

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

UK NATIONAL CONTACT POINT – REVISED FINAL STATEMENT

22 February 2011

SPECIFIC INSTANCE: BTC PIPELINE

The BTC Pipeline Specific Instance was one of the first complaints raised with the UK NCP in 2003 and resulted in a Final Statement in 2007. Following a procedural review by the UK NCP Steering Board this original Final Statement was withdrawn.

The Review Committee found that the UK NCP's failure to provide an opportunity for the complainants to see and comment on a report by the company's largest shareholder BP meant that it had acted unfairly. This report addressed compensation and grievance concerns identified in a 2005 Field Visit by the UK NCP and was an important part of the UK NCP's decision-making in relation to certain parts of the complaint.

In line with the recommendations of the Review Committee, the UK NCP liaised with the parties to reach agreement that the complainants would be provided with an opportunity to see and comment on the BP report. This included mediation on the subject of a mutually acceptable partner in Turkey with whom the Complainants could share the BP report. The revised Final Statement includes the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the non-disclosure of BP report. In addition, in line with the recommendations of the Review Committee, this revised Final Statement also provides a balanced summary of the position of all the parties and sets out the reasons for each of the UK NCP's conclusions. The complaint as a whole has not been substantively reopened and the UK NCP has only considered information relating to the original 2003 complaint.

SUMMARY OF THE CONCLUSIONS

Complaints 1, 2, & 5 – Negotiation and constraints of the BTC legal framework - Not reopened and no change.

The BP report addressed compensation and grievance concerns and did not address the negotiation and constraints of the BTC legal framework. Accordingly, the UK NCP has not substantively reopened complaints 1, 2 and 5.

The UK NCP considers that the negotiations between the company and the host governments were conducted appropriately, that the company did not seek or accept exemptions not contemplated in the statutory or regulatory framework, and that company did not undermine the ability of the host governments to mitigate serious threats.

The UK NCP considers that the company engaged constructively with concerns that the overall BTC framework would undermine human rights by agreeing that new legislation could introduce additional requirements benchmarked against evolving EU, World Bank and international human rights standards. The company also addressed concerns of how the BTC legal framework would be interpreted in practice by negotiating additional policy undertakings, confirming that the BTC framework would not constrain host governments in protecting human rights but that it would legally preclude the company from seeking compensation for new legislation required by international treaties. Accordingly, the UK NCP considers that in relation to complaints 1, 2 and 5 the company did not breach the Guidelines.

Complaint 3 – Compensation process - Reopened and no change.

The BP report addressed compensation and grievance concerns, including concerns over rural development projects. Accordingly, the UK NCP has substantively reopened complaint 3.

The UK NCP considers that the company took a comprehensive and proactive approach to compensation and rural development, and that individual concerns raised during the Field Visit do not represent a systematic failure to promote sustainable development in breach of the Guidelines.

While compensation and rural development differed between villages the UK NCP consider that some degree of variation was inevitable as a consequence of local participation in consultation and implementation, in addition to variation arising from differing land types, land use and market value. In response to identified risks of inconsistency the company made pro-active efforts to establish due diligence procedures over the compensation, rural development and grievance process, contributing to an ongoing resolution of complaints and assisting local partners to improve their capability. Accordingly, the UK NCP considers that in relation to complaint 3 the company did not breach the Guidelines.

Complaint 4 – Consultation and grievance process - Reopened and changed.

The BP report addressed compensation and grievance concerns, including concerns of intimidation by local partners undermining the BTC consultation and grievance process. Accordingly, the UK NCP has substantively reopened complaint 4.

While the UK NCP considers that the BTC framework was established in accordance with the Guidelines, there were potential weaknesses in the local implementation of this framework regarding consultation and monitoring. These potential weaknesses arose from the company's distinction between complaints raised through the formal grievance and monitoring channels from complaints raised by other means.

In one particular region, these potential weaknesses seem to have contributed to shortfalls in effective and timely consultations with local communities, such that **the company failed to identify specific complaints of intimidation against affected communities by local security forces where the information was received outside of the formal grievance and monitoring channels, and, by not taking adequate steps in response to such complaints, failed to adequately safeguard against the risk of local partners undermining the overall consultation and grievance process.** Accordingly, the UK NCP considers that in relation to complaint 4 the company's activities in this particular region were **not** in accordance with Chapter V paragraph 2(b) of the Guidelines.

Recommendations

Given the length of time that has passed since the 2005 Field Visit, and the forward-looking nature of UK NCP recommendations, the UK NCP does not see any grounds for making recommendations to the company in respect of these specific complaints of intimidation of villagers who spoke to the UK NCP. However, the UK NCP does consider that the company can address the general complaints of intimidation in this region, and therefore **recommends that the company consider and report on ways that it could strengthen procedures to identify and respond to reports of alleged intimidation by local pipeline security and other alleged breaches of the Voluntary Principles.**

BACKGROUND

OECD Guidelines for Multinational Enterprises

1. The Guidelines comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.
2. The Guidelines are not legally binding. OECD governments and a number of non OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP Complaint Procedure

4. The UK NCP complaint process was revised in April 2008 following public consultation. The BTC Specific Instance was one of the first complaints raised with the UK NCP in 2003 and was first considered under the previous complaint process.
5. The UK NCP issued an original Final Statement on 15 August 2007. The result was to dismiss all alleged breaches of the OECD Guidelines.
6. This 2007 Final Statement was procedurally reviewed by the UK NCP Steering Board (<http://www.bis.gov.uk/files/file49676.doc>). As recommended by the Review Committee, the 2007 Final Statement has been withdrawn and reconsidered in light of the review.

Review of the original Final Statement

7. The procedural review identified a flaw in the process followed by the UK NCP; namely, that the UK NCP published the Final Statement without giving the complainants the opportunity to read or comment on a report by the company's largest shareholder BP on concerns about the implementation of the BTC compensation and grievance process.
8. These implementation concerns were identified during a Field Visit by the NCP to all three host countries in August-September 2005. The Field Visit was undertaken in recognition that there existed significant factual difference between the parties and that additional information gathering would enhance the UK NCP's understanding of the issues. The Field Visit included face-to-face discussions with a number of host government officials, representatives of five villages and individual villagers affected by the pipeline. The UK NCP does not have investigatory powers and during the Field Visit the UK NCP simply took note of what was said, without challenging the information received or questioning the interviewees. During this Field Visit the UK NCP heard allegations that some villagers were not receiving the compensation they had expected and that some villagers had complained of poor local implementation of the overall processes of consultation and grievance resolution.

9. Following this Field Visit the UK NCP held a meeting with both parties where it was agreed that BP (the lead contractor in the BTC project) would investigate and report back on these implementation concerns. This BP report was provided in confidence to the UK NCP and was not shared with the complainants. The UK NCP relied upon the BP report in the decision-making process, and the original Final Statement quoted some redacted portions of the BP report but did not reflect any comments by the complainants on the BP report.

10. Following the publication of the original Final Statement the complainants sought a review on procedural grounds. The UK NCP Steering Board found that the UK NCP acted unfairly by not giving the complainants the opportunity to comment on the BP report, and recommended:

- That the original Final Statement be withdrawn and reconsidered in the light of the review;
- That BP be asked to reconsider consent to share the report with the complainants;
- In the absence of such consent, the NCP consider to what extent it can rely on the report in reaching its decision;
- That the revised Final Statement set out in balanced terms the positions of the two parties, and set out the reasons for the UK NCP's conclusions on the points it considers are relevant for its decision;
- That, throughout the process, the parties are kept informed of what the UK NCP expects to achieve;
- The UK NCP Steering Board reminded the parties that the review process was not an appeal and only addressed procedural aspects of the handling of the complaint, and not at all its substance. That remains the exclusive function of the UK NCP;
- The UK NCP Steering Board noted that whether the directions recommended by the review would result in substantive reappraisal is also for the UK NCP alone to determine;
- That the review is not an invitation to reopen the complaint generally;
- That the UK NCP make clear whether it decides to seek information or comments from the parties, and if so, on what topic and when;
- That the UK NCP should set a realistic but tight timetable for finally concluding this Specific Instance under the OECD Guidelines, which provide for a way of resolving differences.

11. In line with the recommendations of the review, the original Final Statement was withdrawn and the UK NCP liaised with the parties to reach agreement that the complainants would be provided with an opportunity to see and comment on the BP report, and on the terms under which the BP report would be shown to the complainants. This agreement included arrangements for local partners of the complainants to check the contents of the BP report, with the UK NCP sponsoring professional mediation on the subject of a mutually acceptable partner in Turkey.

12. The complainants have now been given the opportunity to read and comment on the BP report, and the company has been given the opportunity to respond to the complainants' comments. This revised Final Statement provides a balanced summary of the position of all the parties and includes the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the non-disclosure of the BP report.

DETAILS OF THE PARTIES INVOLVED

The complainants

13. Friends of the Earth

Milieudefensie (Friends of the Earth Netherlands)

The Corner House

Baku Ceyhan Campaign

Platform

Kurdish Human Rights Project

The company

14. BTC Corporation (“the company”) oversees the construction and operation of the Baku-Tblisi-Ceyhan (BTC) pipeline, an oil infrastructure project crossing the three host countries of Azerbaijan, Georgia and Turkey.

15. BTC is managed by BP Exploration (Caspian Sea) Ltd, which owns 30.1%. The other shareholders are: the State Oil Company of Azerbaijan (25%), Chevron (8.9%), Statoil (8.7%), Turkish Petroleum (6.5%), ENI (5%), Total (5%), Itochu Inc (3.4%), Inpex (2.5%), ConocoPhillips (2.5%) and Hess (2.3%)

16. The BTC project operates within a hierarchical legal and policy framework outlined below:

- The Constitutions of the Republics of Azerbaijan, Georgia and Turkey for the elements of the project within each State;
- The requirements of the Project Agreements, including Intergovernmental Agreements (IGAs) between the three host countries and BTC Corporation, and Host Government Agreements (HGAs) between the individual host countries and BTC Corporation. Referred to collectively as the Prevailing Legal Regime (PLR);
- Collective policy statements by the host governments and the company, including the Joint Statement;
- The Human Rights Undertaking, a unilateral policy statement by the company;
- National legislation and international conventions in force in the host countries, to the extent that they do not conflict with the standards above;
- Applicable Lender Environmental and Social Policies and Guidelines of the World Bank and UK Export Credit Guarantee Department (ECGD);
- Corporate Policies of BP (the lead contractor) and Botas (the Turkish contractor).

17. The BTC project included the construction and operation of the pipeline and, of direct relevance to this complaint, a compensation programme for land owners and users affected by pipeline construction. This compensation programme was developed through consultations with affected land owners and users, and was implemented through local partners with a grievance process to resolve disputes over compensation.

- To illustrate the scale of the consultation process, the company submits that in one host country this involved public meetings in 11 locations, with a consultation document sent directly to 90 organisations and published on-line. The consultation document was also sent to villages and meetings held at various locations along the pipeline. 3000 comments were received in response, with the host government then consulting on an updated proposal document. In another host country, consultation

involved community level, regional level and national level meetings, with 1624 people interviewed through household questionnaires, including questionnaires distributed at local construction camps. In response, the complainants dispute the accuracy of these figures and submit that of the consultation which did take place fewer than 2% was face-to-face consultation.

- To illustrate the scale of the grievance process, in one country this included 2100 land related and 400 social grievances from the period since the 2003 complaint until the 2005 Field Visit. 70% of these grievances were finally agreed and paid compensation and 20% were not agreed (the remaining 10% of grievances were passed to the host government as not directly related to the BTC project).

SUMMARY OF THE COMPLAINANTS' POSITION

18. The 2003 complaint alleged that the company exerted undue influence on the regulatory framework (Chpt I, par 7), sought and accepted exemptions related to social, labour, tax and environmental laws (Chpt II, para 5), failed to operate in a manner contributing to the wider goals of sustainable development (Chpt V, para 1), failed to adequately consult with communities affected by the project (Chpt III, para 1 and Chpt V, para 2a and 2b) and undermined the host governments' ability to mitigate serious threat to the environment and human health & safety (Chpt V, para 4). The complainants' position can be summarised as follows:

- (i) Exerting undue influence: specifically that the company exerted an undue influence on the process of negotiating and drafting the terms of HGAs with the governments of Azerbaijan, Georgia and Turkey, thereby circumscribing the right of those countries to prescribe the conditions under which multinational enterprises operate within their jurisdictions;
- (ii) Seeking exemptions: specifically that, in exerting undue influence on the terms of the HGAs, the company sought exemptions with respect to environmental, health and safety, labour and taxation legislation;
- (iii) Sustainable development: specifically that the company failed to take due account of the need to protect the environment, public health and safety, generally to conduct their activities in a manner contributing to the wider goals of sustainable development;
- (iv) Disclosure and consultation with affected communities: specifically that the company failed to provide timely, reliable and relevant information concerning its activities available to all communities affected by the project, and that the company failed to consult adequately with affected communities;
- (v) Undermining the Host Government's ability to mitigate serious threats: specifically that in exerting undue influence through the terms of the HGAs the company undermined the host governments' ability to mitigate serious threats to the environment and human health and safety.

19. The complainants' comments on the BP report (on the concerns identified in the Field Visit) can be summarised as follows:

- (i) The company did not investigate the full range of compensation concerns identified in the Field Visit. The BP report confirms that only a minority of affected villages raising complaints with the UK NCP were contacted, and in some cases only the village leader was contacted.

- (ii) The company breached confidentiality of villagers raising grievances by discussing their cases with village leaders and local journalists.
- (iii) There was a lack of a systematic approach to compensation and grievances, resulting in an inconsistent process and unrealistic expectations and confusion over procedural channels and legal rights.
- (iv) The subsequent concessions by the company show that the original consultation and compensation process was inadequate. Following the 2003 complaint the company has paid extensive compensation and agreed significant limitations to land use following complaints made under its own grievance mechanism and via the separate EBRD mechanism.
- (v) The BP report was limited to individual compensation complaints and failed to address systematic flaws in compensation and consultation. In addition, the BP report does not address broader concerns relating to human rights and environmental concerns raised during the Field Visit. For example, local NGO concerns over a lack of transparency in the negotiation of HGAs and constraints placed by HGAs on host government's environmental consultation procedures.
- (vi) There was a lack of a systematic approach to grievances resulted in local policing problems, including intimidation of those trying to complain. Despite the company's local economic influence they didn't monitor policing undertaken in their interests, as they undertook to do under the Voluntary Principles of Security and Human Rights.
- (vii) BP failed to update the UK NCP on alleged breaches of environmental standards; namely curtailed environmental impact assessments and excessive nitrous oxide emissions. These breaches illustrate the chilling effect of the BTC legal framework.

SUMMARY OF THE COMPANY'S POSITION

20. The company rejects all of the complainants' allegations that it has breached the Guidelines. The company's position can be summarised as follows:

- (i) Exerting undue influence: The company state that the HGAs were properly negotiated over a long period of time and that participating host governments were advised by external advisors. Furthermore, BTC point to well-established precedents for the enactment of specific legal regimes applicable to strategically important projects;
- (ii) Seeking exemptions: The company does not accept that it breached the Guidelines by seeking or accepting exemptions to local laws. The Project Agreements create a binding mechanism under which the company is required to adhere to international best practice and EU standards as they develop over time. The project establishes a model for international best practice and regulation that host countries may build on over time. The Joint Statement by the company and the host governments sets out the international standards to which they are committed in the areas of human rights, security, labour and environmental standards;
- (iii) Sustainable development: The company note that issues of sustainable development are addressed in the commitments set out in the Joint Statement. The Joint Statement specifically states that it would be incorrect to interpret that the Project Agreements exempt the project from world-class environmental standards, since such an interpretation would neither reflect the intentions of the signatories nor the manner in which all the Project Agreements would be applied. The company also notes that, in addition to the compensation programme, it financed a number of community-based projects along the route of the pipeline to support rural development in line with its commitment to corporate social responsibility;

- (iv) Consultation with affected communities: The company has conducted a consultation and disclosure process unprecedented in scope, and designed to comply with international best practices. The company states that overall more than 450 communities and 30,000 landowners and land users affected by the pipeline were consulted;
- (v) Undermining the Host Government's ability to mitigate serious threats: The company notes that the project's environmental and social responsibility rests with BTC, which is obligated through the Project Agreements to construct and operate the pipeline in an environmentally and socially responsible manner that complies with international standards. The company adds that under the Human Rights Undertaking it recognises the ability of host governments to enact human rights or health and safety legislation that are reasonably required in the public interest in accordance with domestic law, provided that this new legislation is not more stringent than the highest of the EU standards referred to in the Project Agreements. The company states that it is legally precluded from seeking compensation from the host governments in circumstances where the government acts to fulfil its obligations under international treaties in respect of human rights, health and safety, labour and the environment.

21. The company's response to the complainants' comments (regarding the BP report on concerns identified during the Field Visit) can be summarised as follows:

- (i) The BP report only listed visits where the company was following up specific complaints mentioned in Field Visit. Local liaison officer consulted other villages.
- (ii) The company discussed certain cases with third parties due to these cases involving grievances that were being considered by the local courts. To avoid any perception of the company putting pressure on the villagers themselves while they were using the grievance process, the company investigated the cases indirectly via village leaders.
- (iii) The company took a pro-active approach to consultation and monitoring, engaging a network of local liaison officers to reach owners and users of land affected by the project. The company also took steps to support the grievance process, distributing free written guidance on the procedure, arranging for payment of individual court fees if compensation was disputed, and sponsoring a number of local NGOs to monitor how the process was being implemented.
- (iv) Individual problems were inevitable in a project affecting 0.75m people. Major administrative processes take time but the company took a pro-active stance in resolving problems and has settled the vast majority. To illustrate, if a villager died without their claim being resolved, any due payments were made to their heir.
- (v) The BP report only addressed compensation issues identified in Field Visit, as agreed in an NCP meeting with all parties.
- (vi) Variation in compensation was largely determined by differing land types, land use and market value.
- (vii) The BP report noted that complaints of intimidation and pressure by the sub-contractor had not been raised through the monitoring or grievance processes, which included opportunities for complaints to be raised during village visits and land exit protocols. The company had directly asked various land owners on a number of occasions whether they ever felt pressured to accept the compensation offered, and has always been told that the land owners have never felt so pressured. There were no specific allegations of landowners being put under pressure to accept inadequate compensation have been raised but the company will investigate these if raised.

- (viii) In addition to the formal monitoring and grievance procedure, the company guarded against the risk of local intimidation via NGO observers who monitored the overall process.
- (ix) The company notes that it is unaware of any interrogations by local security forces and that no such complaints have been raised. The Joint Statement commits both the host governments and the company to the goal of promoting respect for and compliance with human rights principles, with the legal framework confirming that all pipeline security operations must be concluded in accordance with these principles and related international norms such as the Voluntary Principles of Security and Human Rights (the Voluntary Principles). The company also notes that a number of challenges to the level of compensation had been brought in the courts and comments that this demonstrates that land owners were aware of and willing to assert their rights, despite the alleged intimidation.
- (x) The company has apologised for not providing an update on alleged breach of environmental standards. UK NCP was able to issue the 2007 Final Statement without this information so the company believe that it was not vital to the UK NCP conclusions.

UK NCP ANALYSIS AND CONCLUSIONS

COMPLAINTS 1, 2 AND 5: NEGOTIATION AND CONSTRAINTS OF THE BTC LEGAL FRAMEWORK

- Chpt 1, para 7 – exerting undue influence;
- Chpt 2, para 5 – seeking or accepting exemptions;
- Chpt V, para 4 – undermining the host government’s ability to mitigate serious threats

22. The 2007 Final Statement had found that the host governments had access to external expert advice during the negotiations and commented that it was sensible for any commercial organisation seeking to operate in countries where a legal framework does not exist to liaise with governments in developing laws that may be necessary to control their commercial activities. The UK NCP has considered whether this conclusion was affected by the non-disclosure of the BP report by considering information relating to the original 2003 complaint in light of the positions of the two parties.

23. In their comments on the BP report the complainants drew attention to concerns raised during the Field Visit by a local NGO of a lack of transparency in the negotiation of the BTC legal framework, and that the BTC legal framework placed constraints on host governments’ environmental consultation procedures. The complainants critique the BP report as being flawed by being limited to individual compensation issues and not addressing these broader concerns.

UK NCP Analysis

24. This revised Final Statement sets out the UK NCP’s revised conclusions on the findings in the original Final Statement which were affected by the procedural failure to provide an opportunity for the complainants to see and comment on the BP report. The BP report addressed compensation and grievance concerns identified in the Field Visit and did not address concerns relating to the negotiation and impact of the BTC legal framework. Therefore, the UK NCP considers that the procedure failure did not affect the conclusions on these issues in the original Final Statement and accordingly these aspects of the complaint have not been substantively re-opened. However, in accordance with the Review Committee’s recommendations, the revised Final Statement sets out in balanced

terms the positions of the parties and the reasons for the NCP's conclusions on complaints 1, 2 and 5.

25. In addition to the complainant's comments on the BP report, the UK NCP received material regarding a related complaint against an Italian company involved in the BTC Consortium. Having reviewed this material and discussed the issue with the Italian NCP, the UK NCP understands that this related complaint is exclusively concerned with the negotiation and constraints of the BTC legal framework and applies to the behaviour of the BTC Consortium as a whole. This revised Final Statement does not address additional allegations made since 2003, either by the BTC complainants or by other complainants.

UK NCP Conclusions on Complaints 1, 2 and 5

26. While the Guidelines do not specifically discuss Host Government Agreements and stabilisation clauses, they are clear that there should not be any contradiction between multinational investment and sustainable development. The Commentaries to the Guidelines note that "MNEs are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments' international obligations and commitments" (Commentary on General Policies, para 4). The Commentaries to the Guidelines also note that "there are instances where specific exemptions from laws or other policies can be consistent with these laws for legitimate public policy reasons" (Commentary on General Policies, para 7). HGAs are a feature of the statutory and regulatory framework of many countries as they are commonly used to facilitate major infrastructure projects. In contrast to many IGAs and HGAs established at the time, the BTC legal framework did not seek to freeze the company's regulatory liability or automatically exempt the company from future legislation. Rather, the BTC legal framework set an upper limit of the project's future regulatory liability. This upper limit was open-ended and evolving, which allowed for standards in new legislation to be taken into account up to the highest EU, World Bank and international human rights standards.

27. Both the company and host governments were represented by professional legal and policy advisors to take forward extensive negotiations of first the BTC legal framework and subsequently the BTC policy framework. The company responded to NGO concerns over the interpretation of the BTC legal framework by establishing this wider policy framework, by negotiating the Joint Statement and making a unilateral Human Rights Undertaking. The Joint Statement confirmed that the BTC legal framework's references to host government protection of project facilities and personnel would not require the host governments to take actions in breach of human rights norms or prevent the host governments from taking actions to protect human rights. The Human Rights Undertaking confirmed that the company was legally precluded from seeking compensation for new legislation required by international treaties.

28. The UK NCP considers that the company engaged constructively with concerns that the overall BTC framework would undermine human rights by agreeing that new legislation could introduce additional requirements benchmarked against an evolving upper level of EU, World Bank and international human rights standards. The company also addressed concerns as to how the BTC legal framework would be interpreted in practice by negotiating additional policy undertakings, confirming that the BTC framework would not constrain host governments in protecting human rights but that it would constrain the company from seeking compensation for new legislation required by international treaties.

29. The UK NCP remains of the view that the negotiations between the company and the host governments were conducted appropriately, that the company did not seek or

accept exemptions not contemplated in the statutory or regulatory framework, and that company did not undermine the ability of the host governments to mitigate serious threats. **On these three complaints the UK NCP remains of the view that the company did not breach the Guidelines.**

30. The issue of Host Government Agreements and stabilisation clauses has been raised in the context of OECD Working Party negotiations on the Update to the Guidelines. In terms of this Update, the UK supports clearer, practical guidance to assist multinationals in respecting human rights using a due diligence and risk awareness process. While not relevant to the 2003 complaint, in 2008 the UN Special Representative of the UN Secretary-General on Business and Human rights (UNSRSG), Professor John Ruggie, and the World Bank's International Finance Corporation published a joint discussion paper on 'Stabilisation Clauses and Human Rights'¹. This discussion paper raised concerns about HGAs that exempted investment projects from any future changes in human rights law and commended Human Rights Undertakings that benchmark against the highest of domestic, EU or international standards and that prohibit compensation for legislation required by international obligations as emerging best practice.

COMPLAINT 3: COMPENSATION PROCESS

- Chpt V, para 1 - sustainable development

30. The 2007 Final Statement had found that in preparing the project framework the company took major steps to address concerns about broad sustainable development issues and took a number of actions to contribute to the development of local communities. The UK NCP has considered whether this conclusion was affected by the non-disclosure of the BP report by considering information relating to the original 2003 complaint in light of the positions of the two parties.

31. In their comments the complainants critique the BP report as not addressing all the individual compensation issues raised during the Field Visit, not addressing concerns of systemic flaws in the overall compensation and grievance process, and not addressing environmental concerns in one of the host countries.

UK NCP Analysis

32. This revised Final Statement sets out the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the procedural failure to provide an opportunity for the complainants to see and comment on the BP report. The BP report addressed individual compensation and grievance issues identified in the Field Visit, including concerns relating to rural development projects in addition to the legal compensation process. Therefore, the UK NCP considers that the procedure failure did affect the conclusions on these issues in the original Final Statement and accordingly this aspect of the complaint (i.e. the compensation process) has been substantively re-opened. In accordance with the Review Committee's recommendations, the revised Final Statement also sets out in balanced terms the positions of the parties and the reasons for the NCP's conclusions on complaint 3.

33. The 2007 Final Statement had found that the company had taken major steps to address the environmental impacts of the BTC project. During the Field Visit local NGOs in Turkey noted that they were 'initially... very sceptical about an oil company's ability to do biodiversity conservation, but now consider BTC has made an outstanding contribution to conservation NGOs'. Local NGOs also noted that the local sub-contractor had been

¹ [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_StabilizationClausesandHumanRights/\\$FILE/Stabilization+Paper.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_StabilizationClausesandHumanRights/$FILE/Stabilization+Paper.pdf)

perceived as having a poor environmental record but subsequent to joining the BTC project this sub-contractor was planning to work to BTC project standards on future pipeline contracts.

34. Following the submission of the 2003 complaint the complainants alleged that Turkish environmental impact assessments were curtailed to meet the timetable set by the project's legal framework, and that permitted nitrous oxide emissions in Turkey exceeded the EU benchmark required by the project's legal framework. This allegation was repeated in the complainants' critique of the BP report.

35. This revised Final Statement sets out the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the procedural failure to provide an opportunity for the complainants to comment on the BP report. The BP report addressed compensation and grievance concerns identified in the Field Visit and did not address concerns relating to allegations of curtailed environmental impact assessments or excessive emissions. Therefore, the UK NCP considers that the procedure failure did not affect the conclusions on these issues in the original Final Statement and accordingly this aspect of complaint 3 (i.e. allegations relating to environmental impact assessments and excessive emissions) has not been substantively re-opened. However, in accordance with the Review Committee's recommendations, the revised Final Statement sets out in balanced terms the positions of the parties and the reasons for the NCP's conclusions on this part of complaint 3.

36. A key point of difference between the parties is whether differences in compensation and rural development projects arose from a systematic flaw in the overall compensation process, or from the varying circumstances of individual villages. In light of the positions of both parties the UK NCP has considered this question in terms of the company's response to concerns of inconsistent local application of the overall BTC framework.

37. In addition to the payment of compensation to landowners whose land was impacted by the pipeline, the company submits that it undertook a Community Investment Programme (CIP) to support rural development along the route of the pipeline. The company states that the CIP was not a legal requirement on the company but was undertaken in line with its commitment to corporate social responsibility. The complainants drew attention to reliance in the BP report on signed protocols to demonstrate that CIP rural development projects were implemented fully and consistently, noting that signed protocols are not evidence that the CIP was undertaken or completed. The company agrees that protocols alone are not sufficient but refers to other documentation that shows that CIP rural development projects were undertaken and gradually completed.

- In some cases complaints seem to have arisen because of misunderstandings over the scope of products and services agreed. In one example, the complainants refer to a complaint made by villagers during the Field Visit who were promised an irrigation system that had not been installed, with the final CIP log entry referring to "a meeting with the [local village headman] on activities not completed". In this case the BP report noted that the local partner had provided cement and technical support to the establishment of an irrigation channel, as agreed in the protocol.
- In some cases complaints seem to have arisen because the company implemented the CIP but the villagers were unsatisfied with the results. In one example, the complainants drew attention to misconstrued complaints in the BP report, where in response to villager complaints of ineffective livestock project the company provided details of livestock inseminated under the CIP. The complainants critique the BP

report as having misconstrued the complaint as the villagers were not disputing that the project took place but were questioning if it was effectively implemented as few livestock became pregnant, and noted that since 2007 the Turkish Government has taken over the insemination project.

- In some cases complaints seem to have arisen because compensation claims were examined but rejected by the company. In one example, the complainants drew attention to complaints that houses and a local historical building had been damaged by vibration from project vehicles using local roads and that none of the company's local partners had contacted the villagers about their complaint. The BP report noted that the project vehicles were routed to avoid significant monuments and that local partners undertook vibration monitoring and found that it is unlikely that project vehicles are the primary cause of the damage to these structures.

38. During the Field Visit a number of local NGOs in Turkey expressed concerns that the local sub-contractor was not consistently implementing the BTC project framework. One local delivery partner NGO commented that 'BP has good intentions but sometimes the subcontractors did not live up to these'. In another host country, a number of local NGOs and affected villagers alleged that 'local executive powers abuse their position to their own and family's benefit', including village leaders redrawing the map of ownership to benefit their families or not passing on information discussed with company representatives.

39. The company acknowledged this risk of inconsistency in compensation and rural development, with a local BP representative in Turkey noting that 'uptake of the Community Investment Programmes is varied. All villages are different and sometimes it [was] dependant on personalities within the village'. The company also recognised the risk that local partners might lack the capability to implement the CIP framework effectively, with a 2005 company evaluation report noting that 'in most cases the level of coaching and support [for local NGOs implementing the CIP] has been underestimated' and that 'BTC took chances and opted to work with NGOs and partners previously unknown to itself, and in full cognisance some were not even tested on the ground in the business of development'.

40. The Field Visit heard of extensive measures taken by the company to establish an effective compensation and grievance process. The UK NCP heard local NGOs in one country praise the BTC project framework as 'best practice which they would like to see repeated', while another local delivery partner NGO commented that 'BP is not a development organisation but in this case they have made great efforts in the environmental and social areas'. BTC project representatives described how the company provided support and monitoring for the grievances process, including paying for complainants legal costs if compensation disputes were taken to court, and sponsoring local NGOs to monitor the implementation of the compensation and grievance processes.

UK NCP Conclusions on Complaint 3

41. Having considered the complainants' comments on the BP report, and the company's response to these comments, the UK NCP remains of the view that BTC acted in such a manner as to contribute to sustainable development, in accordance with the Guidelines.

42. While compensation and rural development projects differed between villages the UK NCP consider that some degree of variation was inevitable as a consequence of local participation in consultation and implementation, in addition to variation arising from

differing land types, land use and market value. In response to identified risks of inconsistency the UK NCP considers that the company made pro-active efforts to establish due diligence procedures over the compensation, rural development and grievance process, contributing to an ongoing resolution of complaints and assisting local partners to improve their capability. For example, the UK NCP considers that CIP protocols were part of wider company efforts to implement the overall compensation and rural development process and, while not preventing individual cases of misunderstanding and dissatisfaction, use of such protocols helped minimise and resolve these issues. On this basis, **the UK NCP considers that the individual compensation issues raised during the Field Visit (including those whose status is still in dispute between the parties) do not represent a systematic failure to promote sustainable development and therefore this does not give rise to a breach of the Guidelines.**

43. The UK NCP does not see any grounds for making recommendations to the company in respect of these complaints. While not relevant to consideration of the 2003 complaint, the UK NCP notes that a large number of the compensation, rural development and grievance cases have been resolved since the 2003 complaint, following completion of various village-wide CIP projects and as the company gained on-the-ground experience in the various host countries.

COMPLAINT 4: CONSULTATION AND GRIEVANCE PROCESS

- Chpt III, para 1;
- Chpt V, para 2a and 2b – disclosure and consulting with affected communities

44. The 2007 Final Statement had found that the company carried out an extensive consultation process and took serious steps to ensure that the consultation was effective and transparent. The 2007 Final Statement also found that, in all but a handful of cases, complaints raised during the Field Visit were without foundation. The UK NCP has considered whether this conclusion was affected by the non-disclosure of the BP report by considering information relating to the original 2003 complaint in light of the positions of the two parties.

45. In their comments the complainants critique the BP report as not addressing concerns of systemic flaws in the consultation and grievance process, resulting in unrealistic expectations and confusion over procedural channels and legal rights. The complainants also critiqued the BP report for dismissing complaints made by two villages during the Field Visit of intimidation of villagers by the local sub-contractor, as these complaints had not been raised through the company's grievance and monitoring procedures. The complainants also critiqued the BP report for not investigating complaints made by one village during the Field Visit of intimidation by local security forces.

UK NCP Analysis

46. This revised Final Statement sets out the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the procedural failure to provide an opportunity for the complainants to comment on the BP report. The BP report did not address concerns relating to the public reporting of company information. Therefore, the UK NCP considers that the procedure failure did not affect the conclusions in the original Final Statement on the Chapter III complaint regarding disclosure or the Chapter V para 2a complaint regarding the provision of adequate and timely information to employees and the public on the impacts of company activities. These parts of complaint 4 (i.e. allegations relating to disclosure) have therefore not been substantively re-opened.

47. The BP report did address a number of individual grievances raised during the Field Visit, the overall consultation and grievance process, and complaints of intimidation including a local sub-contractor putting pressure on villagers to accept inadequate compensation and of local security forces putting pressure on villagers not to raise grievances. The procedure failure therefore did affect the withdrawn 2007 Final Statement conclusions on the Chapter V para 2b complaint regarding consultation and accordingly this aspect of complaint 4 (i.e. allegations relating to the compensation and grievance process) has been substantively re-opened. In accordance with the Review Committee's recommendations, the revised Final Statement also sets out in balanced terms the positions of the parties and the reasons for the NCP's conclusions on complaint 4.

48. Having received a copy of the BP report, the complainants submitted detailed comments (summarised above) in relation to the company's consultation and grievance process. In particular, the complainants highlighted what they considered to be lack of a systematic approach to grievances which they submit resulted in local policing problems including intimidation of those trying to submit complaints. A key point of difference between the parties is whether the company's consultation and grievance process was sufficiently pro-active and responsive to individual villagers, or complacent about the risk that bona fide grievances would not be identified by the formal process. In light of the positions of both parties, the UK NCP has considered this question in terms of what steps the company took to safeguard the consultation and grievance process from being undermined by local officials, security forces and sub-contracting organisations.

49. Taking into account all of the circumstances, the UK NCP does not consider that the company was complacent about the risks of local implementation or failed to commit sufficient resource to the consultation and grievance process. The company acknowledged that individual short-falls was inevitable in a programme of the size of BTC and denied that they had taken a defensive or passive approach to complaints. As noted above, the company sponsored local NGOs to monitor the grievance process and paid for legal costs arising from disputed compensation. The company also submits that it directly asked various land owners on a number of occasions whether they ever felt pressured to accept the compensation offered, and has always been told that the land owners have never felt so pressured.

50. However, despite these safeguards, during the Field Visit the UK NCP heard of complaints that villagers in one region of Turkey had been pressured to accept compensation and intimidated to not raise grievances by local sub-contractors and security forces. The company's claim to be unaware of such complaints, both prior to and following the Field Visit, raises questions as to the adequacy of the monitoring and grievance process. The UK NCP has therefore considered how the company responded to these complaints.

Complaints of Intimidation

51. The general complaints of pressure and intimidation by the local sub-contractor to accept inadequate compensation were investigated by the company, by confirming with various landowners at various times that they did not feel pressured to accept inadequate compensation. While not taking a view on the substance of these general complaints, the UK NCP considers that on this issue the company took adequate steps to safeguard the risk of local partners undermining the process.

52. The UK NCP considers that, based on the information available to it, neither the general nor the specific complaints of intimidation by local security forces were investigated adequately by the company. The BP report noted that no complaints of

intimidation had been raised through the formal monitoring or grievance processes and that individual grievances from these villages had still been pursued through the company-sponsored legal dispute process, despite the alleged intimidation not to do so.

53. In its response to the complainants' comments on this issue, the company emphasised the lack of specific complaints. The BP report also emphasised the company's use of systematic visits to each village with NGO monitoring of this process. The UK NCP considers that this focus on general systems and the sampling approach noted in the company's investigation of alleged pressure to accept inadequate compensation puts additional reliance on the adequacy of the formal monitoring and grievance process.

54. The two villages that made these complaints during the Field Visit were both in the north-east of Turkey. The UK NCP acknowledges the challenges of monitoring the behaviour of local security forces in a region characterised by a significant Kurdish population and ethnic tensions, and notes that a local delivery partner NGO acknowledged 'the possibility that some of the Kurdish community manipulate these [compensation] difficulties as an opportunity to promote their case'. However, the UK NCP considers that the company's due diligence preparations could have identified a heightened risk of intimidation and led to additional efforts in compensatory checks and monitoring. The UK NCP notes that concerns over potential human rights abuses by local security forces had been identified in the negotiation of the overall BTC framework.

55. The UK NCP did not witness the alleged intimidation but was both told of similar general complaints before visiting particular village and was later told of specific complaints of intimidation against these villagers after they met with the UK NCP. The UK NCP also witnessed close supervision of this particular village by the local sub-contractor, officials, politicians and security forces, despite the UK NCP's request to visit the village unaccompanied. The supervision by local officials and security forces was explained as being due to security concerns, but supervision by the local sub-contractor and politicians was perceived by the villagers as being intended to deter them from discussing grievances over compensation with the UK NCP. While not taking a view on the substance of these complaints of intimidation by the local sub-contractor, the UK NCP considers that they indicate that the villages might be unwilling to report complaints of intimidation by the local security forces to the company's local partners, possibly including NGOs appointed to monitor the grievance process.

56. While both pipeline security and criminal investigations are the responsibility of host governments, the Joint Statement committed the company to implement the responsibilities set out in the Voluntary Principles on Security and Human Rights (the Voluntary Principles). The Voluntary Principles are referred to in the OECD Risk Analysis Tool for Weak Governance Zones (RAT), as guidance for companies operating in situations of heightened risk and seeking to apply heightened care in managing investments and dealing with public sector officials. While the company made general efforts to provide local security staff with general training on human rights, it is unclear whether the company took specific steps in relation to these complaints. Both general efforts and specific steps are required by the Voluntary Principles.

Voluntary Principles – Interactions between companies and public security

- Security Arrangements - "Companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities"
- Deployment and Conduct - "Companies should use their influence to promote the following principles with public security: ... (c) the rights of individuals should not be

violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining,..."

- Responses to Human Rights Abuses - "Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, Companies should urge investigation and that action be taken to prevent any recurrence".

57. While the company submits that it took steps to investigate the general complaints of intimidation by the sub-contractor, including particular enquiries with landowners in these villages, it is unclear whether the company took any steps to investigate the specific complaints of intimidation by local security forces. It is also unclear whether the company took steps to obtain further details about these complaints from the villagers, the local security forces or the host governments. Both the BP report and the company's response to the complainants' comments note that the company was unaware of any interrogation of villagers by local security forces and that no formal complaints have been raised subsequent to the Field Trip through the formal grievance and monitoring process. However, the company's response also acknowledges the specific complaints made during the Field Visit and notes that the company takes any such allegations very seriously and would investigate any such complaints that arose through the formal grievance and monitoring process. The company has not challenged the credibility of the complaints made during the Field Visit and the UK NCP therefore understands the company to be distinguishing complaints made during the Field Visit from complaints raised through the monitoring or grievance processes.

58. It is also unclear whether the company took any steps to report these specific complaints of intimidation by local security forces, encourage investigation by the host authorities or support action to strengthen existing safeguards. The company's response to the complainants' comments noted that the local security forces may undertake investigations "where unusual events occur", but does not give any indication that the company encouraged investigation of the complaints. The company's response notes that the local security forces have been trained by international experts but does not give any indication of whether the company has supported additional training in response to the complaints.

UK NCP Conclusions on Complaint 4

59. Having considered the complainants' comments on the BP report, and the company's response to these comments, the UK NCP has reconsidered its original view on the complaint that BTC failed to adequately consult with affected communities.

60. While the UK NCP considers that the BTC legal framework was established in accordance with the Guidelines, there were potential weaknesses in the local implementation of this framework regarding consultation and monitoring. These potential weaknesses arose from the company's distinction between complaints raised through the formal monitoring and grievance processes from complaints raised through other channels. In one particular region of north-east Turkey, this potential weakness seems to have contributed to shortfalls in effective and timely consultations with local communities.

61. The Guidelines recommend that companies ensure that in practice the consultation which it undertakes with affected communities is adequate. The RAT guidance to companies operating in situations of heightened risk, such as those operating in regions of conflict or working with more vulnerable communities, recommends that companies take additional steps to assess and guard against these risks. More generally, the Guidelines

recommend that companies encourage their sub-contractors and other partners to act in accordance with the Guidelines (General Policies, para 10). Given the general risk of human rights abuses by pipeline security identified in the Joint Statement and the particular regional challenges recognised by nearly all participants in the Field Visit, the UK NCP considers that the company's due diligence preparations could have identified and mitigated an additional risk of intimidation by local partners. The UK NCP acknowledges that the company took some steps to mitigate this risk by appointing NGOs to monitor the formal process. However, the UK NCP considers that the risk was exacerbated by the company distinguishing between complaints raised through the formal monitoring and grievance process from complaints raised through other channels. The UK NCP considers that this distinction was a general weakness in the company's monitoring and grievance process that, in the particular region of north-east Turkey, led to a specific failure to identify complaints of intimidation against affected communities where the information was received outside of the formal grievance and monitoring channels.

62. The company's response to specific complaints of intimidation made during the Field Visit is also unclear and does not seem to accord with the Joint Statement commitment to ensure that all pipeline security operations are in accordance with the Voluntary Principles. The UK NCP does not take a view on the substance of the alleged intimidation, but does consider that the company's reference to general preventive measures is not a sufficient response to the specific complaints of intimidation identified during the Field Visit. Furthermore, as noted above, general complaints of intimidation by the local sub-contractor suggest that villagers in this region might be unwilling to report complaints of intimidation to the company's local partners, possibly including NGOs appointed to monitor the formal process. On this basis the UK NCP does not consider that the lack of corroborating information from the company's formal monitoring and grievance channels provide sufficient reason for the company to fail to take adequate steps to address the specific complaints raised outside of the formal process. The UK NCP considers that the company's failure to act in response to these specific complaints represents an inadequate safeguard against the risk of local partners in this region undermining the overall consultation and grievance process.

63. In light of the above, the UK NCP considers that the company's activities in one region were not in accordance with Chapter V para 2b of the Guidelines regarding consultations with affected communities, in (a) failing to identify specific complaints of intimidation against affected communities by local security forces where the information was received outside of the formal grievance and monitoring channels, and (b), in not taking adequate steps to respond to such complaints, failing to adequately safeguard against the risk of local partners in this region undermining the overall consultation and grievance process.

GOOD PRACTICE

64. The UK NCP considers that the overall BTC framework includes a number of examples of good practice, including:

- Responding to concerns over the BTC legal framework by negotiating a wider policy framework that confirmed that the HGAs did not exempt the project from all future legislation but set an upper limit of the project's future regulatory liability benchmarked against the highest of domestic, EU or international standards. This policy framework also legally precluded the company from seeking compensation for legislation required by international obligations;
- Responding to risks of inconsistency in the compensation, rural development and grievance process by establishing due diligence procedures and assisting local

partners to develop their capacity. These due diligence procedures included NGO monitoring of the compensation and grievance process, use of Community Investment Programme protocols to minimise and resolve misunderstandings and dissatisfaction, and paying for legal costs arising from disputed compensation.

RECOMMENDATIONS

65. The UK NCP's complaint handling procedures explain that the NCP may make recommendations where appropriate. UK NCP recommendations are intended to assist companies in bringing their activities into line with the Guidelines going forward. This Final Statement is restricted to the 2003 complaint and the BTC pipeline project.

66. Given the length of time that has passed since the 2005 Field Visit, and the forward-looking nature of UK NCP recommendations, the UK NCP does not see any grounds for making recommendations to the company in respect of the specific complaints of intimidation of villagers that spoke to the UK NCP. However, the UK NCP does consider that the company can address the general complaints of intimidation by local security forces in this region of north-east Turkey, and therefore **recommends that the company consider and report on ways that it could strengthen procedures to identify and respond to reports of alleged intimidation by local pipeline security and other alleged breaches of the Voluntary Principles.**

67. As noted above (para 55), the Voluntary Principles is referred to in the RAT which suggests a number of responses available for companies seeking to apply heightened care in managing investments and dealing with public sector officials:

RAT reference to Voluntary Principles -

- "Does the company consult regularly with public security in the host country, home and host governments and local communities about the impact of their security arrangements?"
- "What policies does the company have for recording and reporting credible allegations of human rights violations? How does it plan to protect the security and safety of the sources of such information?"

68. While not relevant to the 2003 complaint, the work of UNSRSG Professor Ruggie has identified due diligence as a means for companies to translate in operational terms the corporate responsibility to respect human rights. As recommended by the UNSRSG, due diligence should be understood as a dynamic ongoing process involving engagement and communication with relevant stakeholders in order to identify, prevent and address actual or potential risks, with a view to avoiding or minimising human rights impacts. Due diligence is therefore also a learning process to distinguish between genuine mistakes, where the challenge is to learn the lessons and avoid any repetition, from wilful or careless breaches.

69. In accordance with paragraph 6.1 of the current UK NCP complaint procedure, where the Final Statement includes recommendations to the company, the UK NCP will specify a date by which both parties are asked to provide the UK NCP with a substantiated update on the company's progress towards meeting these recommendations and then publish a follow up statement reflecting the parties' response and, where appropriate, the UK NCP's conclusions thereon. The UK NCP asks both parties to provide an update on this recommendation by 8 June 2011.