

EA/2008/0071

IN THE INFORMATION TRIBUNAL

**BETWEEN:**

**EXPORT CREDITS GUARANTEE DEPARTMENT**

**Appellant**

and

**THE INFORMATION COMMISSIONER**

**Respondent**

and

**MR NICHOLAS HILDYARD ON BEHALF OF CORNER HOUSE**

**Additional Party**

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**WITNESS STATEMENT OF NICHOLAS HILDYARD**

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1. I am Nicholas Hildyard, a Director of The Corner House (a not for profit company limited by guarantee).
2. Attached to this statement is an exhibit (**NH1**) containing documents to which I make reference or which are otherwise relevant to the matters before the Tribunal. Page references in this statement are to pages in either the Open Bundle [**OB XX**] or to pages in the attached exhibit [**NH1 XX**]. So as to avoid too much paper being produced I do not exhibit every document to which reference is made. However, I will make copies of those documents available to the parties and/or to the Tribunal on request.
3. The purpose of this statement is to explain why there is such a strong public interest in disclosure of the information at issue in this appeal. However, in order to make sense of the public interest in disclosure of these particular documents it is necessary to put them in context. It is therefore important to have at least an outline understanding of the following matters:
  - The background to public concern over the role of **Export Credit Agencies** (“ECAs”) including, in particular in relation to the adverse impacts of projects that they support

- International undertakings by ECAs, including the UK’s **Export Credits Guarantee Department** (“ECGD”), in relation to sustainable development and financial risk management;
  - The specific decision making procedures employed by the ECGD to assess environmental and social risks (in particular the ECGD’s case handling processes); and
  - The financial risks associated with the **Baku-Tbilisi-Ceyhan oil pipeline project** (“the Project”) arising from its environmental and social impacts.
4. As such, my statement is structured as follows<sup>1</sup>:
- I. [Involvement of The Corner House in issues relating to export credit](#)
  - II. [Export Credit Agencies and civil society](#)
  - III. [The wider international context of Export Credit Agencies](#)
  - IV. [The ECGD’s assessment procedures \(including its business principles\)](#)
  - V. [ECGD and the Baku-Tbilisi-Ceyhan \(BTC\) oil pipeline](#)
  - VI. [The general public interest in disclosure](#)
  - VII. [Public interest in the BPU report](#)
  - VIII. [Public interest in the Underwriting Committee Minutes](#)
  - IX. [Brief conclusion on public interest](#)

In addition there are two annexes to this Statement the intention of which is to keep the main statement to a more manageable size.

#### **I. Involvement of The Corner House in issues relating to ECAs, ECGD and the Project**

5. The Corner House aims to support democratic and community movements for environmental and social justice. The Corner House carries out analysis, research and advocacy with the aim of stimulating informed discussion on

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1 These are electronically hyperlinked for the Tribunal’s ease of use

critical environmental and social problems, and encouraging broad alliances to tackle those problems.

6. An important area of our work concerns the public financing of projects that have socially and/or environmentally destructive impacts overseas and, in particular, in less developed countries. In that context we work particularly on issues relating to funding by ECAs, particularly those from countries that are members of the Organisation for Economic Cooperation and Development (“**OECD**”) but also from non-OECD countries, such as China. In the UK, the focus of our work in this area is the ECGD (the UK’s ECA).
7. Over the past ten years, The Corner House has closely monitored the policies and operations of the ECGD, with a view to strengthening and improving its policies on sustainable development. In this regard, The Corner House has submitting evidence to a number of parliamentary inquiries and UK Government consultations. In addition, it has participated in nine field missions to assess the social and environmental impacts of a number of projects for which ECGD support has been sought. The Corner House has also undertaken in-depth research into a number of ECGD-backed projects that have been tainted by allegations of bribery.

*Corner House’s Involvement with the BTC Project*

8. Since 2001, The Corner House has worked closely with communities affected by the Baku Tbilisi Ceyhan Pipeline Project (“**the Project**”). The information request that is the subject of this Appeal arises from this work. Both before and after the ECGD’s decision in December 2003 to support the Project, The Corner House, in coalition with a number of other UK and international non-governmental organisations, has been active in:
  - providing a conduit through which those affected by the Project might bring their concerns to the companies and financial institutions involved, including the ECGD;
  - documenting those concerns through field missions, reports and letters to the ECGD and other funders; and

- informing parliamentarians of the concerns.

Details of specific interventions by The Corner House were provided in our solicitor's complaint of 20 December 2006 to the Information Commissioner and are set out in Annex 1 to this statement.

## **II. Export Credit Agencies and Civil Society**

9. Export credit agencies ('ECAs') are public, quasi-public or private agencies that provide loans, guarantees, credits and insurance to private corporations from their home country to assist them doing business overseas. Such loans are particularly used in relation to projects in the developing world because of the financial and political risks involved in such projects. Where the ECA is public or quasi-public, the loans are backed by the agency's national government.
10. Collectively, ECAs are the largest source of public finance for private sector projects in the world, underwriting approximately 10 per cent of exports worldwide. Between 1995 and 2002, every major commitment over \$20 million made by a Western bank to companies operating in or trading with poorer countries had some form of official public guarantee. The latest available figures confirm that ECAs supported \$1.1 trillion-worth of business in 2006, a figure that has doubled since 2002 when total business covered was around \$500 billion. Preliminary figures for 2007 indicate over \$1.4 trillion in new business, a nearly 30% rise from 2006. A significant portion of the finance provided by ECAs – perhaps in the order of \$100 billion a year – involves goods for projects that involve significant risks of damage to the environment, such as dams, oil and gas projects, pulp mills and other infrastructure.
11. As a high proportion of their business involves projects in developing and transition countries, ECAs have come to play a key role in influencing the pattern and direction of development in such countries (for better or for worse). There are widespread concerns that ECA financing generally

contributes to negative development patterns. As a result, they have become a significant focus of concerns for civil society groups including development and environment non-governmental organisations (**NGOs**).

12. The impact that ECAs have on patterns of development is very well documented.<sup>2</sup> Nonetheless, ECAs were historically subject to few, if any, environmental, human rights or developmental safeguard standards and policies. Since the late 1990s, numerous calls - including statements by the G8 leaders - have been made for ECAs to adopt binding standards.
13. These concerns led, in 2000, to the signing of the “Jakarta Declaration For Reform of Official Export Credit and Investment Insurance Agencies” (“the Jakarta Declaration”) [**NH1 5**] which was endorsed by 347 non government organisations (NGOs) from 45 countries and the formation of international civil society organisations and networks such as *ECA-Watch*. The Corner House is part of the ECA Watch network and has signed the Jakarta Declaration.
14. In recent years, and as a result of increasingly vocal expression of these concerns, ECAs have been made subject to or otherwise adopted various environmental, human rights, anti-corruption, debt and development policies, domestically and internationally, intended to address such concerns.
15. The existence of such policies forms part of the backcloth to this case. Not only is it important that such policies and processes are adopted by the relevant ECA but also they are implemented and fully respected once they are in place. Unless that is done then the important (if slow) policy improvements in relation to ECAs lose their meaning. That is the context of The Corner House’s Appeal.

### **III. The wider international context of ECAs**

16. In part as a result of the concerns expressed above, a number of international agreements now govern the operations of government-

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<sup>2</sup> The document at **NH1 1** is an annex from my witness statement in a previous Information Tribunal case *Friends of the Earth v. Information Commissioner and ECGD EA/2007/0073*

controlled Export Credit Agencies from states that are members of the Organisation for Economic Co-Operation and Development (OECD), including the United Kingdom. Such agreements cover a range of issues including, relevantly, sustainable development and financial risk management.

(A) ECA International Undertakings on Sustainable Development

17. In December 2003, ECAs from OECD countries agreed the OECD Recommendation on Common Approaches on Environment and Officially Supported Export Credits (**the ‘Common Approaches’**) [NH1 17], which lays down screening procedures and accompanying standards for assessing the environmental and social impacts of the projects they support. The Recommendation was updated in 2005 and again in 2007.
18. At the time that the ECGD received a formal application to support the Baku-Tbilisi-Ceyhan oil pipeline,<sup>3</sup> the final version of the Common Approaches had not been agreed by all member states of the OECD. However a version agreed by all but Turkey and the USA had been adopted in 2001 by the majority of members, including the UK. This version is known as “**Rev 6**”. [NH1 27] Following ECGD’s practice, The Corner House has assumed Rev 6 to be the version applicable for the BTC project.
19. Two key objectives of Rev 6 (which have remained unaltered in subsequent versions) were to:
  - “Promote coherence between policies regarding officially supported export credits and policies for the protection of the environment, including relevant international agreements and conventions, thereby contributing towards sustainable development”; (Art. 1.2)

and to

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3. The BPU report puts the date of the application as 2002. However, an ECGD briefing for the Treasury, prepared in May 2003 and obtained under FOIA, states: “ECGD is still awaiting formal applications for cover on this project”. See: ECGD, “Baku-Tbilisi-Ceyhan Pipeline”, BTC Treasury Submission, May 2003 redacted, p.11 released under Freedom of Information request by Friends of the Earth.

- “Promote good environmental practice and consistent processes for projects benefiting from officially supported export credits, *with a view to achieving a high level of environmental protection*” (emphasis added). (Art. 1.2)
20. It is relevant that the screening procedures introduced under the “Common Approaches” are intended both as a risk management tool and as a means of enhancing sustainable development. Indeed, Rev 6 specifically records that, through implementing the “Common Approaches”, members “seek to . . . enhance financial risk assessment of projects by taking into account their environmental impacts”.
21. Other relevant intentions of the Common Approaches are to:
- “Foster transparency, predictability and responsibility in decision-making, by encouraging disclosure of relevant environmental information with due regard to any legal stipulations, business confidentiality and other competitive concerns”; (Art. 1.3)

and to

“Encourage the prevention and the mitigation of the adverse environmental impacts of projects”. (Art. 1.3)

(B) ECA International Undertakings relating to financial risk management.<sup>4</sup>

22. In 1978, in response to concerns that national ECAs were not merely supporting exports from their countries but actively using export credit guarantees to undercut competitors through subsidising exports, OECD members states adopted a voluntary agreement, known as the OECD Arrangement on Officially Supported Export Credits (the “Arrangement”), in order to “to foster a level playing field for official support” [NH1 43]. Under the Arrangement, the OECD set limits on the terms and conditions for export credits, including the interest rates and premium fees that can be charged.<sup>5</sup>

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4. OECD, *Arrangement on Officially Supported Export Credits*, Paris. The latest revision dates from December 2007 [TAD/PG (2007) 28/Final], Paris, 2007. (**the Arrangement**)

5 Although the terms of the Arrangement remain voluntary for ECAs outside of the EU, adherence to the Arrangement became a requirement for any country that is a member of the World Trade Organisation (WTO) and which seeks to benefit from a specially-negotiated “carve out” clause within the WTO’s 1994 Agreement on Subsidies and Countervailing Measures (ASCM). The ASCM is the WTO instrument that provides the legally binding international framework for regulating government subsidies. Under the carve out clause, the ASCM allows government support to business through ECAs provided that such support complies with the OECD Arrangement, stating that export credit support to corporations in compliance with this Arrangement shall not be considered an export subsidy forbidden by the ASCM. Prior to the 1994 ASCM “carve out” agreement, OECD

23. The Arrangement stipulates that premiums charged by ECAs “*shall be risk-based . . . and shall not be inadequate to cover long-term operating costs and losses*” (para. 23). Within the European Union, this break-even-requirement was incorporated into EU law in May 1998 through “Council Directive 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover”.<sup>6</sup> The Directive requires, *inter alia*, that “*the premium charged for export credit insurance shall correspond to the risk (country, sovereign, public and/or private risk) covered, adequately reflect the scope and the quality of the cover granted, [and] not be inadequate to cover long-term operating costs and losses*”.
24. These international undertakings set the framework in which ECAs from the major industrialised countries now operate. They are relevant to this Appeal because the ECGD has committed to observing both the terms of the OECD’s Recommendation on Common Approaches and the OECD Arrangement, and is legally-bound to comply with the 1998 Directive. As will be seen from the next section, the assessment of project impacts and risks provided by the ECGD’s Business Principles Unit to the ECGD’s Underwriting Committee is critical to enabling the Underwriting Committee to assess compliance with the UK’s international undertakings and thus to the Committee’s ability properly to advise Ministers as to whether or not a project should be supported.

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Export Credit Agencies regularly incurred substantial losses, which were picked up by their national governments and thus taxpayers. In the case of the UK, the ECGD was estimated in 2003 to have run up some £9 billion (including interest due) in losses stemming from loans made largely prior to 1991. Since 1994, OECD ECAs have introduced measures that have reduced their losses and moved their operations into the black. Nonetheless, some covert subsidies persist. A 2003 study for ECGD by NERA found that, between 1992 and 2002, the subsidy for three of ECGD’s products - EXIG (export insurance and export credit guarantees), Overseas Investment Insurance and FREF (Fixed Rate Export Finance) – amounted to £637-718 million (although, since FREF in particular has since been reformed, NERA emphasised that this figure does not represent an accurate representation of the ongoing subsidy). See: NERA, *Estimating the Economic Costs and Benefits of ECGD: A Report for the Export Credits Guarantee Department*, January 2003. In 2005, the UK admitted that the annual cost of the ECGD to the taxpayer is an annual £150 million. See: Secretary of State for Trade and Industry/ Chief Secretary to Treasury, “*Estimating the economic cost of ECGD*”, 16 March 2005, <http://www.berr.gov.uk/files/file16384.pdf>

6. “Council Directive 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover”, Council Directive 98-29-EC, 7 May 1998



#### **IV. The ECGD and its processes**

25. The ECGD is the UK's export credit agency. It derives its functions and powers from the Export and Investment Guarantees Act 1991. Its primary function is to facilitate exports of goods and services by the provision of guarantees and insurance. In carrying out its functions the ECGD makes use of a variety of different financial instruments including different forms of credit and insurance.
26. According to the ECGD's latest set of accounts, the value of guarantees and insurance policies issued by the Department in 2007/08 was £1.83 billion.

#### *ECGD policies on sustainable development*

27. The ECGD has adopted a number of policies and commitments relating to sustainable development, which are of relevance to the public interest issues at stake in this Appeal.
28. In December 2000 the ECGD first published a statement of Business Principles [**NH1 161**]. That statement provided that ECGD would
- “promote a responsible approach to business and will ensure our activities take into account the Government's international policies, including those on sustainable development, environment, human rights, good governance and trade.”
29. It committed the ECGD to being “*open and honest in all our dealings*”.<sup>7</sup>
30. Accompanying the Business Principles is a Mission Statement [**NH1 161**] which affirms, inter alia, that ECGD's objectives are:

“to achieve the Financial Objectives set for it by Ministers”; and

“to operate in accordance with its Business Principles, so that its activities accord with other Government objectives, including those on sustainable development, human rights, good governance and trade.”

31. The ECGD subsequently announced that it was revising its procedures for assessing the impacts of projects in order to introduce greater transparency.<sup>8</sup>
- A Case Handling Process - Information Note (“**CHPIN**”) [**OB 314-322**] was

7. ECGD, Business Principles, 2000, p.3, <http://www.ecgd.gov.uk/ecgdbusprinciples.pdf>.

8. ECGD, “Revised Case Impact Analysis Process”, Press Release, 1 April 2003,.

issued, followed by a detailed document setting out the new Case Impact Analysis Process ('CIAP'). [OB 323-342]. The BTC application was one of the first applications to go through the new CIAP process. Moreover, and as set out below, the ECGD's assessment of the BTC project has been repeatedly triumphed by ECGD as an example of its procedures ensuring that its Business Principles are being met and in terms of transparency.

32. The CHPIN sets out how the CIAP fits into ECGD's financial risk assessment procedures. The note is explicit that:

"[ECGD] will also decline (following Underwriting Committee consideration or advice, where appropriate, from other Government Departments or referral to Ministers) cases where the adverse impacts identified cannot be mitigated to ECGD's satisfaction and thus are considered to outweigh the potential benefits of providing support." [OB 320]

And that

"ECGD will not support cases unless they meet its minimum financial risk standard." [OB 320]

33. Under the ECGD's Case Handling Procedures, the Business Principles Unit ("BPU") is responsible for assessing the environmental and social impacts of projects and recommending to the appropriate underwriting authority

"whether support should be provided, whether any additional information or reports are required or whether support would not be in conformance with ECGD's published Business Principles".

On the basis of the BPU's report (and other risk assessments), the Underwriting Committee then decides whether any additional information or reports are required.[OB 319]

34. The CIAP sets out the methodology used by the Business Principles Unit to assess impacts. Its stated aim is to ensure that all civil, non-aerospace transactions supported by ECGD meet the ECGD's policy objectives, namely that: (1) all cases are compatible with the Statement of Business Principles; and (2) all decisions have taken into account UK Government policies on the environment, sustainable development, and human rights. [OB 323]
35. ECGD states that the methodology that it uses to assess the impacts of projects *"reflects the process described in the OECD 'Recommendation on*

*Common Approaches on Environment and Officially Supported Export Credits*". [OB 323, para. 2.2]

36. The CIAP is intended to allow ECGD (1) to determine the impacts of a project for which support is sought and (2) to assess the acceptability of those impacts having particular regard to relevant international standards (para. 2.5). Those standards are stated to include guidelines, policies, directives and procedures. They include those of international bodies including the World Bank Group, Regional Development Banks, the EU and UN bodies (para. 2.5). It is ECGD's stated policy that projects it supports should comply in all material respects with the relevant safeguard policies, directives and environmental guidelines of the World Bank Group (para. 2.6). Where projects do not meet the relevant standards, they will normally be considered unacceptable (para. 2.8). In addition to compliance with international standards, ECGD also takes into account applicable UK Government policies (para. 1.1; 2.10; 10.1).
37. ECGD is also committed to taking account of commitments made by the UK Government at the World Summit on Sustainable Development in Johannesburg in 2002 including the UK's commitments towards (1) halting biodiversity loss at sea; (2) increasing the generation of energy from renewable sources; (3) reducing unsustainable consumption and production patterns; (4) recognising the importance of public participation in decision making and access to environmental information. [OB 333]<sup>9</sup>
38. In April 2003, the ECGD affirmed "*its commitment to keep sustainable development at the heart of its work in supporting UK exporters and investors trading in world markets.*"<sup>10</sup> [NH1 171]

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9. CIAP para 10.2.

10. "Sustainable development at the heart of UK export credit support", [http://www.ecgd.gov.uk/news\\_home.htm?id=5278](http://www.ecgd.gov.uk/news_home.htm?id=5278).

## **V. ECGD and the Baku-Tbilisi-Ceyhan (BTC) oil pipeline**

### **The Project**

39. The 1,760 kilometre-long Baku-Tbilisi-Ceyhan (BTC) oil pipeline runs from Baku in Azerbaijan, through Tbilisi in Georgia to a new marine terminal at Ceyhan on Turkey's Mediterranean coast. The aim of the project is to carry up to 1 million barrels of oil per day from the Caspian Sea to the Mediterranean. The project forms a central plank of the UK's energy policy, *"contribut[ing] to the development of further energy supply routes in accordance with the Government's policy of ensuring a range of secure energy sources to Western markets."* [OB 345]
40. The project has been developed by BTC Co., a consortium of companies led by the British oil multinational BP. Other members of the consortium include: Unocal, Statoil, Turkish Petroleum, ENI, TotalFinaElf, Itochu, Inpex, ConocoPhillips, Delta Hess and the Azerbaijan state oil company SOCAR. The BTC pipeline was completed in 2006 – a year late and about one billion dollars over its projected cost of \$2.9 billion.
41. The BTC Project was a particularly controversial project even in a context of a department that is used to dealing with high-profile and controversial projects. Hence the fact of a parliamentary inquiry into ECGD's handling of the BTC by the UK Parliament's then Trade and Industry Committee. [OB 349-379]

### **Requests for ECA support**

42. ECGD was approached about the possibility of financial support (under section 1 of the Export and Investment Guarantees Act 1991) for the Project in 2002 although the formal application for support was (apparently) only submitted sometime after May 2003<sup>11</sup>.
43. In line with its CIAP procedures, ECGD deemed the Project a "prior disclosure" [OB 330, para. 8] case and a High Potential Impact Project. Prior

<sup>11</sup> ECGD, "Baku-Tbilisi-Ceyhan Pipeline", BTC Treasury Submission, May 2003 redacted, p.11 released under Freedom of Information request by Friends of the Earth. "ECGD is still awaiting formal applications for cover on this project"

disclosure cases are “High Potential Impact” projects which the ECGD’s Underwriting Committee has confirmed should be made public prior to ECGD making a decision on approval. In such cases, ECGD obtains the relevant consents and publishes on its website a brief account of the project (project name, location, a brief description and the source of environmental information). Interested parties may forward their comments to the BPU. Material comments will be taken into consideration.

44. CIAP requires the ECGD to consult various other Government Departments (specifically, DEFRA, DFID, DTI (UKTI), FCO and MOD) on all ‘potentially sensitive cases’ (para. 3.1, 7.2) [OB 325; 330]. Other Government Departments were notified in September 2002 and three of them – the Foreign and Commonwealth Office (FCO), the Department for Environment and Rural Affairs (DEFRA), and the Department for Trade and Industry (DTI) – responded [NH1 201]. Those departments were simply asked at that stage to identify areas of concern. The Project was subsequently the subject of considerable discussion within and between government departments other than ECGD.
45. Particular concerns were raised by both DEFRA and the FCO in relation to their own areas of responsibility. DEFRA in particular raised concerns over the social and environmental implications of the investor-state contracts that set the legal regime for the Project [NH1 207] whilst the FCO raised concerns about social and environmental impacts of the project more generally [NH1 203]. DEFRA also raised concerns about the climate implications of the project.

#### Stakeholder engagement

46. Prior to a decision being made on whether or not to support the Project, the ECGD also invited comments from, and subsequently sought further engagement with, concerned stakeholders, including non-governmental organisations such as The Corner House.

47. Submissions were made by a number of organisations, including The Corner House. Those submissions were often made through the Baku Ceyhan Campaign (**BCC**) of which The Corner House was a founding member. In 2002, a Memorandum outlining concerns about the BTC project was signed by some 80 non-governmental organisations from more than 40 countries, representing hundreds of thousands of citizens worldwide. The Memorandum was sent to International Financial Institutions (including ECAs) which might have been considering support for the BTC project. [**NH1 215**] There was widespread international and domestic media reporting on the Project and the concerns expressed by civil society groups such as The Corner House.
48. A list of the written submissions made by The Corner House (either alone or in conjunction with others) in respect of this project is at Annex 1 to this Statement. In addition, many of the concerns that we raised were often made at meetings with the ECGD and in particular at meetings with the BPU. These highlighted a range of human rights, environmental, development and other concerns. For example, one detailed review of the Project's Environmental Impact Assessment documented 173 violations of international standards, including many of the World Bank Safeguard Policies to which the ECGD is committed to ensuring compliance. [**NH1 303**]
49. In addition, two face-to-face meetings were held with ECGD, in October 2002 and May 2003. Both involved partner groups from the region, who were working directly with the affected communities, being brought to the UK by the Baku Ceyhan Campaign in order that they could make representations directly to the ECGD. No other stakeholder meetings were convened in the UK by the ECGD or any other government department. The ECGD also attended a seminar on the Project in the House of Lords in November 2002, jointly organised by the Baku Ceyhan Campaign (**BCC**), a coalition of NGOs concerned at the impacts of the pipeline, including The Corner House; a public meeting at the LSE in the same month, also organised by the BCC; and

a seminar on legal concerns arising from the project in July 2003, again organised by the BCC.

50. The Corner House and its partners in the Baku Ceyhan Campaign also informed David Allwood of the ECGD's Business Principals Unit of concerns via telephone. It is important to stress that the meetings held with ECGD were an opportunity for NGOs to express their concerns to the Department (the Government's position in these meetings was that it was in "*listening mode*"): therefore, although ECGD undertook to investigate several of the concerns further, it never indicated its own formal assessment of the issues raised, nor was The Corner House informed of the outcome of the ECGD's own investigations. Similarly, ECGD's written responses to concerns expressed by The Corner House or the wider campaign did not set out BPU's assessment or views of the matters that we had raised. I cannot comment on whether concerns raised by groups which were not members of the Baku Ceyhan Campaign, such as Amnesty UK, were responded to with details as to ECGD's formal position.

*Business Principles Unit Review and the decision to support*

51. In accordance with its procedures, the ECGD's Business Principles Unit ('BPU') carried out its own due diligence assessment of the project and project documentation from August 2002 to December 2003. Critically, this review is said to have responded to the concerns raised by NGOs over the project. Following that review, the BPU produced a document (dated 3 December 2003) entitled *BPU Review of Baku-Tbilisi-Ceyhan Pipeline Project* ('**the BPU Review**'), which was provided to the ECGD's Underwriting Committee. It is clear from the structure and contents of the redacted version of the BPU Review that that was one of its principal purposes was to address the concerns expressed by NGO stakeholders. It is the redacted elements of that Review [**OB 72ff**] which form part of the subject matter of this Appeal. I comment on this report in more detail below.
52. The Underwriting Committee met on 5 December. The minutes of that meeting [**OB 135-138**] form the second part of the withheld information in

this Appeal. The first four and a half pages of the minutes have been withheld as have elements of the remaining two and a half pages.

53. On 17 December 2003, the ECGD issued a “Decision Note”<sup>12</sup> [OB 344] which stated that cover would be issued for the project subject to two conditions:

“ECGD’s prior approval of the Project’s Environmental and Social Action Plan, the General Oil Spill Response Plan and the General Hydrostatic Testing Plan”;

and

“the establishment of final project documentation to the satisfaction of ECGD.”

54. The Decision Note set out the main criteria applied by ECGD in making its assessment and summarised the scope of comments received from interested third parties. It is in respect of this document that the Trade & Industry Select Committee commented as follows:

“For such a large and potentially controversial project as the pipeline, publishing a brief explanation of its decision as the Department was not enough.” [OB 353]

55. I firmly agree with the select committee’s view. The Note does set out the process by which the Project was assessed and the standards against which it was benchmarked. However, since the procedures and standards which the ECGD employed were already in the public domain, the Decision Note therefore adds little to the public record in that regard.

56. Although the Note sets out a brief (and incomplete) list of some of the issues raised by NGOs (‘Comments by Interested Third Parties’ (para. 6)) it does not give any explanation as to the conclusions reached by the ECGD (or BPU) either on the issues listed in the Decision Note or on the wider range of issues raised by NGOs, including The Corner House. Still less, of course, does it indicate the basis for any conclusions that it did reach on those issues. In fact, the Decision Note sets out its conclusions on all of the issues raised in a single paragraph as follows:

“Having considered the relevant issues, including comments made by interested third parties, ECGD has concluded that the environmental, social

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12. ECGD, Note of Decision, 17 December 2003, <http://www.ecgd.gov.uk/btc - note of decision.doc>.



and human rights impacts of the Project have been properly and sufficiently addressed and that the Project complies in all material respects with relevant guidelines and standards. Further, ECGD has concluded that the risks of providing cover for the Project are acceptable.” [OB 348]

57. The Decision Note states (by way of explanation for this lack of information) that:

“... it is not feasible to record in this note of ECGD’s decision every comment made, or for ECGD to respond individually to all comments received . . .”

58. However, no explanation is given for why it was considered *not feasible* to provide a response to each of the issues raised by NGOs. Still less is it understood why it was not considered feasible to publish a document setting out responses to the broad range of issues raised by NGOs particularly in light of the fact that we now know that there existed a document containing those conclusions.

59. The result is that the rationale behind the ECGD’s decision in respect of the issues raised remained (and remains) undisclosed: those who had expended considerable time and energy in bring issues of concern to the ECGD could not therefore be satisfied that those issues had been reasonably assessed and addressed; nor could they know the basis on which those concerns had been either dismissed or accounted for. On the contrary, the ECGD’s position is that it was “*not feasible*” to respond to those concerns. However, the documents that would provide answers to those important questions are those at issue in this appeal.

60. In February 2004, the ECGD formally issued £81,703,893 in guarantees for the Project – the largest guarantee issued in 2003-04 [NH1 245]. Documents released to Friends of the Earth (England, Wales and Northern Ireland) confirm that further support was also sought under the ECGD’s Overseas Investment Insurance (OII) scheme<sup>13</sup>. However, as ECGD do not disclose whether OII support is given (for reasons of commercial confidentiality) we do not know whether such support was granted (or to what level). As such, it

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13. “Letter from Hall (ECGD) to O’Donnell (HM Treasury), Update to HMT on BTC, 2 May 2003 (redacted), p.5.

may well be that the public does not know the full extent of tax-payer support for the project. .

*The ECGD's own reporting of its handling of the BTC project*

61. The Tribunal should be aware that, having granted the Credits, ECGD publicly celebrated its handling of the BTC pipeline as a demonstration as to both (a) the effectiveness its business principles and (b) its transparency of stakeholder engagement.

62. For example, in it's Annual Report for 2003/04 the Chief Executive stated:

**"A key project that showed how ECGD continues to be involved in high-tech, complex cases, while at the same time rigorously applying our Business Principles to the benefit of all concerned, was the Baku-Tbilisi-Ceyhan oil pipeline. Through its work with BTC, ECGD has been instrumental in ensuring the project meets rigorous standards of environmental protection, transparency and accountability.**

Before coming to our decision to underwrite a loan for the UK contractors, we carried out a thorough assessment of the environmental, social and human rights impacts as well as the financial and project risks of the BTC scheme. (Emphasis added)." [NH1 243]

63. In the same Annual Report the ECGD note that the BTC project was the "most notable" part of their project impact assessment work that year, that it "attracted significant public interest" and celebrated it as an example of its "programme of transparent engagement with civil society organisations" in relation to the BTC project [NH1 249-250].

64. The following year, in his foreword to the Annual Report the ECGD's Chief Executive described the BTC pipeline as "*one of the biggest successes of recent years in terms of ECGD's business.*"

**VI. The General Public Interest**

65. I first of all make some general comments about the public interest in disclosure of this information before commenting in slightly more detail on the specifics of the two documents at issue in this appeal.

*The nature of the project*

66. Overall it is my view that this is a case in which there is an exceptionally strong public interest in disclosure of the information arising out of the particular nature of the BTC project as described above, including its scale, cost, key role in the UK's energy policy and the fact that it was highlighted by ECGD as an example of its own good process in transparency and engagement terms (an issue that I would very strongly dispute).

*Taxpayer's money*

67. There is also a particular public interest in this case having regard to the very large sums of tax-payer money involved. I note what is said by the ECGD in its Grounds of Appeal on this subject. It appears to be their position that because ECGD does not expect to have to pay out in respect of this guarantee and because the taxpayer is only contingently responsible for losses (where premium funds are insufficient to cover residual losses) that there is no strong public interest arising out of this aspect.

68. I do not accept that:

68.1 First, that position is itself dependent on the extent to which the risks have been properly assessed. Although the Grounds of Appeal state that "financial losses to ECGD are much less likely to be caused by environmental or social factors than by other factors relating to the creditworthiness of borrowers or purchasers", that does not mean that those factors do not affect risk. Indeed, in a case such as this, social and environmental risks are very significant and could have a real effect on the financial viability of the project and hence the risk to ECGD. Two particular examples of how that is the case are set out in Annex 2 to this statement.

68.2 Second, the fact that UK taxpayer money might not actually be called on (and I hope it will not) does not detract from the fact that a significant sum of tax-payer money has been put at risk in order to support UK involvement in this Project. Knowing the basis on which such monies have been put at risk and the basis on which the UK Government chooses

financially to support (whether by insurance, guarantee or subsidy) certain projects is a matter of considerable public interest.

69. At this point, it is important to recall that the procedures introduced through the OECD Arrangement, the EU's May 1998 Directive, the OECD's Common Approaches, the ECGD's Business Principles, the CIAP and the ECGD's Mission Statement were all adopted with specific public interest purposes: namely to protect the taxpayer from losses, to achieve coherence between support for projects and broader sustainable development objectives, and to mitigate the adverse environmental and social impacts of projects.

*Stakeholder engagement*

70. A further area of general public interest relates to the way in which ECGD engages with its NGO stakeholders.
71. Many hundreds of hours and other resources went into stakeholder engagement by The Corner House in this case (see e.g., the list of submissions at Annex 1). Doubtless other stakeholders would have provided a similar level of resource commitment. More over, for groups that are part of the Baku Ceyhan Campaign and are based in the host countries their involvement represented not just very considerable time and effort but, often, considerable personal risk. I also have no doubt that ECGD will also have spent very considerable amounts of time in considering all of our submissions. I say that because one of our concerns is that having sought (and received) such detailed stakeholder engagement over many months there is a particular concern that the ECGD is unwilling to tell us how all of our submissions and representations were received: which were accepted, which not accepted and why? I have a concern that this approach is likely, over time, to reduce the willingness of NGOs to engage positively and actively with ECGD. Should this happen, then ECGD would be deprived of a critical source of information on project risks that would not otherwise be available to it.

72. In my experience, ECGD's approach is extremely unusual in providing a context in which stakeholders are invited to make representations and are then engaged in stakeholder dialogue but are not only given no information at the end of the process as to how the information and submissions they have provided have actually been received - but are actually refused access to the only internal documents that would explain how such representations have been dealt with. Not only is that very unusual but it is fundamentally at odds with modern norms of good governance: for example, this approach is at variance with the general approach of the Government in respect of formal public consultations (see e.g., Criterion 4.4 of the Government's Code of Practice on Written Consultations); it is also at odds with other schemes in which stakeholders are invited (as here) to comment on an application by a third party for a benefit (e.g., for a permission or licence).
73. In each of those contexts, the public authority making the decision will make available to its stakeholders details of its reasoning in respect of the issues raised by them – sometimes in very great detail. There is a good common sense reason for that, which is that the value of stakeholder engagement (whether by formal consultation or otherwise) is very significantly undermined if those who take the time to feed into the process are not informed whether (and how) their submissions have affected the process. Where, as in the case of the BTC pipeline, groups on the ground in the countries affected by the Project have suffered intimidation and surveillance by the national security services as a result of their engagement with international financial institutions, such as ECGD, the failure to respond to their input not only offends commonsense but is arguably detrimental to wider international efforts to build democratic accountability.

#### *Pricing of risk*

74. It is also important to reiterate that ECGD is under a legal duty to price risk adequately in order that it does not impose a burden on taxpayers. Past experience shows that inadequate due diligence and poor financial management has been responsible for the ECGD incurring large losses. The

government's requirement that the ECGD operate at no net cost to the taxpayer reflects a clear policy on the part of government to avoid such losses in the future.

75. The Corner House believes that the proper pricing of risk relies fundamentally on rigorous procedures for ensuring that identified risks are conveyed to, and assessed by, underwriters. However advanced the financial risk management systems in place at the ECGD might be, they are only as good as the information fed into them. Indeed, as the ECGD said to the Information Commissioner in the course of the investigation "*Decisions made on the basis of incomplete information and discussions are likely to be poor and therefore more 'expensive' in terms of the eventual financial outcome for ECGD and ultimately the tax-payer...*" (**OB 248**, para. 75).
76. If the ECGD is to comply with its legal obligations to charge premiums that correspond to the risks covered, as mandated by the EC Directive, then it is critical that ECGD underwriters are fully appraised of all material risks as have been reported to the ECGD, or of which the ECGD is otherwise aware.
77. There is thus a clear public interest in ensuring that ECGD's due diligence on the projects it supports – including its assessment of social and environmental risk – should be conducted with the utmost rigour in order to safeguard public funds. The public can only be assured that this is the case if they are in a position to scrutinise the ECGD's assessment of such risks, the more so where such risks have been the subject of submissions made by the public itself.

#### *Sustainable development and the ECGD*

78. Many of the projects that ECGD is asked to support (in particular its High Impact Projects such as BTC) are projects that by their nature have very significant social, environmental and human rights implications. The UK taxpayer in being asked to provide financial support for such projects needs to be satisfied that such support is compliant with the UK's own policies on

social, environmental and human rights issues, as is required under the ECGD's own Business Principles.

79. ECGD's support for large-scale infrastructure projects with serious environmental and social impacts is a matter of considerable public interest. This level of public interest is evidenced in part (though not exclusively) by the concerns raised by a series of twelve parliamentary inquiries since 1999, including the International Development Committee, the Environmental Audit Committee and the Trade and Industry Committee as well as by the large number of letters sent to the ECGD by members of the public in relation to specific projects.
80. Most recently, the Environmental Audit Committee carried out a report into the ECGD and Sustainable Development (published October 2008). That report included detailed consideration (and critique) of ECGD's record of transparency [**NH1 261**]. The Committee noted that transparency was at the heart of criticisms of ECGD made during the course of its inquiry (including by Corner House).
81. In order to ensure that the ECGD has complied with its duties with regard to pricing risk and with its stated policies on sustainable development and human rights, it is not sufficient that ECGD should simply assert this to be the case – the more so where serious concerns, backed by documentary evidence, have been expressed that ECGD's due diligence has been insufficiently rigorous to substantiate such an assertion. If the public is to be reassured that the ECGD's decision to back the BTC pipeline was sound – and if deficiencies in its procedures are to be identified and corrected – then it is critical that the key documents on which its environmental and social assessment was based should be open to public scrutiny. If, moreover, the assessment of the Project given by the BPU to the Underwriting Committee – and ultimately, as acknowledged by ECGD, to Ministers - was flawed, partial, or incomplete then it may well have had a significant negative effect on the ability of the ECGD properly to carry out its functions.

82. If there are no such shortcomings in the BPU's assessment (and the underwriting committee's consideration) then publication of the information would still significantly assist public understanding of a decision making process (and a substantive decision) which has been trumpeted by ECGD as a model of transparency and public engagement. As the Environment Audit Committee recently put it [**NH1 269**]:

38. The current shortcomings in the ECGD's information disclosure procedures breed suspicion and misunderstanding, often exposing the ECGD to unnecessary criticism. By failing to disclose a wider range of information as a matter of course, the ECGD has directly contributed to the negative perception of its sustainable development policies.

39. Where decisions are taken that appear contrary to the information available in the public domain (for example in the classification of projects into impact categories) the ECGD should publish an explanation of their decision and provide further supporting material as necessary. This will increase confidence in the ECGD's procedures and make it easier for Parliament and interested parties properly to assess the ECGD's decisions.

83. Without access to the documents, it is also much harder for members of the public (including expert stakeholders such as The Corner House) to assess the robustness of the ECGD's decision making process or to assist the ECGD, in areas where we have expertise, to improve on the assessment process.

84. In particular, it is impossible for the public to judge the following issues:

- Whether or not the impacts and risks identified to ECGD were adequately taken into consideration by ECGD, in line with its stated policy (CIAP para. 8.3, **OB 331**)<sup>14</sup>;
- Whether or not the issues raised by other government departments (for example DEFRA's concerns over the impacts of the Project's legal regime on rights of redress and over the legal status of the World Bank's safeguard standards) were properly assessed by ECGD against the government's policies on sustainable development and human rights (particularly, in this case, its duty to protect and promote human rights);

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14. CIAP paras 8.3: "material comments" received as a result of such consultation exercises "will be taken into consideration"



- Whether the full range of the government’s policies on sustainable development (as listed by the Government’s Sustainable Development Commission) [NH1 271]<sup>15</sup> were taken into account when assessing the Project’s compliance with the ECGD’s Business Principles;
- Whether or not the BPU’s report adequately appraised the Underwriting Committee of the commercial and political risks arising from the environmental, social and human rights impacts identified;
- Whether the conditions recommended by the BPU were sufficient to prevent infringements of human rights and adverse environmental impacts; and critically
- Whether those conditions were accepted by the Underwriting Committee and recommended to be included in the loan agreements<sup>16</sup>.

*The project was politically driven*

85. The need to subject the ECGD’s due diligence for the Project to rigorous analysis is particularly important given the extent to which the BTC Project was politically (as opposed to commercially) driven – with politics arguably overriding commercial considerations and (of particular relevance in the context of this Appeal) environmental and social due diligence. Further details of the extent to which this project was politically driven are set out in Annex 3 to this statement.

**VII. Public interest in disclosure of the BPU report**

86. As noted, the ECGD is committed to assessing the social and environmental impacts of the projects it supports, with a view to ensuring that they accord with the government’s policies on sustainable development, human rights and development. It is also legally bound adequately to price risks, which, in

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15. The Government’s international sustainable development priorities, “primarily arising from the World Summit on Sustainable Development, the Doha Development Agenda of the WTO, the Monterrey Consensus on Financing for Development and the Millennium Development Goals”, are set out at <http://www.sustainable-development.gov.uk/international/priorities.htm>

16. Section 10 of the BPU Report reads “The BPU considers that the BTC project complies in all material respects with the relevant standards and guidelines. If ECGD decides to support the project, the BPU recommends that such support should be subject to the conditions set out in this Review.” (That wording was originally withheld but was provided by letter dated 14 November 2008) [OB 195]

the case of the Project, includes both commercial and political risks arising from the Project's environmental and social impacts. Such risks would include, but not be restricted to, engineering failures, risks of conflict and risks arising from human rights impacts.

87. The BPU's due diligence process is the principal means through which ECGD gathers information on such environmental and social risks (i.e., non commercial risks). It is also the sole process for assessing a project's compliance with the ECGD's business principles. The BPU report is the culmination of that process and forms an essential component of the final decision making by the Underwriting Committee (and therefore ECGD) in a case such as this.
88. The significance of the BPU's due diligence report in terms of the ECGD's decision-making procedures has been noted by the House of Commons Select Committee on Trade and Industry

This document constituted a major element of the information considered by the Department's Underwriting Committee prior to its decision to authorise support for the project. [OB 353 ]

89. The ECGD itself also underlines the importance of the report in its decision-making processes, noting that it "ultimately formed the basis of advice to Ministers when we recommended to them that they endorse the decision of the Underwriting Committee to support the BTC pipeline."<sup>17</sup>
90. It is my view that there is a very strong public interest in disclosure of the entirety of the BPU report and that the public interest is particularly strong in respect of precisely those elements of the report that have been redacted. As noted by the Trade and Industry Select Committee (quoted above), the BPU report is of fundamental importance to understanding the way in which the BPU carried out its social, human rights and environmental due diligence functions. It is only in that document that members of the public would be able to understand the result of the lengthy consultation and due diligence exercises and in particular to understand the conclusions that were reached

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17. Ibid. Oral Evidence. Question 2.

in respect of the decision to provide support. It provides the only available guide to the issues that the ECGD deemed of importance in terms of environmental and social risks; to how they were handled; and to the measures that were proposed for mitigating them. In that respect, it is as important to see what was omitted from the report as it is to see what was included.

91. The structure of the Report is, broadly speaking, that it sets out a range of issues covering the choice of route (Chapter 1) social and environmental issues (Chapters 2-3), compliance with various legal and policy requirements (Chapters 7), productive expenditure (Chapter 8), Environmental and social benefits (Chapter 9) and Overall Assessment (Chapter 10). There is then a Schedule headed 'Synopsis of BPU recommendations etc'. Specific issues covered include involuntary resettlement and compulsory land acquisition, damage to cultural and historic sites, child labour, minority or vulnerable groups, use of armed security guards, water pollution, wildlife & habitats, degradation of land, waste generation, atmospheric pollution and others.
92. Each of Chapters 1-9 follows a broadly similar pattern. In each case an overview of the issue is provided (which usually includes the view of the applicant (BTC Co)). That is then followed by a section headed **NGO Comments** which summarises some of the concerns raised by groups such as The Corner House. This is then followed by a section headed **BPU Assessment**.
93. The information that has been redacted consists (almost entirely) of
  - the section of each chapter that contains BPU's assessment of the subject;
  - "Schedule 1 Synopsis of BPU recommendations etc"
94. The other elements that have been redacted consist of specific paragraphs at 1.2.2 (without explanation) 2.4.1 (apparently for reasons of international relations)

95. The BPU report starts by explaining (under Methodology) that *'this report details the most significant potential impacts identified and the outcomes of the discussions about them.'*
96. The result is that whilst we now know, in broad terms, what matters ECGD's BPU thought were *"the most significant potential impacts"* we know nothing of *"the outcomes of the discussions about them."* It may also be that the redacted assessment passages address concerns that were not recorded in the ECGD's introductory summaries of issues. (Recent correspondence from the ECGD indicates that this is likely [NH1 301, discussed at para. 110 below).
97. As a result we do not know whether or not the material concerns raised by NGOs and other stakeholders had been adequately assessed by ECGD, in line with its stated policy (CIAP para. 8.3 **OB 331**). Although the disclosed passages summarise the concerns raised (in other words they are 'listed') – they do not include ECGD's assessment of those concerns. We also do not know whether the conditions recommended by the BPU (which have been redacted) are sufficient to prevent infringements of human rights and adverse environmental impacts.
98. In fact, it is redacted information (i.e., the "outcomes of the discussions" and the BPU's assessment and recommendations) that are of the greatest public interest. In order to understand this I look at a few examples from different sections of the report.
- 98.1 Para. 1.1 – Route selection macro-scale [**OB 75**]. The BPU report starts by summarising the position as presented (broadly speaking) by the applicant. It then sets out those NGO comments that the BPU considers the *"most pertinent"* (footnote 4) which in this case are concerns expressed by WWF about the absence of a Strategic Environmental Assessment and by other NGOs about the absence of assessment of 'without project' alternatives in the preparation of the project. However, we have no idea at all what conclusion BPU reached about these concerns. By way of example only, was it considered that these concerns were well founded or ill founded? Was it considered that the 'without project'

alternative was assessed, or that it was not assessed but did not need to be, or that it was not but that this did not matter? Was it considered that the WWF concerns were misleading?

98.2 Para. 2.2.7 – Turkey Inland Water - Ceyhan Marine Terminal [**OB 87**]: This section summarises two sets of competing factual and expert evidence in the form of statements by WWF on the one hand and by the International Finance Corporation (for BTC Co’s behalf) on the other hand. The competing evidence relates to ‘best practice for ballast water disposal’ in environmental protection terms. However, what we are not told is whose evidence the ECGD accepted and on what basis. Bearing in mind the nature of the stakeholder engagement process, it is extraordinary that stakeholders who engage so conscientiously with the process are not allowed to know whether their evidence was accepted or rejected and if so why. Nor are they told whether there is other information that was provided subsequently and on which they were not able to comment. This point arises in a number of different sections of the report.

98.3 Para. 2.5 The use of Unsustainable Resources [**OB 96**]: A key role of the BPU report ought to be to assess the Project’s compliance with the UK’s stated Sustainable Development policies. One such policy – unfortunately the only one that appears to have been explicitly considered in the report – is a commitment to reduce the unsustainable consumption of resources, commitment to which the ECGD has also bound itself (see para 37 above). The summary notes that implementation of the Project will not only directly involve the unsustainable consumption of fossil fuels but will also “facilitate the much more significant unsustainable consumption of the crude oil it conveys from the Caspian . . . “. The BPU then notes that the issue was raised by Friends of the Earth. However, the entire assessment of the issue has been redacted. A stakeholder such as Friends of the Earth is not therefore in a position to judge how the ECGD addressed the project’s compliance with this key plank of the UK’s Sustainable Development policy. This is of particular importance given that the issue

of unsustainable resources was flagged by DEFRA as a matter of particular concern [NH1 207]; that it was flagged by the BPU as an issue for further discussion by the Underwriting Committee; and that it was indeed considered in its meeting of 5<sup>th</sup> December 2003 (a matter that has only been disclosed to us by accident see ECGD's letter to ICO [OB 247, para. 66] (In passing, I note that even within that later report any discussion of how Climate Change is to be addressed within the context of the BTC project has been redacted [OB 136, para. 3.3]. .

98.4 3.1.2 – Involuntary resettlement and compulsory acquisition (Georgia) [OB 101]. An issue of significant concern in relation to the pipeline was the effect on local people's land rights. Very large amounts of land were either compulsorily purchased or made subject to other limitations or restrictions. In Georgia all land along the pipeline was compulsorily acquired. The first part of this section sets out the facts from a BTC Co. perspective. The following section contains NGO comments in particular those of the local Georgian group Green Alternative. The document summarises some detailed criticisms made by Green Alternative as to the way in which compensation was dealt with and to particular ownership disputes. The lack of disclosure of the BPU assessment again raises the following questions: Were the submissions of Green Alternative accepted or rejected? If rejected on what basis? Did BPU require further action to be taken before ECGD could grant a guarantee? If so, what action and how would that action be secured?

Likewise, the section on land acquisition in Turkey [OB 104] correctly records NGOs concerns over the use of Emergency Powers (under Article 27 of the Turkish Expropriation Law) to expropriate land. The BPU report then sets out the views of the Turkish legal council to the Lenders Group. However, the lack of disclosure of the BPU assessment again leaves the public in the dark as to the view the ECGD itself came to take on the issue

98.5 Para. 3.4 – Impacts on minority or vulnerable groups [OB 109]. The main issue arising under this heading (so far as the BPU report is concerned)

relates to whether there are any people along the pipeline that are 'Indigenous Peoples' so as to qualify for the limited protection set out in the World Bank Group's Operational Directive on Indigenous Peoples (OD4.20). BTC Co stated that there were no such people. On the other hand the Kurdish Human Rights Project asserted that Kurdish communities along the pipeline did meet such a definition and so would be afforded the protection of OD4.20. However, in the absence of the BPU's assessment we have no idea which of those competing arguments the BPU (and therefore ECGD) accepted or why they did so.

98.6 5. IGA and HGAs [**OB 117**] – One of the most hotly contested issues in relation to this project related to the international legal architecture for the project which took the form of an Inter Governmental Agreement (IGA) between the three host Governments and the three Host Government Agreements (HGAs) between, in each case, BTC Co and each of the three host Governments. A range of human rights, environmental and development NGOs expressed serious concerns about the extent to which the legal architecture amounted to an abrogation of the host states' sovereign powers and the extent to which it undermined Turkey's accession to the EU. These are serious issues with implications not merely for ECGD's consideration of this project but more widely. However, once again, NGO stakeholders who have made such representations are not told whether their representations were found to be valid or invalid and on what basis?

98.7 Para. 6.3 – European Convention on Human Rights [**OB 122**]: BPU sets out five particular rights which it considers are relevant to BTC. Under four of those rights (slavery and forced labour, liberty and security, private and family life; and protection of property) all information has been redacted. BPU has however disclosed information under the heading 'Right to a fair trial' setting out the position of BTC Co. It also discloses its view that "rights guaranteed by the ECHR are sufficiently safeguarded in connection with the BTC project" [p.52]. However, no reasons justifying this view are

disclosed. Indeed, in none of the cases is it explained how BPU/ECGD has assessed these issues of fundamental human rights in light of the concerns about them raised by NGOs.

98.8 Para. 9 – Environmental and social benefits arising from the project [**OB 129**]. Under this heading BPU lists eight such benefits that ‘are expected to arise as a result of the BTC project’. NGOs had vociferously contested such claims of benefits and had submitted evidence on this point. That evidence was summarised (entirely inadequately as it happens) as ‘Insufficient benefits will accrue directly to the project-affected communities’. However, once again we are not told whether BPU considered the question of benefits to be significant or how it treated the evidence and submissions by the NGOs or whether any particular recommendations were made in respect of this issue?

99. The points above are in addition to the examples raised in our letter of complaint to the Information Commissioner of 20 December 2006 at paragraphs 45-50 of that letter [**OB 206**].

100. The ‘Overall Assessment’ was originally withheld but was disclosed as a result of the Internal Review in a letter dated 14 November 2006 (nine months after the request for the internal review was made). The ‘overall assessment was that:

“The BPU considers that the BTC project complies in all material respects with the relevant guidelines and standards. IF ECGD decides to support the project, the BPU recommends that such support should be subject to the conditions set out in this Review.”

101. However, that brief statement not only fails to make up for the lack of detail in relation to the specific issues, but is also of limited value because: (a) it leaves begging the important question of which guidelines and standards are considered ‘relevant’ (see e.g., the position in relation to contested OD4.21 at para. 98.5 above); and (b) it does not disclose the conditions which BPU recommended should be imposed on any support granted. Knowing what those conditions are is particularly important because: (a) they are a litmus test of the extent to which the BPU is implementing ECGD’s Business



Principles in practice – where conditions clearly should have been recommended/imposed but have not been, this would be of concern; and (b) the conditions recommended by the BPU may have been broader than (or different to) the conditions eventually required by the ECGD in its Note of Decision on the project, potentially raising questions as to the basis for any such difference.

#### **VIII. Public interest in disclosure of the Underwriting Committee Report**

102. Many of the points made above also apply to public interest in disclosure of the Underwriting Committee minutes. The following points are therefore to be treated as further points arising particularly in relation to the Underwriting minutes.
103. I note that the minutes of the underwriting committee represent the culmination of several years of work by ECGD in respect of consideration of the BTC application. It represents, in effect, the final decision making meeting. As such the importance of the meeting cannot be overestimated.
104. It is known (from documents released under the Freedom of Information Act) that the cover sought from ECGD for the Project included “both political and commercial risks”.<sup>18</sup>
105. It is also known that ECGD obtained a large amount of information to help it assess those risks: For example, as noted above, the ECGD invited and received comments on the Project’s impacts and risks from both government departments and other interested third parties (many of which had a direct bearing on both political and commercial risks of the project). It also commissioned a number of technical reports, undertaken by consultancy group Worley Parsons, to assess the Project, including its engineering aspects. ECGD also undertook its own due diligence research on the Project, including undertaking a field visit along portions of the pipeline route.
106. All of that is to be welcomed. However, what is still not known is:

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18. ECGD, “Baku-Tibilisi-Ceyhan Pipeline”, BTC Treasury Submission, May 2003 redacted, p.5, released under Freedom of Information request by Friends of the Earth.

- 106.1 Which of the various political and commercial risks (and this is ultimately the role of the underwriting committee) were actually considered material and therefore, presumably, considered by the underwriting committee;
- 106.2 How each of those risks were actually assessed.
107. Whilst it is obviously a matter for the Tribunal to consider, I do not understand how it can be viewed as necessary (absent any claims for commercial confidentiality – which have not been cited) to withhold, in effect, the entirety of the consideration by the underwriting committee of its risk assessment for the BTC Project. The result is that, despite the huge variety and seriousness of the risks that were presented to the ECGD, members of the public have no information at all as to which risks were assessed or the ECGD’s conclusions in respect of those risks. I note that the published Decision Document [OB 344] is particularly uninformative in this regard stating only that *“The Project has been assessed in accordance with ECGDF’s underwriting procedures. These include an appraisal of the risks to ECGD of providing cover for the Project...”* [OB 345, para. 4]
108. It appears from the information released that the BPU recommended a number of conditions to the Underwriting Committee and that a number of concerns remained unaddressed at the time that the project was considered by that committee. However:
- 108.1 Without access to the full minutes of the underwriting committee meeting, it is not possible to tell whether (and to what extent) the BPU’s conditions were accepted or to understand what consideration was given to them by the Committee. It is also not possible to determine how the outstanding issues were resolved – a key test of the extent to which the ECGD’s case handling procedures are sufficiently rigorous to ensure that projects comply with ECGD stated social and environmental policies.
109. The public interest in disclosure of the BPU Report and the Underwriting Committee Minutes is enhanced given the reliance subsequently placed on that report and the Committee’s consideration of it by ECGD. In a recent

letter to me dated 30 January 2009 ECGD responds to my requests for information as follows [NH1 301]:

**(d) Did the ECGD undertake an assessment of the conflict-related risks raised by NGOs prior to the decision to support the BTC project? If so, please supply the title and date of the assessment and the identity of the department or institution that undertook it.**

Points (a) [risk of inflaming conflict in the region] and (b) [risk of attacks on the pipeline by Kurdish separatists] above were included in a paper submitted to ECGD's Underwriting Committee entitled 'Baku-Tbilisi-Ceyhan Pipeline Project' and dated December 2003.

...

**(f) Did the ECGD consider any of the above conflict-related risks to be material?**

These were considered to be material insofar as they were considered by ECGD's Underwriting Committee.

**(g) Was the Underwriting Committee informed of the above conflict-related risks prior to a decision being made to support the BTC project?**

Yes – see d) above.

110. In other words ECGD claims that the BPU Report included an assessment of the specific conflict related risks raised by NGOs and, moreover, that those risks were identified to the Underwriting Committee through the medium of the BPU Report. However, I have not been able to identify where in the BPU Report such NGO concerns were set out or assessed. It would appear either that ECGD are mistaken about the BPU's consideration of such concerns (which would be a matter of concern) or the information is included in a section of the report that has been redacted (although ECGD's position thus far has been that the only redacted information has been BPU's own assessment).
111. Moreover, ECGD states (somewhat tautologically) in the letter quoted above that the conflict risks "*were considered to be material insofar as they were considered by ECGD's Underwriting Committee.*" However, as the Committee minutes (as released) do not indicate which such conflict risks were considered, members of the public have no information at all as to which conflict risks were considered by ECGD to be material considerations.

#### **IX. Brief conclusion on public interest**

112. In summary, I consider that the documents to which access is sought in this appeal are of very considerable public importance and that the public interest in their disclosure is significant. In my view those documents go to

the heart of any consideration as to the manner in which the ECGD discharged its legal duty adequately to price its premiums (based on a proper assessment of risk) and fulfilled its obligations of ensuring that its ECGD's activities accord with (a) its own business principles; and (b) the UK's policies and international obligations on sustainable development and human rights.

113. It is moreover a matter of real concern that ECGD is, on the one hand, prepared repeatedly to trumpet this project (see paras. 61-64 above) as an example of its transparency, application of its 'business principles' and its positive stakeholder engagement whilst, on the other hand, refusing to disclose either to those stakeholders or to the general public the only documentation that sets out the outcome of that engagement and how those concerns have been taken into account.

DATED 5 March 2009

.....

SIGNED      Nick Hildyard

**Annex 1 to the Witness Statement of Nicholas Hildyard**

**Details of submissions, and documentation provided by The Corner House, to ECGD in relation to the Project**

1. The Corner House, individually and/or as part of the Baku Ceyhan Campaign of which it was a founding member, submitted detailed evidence to ECGD documenting the Project's failure to comply with the ECGD's stated policies on environment, development and human rights. The Corner House also submitted evidence to the Foreign and Commonwealth Office and the Department for International Development, the government departments from which ECGD seeks advice, respectively, on the human rights and developmental impacts of projects being considered for support.<sup>i</sup> In addition, concerns were raised during meetings with ECGD officials.<sup>ii</sup>
2. The documentation submitted to ECGD and other interested government departments is summarised below.
  - The findings of in-depth on-the-ground fact finding missions to Turkey (2002<sup>iii</sup> and 2003<sup>iv</sup>), Georgia (2002<sup>v</sup> and 2003<sup>vi</sup>) and Azerbaijan (2002<sup>vii</sup> and 2003<sup>viii</sup>), including details of unlawful expropriation of land for the pipeline, corruption in the expropriation process, inadequate compensation and intimidation of affected villagers and project critics;
  - Update reports (October 2003) from NGOs in Georgia and Azerbaijan on the failures in the implementation of the project;<sup>ix</sup>
  - June 2002 letter, signed by over 60 regional and international non-governmental organisations (NGOs), raising a range of environmental, human rights, developmental and environmental concerns;<sup>x</sup>
  - Testimony from affected villagers and critics of the project alleging human rights abuses;<sup>xi</sup>
  - Testimony from pipeline workers, alleging major breaches of standard quality assurance practices, including inadequate record keeping, and evidence that faulty welding has been permitted to go un-repaired;<sup>xii</sup>

- Legal analysis of the adverse human rights and environmental implications of the agreements that established the legal regime for the project;<sup>xiii</sup>
- A detailed Memorandum (November 2002), also signed by international and regional NGOs, outlining major concerns relating to: denial of Public Purpose; regional development and poverty alleviation concerns; debt implications of Host Government Agreements; the Turnkey Agreement and IMF loan ceilings; overwhelming Georgia's institutional capacity and undermining the transition to democracy; corruption concerns; legal implications of Intergovernmental and Host Government Agreements: concerns over conflicts with international law, EU law and Turkey's accession undertakings; pipeline security, human rights, conflict and militarisation of the region; violations of World Bank Safeguard Standards on consultation and ethnic minority issues.<sup>xiv</sup>
- A Complaint under the OECD Guidelines on Multinational Enterprises, alleging that the BTC project breached the guidelines in relation to: exerting undue influence on the regulatory framework of the host governments; seeking or accepting exemptions related to social, labor, tax and environmental laws; failing to operate in a manner contributing to the wider goals of sustainable development; failing to adequately consult with project-affected communities on pertinent matters; and undermining the host governments' ability to mitigate serious threats to the environment, human health and safety.<sup>xv</sup>
- A detailed critique of the environmental and social impact assessment for the project, including documentation of 173 violations of the World Bank Safeguard Policies to which ECGD is committed, EU directives and local law.<sup>xvi</sup>

**Annex 2 to the Witness Statement of Nicholas Hildyard [Paragraph 68]**

1. This annex provides information in relation to how two of the social / environmental issues raised can have a significant bearing on financial risk. This is relevant as one of ECGD's arguments is that the types of issue that were raised by groups such as The Corner House are unlikely to be relevant to risk assessment. However, that is an over-simplistic approach to the issues involved.
2. The first of the issues relates to the risk of conflict in the area – an issue raised repeatedly by civil society groups. The second, quite different, issue relates to the technical capability of the pipeline coating. This issue was raised first not by civil society groups but by ECGD's own consultants prior to the publication of the BPU report.

a) Conflict Risks

3. The pipeline passes close to several conflict zones and through a politically unstable region<sup>xvii</sup>.
4. Prior to supporting the Project, ECGD confirmed that 70 per cent of the costs of financing the Project "will be funded by debt from many sources, including . . . ECA tied funding"<sup>xviii</sup>. The ECGD also stated that: "funds to pay the debt service for [the Project] will be accrued from the tariff charged to shippers under the Transportation Agreement". Should conflict result in the flow of oil through the pipeline being disrupted (due to a change in government locally, for example, or to physical damage being caused to the pipeline or to a producer deciding not to transport oil through the pipeline), then the commercial viability of the project would clearly be affected. Assessing the conflict risks of the Project was thus clearly of importance to any realistic pricing of premium risks.
5. Prior to ECGD's decision to fund the BTC oil pipeline in December 2003, national and international non-government organisations (NGOs) repeatedly warned UK government officials of the high risks posed to the project by

conflicts in the region – and the strong possibility that the project itself would exacerbate such conflicts.<sup>xix</sup>

6. NGOs also specifically drew ECGD’s attention to statements by the Partiya Karkeren Kurdistan (Kurdish Workers Party or PKK) that the pipeline would be a target for military action by its forces in response to continued repression of Turkey’s Kurdish minority by the Turkish State.<sup>xx</sup>
7. The Foreign and Commonwealth Office also recorded that Russia viewed the pipeline “as part of a wider American plot to squeeze Russia out of the Black Sea and the Caucasus.”<sup>xxi</sup>
8. In December 2002, Baroness Symons, replying on behalf of ECGD,<sup>xxii</sup> assured The Corner House that “the pipeline route was chosen specifically to avoid areas of conflict”. No reasons were given to justify this statement
9. The BPU report contains a section that assesses the pipeline route and confirms that the security considerations determined the pipeline route.<sup>xxiii</sup> However, (a) there is no indication given of the concerns raised by NGO groups; and (b) the assessment of these security consideration – which would presumably include assessment of the conflict risks raised by The Corner House and others – has not been disclosed. It is therefore impossible for NGOs and the public to reach a view as to how the conflict risks they raised were assessed, or even whether they were assessed at all, and hence whether the pipeline route was justified or, equally critically, whether the premiums charged by the ECGD were likely to have been adequate to cover the true conflict risks. This issue is particularly serious in light of the ECGD’s recent statement in a letter to me (see para. **[NH1 301]** above) that the assessment of such risks was carried out by BPU and recorded in the BPU Report and, moreover, that the risk assessment by the Underwriting Committee of those issues was based on the BPU Report.
10. Recent events have underscored the very real risks that conflict pose to the Project and thus the public interest in disclosure. In 2008, a section of the pipeline was blown up by the PKK, leading to disruption of oil



transportation,<sup>xxiv</sup> whilst resurgent conflict in Georgia resulted in Russian airstrikes along the pipeline route, with some missiles landing within 100 yards of the pipeline itself.<sup>xxv</sup> Fears have been expressed that Russia's actions may prompt governments in Caspian and Central Asian oil-producing states to rethink plans to send their oil via BTC.<sup>xxvi</sup> In particular, analysts are questioning whether BP can rely any longer on future plans for oil from the Kashagan oil field in Kazakhstan to be shipped to the West via BTC.<sup>xxvii xxviii</sup>

**b) Risks related to the pipeline coating**

11. The risk that the pipeline might be subject to systemic engineering failures would also affect the Project's ability to repay its debts, and thus the premium that ECGD might charge to cover its commercial risks. It would also have profound impacts for environmental pollution.
12. Prior to approval of the Project, and to the BPU writing its report, ECGD was warned by Parsons E&C, the independent engineering consultant which advised the ECGD that it had "major concerns" about the integrity of the field joint coating being used on the Azerbaijan and Georgian sections of the pipeline. The field joint coating is integral to the protective coating for the pipeline: a failure could result in a major pollution incident involving the leaking of oil. If the coating failure resulted from a systemic fault, the entire pipeline would need to be unearthed and recoated. The issue was thus clearly of importance for risk pricing and risk mitigation, particular given the experimental nature of the coating which, as the ECGD acknowledges, had never been used on a similar pipeline.<sup>xxix</sup>
13. Parsons E&C's interim "Design Appraisal Report" noted: "Field joints will be coated using liquid applied systems . . . As these coatings are not fully compatible with the polyethylene outer jacket of the three-layer system, and will pull off and peel strength between them if known to be relatively low, trials will be required to establish a procedure to provide greater bond strength at the coating interface".<sup>xxx</sup> Parson also stated: "Experience has proven that there will be damage, even though the chosen coating has damage resistant properties. Repairs and field joint coating is a major

concern for the selected coating system because it does not lend itself to repair as a di-eletric does not work well with Cathodic protection when it fails.”<sup>xxxix</sup> Parson recommended that coating conditions in high-groundwater right-of-way areas be monitored and inspected at more frequent intervals.

14. Parsons also notes that the coating system being used in Turkey was associated with "4 catastrophic failures" elsewhere in the world and warned: "When significant areas of corrosion are located in the future, the pipes will have to be excavated and recoated. The expense will be significant".<sup>xxxix</sup> Parsons concluded: "The ability to effectively repair coating damage and to coat field joints in a manner that will meet the 40-year design life is questionable for the selected line pipe coating"; and, "The possibility of a failure of the pipeline coating system should be evaluated".<sup>xxxix</sup>
15. Freshfields Deringer Bruckhaus, the legal counsel for the ECAs participating in the project, including ECGD, also raised questions over the difficulty of maintaining coating integrity for the design life of the Project in an environmental issues matrix for consideration by the ECAs.<sup>xxxix</sup> Concerns about field joint and line pipe coatings also appeared in the Independent Engineer’s final report.
16. These warnings are of particular significance given that BP’s own consultant, Derek Mortimore, also warned that the coating selected for use on the pipeline in Azerbaijan and Georgia was “utterly inappropriate to protect the pipeline”.<sup>xxxix</sup> ECGD was not informed of this report.
17. Extensive cracking occurred along the pipeline in November 2003. In 2004, following ECGD approval of the project, a survey revealed that over a quarter of the pipeline in Azerbaijan had been affected. Although BP claimed to have resolved the problem, a major investigation by Bloomberg, the financial news agency, in January 2006 found that cracking had continued.<sup>xxxix</sup>
18. The Corner House also notes that the coating had never previously been used on a similar pipeline and had not been fully tested before it was selected for

the pipeline, consideration of particular significance given ECGD's legal duty to price risk adequately.

19. The BPU report (in its redacted form) contains no indication that the issue of the pipeline coating was considered at all.

**Annex 3 to the Witness Statement of Nicholas Hildyard [Paragraph 85]**

1. The following paragraphs explain the basis on which it is considered that the BTC project was politically rather than commercially driven such as to enhance the public interest in disclosure of information relating to the project for the reasons set out at paragraph 85.
2. The ECGD's has admitted<sup>xxxvii</sup> that at least one important element of the BTC project were politically-driven. In a briefing on the BTC project for its Advisory Council, ECGD stated: "Politics had dictated the route".
3. Shortly before announcing its involvement in the project, BP, the lead company in the consortium building the pipeline, informed the government that the pipeline was commercially unviable.<sup>xxxviii</sup> An internal DTI email dated 2 September 1999 was also blunt: "Essentially the route is uneconomic".<sup>xxxix</sup> BP itself was reported by the Foreign and Commonwealth Office to have estimated that "Baku-Ceyhan still fell USD 1 billion short of being commercially viable" and that "everything depended on making up the missing volumes from eastern Caspian production."<sup>xl</sup> Even after the Intergovernmental Agreement<sup>xli</sup> initiating the project had been signed in December 1999, Department for Trade and Industry officials again expressed concerns that "the route is not commercially viable."<sup>xlii</sup>
4. Although BP was subsequently reported to have redone "its sums"<sup>xliii</sup>, arguing that there was enough oil in the Azeri, Chirag and Gunahli Caspian oil fields to ensure the pipeline was "a commercial prospect"<sup>xliv</sup>, internal UK Government assessments written after BTC first approached ECGD for support suggest that BTC would need to transport oil from Kazakh fields after "the initial stages" of the project: "BTC will transport 1 million bpd [barrels per day]. BTC will not need Kazakh crude in the initial stages, although there may be some extra capacity for it. ACG will peak around 2010 and begin to decline around 2012-15. This will coincide with an increase in output from Kazakstan/OKIOC. The CPC may not be able to carry this increase and therefore BTC may begin to transport Kazakh crude."<sup>xlv</sup>

5. If the BTC pipeline’s commercial viability was indeed dependent on Kazakh oil, then the environmental impacts of tanker traffic across the Caspian Sea should have been included in any assessment of the project’s environmental risks. Given that, as of 2008, the pipeline is now being used to transport Kazakh oil,<sup>xlvi</sup> there is a very strong public interest in the BPU’s assessment (if any) of the possible need for Kazakh oil and the attendant environmental risks being disclosed. Given the views expressed by HM Government as to the project’s commercial non-viability without Kazakh oil, it would be of great concern if the project was approved on the basis that the project would only transport oil from the Azeri fields and that no assessment of the risk from tanker transportation across the Caspian was therefore required.

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- i. ECGD, Case Impact Analysis Process, May 2004, para 51.3: “ECGD investigates whether support for overseas projects might breach any international obligations or policies of the UK government and consults other government departments, as appropriate.”
  - ii. DfID, “Informal Record of UK Government Meeting with NGOs on BTC Oil Pipeline”, 30 October 2002; DfID, “Note of UK Government Meeting with NGOs on the BTC Pipeline on 29th May 2003”.
  - iii. “International Fact Finding Mission, Preliminary Report: Azerbaijan, Georgia, Turkey Pipeline Project – Turkey Section, August 2002”, available from <http://www.bakuceyhan.org.uk/publications/pipelines-factfinding-turkey.pdf>, sent to ECGD 13th November 2002, as attachment to “Memorandum from Concerned NGOs”.
  - iv. Corner House, letter to Vivian Brown, Chief Executive, ECGD, 5 May 2003, and Baku Ceyhan Campaign et al to Vivian Brown (Chief Executive of ECGD) et al, “Moratorium on BTC Pipeline Project”, 27 May 2003, enclosing “Report of International Fact Finding Mission: Baku-Tbilisi-Ceyhan Pipeline – Turkey Section”, available from [http://www.bakuceyhan.org.uk/publications/Tu\\_FFM.pdf](http://www.bakuceyhan.org.uk/publications/Tu_FFM.pdf).
  - v. “International Fact Finding Mission, Preliminary Report: Azerbaijan, Georgia, Turkey Pipeline Project – Georgia Section, July 2002”, available from <http://www.bakuceyhan.org.uk/publications/pipelines-factfinding-georgia.pdf>, sent to ECGD 13th November 2002, as attachment to “Memorandum from Concerned NGOs”.
  - vi. “Second International Fact Finding Mission to Baku-Tbilisi-Ceyhan Pipeline, Georgia Section, Initial Summary Report, 4 June 2003”, available from <http://www.foe.org/camps/intl/institutions/GaFFM03.pdf>, sent to ECGD 13 October 2003, as enclosure with Review of the Environmental Impact Assessment for the Baku-Tbilisi-Ceyhan Oil Pipeline.
  - vii. “International Fact Finding Mission, Preliminary Report: Azerbaijan, Georgia, Turkey Pipeline Project – Azerbaijan Section, September 2002”, available from <http://www.bakuceyhan.org.uk/publications/pipelines-factfinding-azerbaijan.pdf>, sent to ECGD 13th November 2002, as attachment to “Memorandum from Concerned NGOs”.
  - viii. “Second International Fact Finding Mission to Baku-Tbilisi-Ceyhan Pipeline, Azerbaijan Section, Initial Summary Report, 4 June 2003”, available from <http://www.foe.org/camps/intl/institutions/AzFFM03.pdf>, sent to ECGD 13 October 2003, as enclosure with Review of the Environmental Impact Assessment for the Baku-Tbilisi-Ceyhan Oil Pipeline.
  - ix. “Georgia Update” and “Comments from Azerbaijan NGOs on consultation” sent as attachments to Corner House et al, Letter to Jeanette Swindon, Business Manager Construction, ECGD, 10 November 2003.
  - x. Letter from NGOs to International Financial Institutions, “Baku-Tbilisi-Ceyhan Main Export Oil Pipeline Project - MDB and ECA involvement”, June 2002, available from [http://www.bakuceyhan.org.uk/correspondence/ngo\\_proposals\\_ifi.htm](http://www.bakuceyhan.org.uk/correspondence/ngo_proposals_ifi.htm), with accompanying Memorandum “NGO Proposals on IFI loans or guarantees for BTC pipeline”. Sent to ECGD on 13 November 2002 as attachment to Memorandum from Concerned Citizens, see reference 18.
  - xi. Baku Ceyhan Campaign, “Witness Statements by Applicants”, <http://www.bakuceyhan.org.uk/publications/statements.pdf>, made available to ECGD at NGO Seminar held at 11 Carlton House Terrace on 29 May 2003, “Does BP’s Baku-Tbilisi-Ceyhan Project break EU law and Turkey’s Accession Agreements”.
  - xii. Corner House et al, “Further comments, including allegations of faulty welding”, Letter to Jeanette Swindon, ECGD, 10 November 2003, enclosing “Annex 3 – Anonymised Statement on Construction Violation” and “Annex 4, Anonymous Emails Alleging Construction Violations”.
  - xiii. “Preliminary Analysis of the Implications of the HGA between Turkey and the BTC Consortium”, October 2002, available at [http://www.bakuceyhan.org.uk/publications/preliminary\\_legal\\_analysis\\_oct\\_02.pdf](http://www.bakuceyhan.org.uk/publications/preliminary_legal_analysis_oct_02.pdf), sent to ECGD 13th November 2002, as attachment to “Memorandum from Concerned NGOs” (see reference 18); Baku Ceyhan Campaign See: Moser, P., “In the Matter of The Baku-Tbilisi-Ceyhan Pipeline: Counsel’s Opinion, 15 January 2003”,

- [http://www.bakuceyhan.org.uk/publications/opinion\\_moser.pdf](http://www.bakuceyhan.org.uk/publications/opinion_moser.pdf); Baku Ceyhan Campaign, made available to ECGD at NGO Seminar held at 11 Carlton House Terrace on 29 May 2003, "Does BP's Baku-Tbilisi-Ceyhan Project break EU law and Turkey's Accession Agreements" and sent to ECGD 13 October 2003, as enclosure with Review of the Environmental Impact Assessment for the Baku-Tbilisi-Ceyhan Oil Pipeline, see reference 20; "Statement in response to the BTC Human Rights Undertaking", 6 November 2003, <http://www.bakuceyhan.org.uk/statementondeedpoll.doc>.
- xiv. Corner House et al to Vivian Brown (Chief Executive of ECGD), 13th November 2002, [Tab 3i] attaching "Memorandum from Concerned NGOs", available from [http://www.bakuceyhan.org.uk/correspondence/DfID\\_memo\\_feb\\_2003.pdf](http://www.bakuceyhan.org.uk/correspondence/DfID_memo_feb_2003.pdf).
- xv. Corner House et al, "BTC Project: Complaint under OECD Guidelines on Multinational Enterprises, available at [http://www.bakuceyhan.org.uk/publications/oecd\\_complaint\\_final\\_uk.doc](http://www.bakuceyhan.org.uk/publications/oecd_complaint_final_uk.doc), sent to ECGD 13 October 2003, as enclosure with "Review of the Environmental Impact Assessment for the Baku-Tbilisi-Ceyhan Oil Pipeline" (see ref 20).
- xvi. Letter to Vivian Brown, Chief Executive ECGD, "Baku-Tbilisi-Ceyhan oil pipeline: Violations of World Bank Safeguard Policies and Host Country Law", 23 October 2003, available at [http://www.bakuceyhan.org.uk/correspondence/letter\\_to\\_ECGD\\_re\\_EIA\\_oct\\_03.doc](http://www.bakuceyhan.org.uk/correspondence/letter_to_ECGD_re_EIA_oct_03.doc), enclosing all documents relating to "Review of the Environmental Impact Assessment for the Baku-Tbilisi-Ceyhan Oil Pipeline", available at [http://www.baku.org.uk/eia\\_review.htm](http://www.baku.org.uk/eia_review.htm).
- xvii. The pipeline route passes through or near seven different war-zones, see: [http://www.bakuceyhan.org.uk/more\\_info/humanrights.htm](http://www.bakuceyhan.org.uk/more_info/humanrights.htm)
- xviii ECGD, "Baku-Tbilisi-Ceyhan Pipeline", BTC Treasury Submission, May 2003 redacted, p.4, released under Freedom of Information request by Friends of the Earth.
- xix. See, for example: NGO Letter and Proposals to IFIs, June 2002, Section 6 – Military Conflicts in the Region and new Militarisation in the Pipeline Corridor; "Memorandum from Concerned NGOs to DfID, FCO, UK Treasury, ECGD", Section 9 – Pipeline Security, Human Rights, Conflict and Militarisation of the Region", [http://www.baku.org.uk/correspondence/DfID\\_memo\\_feb\\_2003.pdf](http://www.baku.org.uk/correspondence/DfID_memo_feb_2003.pdf); The Corner House et al, Review of BTC Environmental Impact Assessment, Section 3.3.2 – Absence of Analysis of Kurdish Situation in EIA, October 2003; Platform et al, Some Common Concerns, pp115-121 (A Region of Simmering Conflicts), <http://www.baku.org.uk/publications/concerns.pdf> ; International Fact Finding Mission, BTC Pipeline – Turkey Section, Section 1.5 – Pipeline Security and the Gendarmerie, June 2003, [http://www.baku.org.uk/publications/Tu\\_FFMM.pdf](http://www.baku.org.uk/publications/Tu_FFMM.pdf); NGO letter to IFC Executive Directors, "BTC Pipeline Board Meeting", 29 October 2003, [http://www.baku.org.uk/correspondence/EDs\\_re\\_Board\\_report.pdf](http://www.baku.org.uk/correspondence/EDs_re_Board_report.pdf); The Corner House et al, Letter to Jeanette Swindon ECGD, "BTC Pipeline", 10 November 2003, <http://www.baku.org.uk/correspondence/ECGDletter.doc>.
- xx. See: NGO letter to IFC Executive Directors, "BTC Pipeline Board Meeting", 29 October 2003, [http://www.baku.org.uk/correspondence/EDs\\_re\\_Board\\_report.pdf](http://www.baku.org.uk/correspondence/EDs_re_Board_report.pdf);
- xxi. Telegram, UK Embassy Moscow, "Subject – Caspian Energy: Baku Ceyhan: Russian Reactions to", 24 November 1999. "Media reporting has reflected Russian fears that the West is gradually increasing its influence in the South Caucasus region. Nezavisimaya Gazeta portrayed the agreement as part of a wider American plot to squeeze Russia out of the Balck Sea and the Caucasus".
- xxii [http://www.baku.org.uk/correspondence/reply\\_from\\_Symons\\_Dec\\_2002.doc](http://www.baku.org.uk/correspondence/reply_from_Symons_Dec_2002.doc)
- xxiii BPU report, p.4.
- xxiv. Energy Tech, "Analysis: BTC pipeline explosion", [http://www.energy-daily.com/reports/Analysis\\_BTC\\_pipeline\\_explosion\\_999.html](http://www.energy-daily.com/reports/Analysis_BTC_pipeline_explosion_999.html).
- xxv. Damien McElroy, "Georgia: Russia targets key oil pipeline with over 50 missiles", 11 August 2008, <http://www.telegraph.co.uk/news/worldnews/europe/georgia/2534767/Georgia-Russia-targets-key-oil-pipeline-with-over-50-missiles.html>.
- xxvi. Jad Mouawad, "Conflict in Georgia narrows oil options for West", International Herald Tribune, 14 August 2008, <http://www.iht.com/articles/2008/08/14/europe/14oil.php>. Mouawad quotes Cliff Kupchan, a political risk analyst at Eurasia Group and a State Department official during the Clinton administration: "Moving forward, multinationals and Central Asian and Caspian governments may think twice about building new lines through this corridor. It may even call into question the reliability of moving existing volumes through that corridor."
- xxvii. Jad Mouawad, "Conflict in Georgia narrows oil options for West", International Herald Tribune, 14 August 2008, <http://www.iht.com/articles/2008/08/14/europe/14oil.php>.
- xxviii. For further details, see: The Corner House, BTC Pipeline: Resurgence of Regional Conflicts - Concerns over ECGD Due Diligence and Implications for Human Rights of Affected Communities, Letter to ECGD, 26 August 2008.
- xxix. Minutes of Evidence taken before Trade and Industry Committee: ECGD Support for the Baku-Tbilisi-Ceyhan Pipeline, 16 November 2004, Tuesday 16th November 2004, Q 23, <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmtrdind/374/4111603.htm>. Mr Gotts, an ECGD official, told the Committee: "It is the first time it has been used on a pipe with the polyethylene coating".
- xxx. Parson E&C, "Interim Report: Design Appraisal", p.18, released to Pacific Environment under US Freedom of Information.
- xxxi. Parson E&C, "Interim Report: Design Appraisal", p.19, released to Pacific Environment under US Freedom of Information.
- xxxii. Parson E&C, "Interim Report: Design Appraisal", p.19, released to Pacific Environment under US Freedom of Information.
- xxxiii. Parson E&C, "Interim Report: Design Appraisal", p.34, released to Pacific Environment under US Freedom of Information
- xxxiv. Office of Accountability, Overseas Private Investment Corporation, "Office of Accountability Compliance Review of OPIIC's Environmental Due Diligence and Monitoring of the BTC Oil Pipeline Project", Final Report, January 2007, [http://www.opic.gov/doingbusiness/accountability/documents/compliance\\_review\\_opic\\_environmental\\_due\\_diligence0107.pdf](http://www.opic.gov/doingbusiness/accountability/documents/compliance_review_opic_environmental_due_diligence0107.pdf).
- xxxv. "BP Field Joint Coating Specification: DOCUMENT NO: 410088/00/L/MW/SP/015", available at <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmtrdind/374/374we05.htm>.
- xxxvi. Simon Clark and Stephen Voss, "BP Ignores Warnings About Potential Leaks in Caspian Pipeline", Bloomberg, January 2006,, <http://www.bloomberg.com/apps/news?pid=20601109&sid=aDbYpRvhzoHA&refer=home>.
- xxxvii. See: Export Guarantees Advisory Council, Minutes, 2004, 2nd Meeting, 17 March 2004, para 5.2.4, available from [http://www.ecgd.gov.uk/index/pi\\_home/pi\\_ac/the\\_advisory\\_council\\_-\\_minutes.htm](http://www.ecgd.gov.uk/index/pi_home/pi_ac/the_advisory_council_-_minutes.htm).

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- xxxviii. "BPA [BP Amoco] have not changed its view about the current commercial viability of B-C [Baku-Ceyhan]: traditional pipeline economics will not make B-C happen now – it needs tangible commitment by those who have long espoused the geopolitical imperatives", FCO telegram from Ken Forrest, 8 October 1999.
- xxxix. Email from Ken Forrest, Deputy Director IEP2, to J. Rhodes, "Subject - Re: BP and Azerbaijan", 2 September 1999: "FCO (confidential) telno 754 of 27 August arrived on my desk today and is the latest in a line of telegrams reporting BP Amoco's dilemma of the US govt pushing the Azeris and Turks and BP to build a pipeline from from Baku to Ceyhan on Turkey's Mediterranean coast. Essentially the route is uneconomic, but the US have put a significant amount of political capital into the project (Al Gore has been backing it in public, as has Richardson)."
- xl. Foreign and Commonwealth Office, Tel NO 524, "Caspian Energy – BP Amaco and Baku", 25 October 1999. The telegram states: "After a recent visit to Kazakstan, Wolf [Special Advisor to President Clinton on the Caspian] was convinced that up to 400,000 bpd could be put together relatively easily from production there. But BPA [BP Amoco] continued to take a more pessimistic view."
- xli. "Agreement among The Azerbaijan Republic, Georgia and the Republic of Turkey, relating to the Transportation of Petroleum via the Territories of the Azerbaijan Republic, Georgia and the Republic of Turkey through the Baku-Tbilisi-Ceyhan Main Export Pipeline", Agreed and executed on 18 November 1999 in Istanbul, Republic of Turkey, <http://subsites.bp.com/caspian/BTC/Eng/agmt4/agmt4.PDF>.
- xlii. Letter from Ken Forest, IEP2, to John Rhodes, "Meeting with Brown and Root", 16 December 1999. "The intergovernmental declarations in Istanbul (and witnessed by Clinton) set the framework for governmental agreement over construction of Baku-Ceyhan. The problem is that the route is not commercially viable. There will not be the reserves in production to fill Baku-Ceyhan until around 2008 at the very earliest."
- xliii. Teleletter from UK Embassy, Ankara, Turkey, 14 February 2001. "BP had done its sums and concluded that the project made strong commercial sense . . . The volumes necessary to make BTC viable existed: but not all ACG participants had committed their volumes. Exxon and Lukoil, who controlled 25 per cent of ACG's reserves needed to be brought on board."
- xliv Stuart Horsman to Simon Butt, "Caspian Pipelines: RIIA Presentation", 7 October 2002, released under FOIA request to Friends of the Earth (England, Wales and Northern Ireland). "The defining moment for BTC was in mid-2001 when BP realised that there were sufficient reserves in Azeri, Chirag and Gunashli fields (ACG) for BTC to be a commercial prospect".
- xlv Stuart Horsman to Simon Butt, "Caspian Pipelines: RIIA Presentation", 7 October 2002, released under FOIA request XXX to Friends of the Earth (England, Wales and Northern Ireland). "The defining moment for BTC was in mid-2001 when BP realised that there were sufficient reserves in Azeri, Chirag and Gunashli fields (ACG) for BTC to be a commercial prospect".
- xlvi Tengiz crude starts flowing in BTC pipeline", see:  
<http://www.reuters.com/article/marketsNews/idUSLT40257120081029>