Co. is considering the possibility of exporting hazardous waste abroad to an EU-complaint landfill. The process should be managed according to the Basel Convention's requirements, based on intergovernmental negotiations and agreements, which is quite a time-consuming process. Until that time, SPJV continues to store hazardous waste.

The BTC Co. is fully responsible for waste management and its obligation is to ensure waste treatment and disposal in a manner that will have no negative impact on the Georgian population and environment. Waste management was one of the main issues that was critically appraised by non-governmental organisations during the ESIA documentation public disclosure period.⁴⁵ The project sponsor, as well as lenders, unanimously contends that the

⁴¹ Joint Stock Company Sarini built waste incinerator for oil and oil products in Rustavi in 1999. The construction was carried out within the frames of Baku-Tbilisi-Supsa Pipeline Project, though initially, according to the Waste Management Plan of Baku-Tbilisi-Supsa Pipeline, the incinerator for stationery-domestic waste should has been installed near Supsa Terminal. Project documentation, submitted by JSC Sarini to obtain environmental permit, can hardly be regarded as EIA, not to mention the absence of public participation in this process. As it can be observed, the BP representatives and its contractors in Georgia do not regard waste incinerators as "Category A" activity.

⁴² At present, in response to the urgent request of MoE, arrangements are being made to bring this dump into conformity with EU standards, though it is recognised that full conformity cannot be achieved.

⁴³ Report on Post Financial Close: Independent Environmental Consultant (IEC): Baku-Tbilisi-Ceyhan (BTC) Pipeline Project: Fourth site visit; D'Apollonia, February 2005

⁴⁴ Letter dated March 2, 2004 of the Acting Gamgebeli of Sagarejo Region to the Premier Minister of Georgia

⁴⁵ "There is no household and hazardous waste management plan for both the construction period as well as the operational period. The project sponsor claims that the construction contractor would develop a construction-specific waste management plan according to EU directives...Even stranger is the fact that the ESIA does not include any hazardous substances management and

project documentation is in order and conforms to EU standards and WB Operational Policy. Critical comments were disclaimed by the motive that the project-working group is staffed with highly qualified experts. Though, as it could be seen, the BTC Co. as well as lenders hoped that they would be able to waive the undertaken responsibilities and conditions.

Box 2. Green Alternative's Claim against SPJV

On June 23, 2004, Green Alternative appealed to Tbilisi Regional Court with the claim, demanding to repeal the environmental permit No.0122 issued by the MoE to SPJV for the temporary disposal of waste generated at worker camps and construction sites and consequent transportation of waste and burning in the incinerator; and to oblige the MoE to ensure public participation in the decision-making process.

In response, on September 16, 2004, Decree No.55 of the Minister of Environmental Protection and Natural Resources of Georgia, Mrs. Tamar Lebanidze, declared the abandonment of the environmental permit, issued by the MoE to SPJV on December 24, 2002 (in fact, the Ministry has satisfied the first demand of Green Alternative). However, at the same time, the same decree entitles the SPJV to continue activities (disposal and incineration of waste) within the framework of the environmental permit, issued by the MoE to the BTC Co. on November 30, 2002, for the construction of the Baku-Tbilisi-Ceyhan Pipeline.

In the accompanying note of decree it is mentioned that in the BTC ESIA report the installation of a waste incinerator was considered, as the issue of placement of permanent installation in Gardabani, on the adjacent territory of PSG-1. In the opinion of the MoE, the fact that the incinerator was mentioned in the section of the ESIA report dedicated to the general review of the pipeline project among the listed possible main stationary installations that could be used on the construction phase of the pipeline, solves the problem itself. However, in the ESIA report⁴⁶ it is also mentioned that the location of the incinerator (or incinerators) would be determined by the BTC Co.'s contractor after the determination of the required quantity and the locations of worker camps and pipe yards.

This means that according to the statement of the MoE, the contractor of the BTC Co. does not need an environmental permit and it can use the environmental permit already issued to its employer for the construction of the pipeline. Following the same logic, it could be concluded that the MoE in advance had entitled the project investor to install and operate waste incinerators and landfills using its own discretion in any territory (e.g. on Liberty Square, Rustaveli Avenue, Borjomi-Kharagauli National Park, yard of the Regional Court, etc).

The above-mentioned once again demonstrates that the MoE was not at all institutionally prepared for the control and monitoring of a project on such a large scale. As for the BTC Co. and its contractor, they obviously violated the EU Directives, WB Operational Policy 4.01 and the "best practice" when operating a category A project, performed without environmental permit, EIA and public participation.

operation plans, as required by the Management of Hazardous Wastes, World Bank Group Pollution Prevention and Abatement Handbook" - comments submitted by the Association "Green Alternative" on ESIA draft report, July 2002

⁴⁶ BTC ESIA Report, Section 5, Table 5.8

CHAPTER 2. REMOVAL OF THE TREES FROM THE CONSTRUCTION CORRIDOR

2.1 *Infringements in the Process of Felling*

In 2003, "Saktkeproekti" conducted an inventory of the forests in the BTC RoW and prepared recommendations for the clear-cut. According to the recommendations of "Saktkeproekti" it was necessary to bark the conifers and burn the barks in the corridor, with the purpose of prevention of spreading of vermin and diseases. Unfortunately, it was found that in some cases the contractor company was unfair and took trees that were not barked out of the construction corridor.



There were also some problems detected in the RoW clearing works. For example, representatives of Borjomi Regional Department of the MoE and Borjomi-Bakuriani Forestry, in the process of joint inspection, found a large number of trees cut down without any permission in the territory of Tsikhisjvari Forestry. According to the Act on Infringement, SPJV has illegally felled 475 m³ of spruce as timber; 900 m³ as firewood. The losses constituted

GEL 72 794.40. July 29, 2004 in the very same Borjomi region, in the territory of villages Tadzrishi and Dviri, SPJV cut down 545 m³ of spruce as timber and 124 m³ as firewood. The losses constituted GEL 61 324.⁴⁷

2.2 *Corruption in the Distribution of Timber*

In the ESIA report, the BTC Co. undertook the responsibility for the sale of the timber cut and investing the revenues in the strengthening of local communities. It also undertook the obligation to distribute small trees and bushes, removed from the corridor as firewood and building materials to the local population.

In June 2004, Green Alternative received a letter from the BTC Co., describing distribution of timber in Tetritskaro District.⁴⁸

Green Alternative, together with the local group which monitors the BTC pipeline construction in the respective region, in the presence of the representative of Tetritskaro District Administration, performed a random inspection of the obtained information and in the number of cases found significant discrepancies in the amounts of timber actually received and officially recorded. For instance, the Georgian Secondary School has received only 50 m³ of firewood, instead of recorded 93.3 m³; the Russian Secondary School has received only 40.4 m³, instead of recorded 64.9 m³; a musical school has received 20 m³ of firewood, and not 90.6 m³ as recorded; and the kindergartens have received 40.0 m³, instead of recorded 65.3 m³.

CHAPTER 3. PROBLEMS RELATED TO THE WELDING AND THE FIELD JOINT COATING

On February 15, 2004, the *Sunday Times* reports that safety and integrity of the BTC pipeline comes under suspicion. This information was based on an internal BP report from November 2002, stating that the inspection of the quality of the pipe surfaces, performed in Georgia and Azerbaijan, revealed the non-compliance of the coating with internationally recognised

⁴⁷ The letter from Zurab Tavartkiladze, Deputy Head of Supervision Department of the Ministry of Environmental Protection and Natural Resources of Georgia to Manana Kochladze, Chairperson of Green Alternative (dated May 5, 2005, #05-07/45)

⁴⁸ Letter from David Glendenning, Manager of External Affairs of the BTC Co. to Kety Gujraladze, Monitoring Programme Coordinator of Green Alternative (dated July 2, 2004 #BTC/OUT/813/04)

practices. The report expressed grave concern over the coating material that had been specified by BP for use on the pipeline. The product in question was SPC 2888 produced in Canada. The coating had no track record on plastic coated pipelines. According to the company, the objective was to select material that would ensure the operation of the pipeline during the whole operation cycle. For this purpose, the field joint coating strategy and external corrosion control philosophy were developed.



Results of Hydrotesting

As the BTC Co. admits, the key driver to the selection of SPC 2888 was the pipeline cost-challenge. A further key driver to the selection of the field joint coating was the step change in HSE. Specifically, as the company states, many of the available field joint coatings are far less resistant to penetration than the pipeline coating itself and require that fine materials be placed around the pipeline during construction. This necessitates the importing of fine materials from borrow pits and the exporting of rock from trench. The company believes that this would result in a "significant number of truck movements (with increased safety risk) and

environmental impact of excavations for fine and dumping of superfluous rock".⁴⁹

Despite the desire of the company to find out optimum technical and commercial solution, in autumn 2003 it was discovered that the pipes in Georgia, which were already buried, were experiencing defects and cracks. In November 2003, the BTC Co. stopped construction for 10 weeks. The official reason of halting construction was declared to be the bad weather. Simultaneously, the BTC Co. was negotiating credit with the IFC and the EBRD in amount of approximately USD 600 million. Therefore, the BTC Co. attempted to conceal this information from the creditors and governments, though according to the terms and conditions of the credit agreement the BTC Co. is obliged to inform the investors about any issues that could put the integrity of the pipeline at risk.

In February 2004, research performed by Worley Parsons for the BTC Co. revealed that at least 26 per cent of the welded and coated pipes in Georgia have defects. In addition, according to the BTC Co. report of June 18th it turned out that in a number of cases SPC 2888 does not adhere to the external polyethylene layer of the pipe. In addition, in Georgia it is found that in some cases even the polyethylene layer peeled off the pipes.⁵⁰

In November 2004, the MoE stated⁵¹ that "break up of the joint welds of the pipes was caused by non-compliance of the technological regimen, in particular, in the process of manual welding the required temperature regimen was not complied with, which caused appearance of micro cracks at the welded joint." According to a statement by the BTC Co., as of November 17, 2004, 2 000 welds were examined of 3 100; among them 147 were found to be defective and these welded places were either cut and welded again or repaired. The Ministry stated that guarantees of the eradication of all defects had not yet been submitted as the works were still underway. In particular, hydro-testing should be carried out, under the pressure of 150 atmospheres, after burying the pipes and that the monitoring team of the Ministry would be present at the hydro-testing process at all sections.⁵²

⁴⁹ Project Report: Mainline and Field Joint Coating issues: Georgia, AGT Project Report, UO3, 01.06.2004

⁵⁰ Desktop Study: Final Report: Field Joint Coating Review, Redacted Version; Worley Parsons, July 15, 2004

⁵¹ Letter from Zaal Lomtadze, Deputy Minister of Environmental Protection and Natural Resources of Georgia to Green Alternative

On July 2, 2004, at KPs158-159, in the vicinity of Tabatskuri Lake, the monitoring team of Green Alternative has found pipes without any coating, which were taken out of the ground. The workers explained that the work at this section was completed by the end of 2003 when pipes were welded, covered and buried. The trench was filled. In spring 2004, the BTC Co. decided to install the additional block valve at this section. As a result, in June the trench was opened and the pipes were taken out. At that very time the monitoring group of Green Alternative was able to detect the cause – it turned out that the welding places of two pipes were not coated.⁵³

Relevant evidence was submitted to the MoE, though, at the meeting with the NGOs; the

Minister stated that she is not aware what kind of response should she give to these facts.



Damaged Pipe in Rustavi

It should also be noted that the MoE received information about the welding/coating problems from the media and NGOs and not from the BTC Co. The sponsor of the project explained this fact by the motivation that this was a minor issue, not worth bringing to the attention of the Ministry.⁵⁴ In this respect, it is interesting, how can the Ministry perform accurate monitoring, if the sponsor of the project conceals information of critical significance?

In a conversation with a representative of the World Wildlife Fund about the issues of the coating of the pipes, the Minister of Environmental Protection and Natural Resources stated: "Sadly, the Georgian government first heard about it from the media and NGOs. The present situation is as follows: we asked for the experts' accounts, and according to the World Bank experts and others, the technical problems are all dealt with. The BTC Co. had to unearth the pipes, take care of the problems and bury them again though I think that it must be very hard to trace the defects of the buried pipes, plus we don't know which pipes have been removed and which have not. The same applies to the welding; at this stage all technical problems are supposedly solved. Saying this I must also note that the incident triggered the trust problem between the government and the BTC Co".⁵⁵ This interview emphasises once more the fact that the MoE has neither technical nor institutional capacity to ensure the monitoring of the BTC pipeline construction.

It should also be emphasised that Jacobs Engineering,⁵⁶ at the request of the Georgian government has prepared a report regarding the welding and coating of the pipes. According to this report the problem could be solved and the BTC Co. has already eliminated the defects. Though, it should be also noted that Jacobs Engineering did not perform field-testing. The company simply analysed the documents submitted by BTC Co.⁵⁷

⁵² On November 29, 2004, the *SpinWatch* magazine published the article 'The Con-tract of the Century' by Michael Gillard, which covered the issues of welding and coating of the pipeline. *The Journalist* obtained several internal reports of BP, including the results of one of the inspections preformed by Mr. T. Osborn, the Materials Consultant and Mr. D. Fairharst, the Corrosion Engineer, in March-June 2004, in one of the regions of Georgia. According to the report, 1400 seams in the 16-km length section shall be cut off and welded anew. The report of July 18 shows that there was a secret plan to bury 1000 km length pipeline without complete testing of the pipes welding compliance, with the purpose of prevention of the leakages. www.spinwatch.org

⁵³ Kety Gujaraidze's report on business trip to Borjomi-Akhaltikhe region

⁵⁴ Interview with Tamar Lebanidze, Minister of Environmental Protection and Natural Resources of Georgia; Rustavi-2

⁵⁵ WWF Caucasus Programme office, Newsletter #3, www.panda.org/caucasus

⁵⁶ Jacobs Engineering Group is the Technical Advisor of the Government of Georgia in the WB's Energy Transit Institutional Building Project

⁵⁷ BTC Project: Support During Pipelaying, Audit Report on Pipe Welding and Coating; Technical Paper TP 34; Technical Advisor to the Georgia East-West Oil Corridor, March 2005

CHAPTER 4. CULTURAL HERITAGE

"The project will be completed soon. The organisers of the project are proud of the success of the project. I am not sure that it is worth doing this because of the risk to the cultural heritage of the country".⁵⁸
Marina Khmaladze, resident of village Atskuri

Since autumn 2004, residents of the Atskuri village have been seriously concerned about damage to the Atskuri Fortress and the Atskuri Cathedral of Mother of God⁵⁹ resulting from the BTC pipeline construction. Heavy traffic and light vehicles of the BTC Co. and its contractors use the road that crosses the village as an access road to the construction corridor. Due to this reason, the amount of traffic significantly increased in the village of Atskuri. This, on the one hand, affects monuments of Georgian cultural heritage – Atskuri Fortress and Atskuri Cathedral of Mother of God, which are located near the aforementioned road (in its immediate vicinity). On the other hand, the damage to the Atskuri Fortress and Atskuri Cathedral of Mother of God puts the safety of the population at risk.



Atskuri Fortress – Monument of Cultural Heritage

The Atskuri fortress is a monument of Georgian cultural heritage. The fortress was built in the first century and was in operation until 1829. The Fortress is located on unstable layers and during recent decades, some destruction to the Fortress has been observed.

The Atskuri Fortress is located at the road crossing the Atskuri village. Since summer 2004, when the BTC Co. and its contractors commenced their construction activities in the vicinity of the village, their heavy traffic and light vehicles intensively move on this road. The traffic movement causes intensive destruction to the Atskuri Fortress, where small stones as well as

large boulders regularly fall. In addition to the risk to the Atskuri Fortress, the monument of Georgian cultural heritage, there is risk to the lives of people living in the immediate vicinity of the road and Atskuri Fortress, including the children who walk to the school by this road and village residents who use this road for access to their land parcels, pastures and hay lands and to drive cattle. In addition, residents of two villages, Tkemlana and Tiseli also use this road; therefore their lives are also at risk.

The Atskuri Cathedral of Mother of God is also a monument to Georgian cultural heritage. The Cathedral was built in the early eleventh century. In the thirteenth century the cathedral was ruined as a result of interventions and it was built anew in the fourteenth century. In 1989-1990 rehabilitation work commenced, which is ongoing. In 2003, conservation efforts were performed on one part of the cathedral within the framework of World Bank Programme for Protection of the Monuments of Georgian Cultural Heritage. The road, used by heavy traffic and light vehicles of the BTC Co. and its contractors is in the immediate vicinity of the Atskuri Cathedral of Mother of God, and it passes over some underground facilities of the cathedral complex. As a result of traffic Atskuri Cathedral of Mother of God has been damaged.

⁵⁸ "BP does not agree to rehabilitate the historical monuments", newspaper "Samkhretis Karibche", by Lia Manchkhashvili, Atskuri

⁵⁹ With the request of the residents of village Atskuri Association Green Alternative applied to Mr. George Gabashvili, the Minister of Culture, Monuments Protection and Sports of Georgia, letter of August 2, 2004.

The population confirms the fact that at first, the BTC Co. planned to build a bypass, avoiding the cathedral. They state that the company has marked the proposed route and made verbal agreements with the affected landowners, however, the mentioned road was not constructed.

Both the Atskuri Fortress and the Atskuri Cathedral of Mother of God completely correspond to the UN and WB definitions of cultural heritage that imply archaeological, paleontological, historical, religion and unique natural values. The WB recognises the concept of cultural heritage and does not fund those projects, which cause any significant damage to cultural heritage.⁶⁰ At the same time, the WB commits to actively support the protection of cultural heritage⁶¹ and states that the costs of these activities should be integrated into the overall costs of the project.⁶²

In the process of preparation of the BTC ESIA report, the International Finance Corporation noted that detailed studies were conducted with the purpose of protection of cultural heritage, and that detailed plans for the management of cultural heritage were prepared.⁶³ Yet in the case of Atskuri Fortress and Atskuri Cathedral, the WB Operational Policy (11.03) is not complied with. The BTC Co. did not comply with the requirements of IFC policy and did not prepare a cultural heritage management plan for Georgia.⁶⁴

In the ESIA report it is emphasised “only in rare cases it is possible to replace or reconstruct the monument without any harm to its scientific or social value. It is preferred to avoid the historical monuments and its correct protection.” Since a cultural heritage management plan was not developed for Georgia and attention was focused on the archaeological problems (which is confirmed by the Protocol on Archaeological Findings for Georgia), damage to the Atskuri Fortress and Atskuri Cathedral of the Mother of God in the process of construction has taken place. The potential impacts to these monuments by the operation of the BTC pipeline are not yet known, as there are no results from relevant expert examination.

According to the ESIA report, cultural heritage in Georgia was studied in detail and it was noted that in Georgia, 273 historically significant sites were identified in the pipeline corridor, among which 54 are archaeological sites and 219 historical monuments. “Among the archaeological monuments, there are sites on the former and current routes and historical monuments which suggest architectural ruins within the 10 km-width corridor.”⁶⁵ Unfortunately there are neither maps nor documents on the impacts of the pipeline construction and operation on these 219 historical monuments.

⁶⁰ “The United Nations term ‘cultural property’ includes sites having archeological (prehistoric), paleontological, historical, religious, and unique natural values. Cultural property, therefore, encompasses both remains left by previous human inhabitants (for example, middens, shrines, and battlegrounds) and unique natural environmental features such as canyons and waterfalls. The rapid loss of cultural property in many countries is irreversible and often unnecessary”. World Bank OP.11.03

⁶¹ “The Bank will assist in the protection and enhancement of cultural properties encountered in Bank financed projects, rather than leaving that protection to chance. In some cases, the project is best relocated in order that sites and structures can be preserved, studied, and restored intact in situ. In other cases, structures can be relocated, preserved, studied, and restored on alternate sites”. World Bank OP.11.03

⁶² “Such activities should be directly included in the scope of the project, rather than being postponed for some possible future action, and the costs are to be internalised in computing overall project costs”. World Bank OP.11.03

⁶³ See www.ifc.org, Project information.

⁶⁴ See Environmental and Social Action Plans – Management Plans of the BTC Co. include only Protocol of Archeological Findings for Azerbaijan and Protocol of Archeological Findings for Georgia

⁶⁵ BTC ESIA, Georgia Chapter 8.

At the request of the BTC Co., "Ekomos" listed 22 historical monuments, which are located in the immediate vicinity of the oil pipeline. According to the reports, four of them – the Atskuri Fortress, the Atskuri Cathedral of God Mother, the Sakire Fortresses and the Tadzrishi Monastery have been significantly damaged by construction and require urgent help. The Ministry of Culture, Monuments Protection and Sport requires the BTC Co. to move forward with the conservation of the Tadzrishi Monastery (tenth century), where the BTC Co.'s heavy trucks are using the village-cart road, located 150 meters from the monastery. The Tadzrishi villagers testify that during last two years the monastery has experienced intensive damage.⁶⁶ According to the lender's independent environmental consultant, the decision made for the conservation of the Tadzrishi Monastery is still pending. However, the BTC Co. as well as its consultant considers this work not to be the mitigation of adverse project impacts, but as community/public relations work.⁶⁷

CHAPTER 5. MONITORING OF BTC PIPELINE PROJECT IMPLEMENTATION

5.1 Project Monitoring by the Lenders

When making the decision on funding of the BTC pipeline project, the IFC offered quite a complicated scheme of monitoring, involving nine various tiers. The fifth layer involves monitoring performed by the lenders, and the eighth tier is monitoring performed by independent environmental and social consultants hired by the lenders. Though it should be mentioned that monitoring at both tiers is implemented without the participation of the Government of Georgia or interested parties.

The BTC pipeline project Working Group of the IFC and the EBRD met with Georgian NGOs only once in the year after the financing of the project. For unbiased monitoring of the project it was desirable for the independent consultants to meet also with NGOs, especially as they come to Georgia for a few days and often do not have the possibility to visit the field.

5.2 Project Monitoring by the NGOs

A scheme of monitoring by NGOs in Georgia was established in October-December 2004. With financial support of the IFC, and in cooperation with BP Georgia, the project is implemented by the Eurasia Foundation. The project is directed at capacity building of the Georgian NGOs in the monitoring, rather than direct monitoring of the BTC pipeline project implementation.

The first site visits are planned for April-May 2005. The first monitoring report will be released in July 2005. At the first stage of the project, it is planned to train representatives of only Tbilisi-based interested NGOs and this restricts the effectiveness of the project.

5.3 Governmental Monitoring of the Project

World Bank (International Development Agency) is implementing the Energy Transit Institutional Building Project (ETIB). The project is intended for institutional growth of the Government of Georgia and in particular, the GIOC and the MoE. The project was to provide assistance for the monitoring of the environmental and social effects arising in the process of implementation of the BTC and SCP pipeline projects and also for the improvement of environmental management. It involved training and consultation services and the

⁶⁶ report of Rustavi-2, February 22, 2005

⁶⁷ Georgia SRAP Review, February 2005, www.caspiandevelopmentandexport.com

procurement of necessary equipment for the Ministry's staff. Within the scope of this project, environmental and technical advisors for GIOC were employed.

Whether the project to enhance the capacity building of the MoE is effective or not can be determined by the fact that, irrespective of the number of requests, the BTC/SCP Pipeline Projects Monitoring Group, established in the MoE, did not still receive any technical assistance and the monitoring capacities of the group members are quite low. This is also confirmed by the Netherlands Commission on EIA, which in its report states: "in November 2004 the group was increased to 6 members. None of the members, except for the Chairman, had any experience of monitoring of this type of projects. The lack of resources and experience makes adequate implementation of monitoring even more difficult. In November 2004 the group received a car, though it still lacks computers and cameras".⁶⁸ In Green Alternative's experience the group also suffers from lack of information, as the BTC Co. has its own opinion about what information or documentation should be provided to MoE (the welding and coating case is a clear example).

Despite the above-mentioned, the monitoring team managed to detect around 20 violations of law by SPJV during the pipeline construction period, among them illegal logging, illegal mining, construction of access roads without a permit, violation of conditions of the environmental permit issued for the BTC construction, etc. The damage to the state estimated as GEL 300 000. The majority of cases have been brought up before the court. On July 22, 2004, when the construction of the pipeline has been halted at the Borjomi section, the monitoring group has also detected that SPJV was still continuing construction at the Tsikhisjvari area, Borjomi section.

The Netherlands Commission on EIA has also given a negative evaluation to the role of the environmental and technical advisors. The Commission noted that advisors' work has not yet resulted in an adequate monitoring capacity at the Ministry. It should also be mentioned that although environmental and technical advisors study the documents submitted by the BTC Co. and make recommendations for the Government of Georgia, advisory reports are not available to the public.

Another confusing fact is that Ms. Jain Ebigner, the leading professional of the WB project, works with the World Bank via the staff exchange programme. Though the World Bank recognises the concept of conflict of interest, and it has relevant guidelines, Ms Ebigner worked for BP Georgia before she was assigned as a head of the project. BP Georgia is an operator company of the Baku-Supsa Pipeline.⁶⁹

On paper, the WB's USD 9 million ETIB project provides significant assistance to the Georgian environment and people,⁷⁰ though it is actually very difficult to see what particular added value was provided by this project for the correct implementation of the BTC project and the development of MoE's technical and human resources for pipeline monitoring.

The problems related to ETIB were brought to the attention of the IFC and EBRD, as well as relevant WB departments, in 2002-2003. Even more striking, in its official letter to the Treasury Department, USAID expressed deep concern with the "lack of government capacity to oversee and monitor construction and operation phases of the project, including interaction between

⁶⁸ Advisory review on the compliance of Project Implementation with the Environmental Permit for the Baku-Tbilisi-Ceyhan Oil Pipeline and South Caucasus Pipeline in Georgia, 1120-911, Netherlands Commission on EIA, December 23, 2004

⁶⁹ Baku-Supsa Pipeline was constructed in 1997 – 1999, with the assistance of IFC and EBRD-Credit, BP is the operator of the oil pipeline.

⁷⁰ www.worldbank.org/Georgia-Projects&Programmes

affected communities and project sponsors", and recommended "restructuring or supplementing the current World Bank loan in Georgia to direct more resources towards the Ministry of Environment".⁷¹

CHAPTER 6. VIOLATIONS OF WORLD BANK'S INVOLUNTARY RESETTLEMENT POLICY 4.30

As stated by the IFC and the EBRD, the project was intended to contribute to poverty elimination and to attract investments into the region; yet the project has created many concerns to the pipeline-affected people – including damaged road infrastructure and potable water supply systems, ruined houses, and lost incomes as a result of lost crops or lands.

6.1 Implementation of Construction Works without Prior Compensation

Since 2003, Green Alternative and its partners have been raising the issue of imperfect land inventory and compensation process. Numerous letters were sent to the BTC Co., as well as to the international financial institutions and the GIOC, to urgently undertake necessary measures to address a number of problems. The answer to these letters was the same every time: the land inventory and acquisition processes fully comply with the WB Involuntary Resettlement Policy 4.30 and the company's Resettlement Action Plan (see also box 3).

In fact, the different problems associated with land compensation for the land parcels required for the BTC pipeline are a concern of many people. Among these concerns, the problem of the commencement of construction works in the land plots without prior compensation should be underlined. The BTC Co. states that the major cause of these problems is an incorrect inventory by the state. It seems that the BTC Co. has succeeded in forgetting the fact that when the BTC Co. submitted the project documentation and Resettlement Action Plan to the IFC and the EBRD, it undertook the responsibility that the inventory data would be checked and that none of the landowners or users would be adversely affected by the project's implementation. This has been confirmed by the IFC and the EBRD.⁷²

Several Atskuri villagers are among those who were adversely affected by the improper land-acquisition process. Only at the end of 2004 did these people find out that the BTC Co. commenced construction work on their land parcels. Among them were Mr. Merab Mumladze and Ms. Gulo Gokhadze. As a result of an incorrect inventory, the compensation for the land parcel of Mr. Mumladze was paid to the villagers as compensation for grazing lands; the compensation for the parcel of Ms. Gokhadze was paid to another person.

After receiving notification, the representatives of the BTC Co. told the affected persons that they needed to submit relevant documents and afterwards they would receive compensation. However, after presenting the documents the company refused, stating that the company is not liable to pay compensation twice.⁷³ The GIOC supports the position of the BTC Co. and the

⁷¹ Report on "Multilateral Development Bank Assistance Proposals Likely to have Adverse Impacts on the Environment, Natural Resources, Public Health and Indigenous Peoples"; USAID transmittal letter to the Department of the Treasury, October 29, 2003

⁷² "An IFC representative responded that within the 44m corridor, BTC Co. successfully settled these cadastral problems by conducting additional historical research." Report of IFC and EBRD MULTI-STAKEHOLDER FORUM (MSF) MEETINGS on the Baku-Tbilisi-Ceyhan Oil Pipeline, ACG Phase 1, Shah Deniz and South Caucasus Pipeline Projects Azerbaijan, Georgia and Turkey August and September 2003 Prepared by CDR Associates (on behalf of IFC and EBRD) www.ebrd.com

⁷³ "People left without land compensation look for the justice"; newspaper *Samkhretis Karibche*, Lia Manchkhashvili, Atskuri

Social and Resettlement Action Plan monitoring panel. The latter states that the BTC Co. will be obliged to buy the same land twice if the new state inventory reveals the errors, though it also maintains that the revealing of new owners may be associated with local corruption and advises the BTC Co. to take part in the re-registration process and consider in detail each case together with the GIOC, and pay compensation only based on the court decision. The panel also states that, in theory, the BTC Co. has the right to demand compensation for the excess amounts to be paid by the Georgian government, which was responsible for the process of inventory.

Numerous cases have been reported in different regions of Georgia, especially in the Akhalkalaki region. Despite the dispute over who is wrong and who is right in the dispute between the BTC Co., the IFIs, and governments; the fact persists that the project has resulted in a loss of private property for part of the population. The well-known mitigation measures integrated within the project could not address this problem. The only way to solve the problem is by making a legal appeal. In Georgia this approach is less effective, characterised as it is by corruption and lack of impartiality. In addition it is costly and not available to ordinary people, especially in those cases associated with compensation (see also chapter 7).

Box 3. Extract from the Report “Baku-Tbilisi-Ceyhan Pipeline, Baku-Tbilisi-Ceyhan Pipeline Company and Social and Environmental Commitments”⁷⁴

Land compensation was launched in Georgia in January 2003 and according to the project documentation, was supposed to end in April or May 2003. Land compensation, however, is still not finished and the company has still not obtained the rights to some lands.

The APLR hired by the BTC Co. explains the above: “The GIOC failed to conduct a professional inventory and prepare information on the land parcels. The company’s contractors did not use the public land register as their main source; rather they used local council chairpersons, land surveyors, and regional authorities’ representatives who almost certainly had ‘senior advisers’ in the capital”.⁷⁵

It should also be noted that numerous errors occurred during the inventory and if only the company had paid more attention to the formal and procedural sides of the process, most of the current problems would probably have been resolved. The sequence of events is as follows: According to the July 4, 2003 report of the Georgia Chamber of Control, “the initial cadastral survey in regard to the BTC pipeline is the responsibility of the Georgian state. According to the HGA on the gas pipeline project construction, the oil pipeline companies allocated USD 250 000 for pipeline cadastral surveys along the pipeline corridor”.⁷⁶ GIOC chose LKN Ltd. to conduct the surveys; these were completed in the summer of 2002.

Since July 2002, the BP Land Acquisition Group, together with representatives of APLR, have been conducting an inventory-inspection process with regard to the landowners and land users who were within the 44-meter construction corridor or nearby overland facilities. However, the inventory-inspection process was not conducted in compliance with best practice. There were frequent cases

⁷⁴ Green Alternative, Georgian Young Lawyers Association, CEE Bankwatch Network; May 2004

⁷⁵ “Land Parcels Appear and Disappear”, *Landowner*, issue 2, February 2004

⁷⁶ JSC “GIOC” Financial and Economic Activity Act for the period from July 1, 2001 through April 1, 2003, Chamber of Control of Georgia, July 4, 2003

when the Land Acquisition Group forced owners to sign practically unknown documents or when the signed copy of the inventory was not left with the owners.

However, on September 11, 2003, representatives of the IFC declared, "within the limits of the 44-meter construction corridor the BTC Co. successfully resolved the cadastral problems that resulted from conducting extra explorations. And beyond the 44-meter corridor, resolution of the cadastral problems is the obligation of the Government of Georgia".¹

Regrettably, we would like to point out that the reality differs from the IFC's presumptions. The APLR admits that there are serious inventory problems. The February edition of the *Landowner* newspaper reports, "As of today, approximately 30 per cent of the land parcels within the pipeline corridor are disputable".¹

Unfortunately, a united group that includes the BTC Co. Land Acquisition Group, the APLR, the GIOC and the already-eliminated State Department of Land Management is no longer united, and this discord mainly harms the activities. For example, we received different responses to a letter sent by Green Alternative stating the existing problems and concerns about not providing sufficient and adequate information to Rustavi landowners: the APLR accused us of lying, illogical actions, and falsification; whereas the GIOC agreed with us in all aspects. It would probably be more appropriate for both organisations to combine efforts to protect both the esprit de corps and the affected population. Moreover, this is a direct mission of both the APLR and the GIOC.

We need to further consider that, for several years now, various financial institutions and donor organisations, including the WB and the UN Development Programme (UNDP), have been conducting cadastral surveys in Georgia.

6.2 Damage due to Construction Activities

According to the WB Operation Policy 4.30, it is necessary to provide full compensation of caused losses. The BTC Co. undertook that: "Where damage cannot be avoided cash compensation based on full replacement cost (as required by World Bank), or replacement structures/facilities will be provided. The full reinstatement options will involve direct replacement of the structure with no cash transaction taking place. In addition, the construction contractor will assess and document the likely impact on buildings at particular risk and considered sensitive close to project traffic routes. This documentation will be agreed with the house owners/occupants and a copy provided to them (commitment N3); any potential negative impacts during construction shall be identified and prevented where possible. Where such impacts cannot be avoided, the Contractor shall agree a fair and equitable compensation (commitment N26); Should infrastructure or services be disrupted accidentally, the authorities of the affected communities will be informed of the reason for the disruption and the contractor will work with the service owner to complete repairs in the shortest time possible (commitment N23); Where infrastructure is to be damaged, the timetable for repair of the infrastructure will be agreed with the authorities and the communities (commitment N22); The contractor shall repair and reinstate any third party property or services damaged as a result of construction activities (commitment P11)." ⁷⁷

Though there are such commitments, the population of Tetritskaro, Sagharasheni, Agara, Tiseli, Minadze, Ts nisi, Atskuri, Vale, Bakuriani, Tiseli, Sakuneti, Tsikhisvari, Tadzrisi and other

⁷⁷ Register of Environmental and Social Commitments, the BTC Co.



villages periodically go on strike, write letters requesting help to the government, submit claims to the IFC CAO, and, those who are able, apply to the court due to the damages caused by the BTC pipeline construction.

It should be noted that all the people living between Tetritskaro and Vale who claim for damages caused by the traffic, irrespective of their demands, receive one and the same routine answer:

"The BTC pipeline construction contractor - Spie Petrofac, has reviewed your complaints related to alleged damage to the houses and buildings, due to vibration from pipeline construction traffic on nearby roads. SPJV has several years working experience on pipeline building in different countries using its machinery and transport and for the first time in Georgia is facing this kind complaint from local residents." Such answers were received by the residents of the villages Minadze, Tadzrishi, Atskuri and Sagharasheni.

Moreover, the company answers to all complainants that it has already carried out testing in order to measure the vibrations generated by project traffic: "the tests indicate that the vibration levels as a result of passing trucks were significantly below internationally accepted standards that could cause structural damage to buildings....Given the above, Spie-Petrofac does not accept that vibration from construction traffic could have caused damage to the building referenced in your complaint, and therefore, rejects your claim for any monetary compensation".



A resident of Atskuri village, Tamar Labadze, takes this response as a standard answer that is being sent by the company to all complainants regarding damage due to the traffic. This is confirmed also by the fact that Mrs. Labadze never raised in her complaint the issue of compensation; rather she requested a spot check. From the attachment of the letter it also becomes clear that the company conducted testing in Atskuri, but in another part of the village, on the opposite side of river Mtkvari where the houses are mainly constructed from wood. She gave notice about her disappointment to the BTC Co.'s Community Liaison officer, however no reaction ensued.

The same problem is of major concern to Tadzrishi villagers G. Gogoladze, B. Balakhadze and M. Balakhadze, of the Borjomi region. Their houses are 30-40 meters far from the construction corridor. These villagers from the beginning have been against being neighbors of the pipeline. G. Gogoladze did not even allow the company to construct the pipeline in his yard; however, the situation has not changed much. After construction started, around 20-30 heavy trucks passed daily around the villagers' houses – as a result there is great disturbance due to the noise, and dust and cracks in houses. After a number of letters of complaint, the company arranged the testing through bringing two pipe trucks and an excavator, and concluded that the construction has no impact on houses and underlined that these houses were already in a bad condition before the construction.

The same conclusion was made regarding a problem appearing in the village Minadze. Spie-Petrofac denied the possibility of damaging the houses: "heavy truck movement does not cause serious results, except for low frequency sine vibrations. The primary damage of the houses

should be caused by non-correct studies of landscape, while these buildings have been constructed".⁷⁸

It should be noted that in all its conclusions the company claims that it is using the US standards, according to which the vibration limit at the nearest building should be 127 inches/sec. After each testing it is proved that the vibration level caused by the company's traffic is less than half of the vibration level permissible for historical monuments and buildings (0,127-0,254). In this regard it is to be noted that while performing testing, the company forgets that not only amplitude, but also the intensity of vibration is important, measurement of which somehow had been forgotten by the company. In other words, the cumulative impact of intensive traffic movement of heavy vehicles on the houses located near the roads and the construction corridor are not assessed.

Obviously, it should be admitted that some of the houses (and not all of them, as the company tries to prove) were not built in accordance with relevant standards and/or damage done to the houses has been caused by the amplification of natural processes. It is clear, however, that the pipeline construction activities worked as a catalyst in these cases and as a result the processes of damaging and ruining the houses became more intensive.

It should also be emphasized that the transport management plans were very often violated. The BTC Co.'s and its contractors' employees are often choosing shorter routes that are also inflicting damage on peoples' property. For similar incidents the company has a simple answer: they are not using these roads for transportation. Though the movement of BTC vehicles on the roads, that "are not used by the company", is detected both by the population and journalists as well, and in certain cases by representatives of international organisations.⁷⁹

In our opinion, in addition to other reasons, the root causes of the existing situation are based on the shortcomings of the BTC pipeline project documentation (ESIA report, management plans, etc.). These shortcomings were many times pointed out by Green Alternative, its partners, and other interested parties when in 2002-2003 the Georgian government and the IFIs were deciding on approval of the project documentation. This is now also confirmed by the USAID, according to which: "the analysis of alternatives and key baseline data associated with the project were not sufficient, and did not meet USAID internal standards (22 CFR 216)... a complete analysis of the entire road development in conjunction with the pipeline ROW development needed to be undertaken to determine the extent of impacts (direct, indirect and cumulative) and to identify proper avoidance and mitigation measures".⁸⁰

Whatever is said, it is a fact that due to the pipeline construction the life has become unbearable for part of Georgia's population. Living in extreme poverty, the people are now worrying about the threat of their houses being destroyed.

6. 3 Application of the Law of Neighboring Tenements instead of the Eminent Domain Law

According to the Resettlement Action Plan (RAP) developed in compliance with WB Operational Directive '4.30, based on the HGA, in case of failure to reach an agreement, the BTC Co. should have exercised an expropriation right (power of eminent domain), through the

⁷⁸ 'Pipeline and One More Irritated Village Minadze's Population', newspaper *Samkhretis Karibche*

⁷⁹ Report of Rustavi-2, February 22, 2005, interview with William Davis, the expert of IFC CAO Office

⁸⁰ Report on "Multilateral Development Bank Assistance Proposals Likely to have Adverse Impacts on the Environment, Natural Resources, Public Health and Indigenous Peoples"; USAID transmittal letter to the Department of the Treasury, October 29, 2003

payment of compensation as stipulated by the Georgian constitution and the Law on the Rule for Expropriation of Ownership for Urgent Public Necessity (Eminent Domain Law). However, in order to acquire lands in the territory of the city of Rustavi and Akhaltsikhe district, the BTC Co. brought a suit against the land owners with whom it could not reach an agreement about land acquisition, demanding *necessary right of way* on their land parcels. According to the information available to us, there were suits brought against 31 land owners in Rustavi and three landowners in the Akhaltsikhe district.⁸¹ Both the district court of Akhaltsikhe and the city court of Rustavi satisfied a legal action of the BTC Co. and granted to the company *necessary right of way* on the privately owned land parcels. Moreover the courts satisfied the plaintiff's claim regarding the immediate execution of the court decisions.

In our opinion, the BTC Co.'s claim and the court decisions are illegitimate, as they contradict the Georgian constitution, according to which "property is recognized and secured" (Article 21). From the owner's perspective it means possessing, using and disposing of a property freely under the owner's will, and from the state's side it means defending this right consistently. In fact, the BTC Co. was suppressing land owners, saying that the company would deprive them of their lands in case of disagreement between the parties, through giving the wrong interpretation of relevant legislation (the Constitution of Georgia, the HGA, the Eminent Domain Law), which caused a degree of misunderstanding and anxiety among residents who were ready to sell land parcels for the offered compensation because they were afraid to lose the offered money as well as the land.

The BTC Co. demanded immediate access to the land so that the implementation of the project would not be hindered. The court did not define precisely what was meant by "immediate access" – a road for the movement of project machinery, for construction or some other needs. The court incorrectly interpreted Article 180 of the Civil Code of Georgia.⁸² This article regulates the land use issue (the use of neighboring land for passing through the land, but not for construction). The court did not take into account that this article is applicable only in case of a lack of the necessary access to public roads and communications and not in case of the construction of public roads or communications. Besides, in article 180 it is clearly stated that "the neighbors on whose tracts the necessary right of way or transmission line passes shall be given monetary compensation". The court did not take into account this provision and assumed that plaintiffs were arguing not about a *necessary right of way*, but the amount of compensation. The court did not even make any effort to make clear what compensation had been meant. The BTC Co. pays the land purchasing price and not the compensation for the *necessary right of way*.

In the attachment to the suit, the company defined the terms for the *necessary right of way*. In particular, it is stated that, "under the relevant Host Government Agreements the Pipeline Company is granted the right to carry out various pipeline activities at the construction phase, including any kind of above ground and underground construction activities, as well as activities related to construction, among them cleaning and trenching works". It should be noted, however, that according to Appendix II of the HGA (Rights to Land in the Territory Associated with the Project), the project participants must give monetary compensations to the land owners or users for those lands that are part of the construction corridor and the project

⁸¹ There is also information that the number of such owners is much more. It is a category of owners that are not living in Georgia and on whom there were made judgments by default. In our opinion, it is a breach of law because making a default judgment is possible when the party is getting acquainted with the sitting of the court - according to the law, stated rule or defendant should have received a subpoena to appear in court, that could not have happened naturally because they were not physically in the territory of Georgia and they did not have representatives there either.

⁸² "If a tract of land lacks the access to public roads, electricity, oil, gas and water supply lines that are necessary for its adequate use, then the owner may claim from a neighbour to tolerate the use of his tract by the owner for the purpose of providing the necessary access. The neighbours on whose tracts the necessary right of way or transmission line passes shall be given monetary compensation which, by agreement of the parties, may be made as a lump-sum payment"; Article 180, Paragraph 1, Civil Code of Georgia

participants must obtain rights in relation to non-state land only after having paid reasonable compensations to the land owners or users.

The court did not take into account these restrictions either and, based upon the provisions of the Civil Code of Georgia, admitted that an owner shall tolerate the impact. The obligation to tolerate and the deprivation of a right on property are absolutely different matters and the court, as if by conferring a *necessary right of way*, practically allowed for the deprivation of a right on property without the payment of compensation. The plaintiff's claim on granting the *necessary right of way* essentially means asking for carrying out construction activities on the plot, above and underground construction activities, including clearing and trenching works. Such activities do not fall under the notion of the *necessary right of way* (use of a neighboring land plot and obligation of the owner to tolerate), but the *right to build* (superficies),⁸³ foreseen by the Civil Code of Georgia. The fulfillment of the mentioned property right implies making a transaction, i.e. the court gave an incorrect interpretation to the plaintiff's claim and this again points to the fact that the court decisions were unjustified and lawless.

If the BTC Co. intended to carry out construction on the land plot, it would have to become an owner by land acquisition or expropriation, or receive a *right to build* by making a transaction with the land owner. If the BTC Co. had failed to acquire a plot by agreement with the land owner (that excludes itself making a *right to build* transaction with the owner), it should have had to use the right of expropriation (power of eminent domain) according to Article 4 of the HGA. This should have been done according to the provisions of the Constitution of Georgia and the Eminent Domain Law by bringing an action in the district court and not by bringing an action in the regional court claiming the *necessary right of way*.

By claiming the *necessary right of way*, the BTC Co. essentially was willing and managed to deprive the property right. The regional court of Akhaltsikhe, the Rustavi city court and the Tbilisi district court (on the Rustavi case) did not delay and conferred it this right.

It should be noted that the courts did not consider the fact that in the project documentation prepared by the company (Guide to Land Acquisition and Compensation in Georgia for BTC and South-Caucasus pipeline, the RAP) there is nothing mentioned about the possibility of the application of a *necessary right of way* as the means of obtaining the right to privately owned land plots. The company has only planned to use the *necessary right of way* in relation to the state owned or leased state lands. In order to obtain the aforementioned right the company is still actively using the agreement forms, worked out by its specialists and approved by the Ministry of Justice of Georgia.

In accordance with Article 1.3 of Appendix II of the HGA, based on the Agreement on Granting Necessary Right of Way on state-owned land, the BTC Co. does not pay any compensation to the state in order to obtain the right on the land. As for the leased state-owned lands, article 6.1 of the agreement clearly defines the amount of compensation to be given to the user. It is clear that by compensating the lessee, the company wants to follow the obligation defined under the HGA; however, at the same time, it is difficult to understand why the company in this particular case did not want to meet its obligation of paying the compensation to the land owners, as was foreseen by the HGA.

⁸³ "A tract of land may be transferred to the use of another person for a fixed period of time in such a manner as to grant him the hereditary and transferable right to erect on or beneath this tract some construction, as well as the right to alienate, inherit, lend or lease such right (right to build)"; Article 233, Paragraph 1, Civil Code of Georgia

In all cases, based on the Civil Procedures Code of Georgia, the court satisfied the claim about the immediate execution of the judgments, that is lawless because only those judgments can be executed immediately, the execution of which will be impossible or harmful. It should also be noted that the plaintiff had brought a so called "claim of recognition", which, according to Article 180 of the Civil Procedures Code of Georgia, is defined as follows: "an action can be brought about ascertaining of existence or non-existence of a right or a legal relation, if a plaintiff has a legal interest in its recognition by a court decision". It is a paradox because these two notions, a "claim of recognition" and "immediate execution", contradict each other, as recognition of any right does not need to be executed immediately.

The fact that the responsibility of the immediate execution of the court decision was imposed on land management administrations should also be taken into account. At a legal procedure land management administrations did not represent any party (they were neither plaintiffs, nor defendants or the third party), but the court obliged them to carry out such activities (the registration of the *necessary right of way* and, in another case, the registration of *servitude*) that are contrary to the lawful interests of the owner.

It should be mentioned that in both cases, as in Akhaltsikhe, as well as in Rustavi, the BTC Co. brought the actions having the same contents, and of course the courts satisfied both of them. Later the court decisions were appealed in the Appeal Committee of Tbilisi District Court. A remarkable fact is that the Appeal Committee left in force the court decision on the Rustavi case and confirmed that the Rustavi court had made the right decision, but that the Appeal Committee (comprised of different judges) abolished the decision of the Akhaltsikhe Regional Court and made a new decision, confirming the company's property law right – right of the *servitude*.⁸⁴

The Appeal Committee explained that in fact, by asking for the *necessary right of way*, the plaintiff was asking for the registration of the property right – *servitude* – in the public registry as it was conferred by the international agreement and admitted that the plaintiff's demand is a positive servitude by its contents.

It should be noted that *servitude* is allowed by making a transaction. According to Article 50 of the Civil Code of Georgia, "a transaction is a unilateral, bilateral or multilateral declaration of intent aimed at creating, changing or terminating legal relations", i.e. while making a transaction on servitude the decision must be done by the parties themselves and not by the court decision. Such a position of the court contradicts a principle of private autonomy. In our opinion the position of the court is not correct, as the plaintiff itself, and not the court, chooses the subject of the argument.

As outlined above, it is clear that the court violated Article 248 of the Civil Procedures Code of Georgia, according to which "the court is not entitled to confer the party what it has not asked for or more than it might have asked for". The plaintiff was asking for the *necessary right of way* and not the property right, *servitude*. The servitude can be made only by transaction and the transaction shall express the declaration of intent. The court did not use Article 52 of the Civil Code of Georgia, according to which "in interpreting the declaration of intent, the intention shall be ascertained as a result of reasonable deliberation, and not only from the literal meaning of its wording." Neither the plaintiff nor the owner have shown any sign of the intent of

⁸⁴ "A tract of land or other immovable property may be used (encumbered) for the benefit of the owner of another tract of land or other immovable property in such a manner as to either grant this owner the right to use the encumbered [property] in particular instances, or to prohibit the exercise of certain actions on this [property], or to preclude the exercise of some rights of the owner of the encumbered [property] with respect to the other [property] (servitude)"; Article 247, Paragraph 1, Civil Code of Georgia

confirming the *servitude*. In its decision the Appeal Committee itself indicates that the company offered the party to conclude a purchasing agreement, not the *servitude*.

As already mentioned, by requesting the *necessary right of way* and its satisfaction by the court, the right of property has practically been deprived without compensation. The same result comes from the case of ascertaining the right of the *servitude* by the Appeal Committee. According to Article 170 of the Civil Code of Georgia, "an owner may, within the limits of legal or other, namely contractual restraints, freely possess and use the property (thing), exclude others from using this property, and dispose of it", i.e., according to the Civil Code of Georgia the right of property combines rights to possess, use and dispose of a thing. Following this decision of the Appeal Committee the owner will not be able to use the rights conferred him by the law.

The *servitude* is a limited property right. It implies use of a particular land plot for better use of the other (main) plot; however, in this case, the limitation of the property right by application of this article of the Civil Code means the violation of the property right. The court did not explain to what extent the property right can be limited, as in this case ascertainment of the *servitude* right turns the property right to zero; that is inadmissible.

The court noted that imperative provisions of the property law are providing a fair balance between the protection of the property right and the common interest. The implementation of the BTC pipeline project might be a matter of state importance, but is the protection of the property right a question of common and state importance? Certainly it is, and if the state (in this case the court), on performing each important project, encroaches upon the property right, the provisions of the Constitution of Georgia and international law will be violated.

And finally, in our opinion, the BTC Co.'s action and the lawless court decisions clearly represent a violation of the human rights provided for under Article 1 of Protocol I of the European Convention on Human Rights, according to which, **"every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law"**.

CHAPTER 7. BTC CO.'S GRIEVANCE MECHANISM AND ACCESS TO JUSTICE

7.1 BTC Co.'s *Grievance Mechanism*

In order to easily and effectively resolve the grievances of the affected communities at the construction phase of the BTC pipeline project, the BTC Co. committed itself to establish a mechanism for submitting complaints and resolution of disputes. The purposes and procedures of this mechanism were presented in the RAP, according to which the main purposes are as follows:

- To provide the project affected population with straightforward and accessible avenues for making a complaint and dispute;
- To identify and implement appropriate and mutually acceptable corrective actions to address complaints;
- To verify that complainants are satisfied with the outcomes of corrective actions; and
- To avoid the need to resort to judicial proceedings.

At the same time, from the BTC Co. point of view, grievances can provide an indicator of the quality of the work performed within the BTC pipeline project. Thus, in case of an increasing number of complaints, the BTC Co. and its construction contractor might discuss the possibility

of adjustment of work practices or procedures in order to reduce adverse effects and conflicts with affected households and communities.

7.2 Community Liaison Officers

The above-mentioned measures should be performed by the community liaison officers (CLOs); they should play a linking role providing regular communication between the company and the community.

Unfortunately, the reality is quite different from the promises declared by the BTC Co. Despite the official existence of the grievance mechanism and the “best efforts” of the CLOs, the mechanism is unknown to or not accessible for the majority of the affected population. The communities and, even more deplorably, the CLOs themselves are not aware of the BTC Co.’s obligations,⁸⁵ though the provision of the population with this information is the direct responsibility of the CLOs.

Highly problematic in this regard is the communication culture of the CLOs with the affected population; in some cases there has been carelessness and a lack of awareness of local traditions. Apart from the lack of qualifications, experience and personal characters of the CLOs, non-coordinated actions between the CLOs of BTC Co. and the contractor company, and their overlapping responsibilities, can be considered as one of the reasons for the ineffectiveness of the grievance mechanism. For instance, in the village of Sagrasheni in the Tetritskaro district, a member of Green Alternative witnessed CLOs of BTC Co. and SPJV arguing in front of the affected villagers about who was responsible for undertaking control of the pipeline traffic.

The above mentioned issues are not the only subject of criticism of Green Alternative and the local population. The BTC Co.’s advisors, as well as the IFC CAO, are also pointing to the shortcomings of the grievance mechanism and the institute of community relations.

The Caspian Development Advisory Panel report ⁸⁶ states: “The CLOs employed for the Project are intelligent, educated and ambitious, but very young and very often change their jobs in order to have an effective contact along the oil pipeline, sometimes with distant and ethnically diverse villagers. For example, most of the CLOs are from Tbilisi and the lack of their acquaintance with the local community makes difficult to get into their confidence. It is clear that the lack of allocation of responsibilities between the CLOs of the BTC Company and its contractor causes problems even for the people outside the project”.

Concerning this question, British Petroleum has a radically different opinion. It believes that the company has worked hard to enhance the community liaison group (the number of officers has been doubled, two foreign supervisors in social matters have been added to the group, coordination meetings are regularly held and the contractor’s complaints system is regularly checked) and at present the CLOs have good relations with the population and maintain such relations even in hard conditions.

However, a quite different situation is prevailing in the 18th and 19th districts of Rustavi city. In order to settle the complaint submitted by the residents of these districts, on the 17th of March, 2004 the IFC CAO presented recommendations according to which the BTC Co. was required to provide the population with detailed information about the safety of the pipeline. The above

⁸⁵ Environmental and Social Committmetns Register prepared by the BTC Co. is only available on the project website and only in English

⁸⁶ Report of Caspian Development Advisory Panel, December 30, 2004; accessible at: <http://www.caspsea.com> or <http://www.caspiandevelopmentandexport.com>

mentioned recommendations, according to the complainants and the CAO itself, have not yet been acted on;⁸⁷ among the population there are still doubts and questions concerning the safety of the pipeline (e.g. a problem with the joint weld coating, about which the population was alerted by the media).

According to the IFC CAO's recommendations, the BTC Co. should have improved its own and the SPJV's group of CLOs, as well as the oversight of their work. In the IFC CAO's opinion a certain success has been achieved in this regard, although from the complainants' point of view, notwithstanding the appointment of the additional CLO (specifically assigned for the residents of the 18th and 19th districts of Rustavi city) the problem of communication between the company and the population is still an issue of continuing acuteness.

7.3 Complaints of the Project Affected Population

In December 2004, according to the data of the BTC Co. itself, there were about 2000 land and construction damage related complaints. Half of these complaints the company considers to be settled. At the same time, according to the data of the Association for Protection of Landowners' Rights (APLR), hired by the BTC Co. for the monitoring of land related complaints, the number of complaints registered by the association was more than 1600 and 700 of them had been settled positively by the given period.⁸⁸

The presented statistics are often used by BP to demonstrate the improved effectiveness of the grievance mechanism. Thus, when the Caspian Development Advisory Panel pointed out a great amount of complaints and recommended to improve the grievance mechanism, BP commented: "While we do not believe that the number of complaints is a consequence of the merits of the grievance mechanism itself, we continue to study options to improve. The July 2004 SRAP report notes that the project's response to grievances has improved significantly over the year, as a result of the changes to team and though we don't believe that a number of complaints is due to the lacks of a complaining mechanism, we are going on searching for means of its improvement".

According to the SRAP Panel monitoring report of July 2004, as a result of changes in the group and improving the management practice, the response to complaints was greatly improved during the year, and the process of closing a complaint was more improved after that: by November 2004, 65 per cent of complaints connected with land matters (in July 2004, there were 25 per cent) and over 85 per cent of complaints (in July there were 50 per cent) caused by construction works were closed.⁸⁹

The shortcomings related to the inventory of the registered and settled complaints will be discussed later. For now the focus is on the following aspect of the above mentioned statistics: according to the BTC project documentation "for the land acquisition in the 44m corridor the number of population affected by the project is 2778 private owners and leaseholders".⁹⁰

⁸⁷ Complaints related to the Baku-Tbilisi-Ceyhan Oil Pipeline Project and submitted to the IFC CAO are accessible at <http://www.cao-ombudsman.org>

⁸⁸ "The association successfully settled 700 complaints connected with BTC pipeline "; News 04-11-2004, <http://www.aplr.org>

⁸⁹ British Petroleum's response to the Report of Caspian Development Advisory Panel, December, 2004; accessible at: <http://www.caspsea.com> and <http://www.caspiandevelopmentandexport.com>

⁹⁰ Resettlement Action Plan: Baku-Tbilisi-Ceyhan: Georgia; December, 2002, accessible: <http://www.caspiandevelopmentandexport>

In view of APLR's data, this means that almost two thirds of the project affected landowners and leaseholders (over 1600) have/had presented complaints; and perhaps this figure would have been more worryingly high if complaints had been registered correctly. Hence a simple question arises - for who and for what purpose was the public consultation process conducted?

7.4 Problems Connected with the Grievance Registration

For a resident affected by the BTC pipeline project wanting to lodge a project related complaint, there is a basic problem when it comes to submitting the complaint.

According to the RAP the complaint can be presented both verbally or in a written form. According to the Community Liaison Management Plan, complaints can also be taken by telephone. In the experience of the local population there is no point in verbally presenting a complaint, and as for passing a written complaint to the CLOs, it is a very hard process (let alone to register a complaint).

For example, during its assessment visit, the SRAP Panel found that in the village of Bakuriani in the Borjomi district, the CLOs assigned to the construction site by the contractor had not registered even a single complaint since October, 2003; this despite the fact that while having a talk with the local population the experts panel ascertained that the community had submitted their complaints to the contractor that were not found in the complaints log.⁹¹

According to the rules established by the BTC Co., the registration of complaints takes place only in the case when a problem, presented in the complaint, cannot be solved immediately. The complaint is not registered either if the company considers the complaint as unfair, which is not a subject for discussion. Just 13 complaints from such unsettled ones, submitted to the company, are being investigated by the IFC CAO who, unlike the BTC Co., did not regard the facts and demands presented in the complaints as groundless.

There are often cases when the company receives a complaint from the affected resident, discusses it, but decides not to satisfy or partly satisfy it. In both cases, the BTC Co. considers the complaint as settled, in spite of the dissatisfaction of the affected person.

In view of this, it can be concluded that BP's statistics concerning complaints from the affected population do not comprise the complaints that were refused or satisfied at the moment of submitting them or, due to carelessness of the CLOs, were not discussed at all. Moreover, the company's data comprises wholly/partly satisfied complaints and those that were often refused unfairly.

The majority of the project affected population that have gone through the grievance mechanism process remark that the assessment of their complaints is often unfair. As a result of such an unfair attitude on the part of the BTC Co., the population has resorted to extreme measures, such as blocking off roads and other protest actions.

There are no comprehensive statistics of such protest actions as blocking off roads by the project affected population. On June 9, 2004, a special-purpose police detachment raided a protest action of about 60 inhabitants in the village of Krtsanisi; the residents were protesting against the construction of the BTC pipeline through Krtsanisi. In spite of this fact, and the President's official statement that any protest action would be considered as a breach of the law and would

⁹¹ SRAP Expert Panel Review: Georgia; July, 2004, accessible: <http://www.caspiandevelopmentandexport.com>

be dispersed forcibly, in June 2004 alone there were 45 such cases of blocking off roads recorded.

7.5 Access to justice

One of the purposes of the BTC Co.'s grievance mechanism is to avoid the complainants addressing a court. The company has explained it by the fact that the court system in Georgia was not established yet. The community maintains the idea that the court authority is not independent, though the court is still considered by the company as the final means for solving problems.

In a number of cases the BTC Co. itself and its representatives do urge the population to seek justice in court. As an example, the case of the Atskuri residents can be considered again. Due to an incorrect land inventory (see chapter 6 above), Atskuri residents lost their property and the compensation to be paid to them was paid to other inhabitants of the village. The representatives of the BTC Co., as well as the SRAP Panel, consider that in similar cases the BTC Co. must take part in the new registration process and consider each case in detail together with the GIOC, but compensation must be paid only on the basis of a court decision.

The Panel does not specify who must bring an action. It is logical to say that the affected one must have a certain interest in it and therefore he/she must bring an action. However, this issue must be discussed from a different angle as well. In particular, the issue is whether an ordinary citizen of Georgia can afford to bring an action against the BTC Co. or not. The Georgian Law on State Duty strictly defines the rule for definition of the amount of duty to be paid by the plaintiff. In most cases this amount exceeds the abilities of the pipeline project affected communities. Moreover, court procedures are very complicated and take a lot of time.

For example, of the same residents of Atskuri village, only a few of those whose lands were not inventoried correctly can afford to bring an action. "After so much trouble I am still told to go to court and complain. But will I be able to get anything? But where have I got money to cover court expenses? I don't even have money to get to Akhaltsikhe. But everyone keeps telling me - the land is yours and fight for it," says Merab Mumladze.⁹²

An argument between the residents of the village of Minadze and SPJV has already been going on for several months. The argument concerns the damage caused by construction activities. As a result of transport movement, 27 houses have been cracked, though the company denies this accusation. The villagers decided to go to court but it turned out that they had to pay about 5000 GEL (approximately USD 2500) for duty. The villagers could not pay so much money.

In Klde, another village in the Akhaltsikhe region, people lost income due to construction activities that damaged an irrigation channel. In 2004, 333 hectares of arable lands were left without water that resulted in lost crops. In March 2005 the company promised to restore the channel damaged in 2004, but refused to compensate for the losses of last year, strangely explaining that the villagers were late with their complaint.⁹³ The community decided to bring an action to the court and started to collect GEL 5000 to pay for state duty. People are also concerned with the fact that this year crops have been lost again.

⁹² "Those who are left without land compensation are looking for justice", newspaper "Samkhretis Karibche"; Lia Manchkhashvili, Atskhuri

⁹³ The villagers jointly applied to the company for lost income compensation only in late 2004; however, earlier some of the villagers wrote separate complaints on the same issue, but the company anyway refused to repair channels and compensate for the loss.

It should be noted that the BTC Co. declared several times that it would take responsibility for the paying of court duties; in the construction process this promise has not been realized.⁹⁴

CHAPTER 8. COMPLAINTS SUBMITTED TO THE IFC COMPLIANCE ADVISOR/OMBUDSMAN

As mentioned above, there have been 13 complaints submitted by BTC pipeline project affected population to the IFC CAO. These complaints are discussed in brief below.

1. Complaints of the residents of the 18th and 19th districts of the City of Rustavi

On March 17, 2004, the residents of the 18th and 19th districts of Rustavi city applied to the IFC CAO with a complaint. The basis of the complaint was the fact that the BTC pipeline runs at a distance of 250 metres from these settlements, but the residents found out about it only when the construction company started preparatory works for the pipeline construction. On several occasions the population applied to the representatives of the BTC Co., GIOC and the relevant state authorities to receive safety guarantees, but none of their attempts (including a protest action dispersed by force) was a success.

In the complaint the Rustavi city residents requested the CAO to conduct an independent assessment that would give them guarantees that the construction and operation of the pipeline would not impact negatively on their living conditions. If there were no such guarantees the complainants would demand to stop the construction works and change the route of the pipeline. If these requests could not be done, the complainants were asking for resettlement through the payment of compensation or for relocation to an adequate living place.

2. Complaint of the city of Tsalka residents

On July 12, 2004, the inhabitants of the city of Tsalka (Stalin str.) Mamia Tavartkiladze, Avtandil Tavartkiladze, Tinatin Nadiradze, Ednar Abuladze⁹⁵ and Valeri Konstantinidis, submitted a complaint to the IFC CAO.

The main reasons for the complaint were: the neglecting of climate and soil peculiarities while constructing workers camps in Tsalka for the implementation of the BTC oil pipeline project; the failure to carry out the obligations of the construction contractor (during the construction of the camp, as well as while discussing the complaint); and, consequently, the flooding of complainants' farmsteads several times.

The SPJV failed to follow its obligations and during the construction of a workers' camp could not provide rainwater collectors and drainages in the camp territory. Moreover, during the construction of the camp the existing drainage, that had been protecting the population of the adjacent territory from flooding during the previous years, was abolished. It should be noted that the camp itself is located on a slope and in the period of frequent rains, because of the non-existence of a rainwater drainage system, the water collects at fences and flows in torrents onto the adjacent territory. Moreover, the inhabitants of the adjacent territory do not have a sewerage

⁹⁴ This was confirmed by the APLR, interview with a BTC International Fact Finding Mission, October 11, 2004

⁹⁵ Two years ago because of unbearable economic conditions the families of Mamia Tavartkiladze, Avtandil Tavartkiladze, Tinatin Nadiradze and Ednar Abuladze moved from Khulo (the western part of Georgia) to Tsalka hoping to improve their living conditions.

system and faeces are accumulated in special pits. During flooding these pits are filled with water and the faeces are mixed with water. After having arranged a faeces pipe for the camp and, as a result of the movement of the company's vehicles (though company's vehicles are forbidden to use this street), Stalin street is greatly damaged, there are lots of pits and in bad weather going on foot is impossible. In the camp there is an unbearable noise and exhaust fumes from diesel generators (4-5 generators at the same time) from 6 o'clock in the morning until 2 o'clock the following morning.

In their complaint, the affected people addressed the IFC CAO so that the CAO would make SPJV and the BTC Co. take responsibility for the inflicted damage, give the affected people complete compensation and fulfil their commitments fully.

3. Complaint of a Dgvari village resident, Borjomi district

On May 21, 2004, Green Alternative, on behalf of one of the residents of Dgvari village, Borjomi district, addressed the IFC CAO. The village of Dgvari is located approximately 1 kilometre from the BTC oil pipeline route. The village is located in a landslide area. According to the villagers, landslides have become especially active, the number of cases of land tearing off has increased and the risk of destroying of the damaged houses has grown in the last few years. Unfortunately, during the preparation of the ESIA report and RAP the project sponsor "has forgotten" to assess the potential impact of the construction and operation of the BTC oil pipeline on this village. The population of the village is afraid that the laying of the BTC pipeline at a distance of 1 kilometre from the village will significantly stimulate landslide processes and will put the village at serious risk.

The complainant requests from the IFC CAO to demand from the BTC Co. and WB Group to make a detailed assessment of the environmental and social impact of the pipeline construction on the village, which should subsequently be assessed by an independent board of local and international experts. If the results of the assessment fail to give the villagers the guarantees that construction and operation of the pipeline will not have a negative impact on their living conditions, the population will demand an immediate resettlement.

4. Complaint of Vladimir Gelashvili, resident of the city of Tetritskaro

Vladimir Gelashvili's complaint was submitted to the IFC CAO on May 21, 2004 by Green Alternative. Vladimir Gelashvili, the resident of Tetritskaro (not only he, but all the habitants of his district), was seriously inflicted. Since the commencement of construction the population has been constantly affected by dust due to the intensive movement of the company's traffic. Their telephone line has also been damaged. Because of the imperfect Transport Management Plan - or maybe the carelessness of the employee - a heavy fuel-loaded truck, travelling near Gelashvili's house, rolled down and destroyed the wall of his yard. The BTC Co.'s employees advised Gelashvili to find the truck himself and demand compensation from the driver.

The population lost all patience when, in Javakhishvili street (where Gelashvili lives), systematically travelling (twice a day) the BTC Co.'s traffic loaded with fuel and water (20-25 ton) damaged the drinking water pipes. Since then waste water has been mixed with the drinking water, causing the spreading of various diseases.

The SPJV refuses to compensate for damages. Vladimir Gelashvili is demanding from the IFC CAO to ensure that the company fulfils its commitments.

5. Complaint of the residents of Garisi, Tskhra dzma, Stalini, Demetrašvili and Tbilisi streets of Tetritskaro city

A complaint on behalf of the complainants was submitted to the IFC CAO by Green Alternative on May 21, 2004.

For the clearing of the 44 metre pipeline construction corridor on the adjacent territories of Tskhra Dzma, Mshvidoba, Garisi and Demetrašvili streets, explosion works were carried out from the 26th of December, 2003 until January, 2004, as a result of which the houses located in these streets were seriously damaged: the main supporting walls were cracked, and 3-6m long and 5cm thick horizontal and vertical cracks developed. The time and place of the first or subsequent explosions were not announced in advance to the inhabitants of these streets.

On December 26, 2003, the representatives of the affected population addressed the local representatives of the company, but their response to this problem was only confined to taking photos of the damaged houses. Finally, the representatives of the BTC Co. denied responsibility for the damage, saying that the damage of the houses was not caused by their explosion works.

The complainants are demanding from the IFC CAO to make the company fulfil its commitments and pay compensation for the damage.

6. Complaint of Sagrasheni village residents, Tetritskaro district

On May 21, 2004, on behalf of eight households of Sagrasheni village, Green Alternative submitted a complaint to the IFC CAO. The transportation of construction materials necessary for the BTC pipeline construction by heavy trucks caused serious damage to the houses located near the road, especially to those whose supporting walls are adjoined to the wayside. Apart from the fact that these trucks are moving from early morning until late at night, these houses are shaking because of the vibration caused by the movement of heavy trucks and the walls have cracked. The population has been addressing the company's management team for help since November 2004, but in vain. Now the number of cracks is increasing, and the cracks are widening more and more. If the Transportation Management Plan and movement of trucks are not changed the population will probably lose their houses.

The complainants request from the IFC CAO to make the company fulfil its commitments and pay the inflicted inhabitants compensation in full for the damage caused.

7. Complaint of Vasil Pavlov, resident of Tsikhisjvari village, Borjomi district

In Tsikhisjvari, on the access road to Kodiani mountain, a systematic movement of light and heavy vehicles of the BTC Co. and the SPJV has been begun. The access road is in poor condition and, because of great difficulties in moving, the drivers of the BTC Co. and SPJV changed the motorway route without permission and made an access road through Vasil Pavlov's (an inhabitant of Tsikhisjvari) plot, which is located near the road. The passing of the plot happened in June 2002. The new access road was made by the drivers of the BTC Co. and SPJV in the middle of the plot. Since June, 2002, the landowner Vasil Pavlov has been trying to draw the BTC Co.'s attention to his problem; he traveled to Tbilisi to meet the representatives of BTC Co. and addressed the community relation manager in writing several times, but without any result. The problem remains unsettled.

Vasil Pavlov is demanding from the IFC CAO to make the company fulfil its commitments and pay the inflicted inhabitant compensation in full for the damage Caused.

8. Complaint of Otar Khvistani, the resident of Bashkovi village, Tsalka district

On May 21, 2004, on behalf of Otar Khvistani, Green Alternative submitted a complaint to the IFC CAO. Otar Khvistani, together with 10 refugees' families like him, by financial support obtained from the joint initiative of the Georgian Government and the UN agencies, organised a bee-keeping farm.

In the summer of 2003, when SPJV began the BTC pipeline construction work, Otar Khvistani had 98 bee-families. The complainant's bee-keeping farm is located within 200-300 metres of the 44 metre construction corridor. In order to start the construction activities the company cleared the construction corridor (which involved removing the upper layer of the soil covered with field flowers). At the same time explosion works were performed. All these works had a negative impact on Khvistani's bees: 19 families of bees did not survive and the productivity of the remaining families greatly decreased. Otar Khvistani is demanding compensation in full.

9. Complaint of the residents of Tsemi, Sadgeri and Tba villages, Borjomi district

On May 20, 2004 the IFC CAO received a complaint from the residents of the villages Tsemi, Sadgeri and Tba, in the Borjomi district. As a result of the BTC pipeline construction activities, the water supply system of the Tsemi, Sadgeri and Tba villages has been damaged. Despite repeated appeals and protest actions, the company did not restore the channel in adequate time. The population had to be satisfied with water supplied by the company's cars for months. The amount of this supplied water was not sufficient for the villagers. Apart from the obvious discomfort caused by the lack of water, the inhabitants of the village of Tsemi and the sanatoriums located there underwent great material crisis. They lost their traditional income from the tourist seasons, compensation for which they are demanding.

10. Complaint of Nickoloz Aptsiauri, the resident of Tetritskaro city

On December 1, 2004, Nickoloz Aptsiauri submitted a complaint to the IFC CAO. At the beginning of 2003, SPJV rented Nickoloz Aptsiauri's neighbour's house for an office. Supply of the office with water and fuel is done by special heavy trucks, the drivers of which are using the complainant's yard and kitchen-garden (without any agreement with him). Perennial plants are destroyed and the supporting walls are at risk. Aptsiauri has used the company's grievance mechanism without any success and now he demands an independent assessment of the damage and compensation in full.

11. Complaint of the residents of Parnavazi street. Tetritskaro city

On the December 1, 2004, the inhabitants of Stalini str. submitted a complaint to the IFC CAO.

12. Complaint of the residents of Stalini street, Tetritskaro city

On December 15, 2004, the inhabitants of Parnavazi str. submitted a complaint to the IFC CAO.

The houses of the residents of Parnavazi and Stalini streets are located near the road side. The inflicted damage is an increased amount of dust and noise caused by the movement of heavy lorries and cracks of houses, caused by strong vibration. The affected inhabitants are demanding an independent assessment of the damage, safety guarantees for the future and compensation in full.

13. Complaint of the residents of Tadzrishi village, Borjomi district

In spring 2004, the BTC Co. commenced pipeline construction in the village of Tadzrisi, Borjomi district. The houses of the complainants are within 30-40 metres of the construction corridor.

As a result of starting the construction activities, for getting access to the construction corridor there is intensive movement of heavy trucks (20-30 vehicles a day) and due to this living conditions are becoming unbearable, the levels of noise, dust and vibration are greatly increasing, and the houses are damaged significantly.

The complainants are demanding: compensation for the damage; an independent assessment of the pipeline project's impact on the houses; a safety guarantee that would be based upon the decision of a commission of independent experts and, in case of the non-existence of such a guarantee, they demand to transfer the pipeline route to a safe place for them; and, in case of the non-fulfilment of the aforementioned, they demand proper compensation or a relocation to an adequate living place.

For nine of the 13 complaints listed above, there has already been prepared assessment reports from the IFC CAO. The assessment reports contain recommendations for the actions that should be conducted by the BTC Co. and SPJV, but none of them have been acted on yet.

CHAPTER 9. AN INDEPENDENT MECHANISM FOR APPEALING UNSETTLED COMPLAINTS

According to the RAP, "the project will try to settle any complaint, connected with the project before its coming into an official juridical system. There will be formed a procedure of unofficial settling of complaints. It will be used for those complaints, connected with construction and operation of the oil pipeline, that can be discussed by a group, that won't be juridical. The group will include representatives of local authorities, project group, community organizations, and non-government organizations". In spite of these obligations, accumulated complaints and lots of recommendations, such a procedure has not yet been formed.

The IFC CAO, following the assessment of the first complaint submitted to it (the complaint of the residents of the 18th and 19th districts of Rustavi city), gave the following recommendation to the BTC Co.: "BTC Co. should set up an independent appeals process, at least for Georgia. This appeals process should be invoked where the reinforced grievance mechanism fails to produce a mutually satisfactory settlement".⁹⁶

Green Alternative submitted recommendations to the CDAP for the establishment of a mechanism for an independent appeal and its functioning scheme for the BTC pipeline project. These recommendations were later reflected in the Panel's third monitoring visit report and the recommendations made to the BTC Co. The recommendations presented to the CDAP were as follows:

- In each project affected region an independent appeals commission should be established and, in addition, one commission in Tbilisi;
- Regional commissions should include representatives of local government, the BTC Co., the SPJV, the APLR, the representatives of local NGOs, and CBOs. The commissions should

⁹⁶ Assessment Report: Complaint regarding the Baku-Tbilisi-Ceyhan (BTC) Pipeline Project: Rustavi, Georgia; Office of the Compliance Advisor/Ombudsman of the International Finance Corporation and Multilateral Investment Guarantee Agency; July, 2004, accessible: <http://www.cao-ombudsman.org>

review cases in attendance of the CLO and the complainant. The complainant should have the right to be represented by the person or lawyer to whom she/he trusts;

- Those cases that could not be solved at the regional level should be re-directed to the Tbilisi commission for dispute settlement. In addition, the Tbilisi commission should be able to invite independent experts with experience in resettlement issues and conflict resolution;
- The final decisions of the commissions should be mandatory for the BTC Co. and SPJV and this should be guaranteed in writing;
- Within one month of taking the decision, the regional commissions should require a written report from the CLOs on the status of implementation of the decision; this is to be confirmed by the complainant;
- The financial support of the commissions should be carried out through a third party and not directly from the BTC Co.

In spite of all the above-mentioned, the BTC Co.'s position on the need for the establishment of an independent appeals mechanism remains rigid – in the light of a significant improvement of the complaints resolution process, the company cannot see the necessity of such a mechanism.⁹⁷

CHAPTER 10. COMMUNITY INVESTMENT PROGRAMME

To counter-balance the damage that has impacted on the project affected population during the BTC pipeline construction and to show the benefits of the pipeline project at this phase, an initiative of BP/BTC Co. - the Community Investment Programme (CIP) - is often mentioned. The initiative was launched in February 2003 in the BTC pipeline project affected communities.

According to the company, the goal of the CIP is to promote the sustainable social and economic development of the communities along the BTC and the SCP route; however, information on whether the declared aim is achieved or not and how it is achieved is barely available. The website dedicated to the CIP, as well as the website devoted to another BTC Co initiative, the Environmental Investment Programme, is not functioning till now. The only source of information is the mass-media where press releases or social advertisements are released occasionally regarding a repaired road, school, water supply system, etc. in the project affected villages.

The Netherlands Commission on EIA is probably unique in pointing out certain shortcomings of the CIP. Among others, the commission notes that the majority of the villagers have not participated in the CIP and they do not know the selection criteria for the people who were selected for participation. The perception is that friends and relatives were selected; women have been hardly represented in this process.⁹⁸

⁹⁷ British Petroleum's response to the letter of Caspian Development Advisory Panel, December, 2004, accessible: <http://www.caspsea.com> and <http://www.caspiandevelopmentandexport.com>

⁹⁸ Advisory review on the compliance of Project Implementation with the Environmental Permit for the Baku-Tbilisi-Ceyhan Oil Pipeline and South Caucasus Pipeline in Georgia, 1120-911, Netherlands Commission on EIA, 23 December, 2004

In the reports of the nine-layer BTC pipeline project monitoring scheme, usually there is nothing said about the results of the CIP (and/or the Environmental Investment Programme), though, as mentioned above, the projects implemented within the scope of the CIP are considered as the main benefits gained by the local communities during the construction phase of the pipeline project.

EPILOGUE

This is the third report of Green Alternative where abuses of human rights that are ensured by the international law as well as the infringements of both Georgian legislation and the requirements of IFIs are described. However, unfortunately, the IFIs still rigidly maintain that the BTC pipeline project represents a model of development and poverty alleviation.

The IFIs hoped that the integration of the IFC's and the EBRD's safeguard policies in the planning and implementation of the project would alleviate the project related environmental and social problems. However, the issues discussed in this report demonstrate yet again that IFI support for extractive industry projects does not facilitate the alleviation of poverty and corruption; nor does it solve acute environmental and social problems.

Regrettably, it is a fact that for a certain part of the Georgian population, the BTC pipeline project has turned out to be a barrier blocking the chance to escape from poverty.



Association Green Alternative
e-mail:greenalt@wanex.net
www.greenalt.wanex.net



CEE Bankwatch Network
e-mail:main@bankwatch.org
www.bankwatch.org