

South Caucasus Pipeline Expansion Project (SCPX) and land purchase practices in Georgia

October, 2015

Project description

The South Caucasus Pipeline (SCP) originates at the Sangachal Terminal, which is located approximately 45km south of Baku, and traverses Azerbaijan and Georgia before terminating at Erzurum in eastern Turkey. The lengths of Georgia's and Turkey's sections are 442km and 248km respectively. At full capacity, it is envisaged that the pipeline will export up to 25 billion cubic metres of gas a year. At the border of the pipeline links up the Turkish-built extension joining SCP to the domestic supply grid at Erzurum. It runs in parallel, with the Baku-Tbilisi-Ceyhan pipeline, that becomes operational in 2007.

With the development of Second phase of Shah Deniz condensate field in the Caspian Sea, it was decided to expand the existing 42-inch diameter SCP system and develop the South Caucasus Pipeline Expansion Project (SCPX) project as part of the Shah Deniz Stage 2 development to build capacity to export an additional 16 billion cubic meters per year (bcma) of sales gas to the Georgia-Turkey border. The expanded SCP will be into the Trans Anatolian Pipeline (TANAP) at the Eastern Turkey border, in turn, will connect with the Trans Adriatic Pipeline (TAP) at the western Turkey border some 1,900 kilometers (km) away. TAP crosses Greece and Albania, from where it continues under the Adriatic Sea to Southern Italy. The total length of TAP is about 870 km.

The extension of SCP for Georgia means construction of new 59 km of gas pipelines and associated ground installations - a new block valve (BV) at kilometer point (KP) 27, a pigging station at KP56 (the point where the new pipeline will be reconnected to the existing line), two new compressor stations and a new pressure reduction and metering station (PRMS) at the Georgian-Turkish border.

Lands Required for SCPX Project

In total, SCP Company needed 283 hectares for pipeline, 245 hectares for compressor stations and PRMS (including the road) and 41 hectares will be required for construction of construction camps and 133 hectares for temporary facilities. The major part of the land was already under ownership of company, as it was purchased by BTC Co during the BTC pipeline.

As in the case of the BTC pipeline, the lands purchased by SCP Company will be handed back to their former owners for agricultural use, with applicable restrictions (except the

land where facilities are built). According to the resettlement action plan SCP Company will compensate to the owners of the orphan land, the land that is not affected and is adjacent to the Land Purchase Corridor. The company will also compensate for pasture lands and crops of private owners and land users.

Georgian land legislation in 2013-2015

The Georgian land legislation is very fragmented and lots of the issues are not regulated appropriately. The major law is the law on ownership of agricultural lands, adopted in 1996. Since then, the law was frequently changed.

One of the amendments introduced in 2013, declares moratorium on purchasing the agricultural lands by the judicial entities registered outside of Georgia and judicial entities registered in Georgia by foreign citizens. However, regarding the last one, amendment defines that in “special circumstances” restriction can be overcome.

The “special circumstances” supposed to be defined by Government. Therefore. Any entity that wants to purchase the agricultural land was advised to submit the proposal to the relevant sectoral public institution (ministries, public register). In the case of “justified necessity, state and public interests” the institutions will ask the government to take a decision and approve the agricultural land purchase.

After adoption of the amendments, the cases of changing of the agricultural land status to non –agricultural increased significantly, therefore, the Parliament in September 2013, introduced the new amendment in law that 1 July 2015 establish a moratorium on changing the land status. The law also sets the possibilities for exceptions and clarifies that in case of the public interests the decision on the status change will be taken by the Georgian Government based on the materials provided by the public registry.

On 4 March 2014 the government of Georgia issued decree #340 on conversion of certain agriculture land plots. The decree was not published neither by the Government of Georgia, neither on the legislative herald of Georgia - Matsne. The decree changes the status of 336 agricultural land plots (total 1.118.593 sq.m) owned by the state for the needs of South Gas Corridor extension project. While the public interest of the change does not justify, the decree only refers to the host country government agreement signed 17 April, 2002. As a result, the status of the lands for 111 ha was changed in 5 settlements and 1 city. These lands were given to SPC without any fee for 49 years (operational period) under usufruct, right to build (hereditary building right) and servitude.

However, after 1,5 month SPC company realized that it does not need that amount of the land at all. Thus company sent another request to the government. In order to eradicate the mistake, the government of Georgia issued another decree #492 on 26 March, 2014, that changed the status of 146 land plots back to an agricultural. As a result, only 41.5 ha of the land (190 plots) have been given to the SPC.

These decrees are a clear example that governmental procedure on agricultural land status changes is formal. The governmental institutions involved in administrative procedure, are not checking not only the public interest justification, but also the data regarding the land plots.

In order to receive compensation in Georgia the landowners should be registered with the National Agency of Public Registry. For today, only 25% of privately owned land are registered in the public registry. The major obstacle for that is the price of the process, that prevents people to register the land.

Some landowners' property rights were not properly registered in the Public Registry or Public Registry data contains significant errors. Registration documents refer to an electronic cadastral map, which should precisely determine the location and boundaries of their property. However, inaccuracies in cadastral data cause serious issues in some municipalities.

The public Registry has been used as an instrument in many property infringement cases during the last years. As a rule, government can arbitrarily register lands in its name in Public Registry and use them without even consulting with landowners or possessors in good faith, who are not registered in the Public registry.

In addition, the government does not recognize the traditional and customary ownership of the lands. Therefore, during the implementation of infrastructure projects often communities and landowners, where pasture and other lands appear to belong to the state, don't get any compensation

The Land acquisition process during SCP extension process

According to SCP Company policy, all affected assets are compensated for replacement value (market value plus transaction cost) in conformance with international requirements. "Current market value of land and crops has been subject to research by independent Georgian assessors hired by SCP Co. For annual crops, maximum yields observed in each municipality were considered." Different compensation rates for each municipality were included in the Guide to Land Acquisition and Compensation published by BP.

In general, it was expected that SCP Company would be aware of the problems of registration, issues of land overlap and etc. As according to the company's policy it "should assist Individuals, who are good faith owners or users of affected land but are not registered as owners".

However, field work reveals the number of the cases when real owners have not been compensated at all. For example, SCP Company constructs pigging station on the lands of Khaishi village(Tetrtskaro municipality). Khaishi landowners who were registered as owners of private land in the Land Purchase Corridor received compensation. However, there were number of landowners who could not register her land and could not receive compensation. According to one of female landowners: "last year, when the BP car came to the village, I approached them with my documents and asked to explain, as my land has been affected by the pipeline. BP representative threw the document back to me (Land Passport issued in 1990s) and asked me, how he could explain it with that document. I did not know that I needed to register the land. Then I called to the BP and told them, what their representatives told me. They explained to me that I had to register the land. While I was dealing with documents (I had to inherit it from my deceased father), , one of the Khaishi residents registered my land in her name. Her land is not even adjacent to my land." According to her, the same neighbor also grabbed lands of other villagers.

Meanwhile, the Public Registry refused to register the land in on her name because the land was already property of SCP Company according to the publicly available document. SCP Company signed the sale/purchase contract with the person who registered lands, who herself was so called purchaser in good faith, because she bought that land from the third person. The case was supposed to go to the court.

In Ozni village of Tsalka municipality, it's appears that seven landowners stay without compensation. The reason is that their lands were registered by Public registry to the person, who permanently lives in Moscow.

Arali Village Case

Arali village belongs to Adigeni Municipality, which is adjacent to Akhaltsikhe municipality. In Akhaltsikhe Municipality SCP Company construct a pressure reduction and metering station. An additional 2.5km of the pipeline will also be constructed from the pressure reduction and metering station to the Georgian-Turkish border. Construction work has not been started yet, however a few local people are already recruited.

Three villages in Adigeni and Akhaltsikhe Municipality are affected by SCPX, Arali (Adigeni), Naokhrebi (Akhaltsikhe) and Tskaltbila (Akhaltsikhe). SCP Company/BP implemented Community Development Initiative in all these villages. Naokhrebi and Arali residents who were registered as owners of private land in the Land Purchase Corridor received compensation. As for the compensation of the pasture lands registered in the name of village, they were

compensated for villages through Initiative Groups (Community Unions). Individual users of communal land were also compensated for crops.

However, out of 39 landowners in Arali village, only 17 owners received compensation, because 22 of them were not registered as landowners. According to the landowners, after the collapse of the Soviet Union, lands in Arali village, namely Orchosani territory that belonged to Soviet collective farms were granted to locals. Even though they did not register that land in the Public Registry, they still have documents that confirm their original acquisition of those lands. However, "Saknakshiri" has a license to extract brown coal on their lands. Landowners have not been sure that brown coal reserves are indeed in that particular place.

"Saknakshiri" (Georgian coal company - GIG Group) has a license to extract brown coal in Vale (town in Akhaltsikhe). On May 22, 2014 Arali residents applied to the National Agency of State Property to correct cadastral data of disputed lands. However, on December 4, 2014 National Agency of State Property responded that the commission, which was established by the Agency made a decision to correct the data. But Arali residents were requested to present the consent of the license holder. However, the consent was received only after the residents hire the lawyer and they promise the government to organize the protest to halt construction. On February 18, 2015 SCP Company held a public meeting in Akhaltsikhe and stated that as a result of lengthy negotiations with the government and the company [Saknakshiri], issues with land compensation will be solved in two weeks.

According to the publicly available information on the website of the Public Registry, 8871.00 m² in Arali village belongs to the state, the Ministry of Economy and Sustainable Development registered the land in its own name in 2012.

At least three of the 22 landowners who lose their lands hired the same lawyer and are going to sue the company and organize protests if necessary. The Georgian Young Lawyers' Association, one of the prominent human rights organizations in Georgia is going to provide them with free legal aid and support them in advocacy work.

Compensation, negotiations and necessary right of the way

The compensation rate provided by British Petroleum left some landowners dissatisfied and claiming that there was no choice and negotiation, while some others were happy. Taking into consideration poverty levels in each affected community, SCP Company probably did not have to pay fair market value to landowners. As one of the landowners is Akhali Samgori (Gardabani Municipality) put it, he would have been happy even if they paid him less. Another landowner from the same municipality, stated: "Although compensation rate was not that high, there was no point in negotiations, since the government was involved. We did not agree at the beginning, but then they returned to see if we made up our minds and then we made a decision. There were no complaints, BP does not need them, as always".

Land acquisition process was taking place strictly on the case-by-case basis and negotiations were confidential. According to the interviewed landowners, SCP Company was meeting with them and negotiated contracts individually. Individuals registered as owners of private land in the Land Purchase Corridor were identified based on the data of the National Public Registry. After signing contracts, the payments were made by wire transfer in GEL (Georgian Lari) into the bank accounts of landowners or land users. None of the landowners complained about the contract signing and the payment process.

Many landowners complained that they were not paid fair market value. Clearly, they should have a right not to agree to the proposed compensation rate or oppose the company for other reasons. But in this case SCP Company can start the Necessary Right of Way acquisition process.

According to the SCP Company policy, "If the compensation negotiation process is not successful, there are two possible options: - Either, if this is technically possible, the pipeline would be rerouted to avoid the plot of land for which no compensation agreement was reached; in such cases, negotiations will take place with the

landowner/user(s) whose land will be affected by the new route of the pipeline; - Or SCP Co. will apply to the relevant Court for Necessary Right of Way in conformance with the Civil Code (article 180). If Necessary Right of Way is granted by the Court, a new round of negotiations will take place to seek agreement on compensation; otherwise a new application will be made to the Court to rule on compensation amount”.

Using of Necessary Right of Way acquisition procedure is not fully compliant with the domestic legislation. Instead of the Civil Code of Georgia, which includes the article on Necessary Right of Way, the law of Georgia on Expropriation of Property for Public Need should be used. Expropriation law states that the property can be expropriated for pipeline construction with prior, full and just compensation. The principal difference between these two procedures is the fact that large pipeline company and a landowner cannot be treated as neighbors with equal rights.

The Necessary Right of Way by the article 180 of Civil Code of Georgia defined as: “1. If a tract of land lacks the access to public roads, electricity, oil, gas and water supply lines that are necessary for its adequate use, then the owner may claim from a neighbor to tolerate the use of his tract by the owner for the purpose of providing the necessary access. The neighbors on whose tracks the necessary right of way or transmission line passes shall be given monetary compensation which, by agreement of the parties, may be made as a lump-sum payment. 2. The obligation to tolerate the necessary right of way or a transmission line shall not arise if the already existing access to the tract of land was discontinued by the voluntary action of the owner”.

SCP Company never tried to reroute the pipeline to avoid the plot of land for which no compensation agreement was reached. Furthermore, SCP Company avoided lengthy and proper expropriation procedures and is using the Necessary Right of Way procedure as a punishment for “recalcitrant” landowners. According to the Georgian courts database, twenty public notifications were posted online by courts on using the Necessary Right of Way procedure by SCP Company in 2013-2014. When SCP Company or relevant courts cannot reach out landowners, SCP Company is granted the Necessary Right of Way and courts are posting public notifications on their website. Courts routinely use this procedure and does not represents the best practice for purchasing of lands for infrastructural projects.

The case in Rustavi

The case is illustrated by the resident of Rustavi city, whose land previously was purchased by BP for BTC pipeline.

In 2006 BP purchased from Rustavi landowner 380 m², although he did not agree to the compensation rate, which was very low at that time too for the urban land. In 2006 the market value of the Rustavi land was 15-20 USD but BP suggest the price for 6 GEL. According to landowner, BP representative suggested a gentlemen's agreement: “He told me to agree on this compensation rate (6 GEL), he said, “on the next stage we are going to return these lands with some restrictions and then we will additionally pay you the same amount as compensation. I cannot write it for you, but I am not a little boy. Given my position, trust my wordd.” He held indeed an important position and I decided to trust.”

In 2015 he only owns the rest of the 70 m² land and he was not willing to sell it, because according to him, SCP Company/BP does not purchase land at the market value. SCP Company suggests 9 GEL instead of market value of 50 USD for the square meter. In 2006 the market value of the Rustavi land was 15-20 USD but BP purchased it for 6 GEL. As a result, landowner becomes irritated and claims that “For me it does not make a big difference, if this 70 m² land will cost 10 USD or 100 USD, but I will follow this situation to the end, even to the Strasburg (ECHR) if I need and create the precedent that despite the foreign investment, big company, political importance, the right to property is the right to property.” SCP Company applied to the court to be granted with the Necessary Right of Way. The claimant lost the case in the first instance court and challenged the decision in the high court.



The publication was produced under the framework of Green Alternative's project "Improving land governance to foster sustainable development in Georgia". Green Alternative gratefully acknowledges the financial assistance of the European Union.

The content of this publication is the sole responsibility of Green Alternative and can under no circumstances be regarded as reflecting the positions of the European Union.