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APPRAISAL REPORT

CAO Appraisal for Audit of IFC

CAO Compliance

C-I-R7-Y06-F078

February 2007

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**Georgia**  
**Baku-Tbilisi-Ceyhan (BTC) Pipeline**

**Case of**  
**Resident of Tbilisi/ Compensation for rose bushes**

***Summary***

This appraisal report responds to a complaint about the Baku-Tbilisi-Ceyhan (BTC) pipeline (the Project), an IFC investment. The complaint was filed by a citizen of Georgia residing in Tbilisi. The CAO Ombudsman concluded that the parties were not willing to engage in a facilitated solution. The case was therefore transferred to CAO Compliance for an appraisal to determine whether the complaint fulfilled the criteria for the next step in the CAO's investigative process, an audit of IFC. The complaint raised concerns regarding a parcel of land the complainant owned, and the economic impacts experienced as a result of the Project's activities. The main issue concerns the amount of compensation for rose bushes on the complainant's parcel of land. The complainant contends that the Project's offer of compensation is inadequate.

Office of the Compliance Advisor/Ombudsman (CAO)  
*for the*  
International Finance Corporation (IFC)  
Multilateral Investment Guarantee Agency (MIGA)  
Members of the World Bank Group



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## About the CAO

*The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.*

The CAO (Office of the Compliance Advisor/Ombudsman) is an independent post that reports directly to the President of the World Bank Group. The CAO reviews complaints from communities affected by development projects undertaken by the two private sector lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Fund (MIGA).

For more information about the CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)



## 1. Overview of the CAO Compliance Appraisal Process

When the CAO receives a complaint about an IFC or MIGA project, it first refers it to the CAO Ombudsman, which works to respond quickly and effectively to complaints through facilitated settlements, if appropriate. If the CAO Ombudsman concludes that the parties are not willing to reach a facilitated solution, the CAO Vice President has the discretion to request the compliance arm of CAO, CAO Compliance to appraise the concerns raised in the complaint for a compliance audit of IFC or MIGA. Alternatively, a compliance audit can be initiated by request from the President of the World Bank Group or the Senior Management of IFC or MIGA.

A CAO Compliance appraisal is a preliminary investigation to determine whether the CAO should proceed to a compliance audit of IFC or MIGA. Through CAO Compliance appraisals, CAO ensures that compliance audits of IFC or MIGA are initiated only for those cases with substantial concerns regarding social or environmental outcomes.

A compliance audit is concerned with assessing the application of relevant policy provisions and related guidelines and procedures to determine whether IFC and MIGA are in compliance. The primary focus of compliance auditing is on IFC and MIGA, but the role of the sponsor may also be considered.

A compliance audit appraisal, and any audit that ensues, must remain within scope of the original complaint or request. It cannot go beyond the confines of the complaint or request to address other issues. In such cases, the complainant or requestor should consider a new complaint or request.

CAO compliance appraisal will consider how IFC /MIGA assured itself/themselves of compliance with national law, reflecting international legal commitments, along with other audit criteria. The CAO has no authority with respect to judicial processes. The CAO is not an appeals court or a legal enforcement mechanism, nor is the CAO a substitute for international courts systems or court systems in host countries.

The appraisal criteria are set forth in CAO's operational guidelines. The criteria are framed as a series of questions to test the value of undertaking a compliance audit of IFC or MIGA. The criteria are as follows:

- Is there evidence (or perceived risk) of adverse social and environmental outcomes that indicates that policy provisions (or other audit criteria) may not have been adhered to?
- Is there evidence of risk of significant adverse social and environmental outcomes that indicates that policy provisions, standards, guidelines, etc., whether or not complied with, have failed to provide an adequate level of protection?



- Is there evidence (or perceived risk) of significant adverse social and environmental outcomes where policy provisions, standards (or other audit criteria) were not thought to be applicable but perhaps should have been applied?
- Is there evidence that the application of some aspect of a policy, standard, guideline or procedure resulted in adverse social and environmental outcomes?
- Can the cause of adverse social and environmental outcomes not be readily identified and corrected through the intervention of the project team without a detailed investigation of the underlying causes or circumstances?
- Could a compliance audit yield information or findings that might better inform the application of policies (or other audit criteria) to future projects?

During appraisal, CAO Compliance holds discussions with the IFC or MIGA project team and other relevant parties to understand the validity of the concerns and to explore whether an audit would be warranted.

After a compliance appraisal has been completed, the CAO can choose only one of two options: to close the case, or to initiate a compliance audit of IFC or MIGA.

The CAO will report and disclose the findings and decision of the CAO compliance appraisal in an appraisal report in order to inform the President of the World Bank Group, the Board, senior management of IFC or MIGA, and the public in writing about its decision.

If the CAO decides to initiate a compliance audit, as a result of the compliance appraisal, the CAO will draw up a terms of reference for the audit in accordance with CAO's operational guidelines.



## 2. Background and Concerns that Led to the Appraisal

1. The 1,760 km Baku–Tbilisi–Ceyhan (BTC) Pipeline, an IFC investment, starts in Azerbaijan at the Sangachal Terminal near Baku, passes through Georgia, and ends in Turkey at a new marine terminal at Ceyhan on the Mediterranean coast.

2. A resident of Tbilisi filed a complaint with CAO Ombudsman dated June 12, 2006, regarding a parcel of land the complainant owned, and the economic impacts experienced as a result of the Project's activities.

3. In the complaint and subsequent correspondence, the complainant contends that the Project's offer of 19,120 GEL<sup>1</sup> for use of the land during construction and damage to property on the land is inadequate compensation and an incorrect calculation based on the "Guidelines for Land Acquisition and Compensation in Georgia," which is a part of the Resettlement Action Plan (RAP) for the project. He claims that he should be compensated in the amount of 527,679 GEL.<sup>2</sup> To date, the complainant has refused to accept any payment from the Project.

2006	
June 12	The resident files a complaint with the CAO.
	The CAO Ombudsman finds that the stakeholders are unwilling to engage further in a process of facilitated dispute resolution.
August 31	CAO Compliance received the case for appraisal
December 18	CAO Compliance receives the last clarification from the involved parties.

<sup>1</sup> Letter from the Project (BTC Co.) to the complainant dated May 20, 2006.

<sup>2</sup> Letter to the Project (BTC Co.) from the complainant dated May 20, 2006.



### 3. Scope of the Appraisal for an Audit of IFC

4. The dispute concerns the amount of compensation for rose bushes on the complainant's parcel of land. The complainant has raised specific issues regarding the method of calculation and amount of compensation.

5. The Complainant contends that the Project's compensation to him should include compensation for his rose bushes based on expected rose output during the three-year life expectancy of the rose bushes he planted, and current market price for each rose, for total amount of 527,679 GEL.<sup>3</sup>

6. The Project has made an offer based upon land value at project rates, plus the estimated replacement value of the rose bushes removed during preparation of the pipeline construction corridor. The Project has not offered to compensate for the expected rose output.

7. The Project states that the complainant purchased the land by offering the former landowners a slightly higher price than offered by the Project, and that the Complainant purchased the parcel in the full knowledge that it would be required for pipeline construction. The Project further states that the complainant planted the construction corridor with sub-standard rose bushes, in an area inappropriate for any sort of horticultural activity. It is the Project's view that the complainant deliberately placed himself "in harm's way" in order to claim unsupportable amounts of compensation. The Project is therefore not prepared to follow the provisions in RAP, as these provisions were created in good faith and thus should not apply to this case.

8. The Project obtained the compulsory rights to construct and operate the pipelines across the Complainant's land by means of an application for Necessary Right of Way (NROW). The Project was awarded NROW, which gave rights of access to the land in question. The Project did not use eminent domain law to obtain the rights to construct and operate the pipelines across the complainant's land.

9. The Project believes that it made a reasonable formal offer to the Complainant for his genuine losses by making him an offer based upon land value at project rates, plus the estimated replacement value of the rose bushes removed. To the Project's knowledge, there is no court verdict in relation to any amount of alternative compensation. The Project states that the original offer made by the Project to the complainant remains open, should he wish to accept it.

10. The complainant states that he should be compensated in accordance with the provisions in the RAP. The complainant further disagrees with the Project and states that his rose bushes were not substandard, and that the area is appropriate for this kind of activity. According to the complainant, he submitted an appeal to the Tbilisi regional court on July 23, 2004 and another appeal to an unnamed regional court along with 35 other complainants at a later unspecified date.<sup>4</sup> According to the complainant, the appeals did not change the courts' verdict. The Complainant claims the courts in Georgia are biased toward the Project and unfair.

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<sup>3</sup> Complaint letter to CAO dated June 12, 2006 and letter to the Project (BTC Co.) dated April 20, 2006

<sup>4</sup> Claims made by the Complainant in his letter to the Project (BTC Co.) dated April 20, 2006.



#### 4. Policy Provisions Identified as Relevant

11. From a CAO Compliance perspective, the question is how has IFC assured itself that the concerns of project-affected people are addressed, and that they are compensated in a way that meets IFC's overall policy objectives. In order for IFC to assure itself of this, provisions are given in the Resettlement Action Plan (RAP) Georgia, Annex I, p.8 (*Guide to Land Acquisition and Compensation, GLAC*) and in the Necessary Right of Way (NROW), which is part of the Georgian civil code. The RAP provisions are there to protect the interests of landowners and users who suffer a genuine and unavoidable loss as a result of pipeline construction. The RAP further states that if negotiations remain unsuccessful, then the Project (BTC Co.) will enter into an eminent domain process with that landowner. According to RAP, compensation for perennial plants/trees will be made based on the gross market value, equal to the income a farmer would make from the plant/tree by selling the crops at market.

12. Necessary Right of Way (NROW), which is part of the Georgian civil code, is not discussed in the RAP. Under the provisions of NROW, where the parties cannot agree on the amount of compensation applicable, it is the responsibility of the courts to decide upon the amount of compensation. It is the Complainant in this case who must apply to the courts to determine compensation amounts, not the Project (BTC Co.)



## 5. CAO Findings

13. The parties do not dispute the facts, other than the suitability of the land for growing roses for commercial sale. The core of the dispute in this case is therefore whether the Resettlement Action Plan should apply when one party claims that the other did not enter in good faith.

14. The CAO sees no indications that the Resettlement Action Plan has failed in providing provisions in this case, or that IFC has failed in assuring itself that the provisions were followed.

15. The CAO sees no indications that the Project have not followed the provisions stated.

15. The CAO is not an appeals court or a substitute for national court systems in the land of operation.

16. The CAO does conclude that the Project has followed the provisions in the national legislation. The provisions in the national legislation are in this case not contradictory to IFC's policy provisions.





## 6. The CAO Decision

17. The CAO concludes that this case does not fulfill the criteria for further investigation in the form of an audit of how IFC assured itself that its social and environmental policy provisions were adhered to. The CAO closes the case.