



# **Baku-Tbilisi-Ceyhan Pipeline, the BTC Company and Social and Environmental Protection Obligations**

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## Introduction

In 2003, the Baku-Tbilisi-Ceyhan Pipeline Company – an international consortium of 11 partners<sup>1</sup> led by British Petroleum, the largest stakeholder in the project – launched construction of the BTC pipeline. In November of the same year, the International Financial Corporation and the European Bank for Reconstruction and Development allocated up to USD 250 million each to finance implementation of the USD 3.6 billion project. The BTC Pipeline Company will cover 30% of the project cost, and the remaining funds will come from a syndicate that includes US Ex-Im, ECDG, SACE, COFAS, JEXIM as well as a number of commercial banks, the EBRD and the IFC.

The 1770-km long BTC pipeline originates at an expanded Sangachal terminal (near Baku) on the Caspian Sea shore, crosses the territories of Azerbaijan, Georgia and Turkey and ends at Turkey's Mediterranean coast.

The integration of IFC and EBRD safeguard policies was supposed to eliminate the existing environmental and social problems in connection with the design and implementation of the project on the basis of a legal framework that “poses a fundamental problem for human rights” and encroaches on the sovereignty of the states.<sup>2</sup> “We felt that the EBRD could add value, by drawing on its experience in the region. ... The BTC pipeline and the ACG oil field were presented to EBRD as a major new source of energy for European markets that would contribute to stability in the region, and was to be the biggest engineering project ever undertaken. But when the sponsors came to the EBRD for financing, we saw these projects as a means to bring hope and benefits to the people of the region. ... We set ourselves three tests ... this project would be safe, that it would fairly benefit the population, and that it would bring sustainable benefit. ... From our point of view, the pipeline represented an opportunity for economic development in the three countries it crosses ... if the project was planned, built and operated to the highest standards.”<sup>3</sup>

This report provides an overview of the issues that emerged during the construction of the Georgian section of the BTC pipeline.<sup>4</sup> We presume that the majority of the problems are the outcome of violations made by the BTC Pipeline Company during the planning period and an inefficient due diligence process implemented by IFC and EBRD.

In the present report, we address the problems that the IFC and EBRD would resolve with their so-called additionality. We would like to apologize to these organizations for

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<sup>1</sup> The consortium includes: SOCAR (the state oil company of Azerbaijan); BP (UK); TPAO (Turkey); Statoil (Norway); Unocal (USA); Itochu (Japan); Amerada Hess (USA); Eni (Italy); TotalFinaElf (France); INPEX (Japan) and ConocoPhillips (USA).

<sup>2</sup> See *Human Rights on the Line: The Baku-Tbilisi-Ceyhan (BTC) Pipeline Project*, pages 10-12, Amnesty International's report on the BTC pipeline and its possible impacts on human rights in Turkey (May 20, 2003); <http://www.amnesty.org.uk/business/btc/>.

<sup>3</sup> EBRD Vice-president, Mrs. Noreen Doyle's speech at the BTC pipeline signing ceremony in Baku, February 3, 2004.

<sup>4</sup> Present reports envisage the problems that have occurred since June 2003. For additional information, please see the Interim Land report published in June 2003.

the length of this report and for discussing issues for which neither society nor we have yet to receive satisfactory answers.<sup>5</sup>

## **1. The current stage of pipeline construction**

Pipeline construction work in Georgia started at the beginning of 2003. As of January 31, 2004, pipes had been laid over approximately 20 km, pipes had been welded over 45 km, and the construction corridor had been cleaned over 50 km.

In 2003, construction work began in territories where the company had still not received consent from the Georgian government (such territories include areas near Ktsia-Tabatskuri and Kodiana territories and territory near the Tsalka river). At the end of 2003, however, construction in high mountain regions was temporarily suspended because of winter. It should be noted that construction was also suspended in some lowland areas (except for pumping stations), which was probably due to the company's failure to satisfactorily conduct the land acquisition process, especially along the eastern stretches of the pipeline route, and certain other problems to be discussed below.

## **2. Access to information**

The BTC Pipeline Company undertook the responsibility to ensure that the population – and primarily the communities affected by the pipeline project – would have access to information and consultations for during the preparatory and implementation stages.

The company conducted the first public hearings in the summer of 2002. On the basis of the “*Environmental and Social Impact Assessment Report*” (ESIA) and “*Resettlement Action Plan*” (RAP), the company submitted to the IFC and EBRD a “*Community Relations Management Plan*,” major parts of which were the creation of a community liaison program and a grievance mechanism for an ongoing dialogue with the community. The IFC and EBRD supplemented the above with a 120-day public hearing period, which, unfortunately, did not bring any additional benefits to the project. Despite the fact that both banks referred to the meetings of counterparts as “successful,” the offended residents who were present at the meetings still failed to get answers to most of their questions. It should be noted furthermore that the IFC staff report on a proposed investment in the BTC pipeline project, submitted to the IFC and World Bank Board of Directors was dated October 14, 2003, i.e., the date on which the public hearings period ended. Doubts arise that the comments received in last days of the public hearings were even read, much less considered.<sup>6</sup>

As in any large infrastructural project, various problems that occur during the BTC construction process are natural. Nevertheless, the situation is complicated by the

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<sup>5</sup> See IFC Response to submissions received during 120 days of public consultations, October 27, 2003: “Some submissions from certain NGOs were very lengthy and sought to analyze in-depth each and every IFC policy or procedural compliance or non-compliance from their perspective. Some of these reports also provided supporting evidence via previously submitted ‘fact finding mission’ reports. IFC has replied to most NGO letters and ‘fact-finding’ mission reports and we recommend that interested individuals refer to this material for greater in-depth analysis of certain issues, as we do not repeat it.”

<sup>6</sup> Report to the Board of Directors on Proposed Investments in ACG Phase 1 and the BTC pipeline, projects nos. 11252 and 11251, October 14, 2003.

attitude that exists towards the project. Any person or organization that tries to criticize the pipeline construction process or even refer to the inadequate information provided by the company (or other parties to the project) is automatically labeled an enemy of the state who is trying to hamper a politically important project. Number of population strikes immediately affected by the project increased. The increased number of strikes against BTC construction can be explained, on the one hand, by the failure to achieve timely resolutions to conflicts in the pipeline construction areas and, on the other hand, by the lack of sufficient information supplied to the local population and the inefficient operation of the grievance mechanism.

Insufficient information supply is clearly evidenced by the problem currently faced by the population of Rustavi micro-regions 18 and 19.

## **2.1 Insufficient public hearings in Rustavi resulted in conflict**

Although the BTC pipeline will pass 180-250 meters from Rustavi micro-regions 18 and 19, the local residents did not learn about the fact until January 4, 2004, when the BTC Pipeline Company contractor brought machinery onto the nearby land and started the preparatory work for pipeline construction. The local residents addressed BTC Pipeline Company., the Georgian International Oil Corporation (GIOC) and representatives of relevant government agencies to receive safety guarantees. Although the project sponsor states, in all its documents, that the project will be safe and will be implemented in compliance with internationally recognized standards, the local residents did not receive the requested information regarding specific safety standards.

After several unsuccessful attempts to resolve the problem on-site, the local residents applied to the IFC ombudsman on March 17, 2004. The major arguments of the complaint are the following: (1) there are houses within approximately 500 meters of the Mtkvari River, and the territory itself is very sensitive due to excess sulphate subterranean water (up to 2 meters), locally swamped areas, numerous mains and distribution networks and complicated surface and subterranean water drainage; and (2) the houses are in a state of emergency. Pipeline construction may further jeopardize these houses (vibration during operation). BP itself indicates that there is a security zone within 500 meters of the pipeline where construction of schools, hospitals, etc. is forbidden.

Considering all of the above, the local residents are asking the ombudsman to:

- verify the project's compliance with IFC policy;
- conduct an independent study of the impact of the BTC pipeline on these houses;
- give the affected population a guarantee based on the conclusions of an independent study that the construction and operation of the BTC pipeline will not impact their living conditions and, if this is not possible, that the BTC Pipeline Company will develop an alternative pipeline route that will ensure that the houses are located beyond the 500-meter security zone;
- provide housing with relevant compensation or adequate resettlement if no other choices exist or the above is impossible.

Nearly 400 residents of the Rustavi micro-regions 18 and 19 demonstrated near the pipeline construction area on February 7, 2004. As a result, construction was suspended for an hour. The residents' major demand was to have the central and local governments, GIOC and the BTC Pipeline Company focus more attention on their

problem as pipeline construction is being carried out only 180-250 meters from their houses; they demanded information on safety standards and safety guarantees.

Unfortunately, instead of protecting the people and resolving their problems, the government responded in the usual manner: regional police escorted by the deputy mayor forcibly broke up the demonstration. Despite the fact that most of them were women and children, the demonstrators were mercilessly dispersed. Police representatives repeatedly stated that they had a government order to eliminate any opposition obstructing implementation of the pipeline project.

It should be noted that the local residents had initially requested no more than safety standards, but owing to the unsatisfactory response to their request and the company's failure to provide them with the requested documents, the local residents became increasingly anxious. After the events of February 7, the local residents requested the BTC Pipeline Company to make a study of an alternative route.

In his response of March 12, 2004, Mr. Edward A. Johnson, III, General Manager of the BTC Pipeline Project, encouraged Rustavi's residents. The letter says, "*the agreements strictly provide for compliance with relevant standards, including health care and safety norms and practice. All these norms comply with the highest international standards, and we may definitely state that the pipelines in Georgia are constructed with state-of-the-art technologies and materials.*"<sup>7</sup>

In addition to the above, the letter mentions only one standard (ASME B31.8) that regulates the construction of gas pipelines. Here, the letter states that in the case of the "*gas pipeline, the resolution fully satisfies the health care and safety norms of Great Britain, which is the regulatory norm for the Host Government Agreement (HGA). According to this norm, the construction of private houses is allowed within 15 meters of the pipeline route, and the distance between the micro-region 19 houses and the pipelines (an average of 200-250 meters) fits within the above norm.*" The letter is accompanied by an extract from the HGA (Annex 3, Article 2)<sup>8</sup> and not the specific pipeline safety standards requested by the residents.

Johnson's letter also states that "*certain misunderstandings and questions (from people other than those who live in Rustavi) have arisen from the fact that a land acquisition manual published by us refers to a 500-meter zone and that construction – including hospitals, schools, etc. – is prohibited in this area. We responded to this question in our numerous meetings and once again would like to state that ....*"

We would like to note that the company must bear responsibility for any unclear information – even that with which we agree.<sup>9</sup> We would further like to stress the fact that this is not the only case in which a document provided in Georgian is unclear. In

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<sup>7</sup> The translation is by the authors.

<sup>8</sup> It should be noted that health care and safety standards are discussed in Article 3 and not Article 2.

<sup>9</sup> See the *Guide to Land Acquisition and Compensation in Georgia for BTC and South Caucasus Pipeline*, p. 6, scheme 2. This is only mentioned in the footnotes: "Zone 3: There shall be no major developments (hospitals, schools, etc.) for five hundred meters on either side of each pipeline and where the project wishes to be generally involved in planning issues." The word "prohibited" used in Georgian and Russian versions hardly matches the phrase used by Mr. Johnson in his letter of March 12 ("the 500 meter zone is not a prohibited zone; the 500 meter zone is a consultation zone") even with "restriction zone" used in the English document.

this particular case, however, the description of the 500-meter zone is absolutely the same in both the Georgian and the Russian text.

Further, we would like to remind the company that the population in these micro-regions of Rustavi is affected by the pipeline project, as the project defines:

- individuals that own or use the land over both sides within 2 km from the pipeline corridor center;
- individuals that own or use the land within a 5-km radius of the pipeline ground facilities and worker camps (e.g., pumping stations, isolating valve stations);
- individuals that own or use the land within a 2-km radius of the pipeline pipe storage;
- individuals living near roadsides, affected by a considerable increase in road transport due to the implementation of the pipeline project.

In such a context, it is not clear why the population did not learn that the pipeline was supposed to go near their houses until January 4, 2004, when the first machinery showed up on the nearby land. Nor did Mr. Johnson stress this fact in his letter.

Experience proves that access to information is still a significant problem, despite the fact that the company claims to have a continuous dialogue with the affected population along the entire pipeline route. It is strange, however, that the population claims to lack information in areas where the pipeline will obviously have an environmental, social and even psychological impact and where it is necessary for the company to do everything possible to establish normal relations with the population.

### **3. The community liaison program and grievance review mechanism**

According to obligations undertaken by the BTC Pipeline Company, the grievance mechanism and the community liaison program should support a continuous dialogue between the company and the local residents and facilitate the resolution of the affected population's grievances.

We should note, however, that the existence of the community liaison program and grievance review mechanism did not become known to the local community until the end of 2003. This fact was underscored during the public meetings arranged by the international financial institutions.<sup>10</sup> As of today, the role played by community liaison officers in resolving problems is less noticeable. While the population addresses government agencies and various non-governmental organizations and engages in different kinds of protests – demonstrate, close roads, stop pipeline construction operations in order to resolve most problems – most of them know nothing about the grievance review mechanism.

The main problem is that the functions of the grievance mechanism and the functions of the community liaison officers are only discussed in the projects' official documents (Resettlement Action Plan, ESIA and the Community Relations Management Plan), which are less accessible and less comprehensible for the local population. It would be better if the company issued a simply and clearly written brochure to the affected population in the pipeline construction area.

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<sup>10</sup>September 8 and 11, 2003.

In conversations with Green alternative's representative, held in October 2003, the representatives of the International Financial Corporation (IFC) admitted that the grievance mechanism was less known to the affected population. At the same time, it was emphasized that this problem would be resolved in the future.

Unfortunately, it should be mentioned that the company did not take any action in order to improve the relations between the company and local residents. The community liaison officers are rarely able to offer complainants a relevant or prompt answer, and the frequent replacement of officers makes it difficult for local residents to find the person who is responsible for their particular problems. The lack of community liaison officers in several regions only aggravates the situation. Consequently, local residents are forced to express their grievances directly to senior managers at the BTC Pipeline Company and GIOC, and if, for one reason or another, the managers do not respond, the situation deteriorates and the people are forced to resort to demonstrations and protests.

It should be mentioned that Green Alternative requested the register of complaints compiled by the community liaison officers, but the company refused to provide the register, justifying its refusal by saying that the requested information is internal company documentation. They also refused to provide a general data on complaints (amount, kind of complaints, etc.), claiming that Green Alternative only has access to Monitoring Panel reports.<sup>11</sup>

We witnessed a telephone conversation some Rustavi residents had with a community liaison officer to request a meeting with the officer in regard to certain issues. The officer said that people who "bother" community liaison officers and the BTC Pipeline Company are usually trying to improve their "vulnerable" financial situation at the company's expense and that there is generally no basis for such complaints. This is not an acceptable attitude for a representative of the BTC Pipeline Company, and his rudeness and insults were inappropriate. Despite the residents' attempt to convince the officer that his presence was needed, the conversation was neither businesslike nor polite.

#### **4. Land compensation and Resettlement Action Plan**

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.

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.*"<sup>12</sup> GIOC chose LKN, Ltd. to conduct the surveys, which were completed in the summer of 2002.

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<sup>11</sup> The monitoring panel report referred to is dated August 2003, and the Green Alternative letter requesting the information is dated December 3, 2003. It should be further stated that disputes among the population increased considerably along with pipeline construction work during this period.

<sup>12</sup> JSC "Georgian International Oil Corporation" Financial and Economic Activity Act for the period from July 1, 2001 through April 1, 2003, Chamber of Control of Georgia, July 4, 2003.

Since July 2002, the BP Land Acquisition Group together with representatives of Association for the Protection of Landowners Rights (APLR) have been conducting an inventory/inspection process in 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 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 International Finance Corporation easily declared that “*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.*”<sup>13</sup>

Regrettably, we would like to stress that reality obviously differs from IFC presumptions. The APLR admits that still there are serious inventory problems. The February edition of the *Landowner* magazine reports that “*as of today, approximately 30 percent of the land parcels within the pipeline corridor are disputable.*”<sup>14</sup>

The Association for Protection of Landowners' Rights hired by the BTC Pipeline Company 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.*”<sup>15</sup>

Unfortunately, a united group that includes the BTC Pipeline Company's Land Acquisition Group, the Association for the Protection of Landowners Rights, the GIOC and by now the already reorganized State Department of Land Management<sup>16</sup> 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 Association for the Protection of Landowners Rights 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 organizations to combine efforts in protecting the esprit de corps and the affected population. Moreover, this is a direct mission of both the Association for the Protection of Landowners Rights and the GIOC.

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

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<sup>13</sup> 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 11 September, 2003.

<sup>14</sup> “Land Parcels Appear and Disappear,” *Landowner*, issue 2, February 2004, Printing Body of Association for the Protection of Landowners Rights.

<sup>15</sup> “Land Parcels Appear and Disappear,” *Landowner*, issue 2, February 2004, Printing Body of Association for the Protection of Landowners Rights.

<sup>16</sup> According to the new governmental structure of Georgia, the responsibilities of the State Department of Land Management were spitted between two state authorities – Ministry of Justice and Ministry of Environment.

## 5. Land acquisition and compensation mechanism

### 5.1 Land acquisition from private owners

The BTC pipeline Company clearly defined the 44-meter construction corridor and in compliance with the HGA undertook the responsibility to acquire land parcels from land owners, pay compensation and launch pipeline construction work only upon completion of such actions. In case of state land, the BTC Pipeline Company obtains the required right of way without any compensation. After defining the construction corridor, the company determined the land price and conducted property (trees, facilities, agricultural crops, etc.) inventories. The company provided the owners with proposal packages that were supposed to be followed by negotiations and final land acquisition.

BTC Pipeline Company has purchased land in Georgia. The fact that the BTC Pipeline Company was purchasing and not leasing agricultural land was unexpected for the population, as neither the *Guide to Land Acquisition and Compensation in Georgia for BTC and South Caucasus Pipeline* nor the *Resettlement Action Plan* explained that the company would purchase the land and acquire permanent ownership.<sup>17</sup> Furthermore, during the public hearings, the company stressed the fact that upon the completion of construction the land would be returned to the owners. The legal purchasing agreement between the company and the landowner, however, states nothing about the possibility of returning the land to the initial owner.

The fact that BTC pipeline Company is using ownership in order to obtain the Right of Way on land parcels is a violation of Georgian law. In particular, according to article I of the land acquisition agreement concluded with land owners, the land is purchased by the BTC pipeline Company's affiliate – “Baku-Tbilisi-Ceyhan pipeline Company (Georgia)” - which is registered in Georgia.

It should be noted that this contradicts article IV of the law “on Agricultural Land Ownership” of March 22, 1996, which states that only a legal entity registered in Georgia has the right to agricultural land ownership. Despite the fact that, in accordance with Georgian legislation, BTC Pipeline Company (Georgia) is registered in the Vake-Saburtalo district court of Tbilisi, it remains the affiliate of the BTC Pipeline Company. According to the Civil Code of Georgia,<sup>18</sup> a company's affiliate is not considered to be a legal entity, therefore according to the law “on Agricultural Land Ownership”, BTC Pipeline Company (Georgia) has no right to purchase agricultural land. The statute of the BTC pipeline Company (Georgia) confirms and acknowledges this point and reads as follows: “property being in possession of the affiliate is in Company's ownership”.

On June 20, 2003, amendments were made to the law “on Agricultural Land Ownership” of March 22, 1996, according to which only citizens of Georgia as well as legal entities registered in Georgia which conduct their principal activities in the field of agriculture have the right to land ownership. Thus once again the land acquisition agreement concluded between BTC pipeline Company (Georgia) and landowners

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<sup>17</sup> It should also be noted that ECDG representatives learned that BTC Co. was purchasing land in Georgia from a Georgian NGO on May 28, 2003.

<sup>18</sup> See Civil Code of Georgia: article 28 “affiliate of Legal Entity”.

clearly violates Georgian legislation, as BTC Pipeline Company does not conduct its principal activities in the field of agriculture.

This issue has been raised with the BTC Pipeline Company several times, including at a public hearing, since September 11, 2003.<sup>19</sup> Once again, the BTC Pipeline Company assured the population that the land would go to its initial owner and the required documentation would be prepared by the end of 2003<sup>20</sup>. As of today, no such documentation has been developed.

For more than a year now, the BTC Pipeline Company has been telling the public that the land acquisition process is successful and that the population is entirely satisfied with the compensation amounts. We should state, however, that in fact there are people who are not satisfied with the land sale facts and the offered compensation amounts.

The company faces most of these problems in Akhaltsikhe and Rustavi. According to the landowners in Akhaltsikhe and Rustavi who are opposed to selling their land to the company, the company is intimidating landowners and does not consider people's opinions when stipulating land prices. Rumors were systematically spread to the effect "that the company will expropriate land parcels in case of failure to reach an agreement and [the company] was not properly interpreting relevant legislation, which caused a degree of misunderstanding and anxiety among residents who were ready to sell land parcels for offered compensation because they were afraid to lose the offered money as well as the land."<sup>21</sup>

## **5.2. BTC Pipeline Company and obtaining the required Right of Way through the Court**

In order to expedite construction, the BTC Pipeline Company initiates and tries to obtain right of way through privately owned land through court. The first case was registered on December 22, 2003 in Akhaltsikhe region, where the BTC Pipeline Company brought suit against two landowners in Akhaltsikhe Regional Court.<sup>22</sup>

The BTC Pipeline Company requires "immediate" "mandatory Right Of Way" in compliance with Article 180 of the Georgian Civil Code<sup>23</sup>. The BTC Pipeline

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<sup>19</sup> 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 11 September, 2003.

<sup>20</sup> "A member of the Young Lawyers' Association raised a question regarding the form of land acquisition used in the BTC project in Georgia. He asked why the land was purchased and why other forms of land acquisition such as leasing, which was applied in Azerbaijan and Turkey, were not applied. The speaker noted that it was not indicated in the contracts that the land would be returned to its original owner after use of land purchased by BTC Co. In answer to this question, the difference in the forms of land acquisition used in Georgia and Azerbaijan was caused by the fact that Georgian legislation did not provide any options other than buying the land. There was confirmation by BTC Co. that the acquired land would be returned to its original owner to use, subject to some conditions, such as restrictions on building and growing large trees, which was clearly stated in the RAP. The relevant documentation and agreements, which are under discussion with the Georgian government, would be worked out by the end of the year."

<sup>21</sup> Appeal against BTC Pipeline Company presented in Akhaltsikhe district court – Plaintiffs Rafael Gozalishvili, Jimsher Teliashvili (land owners).

<sup>22</sup> Akhaltsikhe Regional Court satisfied the BTC Co. claim on February 10, 2004. The defendants appealed the decision at Precinct Court.

<sup>23</sup> Civil Code of Georgia: Neighborhood Law.

Company, as “the neighboring land parcel owner, believes that it has an absolute and legitimate right to enter and use the land of the ‘defendants’ as this is required for the construction and further operation of the pipeline.” The claim does not assert the need for “mandatory right of way.” Article 180 of the Georgian Civil Code regulates instances when “a land parcel does not have proper access ... to public roads or to electric, oil, gas or water utilities, in which case the owner shall be entitled to request from the neighbor the use of his land to ensure such necessary access. Any neighbor whose land parcel is crossed by such required road or utility shall be given relevant compensation as agreed by the parties, and such compensation may be a single lump sum payment.”

At the same time, the BTC Pipeline Company attaches so-called “mandatory Right Of Way conditions” to the claim according to which “the pipeline company has the right, in accordance with the HGA, to conduct various pipeline work during the construction stage, including any and all surface and underground construction and related activities, cleaning and digging works”, i.e., the company is actually requesting the right to perform all of the above activities, which do not necessarily constitute mandatory right of way.

In its lawsuit, the BTC Pipeline Company also states its own obligation to pay the “defendant” relevant compensation in compliance with the terms of the *Guide to Land Acquisition and Compensation in Georgia for BTC and South Caucasus Pipeline*, though the lawsuit does not define the compensation amount.

In this particular case, the company, by requesting a “mandatory Right Of Way,” is contradicting the Georgian Constitution in its efforts to violate ownership rights. This fact is evidenced by a document that the company submitted to the court, which indicates that “mandatory Right Of Way conditions” merely means the interest of the BTC Pipeline Company.

Violation of ownership rights is evidenced by Annex 3 to the document (“Limitations”) and section 1 of this Annex (“Prohibitions”), according to which it is prohibited to enter the Construction Corridor lands, or conduct any kind of activities during the Construction period. Of particular interest is the fact that after setting the strictest limitations for land owners in section 1, section 2 of annex 3 provides a list of additional activities that still need to be agreed with the BTC Pipeline Company before it can be implemented.

The precedent of Akhaltsikhe was repeated in Rustavi. Rustavi residents whose household lands are crossed by the pipeline dispute the land acquisition price with the company. The people have appealed against the fact that the price for 1 m<sup>2</sup> of household land is GEL 7.82. The people were completely ignorant of the method by which the market price for those parcels had been determined. Owners did not agree with the BTC Co. proposal because they felt that if they sold their land they would lose the land as well as the right to build on it and they would not be able to buy a similar parcel of land or house (apartment) with the money offered in compensation for the land (compensation for a standard 600 m<sup>2</sup> parcel of land amounts to GEL 4 692).

On April 29, 2003, Rustavi citizens gave the EBRD a letter of protest. The owners noted that the manner in which the company had calculated the market price of a parcel of land was perfectly unclear and that the constitutional rights of citizens of Georgia had been violated when the company had pressured them. The letter said that the

citizens reserve their constitutional right to refuse to sell their land if the price is not acceptable and that they would organize protests in response to any pressure and protect their rights through the court.

The negotiations with Rustavi landowners failed, which led to obstacles being placed in the way of pipeline construction through Rustavi. In February 2004, the BTC Pipeline Company initiated legal proceedings in the court against 32 landowners with the intention of receiving authorization for the Right Of Way. In spite of the fact that the BTC Pipeline Company stated in its claim that the company will pay appropriate compensation to the landowners in compliance with the terms of the *Guide to Land Acquisition and Compensation in Georgia for BTC and South Caucasus Pipeline*, and also the fact that the court agreed to the company's claim, thus far Rustavi landowners have not received compensation.

What do the Akhaltsikhe and Rustavi cases represent if not a violation of ownership rights? Where is there any guarantee that tomorrow the company will not be willing and will not modify "mandatory Right Of Way conditions" that are already one-sided.

Obtaining of mandatory Right Of Way through such mechanisms contradicts World Bank operational policy OD 4.30, according to which the company has no right to access a land parcel without prior payment of compensation.

Regarding the obtaining of mandatory Right Of Way, it is also interesting to review the Resettlement Action Plan monitoring panel reports.

The Resettlement Action Plan monitoring panel evaluates the BTC Pipeline Company's implementation of the Resettlement Action Plan every six months. The first such evaluation was conducted in August 2003. Unfortunately, the monitoring panel report was available only in English. The panel visited a few villages, including Kizil-Kilisa, where rather big problems were reported. However, it would be more advisable for the monitoring panel to visit villages where the land compensation problem was not connected only with cadastral shortcomings.

The panel stressed the fact that in a number of cases in which the BTC Pipeline Company could not identify the whereabouts of landowners who were abroad, but it was only in such exceptional cases that the company went to court in order to receive the required right of way authorization on the basis of the Georgian Civil Code.

The BTC Pipeline Company received authorization from the monitoring panel, which proves that its attitude towards the issue concurs with the World Bank's policy (OD 4.30). However, at the same time, the panel demanded that: (1) the BTC Pipeline Company should use all means in order to identify the whereabouts of landowner both before and after going to court; (2) the documentation pertaining to the terms and conditions of the required right of way should specifically contain the BTC Pipeline Company's obligation to pay compensation; 3) on the assumption of World Bank operational policy, the affected population should be compensated as long as it is experiencing resettlement [impact] and sufficient amounts for land purchase and for compensation should be deposited in a bank account as soon as the court issues its decision.

The monitoring panel explained that the acceptance of this procedure for acquiring mandatory right of way was due to the fact that neither the Resettlement Action Plan

nor Georgian legislation had foreseen any legislative procedures in the event of the failure to identify the whereabouts of a landowner.

One must ask how the monitoring panel would respond to a BTC Pipeline Company lawsuit designed to get the right of way against owners who refused compensation.

## **6. Corruption and panel game**

The monitoring panel has provided very interesting materials regarding corruption and extortion. According to this material, no one had heard of any cases of corruption or extortion in the villages in which they conducted interviews. The media, however, had reported several extortion cases.<sup>24</sup> The panel did not receive sufficient information on local corruption.

It should be noted that considerable information regarding this came to light after the so-called Rose Revolution; some of this information pertained to the Kvemo Kartli region, which had not previously been a subject for discussion.

### **Gardabani Region, Village of Krtsanisi**

In the village of Krtsanisi, the BTC pipeline runs through the center of the village and the common village pastures. In 2003, the BTC Pipeline Company informed the village that it would not pay compensation for lands in common use because the lands were leased.

The village decided to establish a CBO in order to resolve this problem. Two CBOs were established, however, to reflect the two groups living in the village: the new settlers from Svaneti formed CBO *Krtsanisi* while the village's original residents, formed CBO *Dzirdzveli Krtsanisi*. Both CBOs requested the transfer of lands with ownership rights to them because, according to them, the common pasture lands were leased out illegally during the reform.

On January 27, 2004, CBO Krtsanisi filed a lawsuit against the Gardabani Local Council at the Gardabani Regional Court. According to the suit, Krtsanisi's residents requested that the leases issued by the regional Gamgeoba (local government) for the common pasture lands be terminated and that the common pasture lands be transferred into village ownership. CBO Dzirdzveli Krtsanisi was a third party in the case.

On January 28, 2004, furthermore, CBO Dzirdzveli Krtsanisi petitioned the Gardabani Local Council in regard to the illegal leasing of village lands. On February 17, 2004, the Gardabani Regional Court satisfied an appeal submitted by the plaintiff and based on a court decision. The local council was required to issue an act suspending lease agreements and transfer the lands into village ownership.

The court decision resulted in a disagreement in the village. Despite the fact that the Krtsanisi suit had been joined by 115 persons, the suit had been submitted in the name

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<sup>24</sup>"A pipeline of Trouble in Georgia", *The Christian Science Monitor*, January 16, 2004; Levan Mamaladze, "Georgian land and machinations," *Akhali Versia* (Georgian newspaper), January 25, 2004; "BP Georgian stuff is at tremendous fault to Georgian population," *The Georgian Times*, January 6, 2004; "What is going on in Kvemo Kartli?," *Zerkalo*, Baku, December 23, 2003; "What is posing a threat to the pipeline and workers?," *Mtavari Gazeti*, December 11, 2003.

of the entire village. Therefore, according to the court decision, the lands should be transferred into the ownership of the entire village.

However, members of CBO Krtsanisi tried to use the submitted documentation for their own benefit, and they assert that the land should be distributed among the 115 people who joined the suit. At the same time, members of CBO Dzirdzveli Krtsanisi discovered that CBO Krtsanisi had submitted a topographic map of all of the village lands verified with their stamp and divided into just 115 parcels.

On February 17, 2004, pursuant to the court decision, the Gardabani Regional Local Council issued a resolution dated March 11, 2004. According to this resolution, the illegal lease for the Krtsanisi village lands was terminated and the lands were transferred only to the 115 persons and not to the entire village. On March 23, 2004, dissatisfied members of CBO Dzirdzveli Krtsanisi filed a lawsuit to terminate this resolution.

Meanwhile, members of CBO Dzirdzveli Krtsanisi and their supporters conducted demonstrations at the Chancellery for three days. The demonstrators requested the lands be fairly distributed. In this regard, the residents met with Soso Mazmishvili, the State Envoy to the President of Georgia in the Kvemo Kartli Region. According to the residents, however, no results were achieved.

The situation in the village is unbearable. There are even personal disagreements. This hostility prevented the parliamentary election of March 28, 2004 from being held in the village. The villagers refused to participate in the parliamentary election.

It should be noted that the population does not know what will happen if the land is distributed among the residents. Company representatives met with the village population in the autumn of 2003. Despite the request made to the BTC Pipeline Company to provide the village residents with a letter stating that the company will pay compensation once the issue is resolved, such letter still does not exist and it continues to cause unrest among the villagers.

#### **Tetritskaro region, Village Khaishi**

The situation is extremely complicated in the Tetritskaro region village of Khaishi, which is populated by Svani immigrants. The former village headman appropriated USD 300,000 for overall land use and private land compensation.<sup>25</sup> According to the new headman, the former headman took advantage of the local people's trust and registered only friends and relatives as landowners.

In January 2004, the former village headman was arrested for misappropriation of the land compensation funds. The villagers do not actually blame the BTC Pipeline Company for the situation, but they still think that the company's representatives should have assisted them in resolving the problem.

#### **Kvemo Kartli**

Machinations with the land compensations in Kvemo Kartli were related to Levan Mamaladze - the former representative (chargé) of the president. According to the new chargé, Zurab Melikishvili, all the land lease agreements for the area adjacent to the BTC pipeline should be reviewed: "We have been informed that the land was

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<sup>25</sup> Weir, Fred, "A Pipeline of Trouble in Georgia," *The Christian Science Monitor*, January 16, 2004.

intentionally allocated to friends and relatives so that these people would be able to receive substantial compensations from the construction company."<sup>26</sup>

## **7. The impact of the BTC Pipeline on the local population: Dgvari, the village that does not exist**

The problem of the Borjomi District village of Dgvari, situated 1 kilometer away from the BTC pipeline route, is an extremely acute one as the village is built in the landslide zone. According to the dwellers, landslides have been particularly frequent in recent years. The number of landslide accidents has increased as has the risk of damage to endangered buildings. Unfortunately, the sponsor "forgot" to study the impact of BTC construction on this village during the preparation of both the Environmental and Social Impact Assessment study and the Resettlement Action Plan.

The Dgvari community is concerned that construction of the BTC oil pipeline only one kilometer away from the village might activate landslides and endanger the survival of the village. Although the problem of Dgvari was discussed with EBRD President Lemierre and the executive directors at the EBRD Annual Meeting (May 1-2, 2003),<sup>27</sup> there was considerable surprise when the villagers raised the same issue at the multi-stakeholder meeting held in Borjomi by the IFC and EBRD on September 8, 2003.

The Dgvari issue was discussed in the report prepared by CDR Associates<sup>28</sup> following the meetings held in September 2003. The report states that (a) the BTC Co. is preparing the draft report; the report prepared for the Georgian Minister of the Environment and Natural Resources will provide recommendations for solving the Dgvari's problems; (b) the BTC Co. will release a short report to the public.

In its response to public submissions, the IFC stated that "*Concerns related to potential landslides at Dgvari village in Georgia, which is close to, but not directly affected by the pipeline were raised at the MSF meetings. The village has been in the process of being resettled for a number of years by the Georgian Government, but this has not been completed due to a lack of funds. BTC has recently assisted the Georgian Government by undertaking detailed surveys and a report and recommendations have been submitted to the Ministry of Environment. This is an example of additionalities being provided by BTC*".<sup>29</sup>

Unfortunately we have to inform the IFC that the reality is quite different from the facts to which they refer in their response.<sup>30</sup>

Under the State Committee established following the Mandate No. 525 of the President of Georgia of May 8, 2003 for the investigation of the problems of Dgvari, the

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<sup>26</sup> Levan Mamaladze, "Georgian Land and Machinations," 2004-01.25, Akhali Versia (newspaper).

<sup>27</sup> Bankwatch Network letter to Mr. Alistair Clark, EBRD Environmental Director, May 2003.

<sup>28</sup> CDR Associates (on behalf of IFC and EBRD). 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.

<sup>29</sup> IFC Response to submissions received during the 120-day Public Comment Period, Site-specific concerns.

<sup>30</sup> As the above mentioned report was not made available to the public, Green Alternative (Mtsvane Alternativa) wrote to BTC Co. manager Edward Johnson. No response to the letter has been received to date. Green Alternative's letter to Ed Johnson (#04/01-30).

geologists of the State Department of Geology began work at Dgvari. The BTC Pipeline Company and GIOC representatives also visited the village periodically.

This has been confirmed by the documents provided by First Deputy of the Georgian Prime Minister Mr. Petre Mamradze, according to which<sup>31</sup> the Georgian State Department of Geology "completed the initial assessment of the civil engineering and geo-dynamic conditions of the landslide processes existing at Dgvari village of Borjomi district and the supplementary territory." This document does not mention any assistance provided by the BTC Pipeline Company, but it does say that the investigation was terminated due to lack of funds. The State Department of Geology insists on the priority of "continuing the planned investigation and, based on the comprehensive analyses of investigation results, producing the relevant recommendations for solving the problems of Dgvari's residents in regard to the landslide processes."

At the same time according to the information of the Georgian State Department of Geology,<sup>32</sup> Dgvari's population is actually endangered and there might be a disaster this spring. This is particularly important as it is expected that the BTC Pipeline Company will restart construction at the Tskratskaro-Kodiana section when the weather gets warmer.

The fact is that since the BTC Pipeline Company has never submitted to the Georgian Ministry of Environment and Natural Resources any detailed studies related to the probable impact of pipeline construction on Dgvari, we cannot speak of any "additionalities." It was not until February 2004 that the BTC Pipeline Company presented the Ministry of Environment and Natural Resources with the investigation summary, which once again proves the long recognized fact of the presence of landslides in Dgvari. At the same time, the IFC is, for some reason, ignoring the fact that the BTC Pipeline Company is intending to build the pipeline within 900 meters of Dgvari despite years of landslides in the village. Neither the BTC Pipeline Company nor the IFC have bothered to explain to the public why the village was not mentioned in the Environmental and Social Impact Assessment, why BTC Pipeline Company did not provide an assessment of the pipeline construction (for example, intensive transport traffic) and operation impacts regardless of the government's plans to resettle the population, and why the government will be held responsible for any losses and damages incurred by the population due to the construction of BTC pipeline.

## **8. Management plans and the state of their implementation**

Regardless of the fact that construction started in early 2003 and the BTC Pipeline Company is obliged – in accordance with the Environmental and Social Impact Assessment Report – to provide all specific management plans prior to the commencement of construction, most of the plans were not prepared until late autumn 2003, and part of them have not yet been translated into Georgian.

According to the document on Environmental and Social Impact Assessment, the BTC Pipeline Company and its subcontractors have undertaken the following responsibilities during construction:

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31 Response to Green Alternative letter 04/03-20.

32 Letter from the State Department of Geology to Green Alternative (# 01-4/17), February 4, 2004.

<b>Obligations</b>	<b>Responsibilities of the BTC Co. and its construction subcontractors</b>
<p>The construction contractor shall:            In addition the construction contractor will assess and document the likely impact on buildings at particular risk and considered the sensitive close to project traffic routes. 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 option will involve direct replacement of the structure with no cash transaction taking place.            This documentation will be agreed with the house owners / occupants and a copy provided them.</p>	<p>N 3, Source - Assessment of the Environment and Social Impact, Table 11.4</p>
<p>Where there will be planned diversion to infrastructure or services, this will be identified by the contractors with as much advance warning as possible. The timing and duration of the diversion will be agreed between contractor and the affected party. Where infrastructure is damaged, the timetable for repair of infrastructure will be agreed with the authorities and the communities.</p>	<p>N 22 (add) - Source Assessment of the Environment and Social Impact, Table 11.5.2.1</p>
<p>Any potential negative impacts during the construction shall be identified and prevented where possible. Where such impacts cannot be avoided, the contractors shall agree a fair and equitable compensation with affected communities.</p>	<p>N 26 (add) - Source List of the environment and social obligations, BTC</p>
<p>The contractor shall repair and reinstate any third party property or services damaged as a result of construction activities.</p>	<p>P11(14) Source - List of the environment and social obligations, BTC</p>
<p>Limit working hours of noisy activities to normal daytime working hours. Provision of warnings of impending works to all potential receptors within the 1 km radius of the sites.</p>	<p>S27(V2) Source Assessment of the Environment and Social Impact, Table 10-5</p>
<p>Blasting: the contractor is constrained by contractual requirements that include: The contractor must obtain written approval from local authorities for the use, storage and transportation of explosives. The local population shall be warned of the opportunity to move livestock and prepare in advance. Warning signs and security staff must be put into the place to ensure the safety of the local population.</p>	<p>Q9 (add) Source Creditor's additional information package Section 5.3.4, HGA, Annex 3, clause 6.2)</p>

In practice, we are encountering situations in which the BTC Pipeline Company is in a breach of its above described obligations, the provisions of World Bank Operational Directive 4.30 and the provisions of the HGA.

As an example, let us introduce the problem of the residents of Tetrtskaro town. In the course of the construction of the BTC pipeline, in order to clean the 44-meter construction corridor between December 26, 2003 and February 2004 – explosives were used in Tetrtskaro in the area adjacent to Tskhra Dzmis, Mshvidoba, Garsi and Demetrashvili streets. As a result, several buildings on the above mentioned streets were damaged, namely, main support walls were cracked and developed vertical and horizontal fissures of 3 to 6 meters in length and up to 5 cm in width. The residents were not warned of the time and place of the first or subsequent explosions.

On December 26, 2003, representatives of the local residents approached the local BTC Pipeline Company representatives. Although the BTC Pipeline Company representatives took photos of the damaged houses, they never responded to the residents or visited the site again.

The affected people have applied on several occasions to BTC Pipeline Company for help. Finally, on March 25, 2004, a meeting between the affected community, BTC Pipeline Company and local authority representatives took place. To people's great astonishment, the BTC Pipeline Company representatives denied responsibility for the damage to the houses and stated that it was not caused by the blasting activities carried out by the company; they even offered to carry out a kind of experiment to resolve the conflict. Although the time and the place of the experiment were agreed during the meeting, it never took place and this has provoked anger among the people.

This is not the only example of a local population suffering the negative impact of construction work because of the negligence of BTC Pipeline Company staff. Mr. Vano Gelashvili, a Tetrtskaro resident (and practically everyone in the neighborhood) suffered significant damages. Ever since construction work began, the local population has had to put up with the dust pollution caused by the intensive traffic to and from the construction site. The telephone line was damaged during construction and the associated work. Either due to the insufficiency of the transportation management plan or the negligence of the contracted personnel, a truck loaded with fuel went off the road, broke through V. Gelashvili's garden wall, and left the scene of the accident. The BTC Pipeline Company representatives whom Mr. Gelashvili contacted regarding the accident recommended that he find the truck himself and ask the driver for compensation.

People have lost their patience after 20-25 ton BTC Pipeline Company trucks, which twice a day carry fuel or water along Javakhishvili Street where Mr. Gelashvili lives, damaged the pipelines that supply water to the neighborhood. As a result, the drinking water was contaminated with sewage, which spread infectious diseases throughout the neighbourhood.

On October 23, 2003, Mr. Gelashvili approached the manager of Spie Capag - Petrofac International with a letter describing the above problems. Later in October, he received a response from Mr. Alexandre Mamatsashvili of the BTC Pipeline Company community relations department inviting him to the company's Tetrtskaro office on November 1, 2003. Although the meeting took place, Spie Capag-Petrofac International representatives refused to repair the drinking water channel. On November 4, 2003, Mr. Gelashvili wrote another letter to Spie Capag-Petrofac International requesting the same measures as previously – the establishment of a committee of civil engineers, geologists and sanitation inspectors that would outline recommendations for alleviating the damages caused by the BTC pipeline construction. On March 11, 2004, under order

#8 of the Tetrtskaro regional authority, a special investigative commission was established to resolve the above-mentioned case. Based on the results of the investigation, on March 23, 2004, the commission applied to the Spie Capag-Petrofac International manager with a request to eliminate damage. However, repair work has not even started yet.

Mr. Aptsiauri, a resident of Demetrashvili Street in Tetrtskaro has encountered similar problems. Spie Capag - Petrofac International has its office in his neighborhood. The office's water and fuel supply is provided by the heavy trucks, which use Mr. Aptsiauri's yard and orchard as access roads to the office. As a result, the vegetation and soil in the garden were damaged, the house's sewerage system ceased to function, and construction materials belonging to Mr. Aptsiauri, which had been stored in the yard, were destroyed.

In the village of Sagrašeni in Tetrtskaro District, BTC construction is causing trouble for six households. The heavy trucks that transport construction materials are endangering the houses situated near the road, especially those houses whose support walls border the roadside. These trucks are moving along the road from early in the morning until late in the evening. The vibrations caused by the heavy traffic are shaking the buildings, whose walls are cracking. The local villagers have been mentioning these problems to the BTC Pipeline Company management since November 2003. It can be clearly seen that the number of cracks is increasing and the cracks are becoming wider and wider. Unless the transportation management plan is changed and the heavy truck traffic stops, the houses may be destroyed and the population left homeless.

It has to be noted that according to the statement made by the Association for the Protection of Landowners Rights,<sup>33</sup> the association has received 150 complaints related to the BTC pipeline within the last month, and 27 of them were satisfied. Three basic problems have been identified: the problem of the remaining land, reimbursement of the damages caused by the construction to the buildings outside the 44-meter area, and the damages caused by the construction-related heavy truck traffic.

### **Borjomi Region, Tsikhisjvari Village**

The village of Tsikhisjvari lies on the route to Mount Kodiana used since 2002 by the cargo and passenger vehicles of the BTC Pipeline Company and the Spie Capag - Petrofac International construction company. This road provides access to the Kodiana section of the pipeline, where construction is in progress. The road is in quite poor condition.

Due to the poor condition of the road, the drivers of the BTC Pipeline Company and Spie Capag - Petrofac International cars changed the route and started to use the land of Tsikhisjvari village resident Vasil Pavlov, which is located close to the actual road, as a new and more convenient route. This invasion took place in June 2002, and the new route "paved" by the BTC Pipeline Company's and Spie Capag-Petrofac International's drivers crosses right through the middle of Mr. Pavlov's land.

Mr. Pavlov has owned this land since 1998. He uses it for mowing and feeds his livestock with the harvested hay. This land parcel, therefore, constitutes the basic

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<sup>33</sup> www.aplr.org. 150 complaints were received by the association in regard to the BTC pipeline. 05.03.2004.

resource for his farming. The farmer has tried to attract the attention of BTC Pipeline Company management since June 2002. The problem, however, remains unsolved despite Mr. Pavlov's visit to the BTC Pipeline Company Tbilisi office, his meeting with the company's representatives, and numerous letters he has sent to both the BTC Pipeline Company and Spie Capag-Petrofac International community relations offices.

In May 2003, BTC Pipeline Company's representatives acknowledged the damage to Mr. Pavlov's land. In August 2003, after Mr. Pavlov's second visit to the BTC Pipeline Company Tbilisi office, BTC Pipeline Company's representative David Maisuradze promised that the company would reimburse the damage caused to Mr. Pavlov, although he could not specify an exact date for payment of the compensation since, according to his explanation, all the payments were temporarily stopped due to the multitude of the claims. In September 2003, Mr. Pavlov once again gave the company the letter, but he has yet to receive a response.

It has to be emphasized that this time the BTC Pipeline Company's employees have violated the transportation management plan, though it seems that British Petroleum does not feel responsible for following its own plans and obligations.

### **Gardabani region, Jandara village and Marneuli region, Jandara village**

The village of Jandara and its vicinity have been designated to house a pumping station, which is currently under construction, along with a workers camp, which is already located there. Traffic within the village increased dramatically with the commencement of construction, causing, on the one hand, significant damage to the existing automobile roads and, on the other hand, compromising environment: the dust pollution became the real problem for the village, and children are the part of the population that is most affected. The village residents and the local government have frequently tried to attract the attention of BTC Pipeline Company management to the above described issues, but they have not yet been able to succeed.

The population of Marneuli region has concerns with a similar problem. In particular, the BTC Pipeline Company's route to get to the worker's camp in Jandara village involves passing through the main road in Marneuli. The permanent movement of heavy traffic has significantly worsened the road's condition. On April 6, 2004, the local authority of Marneuli sent a letter to British Petroleum demanding the repair of the damaged road.

### **Akhalsikhe baggage station settlement**

Akhalsikhe baggage station settlement is located within 500 meters of a pipe unloading station – between the pipe warehouse and the 44-m BTC construction corridor.

Like other Samtskhe-Javakheti villages, the settlement is built in a landslide zone as a consequence of which the houses are in jeopardy. With the commencement of BTC pipeline construction, the residents have faced many new problems, including issues related to safety, noise and traffic.

The constant heavy traffic has worsened the condition of the buildings. In addition, according to the local residents, the landslide support point was cut during the construction of the pipe warehouse, resulting in an escalation of the landslide processes in the area.

The intensive traffic, moreover, damaged the main pipeline supplying the drinking water to the settlement, and the local population was left without drinking water for ten days. After the drinking water pipeline was repaired, though, the village only receives contaminated drinking water, which the residents can only use after boiling it.

The heavy trucks that carry pipes for the pipeline use the settlement's internal automobile roads to access the 44-meter construction corridor, causing considerable dust pollution in the settlement.

The constant noise has a considerable psychological impact on the population. There are several causes of noise in this zone:

- (1) loading/unloading pipes – from 7 AM to 7 PM every day
- (2) the warehouse alarm siren – within 24 hours a day
- (3) the power generators operating in the pipe warehouse – 24 hours a day (the generators have no soundproofing).

In February 2004, the local residents met several times with a BTC Pipeline Company community liaison officer and submitted their grievance. Despite assurances that the problem would be investigated, the residents have not as yet received any response.

In early March 2004, the residents met in Akhaltsikhe with a community liaison officer from Spie Capag - Petrofac International, the BTC construction subcontractor. The officer advised them to tolerate the problems related to the BTC pipeline construction, which naturally irritated the people. Even more irritation was caused by a statement made by Spie Capag - Petrofac International's community relations manager made at a meeting with the representatives of the local residents in late March. According to the community relations manager, Spie Capag - Petrofac International is not liable for any of the obligations of the BTC Pipeline Company as stipulated in the Environmental and Social Impact Report. According to the manager, the only problem-solving measure that Spie Capag - Petrofac International is able to provide is the irrigation of the roads in summer.

## **9. Employment**

Following the IFC and EBRD requirements, British Petroleum should comply with the provisions of Georgian national legislation, the agreement with the country – owner of the BTC pipeline territory – which was ratified by the Georgian parliament. According to this agreement,

All citizens of the state hired in respect of the project shall be hired pursuant to written employment contracts that specify the hours of work required of the employees and the compensation and benefits to be paid or furnished to them and other material terms of employment, consistent with their respective employment contracts. Such employees may be located wherever deemed appropriate in connection with their employment. Subject to the requirement that no Project Participant shall be required to follow any employment practices or standards that (i) exceed those international labor standards or practices which are customary in international petroleum transportation projects or (ii) are contrary to the goal of promoting an efficient and motivated workforce, all programmes and practices applicable to citizens of the State working on the Project in the Territory, including hours of work, leave, remuneration, fringe benefits and

occupational safety standards, shall not be less beneficial than it is provided by the Georgian labor legislation generally applicable to its citizenry.<sup>34</sup>

Most of the Georgian people were hopeful about the BTC pipeline creating a permanent source of employment. However, the "lucky" employees of the BTC Pipeline Company working on construction have little reason to be content. Since November 2003, the strikes and boycotts of the workers in the districts of Tetrtskaro, Gardabani and Tsalka are occurring on an almost permanent basis. The workers demanded a 50% increase in their wages and protested against incomplete payment of overtime earnings, unreasonable differences in the salaries of foreign and local employees, low quality food and rude treatment from the managers. Despite a strike that lasted several days, the construction company did not consider the workers' demands. The trade union of the workers employed in BTC pipeline construction, which was established in December 2003, is trying with the help of the Association of Georgian Trade Unions to engage in negotiations with the construction company.

### **9.1. Wages**

The construction company pays unskilled local workers an average wage of GEO Lari 123 a month; highly skilled workers receive GEO Lari 336 per month.<sup>35</sup> The average wages paid to the Georgian workers do not exceed GEO Lari 225.

In order to reach the declared GEO Lari 600-700 per month, the workers have to work overtime: 12-14 hours per day in summer and 10-11 hours per day in winter, including weekends and holidays. Overtime hours of the Georgian workers exceed 100-120 hours per month, while the Georgian Labor Code restricts them to a maximum of 120 hours per month. This constitutes a direct breach of the HGA.

As stated by Mr. Irakli Tugushi,<sup>36</sup> the chairman of the Association of Georgian Trade Unions, this not only violates the Georgian Labor Code, it conflicts with the ILO 29<sup>th</sup> Convention on Forced Labor. The described situation is a camouflaged form of the forced labor in which the circumstances and not a person provide the compelling force.

**We believe that the company derives great benefit from the overtime and weekend work of its hired workers. This allows for the quickest completion of construction. The company, moreover, does not pay the workers' room and board on weekends.**

It has to be noted that the highly skilled workers who were hired before May-June 2003 are paid USD 2.50 per hour, while the highest pay for the most skilled work done by workers hired since September 2003 is GEO Lari 2 per hour. The foreign employees receive much higher salaries for the same jobs.<sup>37</sup>

Despite the company's statements regarding its "obligations to prevent discrimination in the workplace and pay equally for the same jobs and qualifications," the workers hired at different times receive different wages. This is explained as follows: "There are certain differences in wages of the workers of the same categories related basically to the employment agreements concluded at the initial stage of the project implementation

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<sup>34</sup> Host Government Agreement – Georgia, Clause 18.2.

<sup>35</sup> Per capita subsistence wage is GEO Lari 135 per month.

<sup>36</sup> Georgian workers are paid low wages, February 10 2004.

<sup>37</sup> "Columbian and Indian citizens are paid USD 2,500 and 3,000 per month," "These are negroes", *Alia* (newspaper), December 18-19, 2003.

in accordance with the payment policy existing prior to the establishment of the above mentioned matrix system."<sup>38</sup>

It is the opinion of the Association of Georgian Trade Unions that we are facing national discrimination as workers with the same qualifications receive different salaries. It is emphasized in the construction company's letter that "the higher wages of the foreign employees are related to the additional responsibilities they are bearing and the specific tasks (dangerous and high precision jobs among them) they have to fulfill following their experience."<sup>39</sup> However, no definition of the said "dangerous and high precision jobs" was provided, and, similarly, no salary matrix applicable to the foreign employees was submitted to the trade unions.

The local workers are requesting wages in accordance with actual qualifications and a transparency policy in regard to salaries.

## **9.2. Labor agreements**

The workers employed on the construction of BTC pipeline have requested that the duration of the employment contracts be coordinated with the scope of the job and its reasonably anticipated duration. According to the company's explanations, "construction of the pipeline is the specific job which has to be carried out in accordance with the special program in different geographic, geological and climatic conditions. Considering these circumstances, a sudden and unexpected change of each employment contract may become necessary. For that reason we conclude one-month contracts ... which does not contravene with the Georgian legislation." The dismissal of contracted workers, however, is carried out **in violation of the Georgian Labor Code**.

The construction company generally concludes employment contracts for one month. However, according to the Labor Code of Georgia, the labor agreement should be concluded for:

1. uncertain term;
2. specified time; or
3. length of commitment

In accordance with Georgian legislation<sup>40</sup>, if no termination notice is received by the employee at the expiry of one month, the contract is considered to be extended for an uncertain term. The BTC Pipeline Company was dismissing employees without any notices or dismissal notes. Court action has begun in one such case.

It has also to be noted that while all Georgian workers confirm that they have concluded employment contracts, the regional administrator (gamgebeli) of the village of Jandara asserts that there is discrimination against Azeri workers. They were hired without signing employment contracts and were threatened with dismissal after requesting to do so.

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<sup>38</sup> Response of the international construction company Spie Capag-Petrofac International engaged in the construction of BTC pipeline to the request of the joint meeting of the employees working at the same pipeline. December 22 2003.

<sup>39</sup> Response of the international construction company Spie Capag-Petrofac International engaged in the construction of BTC pipeline to the request of the joint meeting of the employees working at the same pipeline. December 22 2003.

<sup>40</sup> Labor Code of Georgia, article 31 "Extension of term of fixed-date labor agreement"

It is also important that the village population went on strike twice because the company representatives had promised them that construction workers will be recruited primarily from the local village population. After the above mentioned strikes, the recruitment situation was partially improved.

On March 23, 2004, the dismissed women (basically of Georgian nationality) went on strike. The reason for the strike was the termination of their one-month employment contracts, though the scope of their jobs (they were employed to cook and clean in a worker's camp) is not supposed to be affected by any of the "geographic, geological or climatic" changes.

### **9.3. Food**

The workers have been expressing their contempt for the meals they are served for several months. The scanty portions and low quality food were frequently the cause of poisoning. The workers are categorically demanding a qualitative improvement of the food. They resent the GEO Lari 5 per capita spent on meals for the local staff. The foreign staff has their meals separately.

It seems cynical but the fact is that at the demonstration in front of the Marriott hotel in Tbilisi in February 2004, the manager of BP-Georgia confirmed to the representative of the Association of Georgian Trade Unions that the company was quite familiar with the problem of low quality food in the worker's camps.

Nevertheless, on February 10, 2004 a Spie Capag-Petrofac International representative denied the problem and declared that "this is an absolutely biased evaluation of the implementation of our project. We cannot be sure that the food was ours .... It is well known that one worker was forced by the trade union to write the complaint letter."<sup>41</sup>

### **9.4. Women's rights**

It has to be noted that while hiring local women the company does not take into consideration the ethnic and cultural features of the community in the regions adjacent to the pipeline. For example, in Jandara, which is populated mainly by Azeri people, BTC Pipeline Company representatives asked the local regional administrator (gamgebeli) for a list of the village women to be employed as cooks. The administrator provided a list of ten women, four of whom were hired as cleaning women.

In Azeri families, it is considered shameful for a woman to work outside the home, especially as cleaning woman. For that reason, the hired women have to conceal their working places.

## **10. Monitoring of the environment and the social impact of the BTC Pipeline Project in Georgia**

All large-scale investment projects require fair evaluation and close monitoring from the relevant governmental and administrative bodies. The BTC pipeline project is no exception. In September 2003, the former president of Georgia issued a mandate "establishing a coordination center for monitoring the construction and operation of the Baku-Tbilisi-Ceyhan Oil Pipeline and the Baku-Tbilisi-Erzurum South Caucasus Pipeline Projects." International financial institutions assign governmental monitoring to the sixth level of monitoring, while the seventh level of monitoring is assigned to

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<sup>41</sup> *Dilis Gazeti* (newspaper), February 10, 2004.

nongovernmental organizations and communities. Following the president's mandate, the above two levels were merged, although without any actual consequences. The only institution financially able to provide the required monitoring was the Georgian International Oil Corporation. Under the auspices of the World Bank's Energy Transit Institution Building Project, the GIOC hired technical and environment consultants. Meanwhile, the Ministry of Environment and Natural Resources, which is immediately responsible for the control of environmental licensing, proved to be incapable of ensuring formal compliance with the license terms, not to mention compliance in practice.

This should not be surprising, as the BTC Pipeline Company does not provide the Ministry of Environment and Natural Resources with the required information, and the ministry presently has no means of controlling the construction process. As a result, construction works in the Borjomi and Tsalka sections commenced without meeting the environmental requirements. This fact is confirmed by the correspondence of the former Minister of Environment and Natural Resources with the BTC Pipeline Company and her public statements.

Despite the famous multi-leveled monitoring procedure, the question of information deficiency is still crucial. It is also unclear as to when and how the BTC Pipeline Company should eliminate the defects and solve the problems that have been discovered at the different levels of the project implementation. For example, it is absolutely obscure what actions were taken by the BTC Pipeline Company after the publication of the Monitoring Panel review of the Resettlement Action Plan,<sup>42</sup> or what were the results of Mott McDonald's report, which had been initiated by the investors.<sup>43</sup> The report outlines the broad scope of problems, among which are: the lack of environment and social security experts hired by the contractor; the low level of the staff's environmental awareness; audit and self-audit problems in the company as well as its subcontractors; insufficient effluent treatment and its mixing with drinking and irrigation water sources; problems in fulfilling obligations, especially with regard to noise and other pollution. One should note that there were up to 80 demonstrations and road closing protests prior to the beginning of December 2003, and there have been as many as twenty demonstrations, protests and strikes from December 2003 to February 2004.

## **11. The problem of the pipeline's protective coating**

The most interesting information was published by *The Sunday Times* in its February 15, 2004 issue: a critical report concerning the safety and the integrity of the pipeline, prepared internally in the BTC Pipeline Company, was concealed in November 2002. Following an inspection of the pipeline's protective coating in Georgia and Azerbaijan, Mr. Derek Mortimore, an expert from British Petroleum, the consultant of the BTC project, wrote a report and, on November 10, 2002, submitted it to the British Petroleum Baku office. 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 from Canada. The coating had no track record on plastic coated pipeline. In Mortimore's view, the specification was "underdeveloped and incomplete." His report went on: "As a field joint coating specification on a major pipeline, it is utterly

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<sup>42</sup> SRAP monitoring panel report, August 2003.

<sup>43</sup> Baku-Tbilisi-Ceyhan (BTC) Pipeline Project Pre-Financial Close Environmental & Social Construction Monitoring, September-October 2003, Mott Macdonald report.

inappropriate, as it does not confirm a protective system that can be successfully applied in all the conditions under which this pipeline will be constructed, nor does it confirm the integrity of the protection for the design life of the pipeline." According to Mortimer, SPC will not ensure waterproofing and consequently protection of the pipeline sections.

Despite this critical conclusion, British Petroleum did not replace the protective material. The first line of such coated pipeline sections was completed in August 2003, and the first cracks were noticed in November. The construction work was interrupted. By that time, up to 15,000 sections had been laid in Azerbaijan and Georgia. According to experts, the replacement of these pipes and their re-coating with a material acceptable in terms of international industrial practice to ensure adequate protection during the intended life of the pipeline will cost approximately USD 500 million.

It is interesting that the time during which this report was prepared coincides with the time during which the BTC Pipeline Company was trying to obtain an environmental permit for construction of the pipeline in Georgia. This was the very same time when the company was making reassuring statements concerning its intentions to use particularly thick-wall pipes in the Borjomi section and follow the "highest international standards" during construction. The letter of Mr. Edward A. Johnson III addressed to the residents of Rustavi describes "the multi-stage control system for the pipeline and other instruments beginning with their manufacturing and ending with their installation. For example, the pipes produced in Japan exclusively for this project are X-ray tested for invisible defects. The same inspection is also carried out in Georgia after the sections have been welded. For this reason, the project was approved by the Georgian and foreign experts, and the government – namely, the Georgian Ministry of Urbanization and Construction – granted a construction permit on the basis of their approval." In informal conversation, the representatives of the BTC Pipeline Company confirmed that the replacement of the pipes that have already been laid is planned to commence this spring.

The fact that no copy of Mortimore's report was submitted to the Georgian Ministry of Environment and Natural Resources<sup>44</sup> raises further doubts about the position of British Petroleum expressed in the letter<sup>45</sup> of the former Minister of Environment and Natural Resources to the former President of Georgia dated November 29 2002,<sup>46</sup> in which the minister declares that "some of the BP contracted experts have informed us that the important parts of the results of investigations carried out by them on the pipeline corridor following BP's instructions were not included or were misinterpreted in the ESIA."

## **Epilogue without comments**

"...I assure you, this oil pipeline is not a very successful project and we will raise questions for serious discussion."

Interview with Mr. Mikheil Saakashvili  
Newspaper "24 Saati", October 31, 2003

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<sup>44</sup> Letter # 13-12/36 of G. Jorjoliani, the chairman of the State Department for Environmental Licensing and Expertise to Green Alternative, 24.02.2004.

<sup>45</sup> Letter 01/1882 of N. Chkhobadze, Minister of Environment and Natural Resources to President E. Shevardnadze.

<sup>46</sup> One day prior to the issuance of the license.

*“Mikheil Saakashvili: in reality, this is a fight between good and evil”*

“The Baku-Tbilisi-Ceyhan oil pipeline will be implemented. Projects of this kind will serve the interests of each Georgian citizen and not particular clans, as it was before.”

Online magazine “Civil Georgia” December 13, 2003

*“Saakashvili Vows to Secure Favorable Business Climate”*

“This [Baku-Tbilisi-Ceyhan oil pipeline project] alone will not make us prosperous, which is what Shevardnadze was promising the Georgian people. This alone will not make us prosperous but it is important to complete this in order for it to be followed by other investments, for Georgia to be a reliable partner and for its strategic importance to grow. The oil pipeline is helping us in all this. The assertion that it will lead to every Georgian family living better, which is what my predecessor was promising, was not true from the very start.”

Text of report by Georgian TV channel “Imedi”, March 22, 2004

*“Georgian president accuses predecessor of false promises over Caspian pipeline”*