

BPU REVIEW OF BAKU-TBILISI-CEYHAN PIPELINE PROJECT

This report summarizes the due diligence carried out and assessments made in relation to the environmental, social and human rights aspects of the BTC¹ Pipeline Project (the Project) and the related host country and international legal requirements. This due diligence process has been carried out since August 2002 and has been informed by:-

- the project documents disclosed on the BTC Co website and other documents provided by BTC Co and consultants working for them;
- the advice of the Lenders' independent consultants, Mott MacDonald (for environmental and social issues) and Parsons Energy and Chemicals Group (for technical issues);
- a site visit by David Allwood, ECGD's Business Principles Adviser, with environment specialists from other export credit agencies over 13 days to Azerbaijan, Georgia and Turkey;
- the work product of the Lenders' Environmental Working Group on the Project;
- meetings with, and comments received from, interested third parties including those arising out of ECGD's public disclosure procedure;
- local law advice from the Lenders' legal advisers in Azerbaijan, Georgia and Turkey;
- discussions with officials in other Government Departments notably DEFRA and DFID; and
- the work product of the Lenders' Finance and Legal Working Group on the Project.

A synopsis of the recommendations set out in the body of this report is listed in Schedule 1.

Outline of the Report

This report examines the Project under the following headings:

1.1	Route selection - macro scale	page 4
1.2	Route selection - micro scale	
1.2.1	Azerbaijan	page 5
1.2.2	Georgia	page 7
1.2.3	Turkey	page 9
2.	Potential environmental impacts relating to:	
2.1	Atmosphere	page 11
2.1	Water bodies	page 13
2.3	Wildlife and habitats	page 17
2.4	Degradation of land	page 22
2.5	Unsustainable consumption of natural resources	page 25
2.6	Waste generation and disposal	page 26
2.7	Noise	page 27

¹ A list of acronyms is contained in Annex 1 of this report.

3. Potential social impacts relating to:	
3.1 Involuntary resettlement and compulsory land acquisition	page 28
3.2 Employment	page 36
3.3 Damage to sites of cultural, historic or scientific interest	page 37
3.4 Minority or vulnerable groups	page 38
3.5 Child or bonded labour	page 41
3.6 Use of armed security guards	page 41
3.7 Health and safety	page 43
4. Host country legal requirements relating to the environment	page 45
5. IGA and HGAs	page 46
6. Relevant international conventions and EU legislation	page 48
7. Other World Bank Group Safeguard Policies	page 53
8. Productive expenditure	page 57
9. Environmental and social benefits resulting from the project	page 58
10. Overall assessment	page 59

Methodology

The potential impacts of the project were analysed over a period of 14 months by BPU staff and by a team from the consultants Mott MacDonald (MM) who were acting for all members of the Lender Group (IFC, EBRD, Coface, ECGD, Hermes, JBIC, NEXI, OPIC, SACE, and US Ex-Im). Additional input was obtained from the environmental and social specialists of other members of the Lender Group.

Information was gathered from documents and presentations produced by the project sponsor, BTC Co, from the UK Embassies in each of the 3 project countries, during field visits to the project sites in summer 2001 (MM, IFC, EBRD, JBIC & NEXI) and summer 2002 (ECGD, Coface, Hermes, SACE, US Ex-Im and MM), and from submissions from other interested parties.

Communications with BTC Co usually took the form of memoranda sent by email from the Lender Group as a whole or from the ECAs. In addition there were several meetings with BTC Co, both in London and during the field visits, and conference telephone calls. These communications covered a very wide range of topics and frequently Lender Group requests for actions by BTC Co were agreed on the spot.

This report details the most significant potential impacts identified and the outcomes of the discussions about them. It does not cover the full range of other, more minor issues that were identified, discussed and the means to address them agreed during discussions.

The project has generated significant interest from the public and NGOs, many of whom have provided their comments to ECGD. The BPU has taken these comments into account in its assessment and many of the more pertinent comments are referred to directly within this report.

Main criteria for acceptability

BTC Co has committed² that the Project will comply with (in order of precedence):

- Host country constitutions,
- the requirements of the IGA and HGAs
- international standards and best practices within the petroleum pipeline industry (in no event to be less stringent than those generally applied in member states of the European Union or, with respect to Georgia, the Netherlands and, in some circumstances, Austria)
- national legislation and international conventions in force in the project countries
- applicable environmental and social policies and guidelines of members of the Lender Group, and
- BP and Botaş corporate policies.

As stated in the BPU Case Impact Analysis Process, it is ECGD's policy that projects should comply in all material respects with the relevant safeguard policies, directives and environmental guidelines of the World Bank Group (WBG). Thus for ECGD the applicable environmental and social policies and guidelines against which the Project has been assessed are ECGD's BPU Case Impact Analysis Process itself and the relevant directives, policies and guidelines of the WBG, including the International Finance Corporation (IFC), in particular the Safeguard Policies, the Pollution Prevention and Abatement Handbook and the IFC's equivalent environmental guidelines. ECGD's assessment includes consideration of host country legal requirements and relevant international law obligations, as well as any international obligations or policies of the UK Government.

The most relevant **environmental guidelines** are:

- World Bank Guideline 26 – Oil and Gas Development (Onshore) (July 1998)
- IFC Guideline 15 – Offshore Oil and Gas Development (December 2000) – only for the Ceyhan terminal
- WBG General Environmental Guidelines (July 1998)

The most relevant **safeguard policies** are:

- IFC OP 4.04 Natural Habitats (November 1998)
- WBG OD 4.20 Indigenous Peoples (September 1991)
- WBG OD 4.30 Involuntary Resettlement (June 1990)
- WBG OPN 11.03 Cultural Property (September 1986)

Other **safeguard policies** that have been considered are:

- IFC OP 4.01 Environmental Assessment (October 1998)
- IFC OP 4.36 Forestry (November 1998)
- IFC OP 7.50 Projects in International Waterways (November 1998)
- WBG OP 7.60 Projects in Disputed Areas (June 2001)
- IFC Policy Statement on Forced Labor and Harmful Child Labor (March 1998)

² Section 5.2 of the ESAP

1. Route Selection

1.1 Macro-scale

There are several options for the export of crude oil from the Caspian Sea to the international markets. All require a combination of transport over land and transport across seas. Pipelines are generally recognised to be the least risky method of transporting oil across land and large tankers are the normal form of transport across seas and oceans. The closest ports with direct access to international markets are those on the eastern coast of the Black Sea, those at the north-east corner of the Mediterranean Sea and those at the north-western end of the Persian Gulf.

A 1998 semi-quantified risk assessment³ clearly showed that a pipeline from the Caspian Sea to the Mediterranean Sea was the least risky option for transporting ~1 million barrels/day of crude oil to international markets. The other options considered were:

- A pipeline from the Caspian Sea through Georgia to the Black Sea plus tankers across the Black Sea and through the Turkish Straits to the Mediterranean Sea,
- A pipeline from the Caspian Sea through Georgia to the Black Sea plus tankers across the Black Sea and a pipeline around the Turkish Straits,
- A pipeline from the Caspian Sea through Russia to the Black Sea plus tankers across the Black Sea and through the Turkish Straits to the Mediterranean Sea, and
- A pipeline from the Caspian Sea through Russia to the Black Sea plus tankers across the Black Sea and a pipeline around the Turkish Straits.

The shortest route between the Caspian and the Mediterranean Seas passes through Armenia and an alternative pipeline route through Iran to the Persian Gulf was also reported to have been proposed. However, BTC Co discounted both these routes for security reasons. A route through the Akhalkalaki area in southern Georgia was also discounted as the Georgian government stated that it could not guarantee security in this area.

In the light of these considerations, BTC Co has chosen a route following the Western Route Export Pipeline (WREP) (otherwise known as the Baku-Supsa pipeline) in Azerbaijan, passing through central Georgia north of the Akhalkalaki area, and arriving at the closest Mediterranean coast in Turkey – at Ceyhan in the Gulf of Iskenderum.

³ Contained in Annex A of the Supplementary Lenders Information Pack of the Turkey EIA.

NGO comments⁴

The WWF has criticised the project on the basis that a Strategic Environmental Assessment (SEA) has never been undertaken. The WWF paper "BTC Applications to IFC and EBRD for Finance: *WWF Comment, October 2003*" states that "an SEA ... would [have] allow[ed] the BTC Pipeline to be assessed and compared against alternative development options for the region" and in particular "no assessment has been made of alternative routes for the pipeline".

Other NGOs⁵ have criticised the project on the basis that alternatives, including the "without project" alternative, were not assessed in a systematic manner, other strategic routes were not seriously considered and potentially affected communities were not consulted.

BPU assessment

The BPU considers that all the reasonable alternatives were considered and that an acceptable option has been chosen in terms of macro-scale routing.

Consultation of potentially affected communities started after the macro routing selection in order to avoid raising concerns amongst communities that were not close to the final route. The BPU considers this to be a pragmatic and acceptable approach that is in compliance with IFC OP 4.01 (see section 7.1 of this report for further details).

The "Environmental and Social Overview – Baku-Tbilisi-Ceyhan Pipeline Project (September 2002)" contains, in Section 2.0 a summary of the conceptual development of the project and, in Section 7.0 a summary of the cumulative impacts of the various projects related to the BTC project – these cover some of the issues that an SEA would have covered. Other aspects of an SEA are covered by a World Bank funded Feasibility Study⁶ and BP's Regional Review⁷. All of these studies included consideration of the various project options, including the "without project" option.

1.2 Micro-scale

1.2.1 Azerbaijan

The route of the Right of Way (RoW) from the Sangachal Terminal (the site on the landfall of the undersea pipelines from the production platforms and of the storage tanks) to the Georgian border follows, for almost all of its length, the route of the WREP. The only diversion from this is close to Sangachal

⁴ The NGO comments reported in this report are those that the BPU considers the most pertinent to the issue being reported. This report does not attempt to list every comment received from NGOs.

⁵ CHES, p 30

⁶ Baku-Tbilisi-Ceyhan Feasibility Study commissioned by the World Bank (1999)

⁷ Regional Review – economic, social and environmental overview of the ACG, BTC and Shah Deniz/SCP projects in the national and regional context of Azerbaijan, Georgia and Turkey (February 2003)

where the WREP passes through areas that are virtually impossible to reinstate successfully. To avoid these areas, the BTC pipeline RoW passes through the corner of the Gobustan Cultural Reserve – a semi-desert area containing rocky hills on which ancient petroglyphs (rock art) have been painted. A more detailed description of the options and analyses is contained in Case Study 4 in the “Environmental and Social Overview – Baku-Tbilisi-Ceyhan Pipeline Project (September 2002)”. The 900m stretch of the RoW through the Reserve is 1km from the closest cultural monument and 10km from the most significant area of rock art.

During the field visit, it was observed that the Djeyrankechmes River flows through a waddi close to the eastern boundary of the Reserve and the vertical sides of this waddi cannot be reinstated after the pipeline has been laid. Horizontal directional drilling under this waddi would avoid this damage but would result in damage to a much larger area within the Reserve.

BTC Co has started to lay pipeline along this section of the RoW. To minimise cumulative impacts, the pipeline for the SCP project is being laid at the same time. This section of the RoW has also been fenced to remind the workforce to stay within its boundaries and not to stray further into the reserve. Educational visits to the cultural sites within the Reserve have also been arranged for interested members of the workforce.

NGO comments

In a submission to IFC and EBRD in October 2003 the Azerbaijan Green Movement stated that “archaeological sites, discovered during the routing studies, in Kurdamir, Hajigabul and other regions, would be destroyed within [the] present construction, and some are destroyed already. They are not [suit]able for removal, but BTC and BP co-workers decided they are not significant enough to change the pipeline route”⁸. Although IFC’s response to all the submissions received during the Public Comment Period does not address this issue specifically it states that IFC “believe[s] the actions taken and the documentation and procedures set up by BTC Co to ensure that the project complies with IFC’s Cultural Property Policy are appropriate”⁹. EBRD’s response¹⁰ did not address the issue of cultural heritage/property.

BPU assessment

BTC Co’s commitment¹¹, together with IFC’s general statement, lead the BPU to consider that the project complies with the World Bank Group’s Operational Policy Note 11.03 “Management of Cultural Property (September 1986)”.

The routing of the RoW through the Gobustan Cultural Reserve represents the best environmental option and is considered to be acceptable since

⁸ Annex 2 of letter from The Corner House to ECGD dated 10 November 2003

⁹ BTC Pipeline and ACG Phase 1 Projects Environmental and Social Documentation – IFC Response to submissions received during the 120-day Public Comment Period (October 27, 2003)

¹⁰ The Baku Tbilisi Ceyhan Pipeline Project – EBRD responses to submissions received during the 120 day public disclosure and consultation period. (Undated)

¹¹ ESAP Section 5.3

selection of any of the alternatives routes would cause much more significant environmental damage. The BPU accepts that the change in appearance of the Djeyrankechmes River waddi sides cannot be avoided.

The archaeological sites identified by the Azerbaijan Green Movement in October were not visited by the BPU during the field visit in June as the BPU was not aware of these allegations at that time. The BPU considers that by following the RoW of the WREP the risk of damage to both the natural environment and any cultural heritage sites will be minimised and it will also provide the opportunity in some areas to improve on the previous level of reinstatement.

1.2.2 Georgia

To minimise potential impacts the BTC RoW has been routed alongside the existing WREP from the Azerbaijan border towards Tbilisi. The agreement between the owners of the BTC pipeline and the Turkish Government specifies the limits of the crossing point from Georgia into Turkey. Between these 2 sections BTC Co has considered 4 corridors each initially 10km wide. These corridors are known as: the Western Corridor, the Central Corridor, the Modified Central Corridor and the Eastern Corridor.

An evaluation of the environmental, social and security constraints on each of the corridors revealed that the Modified Central Corridor was the only one of the 4 options with an acceptable level of risk. Unfortunately this corridor runs close to Lake Tsalka that has been identified as a sensitive groundwater area.

The Modified Central Corridor also passes through the support zone of the Borjomi-Kharagauli National Park and, for 18kms, through the water catchment area of the Borjomola River which flows through the town of Borjomi – home to the Georgia Glass and Mineral Water Company (GGMWC). Hydrogeological studies have found that it appears that it would be virtually impossible for any oil leaking from the pipeline to enter the deep underground aquifer that is the source of the Borjomi mineral water but that oil leaks would contaminate the fast running surface streams that flow into the Borjomola River. The studies have also found that it is unlikely that any contaminated surface waters would contaminate the springs that supply spring water to the GGMWC. Despite this, BTC Co has offered to enter into an independently verified Value Protection Agreement with GGMWC and will indemnify GGMWC for all losses and damages should an oil spill occur. As at 25th November 2003, it is understood that BTC Co and GGMWC are in negotiation over the terms of this indemnity.

The pipeline routes near to Lake Tsalka and Borjomi have been studied by many pipeline experts and additional design and operational security measures, such as greater pipe wall thickness and closer spacing of block valves, have been introduced. Parsons Energy and Chemicals Group, the Lender Group Technical Consultant, has confirmed that these sections of pipeline will be amongst the most protected pipelines in the world.

The Modified Central Corridor also passes through the Kodiana Pass. This mountain pass is an area of several landslips but BTC Co believes it has

found an acceptable route for the RoW. The village of Dgvari is situated close to the Kodiana Pass and on an active landslip area. BTC Co's geologists consider that, by avoiding the landslip areas, the pipeline construction activities will have no impact on the homes in Dgvari village. This appeared to be the case to the BPU when the area was visited during the field visit. BTC Co has arranged for a geological mapping of the Dgvari village landslip area to assist the Georgian Government in deciding how to address the problem.

In agreeing the Georgian EIA the Minister of Environment accepted the Modified Central Corridor route but asked for more surveys and other analysis to be carried out to confirm the detailed routing was acceptable. BTC Co has already completed most of this additional work and the remaining work is in progress.

NGO comments

The NGO Green Alternative has criticised the route selection process in the areas around Lake Tsalka and Borjomi¹² and, in particular, that the names of the IFC and BTC Co experts have not been revealed. This NGO has also raised the issue of Dgvari village.

The WWF¹³ has criticised the hydrogeological studies of the Borjomi area as being insufficient to give certainty to the assumed underground water flows. They have also proposed additional routing options – through a tunnel under the Karakaia Ridge and along the north side of the Karakaia Ridge – that they claim BTC Co has never considered seriously. This north side of the Karakaia Ridge route would also avoid the need for the RoW to go through the Kodiana Pass. The tunnel option was rejected by BTC Co on the basis of the enormous quantity of spoil that would have to be disposed of. MM concurs with this decision.

BPU assessment

During the site visit the BPU spent 3 days in the Borjomi area and was impressed by the knowledge, experience and commitment of the BTC Co staff in the field. The north side of the Karakaia Ridge was observed from a distance, as it is not easily accessible. It was clear that use of this route would be technically very difficult due to the terrain, would involve provision of access to a forested area to which there is currently no vehicular access – and hence facilitation of illegal logging – and would lead to a long-term damage to the aesthetic beauty of the head of the Borjomola valley with consequent effect on the prospects for this area to become an international ski resort. The only advantage of the route appeared to be the reduction of the length of the RoW passing through the Borjomola catchment area and the avoidance of the Kodiana Pass.

The identification of an acceptable route through the mountains in Georgia has been a difficult task for BTC Co but the Modified Central Corridor appears to be acceptable. The additional anti-leakage and environmental protection

¹² Annex 1 of letter from The Corner House to ECGD dated 10 November 2003

¹³ BTC Applications to IFC and EBRD for Finance: WWF Comment (October 2003)

measures that have been introduced for the Tsalka and Borjomi sections significantly reduce the likelihood of unacceptable environmental damage.

ECGD, along with the other ECAs, has asked BTC Co to commit to establish procedures for the provision of alternative emergency water supplies in a manner that ensures the health and primary hygiene of individuals in the affected communities as quickly as possible, and in any event within 4 days of the relevant oil spill. BTC Co has included this in the latest draft of the ESAP¹⁴. **The BPU recommends that, if ECGD decides to provide support to the project, ECGD should approve the ESAP prior to financial close or, failing this, that ECGD's approval of the ESAP should be a condition of ECGD's support becoming effective.**

The BPU does not consider the north side of the Karakaia Ridge to be an acceptable alternative to the Modified Central Corridor.

1.2.3 Turkey

The point of entry from Georgia into Turkey specified by the Turkish Government constrains the routing to pass through the Posof Wildlife Protection Area. However, the route does avoid all areas currently internationally-designated for the protection of nature (e.g. officially designated IUCN Category I-IV sites and Ramsar wetland sites of international importance).

BTC Co's own "Environmental and Social Overview"¹⁵ states that, despite many re-routes during the initial route definition phase, it was not possible to avoid all nationally-designated protected areas.

During the site visit the BPU visited the Posof Wildlife Protection Area and observed sections of the RoW. Much of the terrain is covered in "sub-alpine meadows" which will naturally reinstate themselves when the construction activity has ended.

The route to the east of Erzurum was also observed. For much of the section the BTC RoW will be parallel to an existing Botaş gas pipeline. This will provide the opportunity to improve on the previous poor level of reinstatement.

The BPU also visited the section of the RoW through the southern side of the Taurus Mountains. This area contains many rocky outcrops and, although it will still be possible to bury the pipeline, it has to be accepted that full reinstatement to the original condition will take a very long time if, indeed, ever.

¹⁴ Email from Sullivan and Cromwell, to Freshfields Bruckhaus Deringer, relating to Section 7.2 of the ESAP sent at 05.58pm on 20th November 2003

¹⁵ Environmental and Social Overview – Baku-Tbilisi-Ceyhan Pipeline Project (September 2002)

Where it was not possible to avoid a protected area the route was optimised to minimise the impacts and special construction methods and mitigation measures will be applied. This process is described in detail in the Turkish EIA and the related SLIP.

NGO comments

The WWF¹⁶ has alleged that the proposed pipeline route involves risks to the water resources around Erzurum, that inadequate geological research has been conducted, particularly into the effect of seismic activity and that the route will impact on a number of protected areas and areas of biodiversity.

BTC Co does not consider that the implementation and/or operation of the pipeline on the proposed RoW will affect water resources around Erzurum. MM has confirmed¹⁷ that it considers the proposed pipeline routing in Turkey to be acceptable although the information provided in the routing study should be expanded.

The Lenders Group technical consultant, Parsons Energy and Chemicals Group, has confirmed that the pipeline has been designed to be able to withstand any foreseeable seismic activity along the route.

BTC Co has stated that the RoW does not cross any areas protected by Turkish laws¹⁸ and the Lenders Group's Turkish Counsel has confirmed that there is no statement of law in the Sponsors' response that is incorrect or misleading¹⁹.

BPU assessment

In the circumstances referred to above, particularly the conclusions reached by MM and the Lenders' Group's Turkish Counsel, the BPU considers the routing of the RoW in Turkey to be acceptable.

The BPU considers the extended time necessary for reinstatement of the mountain sections of the RoW to be an acceptable consequence of building the pipeline.

¹⁶ BTC Applications to IFC and EBRD for Finance: WWF Comment (October 2003)

¹⁷ Section 3.9.1 of MM's "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review" dated September 2003

¹⁸ BTC Co Response to ECA Memorandum: Potential Breaches of Local Environmental Law dated October 20, 2003

¹⁹ Email from Freshfields Bruckhaus Deringer to ECAs entitled "FW: BTC – Sponsor Response to Key Issue 12 dated 31 October 2003

2. Potential Environmental Impacts

2.1 Atmosphere

BTC Co has committed in the ESAP to comply with all applicable Lender Group standards. These include the World Bank environmental guideline no.26 relating to Oil and Gas Development (Onshore) and the IFC environmental guideline no.15 relating to Offshore Oil and Gas developments (only for the Ceyhan terminal). These environmental guidelines are ECGD's main criteria for acceptability of environmental impacts in this industry sector.

2.1.1 Global atmosphere

The BTC pipeline is designed to convey crude oil to the international markets. Once refined, it will be used in a variety of ways including as fuel. As a result a proportion, possibly all, will be burned and this will generate carbon dioxide (CO₂) with its consequential impact on climate change. The only means of preventing these emissions of CO₂ is to leave the crude oil under the Caspian Sea as even if the BTC pipeline were not built the oil could reach the international markets by alternative routes, such as the WREP.

When fully operational and running at design capacity in 2010, the BTC Pipeline will convey 50 million tonnes per annum of crude oil. The emissions associated with the quantity of crude oil passing through the pipeline annually are estimated by BTC to be between 146,506,800 and 160,191,900 tpa CO₂.

The UN Framework Convention on Climate Change (UNFCCC) forecast of worldwide GHG emissions in 2010 is 38 262 million tpa CO₂-e. The BTC pipeline crude oil would thus represent approximately 0.4% of the anticipated global total²⁰.

ECGD has asked DEFRA for comments from its climate change experts on the BTC assertion that "Under IPCC protocols, GHG emissions are attributed to consumers of fossil fuels, not producers or transporters". DEFRA has confirmed that GHG emissions are attributed to the countries from which the emissions occur and not to countries producing or transporting fossil fuels.

In addition to the eventual emissions resulting from use of the crude oil, a relatively small quantity of CO₂ will be generated by the operations of the pipeline itself. BTC Co will minimise the direct emissions of CO₂ by including this factor in its equipment selection criteria. The total emissions of CO₂ emitted through the operation of the pipeline itself during its design life (40 years) are estimated to be 25-30 million tonnes.

NGO comments

The Friends of the Earth fundamentally oppose all projects that supply fossil-based fuels. As such they oppose the concept of the BTC project. Other

²⁰ Section 5.2.5 of the Supplementary Lenders Information Pack for Turkey

NGOs²¹ have criticised the lack of assessment of the wider climatic impacts resulting from the end use of the oil transported.

BPU assessment

Neither the World Bank nor the IFC environmental guidelines includes standards for CO₂ emissions. There are no Government policies restricting ECGD's ability to provide support for oil and gas projects. Despite this, **the BPU recommends that the potential negative, long-term climate change impacts should be taken into account by the Underwriting Authority when making its decision.**

2.1.2 Local atmosphere

Impacts on the local atmosphere will result from the emissions from the equipment used in the operation of the pipeline. The most significant sources will be the drives for the pipeline pumps and the ground flare at the Ceyhan terminal during tanker loading.

The pump drives will be fuelled by either diesel produced from the conveyed crude oil by topping plants (in Georgia and Turkey until gas becomes available from the SCP project) or natural gas specifically piped to the pumping stations (In Azerbaijan from start-up and in Georgia and Turkey once gas becomes available from the SCP project).

MM has reviewed the project specifications and emission guarantees for all of the proposed drives and compared these with the most stringent of the host country or Lender Group standards²². The only situations in which the most stringent standards may not be met are as follows.

The manufacturer's guarantees for the Solar Mars 100 Turbines proposed for PS2 in Azerbaijan and PSG1 and PSG2 in Georgia include NO_x emissions of 125 mg/Nm³ (also the World Bank limit) while the most stringent (EU) standard is 75 mg/Nm³. However, trials have shown that actual emission levels are much lower than this and BTC Co is guaranteeing that the level of the most stringent standard will not be exceeded. Operation of these turbines on crude topping diesel may also result in excessive levels of NO_x being produced but this will only be during the periods before natural gas is available.

There are also some other small drives for emergency equipment at pumping stations which do not comply fully with the most stringent standards.

Air quality standards for nitrous oxide, benzene, carbon monoxide, sulphur dioxide and particulates also exist. BTC Co has committed to complying with

²¹ CHES, p 29

²² Section 1.2.1 of Addendum No.1 of MM's "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review"

these standards in the ESAP and MM has reviewed the atmospheric dispersion modelling studies and is satisfied with BTC Co's assessments²³.

Emissions of volatile organic compounds (VOCs) are potentially generated during tanker loading as VOCs that have accumulated in the air in the tanks are displaced with the air as crude is loaded. Various VOC control technologies were evaluated during the project design phase. MM considers that the proposed system consisting of a "knock-down drum" to collect liquid droplets, which will be re-injected into the crude oil, followed by an enclosed ground flare at the Ceyhan terminal is in compliance with EU BREF notes (which describe industry best practice)²⁴.

NGO comments

The WWF²⁵ considers that the use of a ground flare at the Ceyhan terminal is unacceptable and that the VOC displaced from the tanks during tanker loading should be used to generate energy or recompressed and returned to the tanks with the crude oil.

BPU assessment

The BPU considers that the equipment specified for the project is acceptable in terms of atmospheric emissions since it complies in all material respects with the relevant host country and WBG/IFC environmental guidelines and also the more stringent EU standards.

[TEXT REDACTION], the BPU considers that the occasional generation of emissions above the most stringent standards resulting from the use of emergency equipment at pumping stations is not a material breach of these standards.

The BPU accepts MM's view that the proposed VOC recovery and destruction system consisting of a "knock-down drum" followed by an enclosed ground flare at the Ceyhan terminal is in compliance with EU BREF notes²⁶.

2.2 Water Bodies

2.2.1 Impacts on water bodies

BTC Co has committed in the ESAP to comply with all applicable Lender Group standards²⁷. These include the World Bank environmental guideline no.26 relating to Oil and Gas Development (Onshore) and the IFC

²³ Section 1.2.2 of Addendum No.1 of MM's "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review"

²⁴ Section 3.9.5 of MM's "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review" dated September 2003

²⁵ BTC Applications to IFC and EBRD for Finance: WWF Comment (October 2003)

²⁶ Section 3.9.5 of MM's "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review" dated September 2003

²⁷ Section 5.3

environmental guideline no.15 relating to Offshore Oil and Gas developments (only for the Ceyhan terminal). These environmental guidelines are ECGD's main criteria for acceptability of environmental impacts in this industry sector.

The potential impacts on the main water bodies along the pipeline route are discussed below.

2.2.2 Azerbaijan: Karayazi Aquifer

The Karayazi Aquifer is located to the north of the Kura River adjacent to the Georgian border. According to MM²⁸, routes to the south and north of Lake Jandari and to the south of the Kura River were explored. However, BTC Co found, and MM agreed, that a number of additional constraints, including terrain, military, security, proposed protected areas and constructability, ruled out any of the alternative routes. As a result the RoW will cross the Karayazi Aquifer.

NGO comments

None that the BPU is aware of relating to water bodies in Azerbaijan.

BPU assessment

The BPU accepts MM's assessment that avoiding this aquifer region would give rise to greater environmental risks than passing through it.

2.2.3 Georgia: Borjomi area

This issue is discussed in section 1.2.2 of this report.

Appendix 1 of the Georgia SLIP (June 2003) contains further information and MM reports that, "based on these details, we [MM] believe that the Sponsor [BTC Co] has applied sufficient detailed consideration to the matter for MM to be comfortable with the chosen route"²⁹.

NGO comments

See section 1.2.2 of this report.

BPU assessment

See section 1.2.2 of this report. The BPU accepts MM's confirmation that BTC Co has done everything for the protection of the water bodies in this area that can be reasonably expected in terms of micro-route selection and environmental protection measures.

²⁸ Section 3.4.1 (iii) of MM's "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review" dated September 2003

²⁹ Section 3.6.1 (i) of MM's "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review" dated September 2003

2.2.4 Georgia: Lake Tsalka

See section 1.2.2 of this report.

During the Lenders' field visit to the Benini Plateau and the area north of Lake Tsalka in the summer of 2002, a Red Book Monument of Inorganic Interest and wetlands of high conservation value were identified³⁰.

MM's report³¹ states that the "pre-clearance surveys and monitoring during construction, as detailed in the latest SLIP (Section 5.9), appear to be a reasonable [means of] ... minimising ecological damage".

BTC Co has included in the Georgia SLIP the statement that "no activities that could result in a permanent modification of the landscape are ... planned in this area and therefore no specific mitigation has been planned".

NGO comments

Several NGOs and the Dutch EIA Commission have commented on this, resulting in the inclusion by BTC Co of the statement in the Georgia SLIP.

BPU assessment

The BPU accepts the conclusions of MM that this issue has been adequately addressed.

2.2.5 Georgia: Drinking water sanitary protection zones

BTC Co has explained that, in general, sanitary protection zones along the pipeline route in Georgia are in the process of being defined (February 2003) and so could not be taken into account during the route selection phase.

[TEXT REDACTION]

As a result, the pipeline route has not taken account of any potential sanitary water protection zones which may be defined in the future.

³⁰ Section 3.6.1 (ii) of MM's "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review" dated September 2003

³¹ Section 3.6.1 (ii) of MM's "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review" dated September 2003

NGO comments

The Georgian NGO Green Alternative has criticised BTC Co for justifying the proposed route close to Lake Tsalka rather than providing a detailed assessment of the alternative routes³². The NGO also states that since construction has started in this area, the Georgian Government has little option but to accept the proposed route.

BPU assessment

The BPU accepts that it would have been impracticable for BTC Co to attempt to predict the location of any potential sanitary water protection zones which may be defined in the future.

As discussed in Section 1.2.2 of this report, the BPU considers the route through the Lake Tsalka area to be amongst the most protected pipelines in the world and therefore acceptable.

2.2.6 Turkey – Inland Waters

No significant impacts on inland water bodies in Turkey have been identified except the comment from WWF about the risks to the water resources around Erzurum that are discussed in Section 1.2.3 of this report.

2.2.7 Turkey - Ceyhan Marine Terminal

The Turkey SLIP includes the statement that Host Government Agreement predetermined the location of the terminal to be within the Bay of Iskenderum.

Five alternative sites within this bay were considered for the location of the marine terminal. A number of criteria were used to determine the choice of site, including elevation, land acquisition requirements, geotechnical considerations and sea depth. MM requested further information about this, which was provided in the Turkey SLIP. As a result of the consideration of alternatives, BTC Co has decided that the Ceyhan Marine Terminal will be located adjacent to the existing marine terminal used for the export of oil from Iraq.

Two loading options were considered: a single point mooring and a jetty. The jetty loading option was selected on the basis of cost, operational safety and risk, nautical and maritime aspects and environmental impact.

NGO comments

WWF has criticised the project on the grounds that the EIA was inadequate as it contained little information about alternative options, did not include details of the Oil Spill Response Plan (OSRP) for the Ceyhan Terminal, and

³² Annex 1 of letter from The Corner House to ECGD dated 10 November 2003

included disposal of ballast water into the sea rather than using onshore treatment³³.

The WWF states that "evolving best practice for ballast water disposal" is not proposed to be followed as the project intends to allow discharge of ballast water into the sea rather than using onshore treatment. IFC has refuted this allegation that the project is not following "best practice", on BTC Co's behalf, by stating³⁴ that research by the International Maritime Organisation (IMO) indicates that onshore disposal of ballast water presents a number of technical difficulties and is not widely accepted as best practice. BTC Co has stated³⁵ that the project will comply with the relevant sections applicable to private entities of the IMO Guidelines on "Responding to Oil Spills" (Offshore).

BPU assessment

The BPU concurs with MM's view that, based on a review of the EIA report, insufficient information had been provided to justify the location of the terminal. However the information provided in the SLIP goes some way to correct this. In view of the Turkish Government's requirement, as stated in the HGA, that the terminal should be located within the Bay of Iskenderum, the BPU considers that its location at Ceyhan is acceptable.

The BPU considers that the risk of spillages during loading operations via a jetty is significantly less than the risk associated with a single point mooring system.

The BPU agrees that the EIA did not contain sufficient information about the marine OSRP. The ESAP will contain further information including a framework for all the OSRPs and BTC Co has committed to providing the ECAs with a general OSRP prior to financial close. BTC Co has also agreed to provide country-specific OSRPs for review by an independent OSRP specialist at least 120 days before linefill. **The BPU recommends that if ECGD decides to provide support to the project, ECGD should approve the ESAP prior to financial close or, failing this, that ECGD's approval of the ESAP should be a condition of ECGD's support becoming effective.**

The BPU accepts that the project is applying current "best practice" relating to disposal of ballast water through the BTC Co commitment to comply with all relevant IMO guidelines.

2.3 Impacts on wildlife and habitats

BTC Co has committed in the ESAP to comply with all applicable Lender Group standards. These include the IFC's Safeguard policies on Natural

³³ BTC Applications to IFC and EBRD for Finance: WWF Comment (October 2003)

³⁴ BTC Pipeline and ACG Phase 1 Projects Environmental and Social Documentation – IFC Response to submissions received during the 120-day Public Comment Period (October 27, 2003)

³⁵ ESAP Section 7.2

Habitats (OP 4.04) and Forests (OP 4.36), which are also ECGD's main criteria for acceptability of these impacts.

The potential various types of habitats and specific protected areas and sites of recognised conservation value along the pipeline route are identified below³⁶.

2.3.1 Azerbaijan

Types of habitat:

- Desert/semidesert (110km)
- Scrub and trees (4km)
- Wetland (16km) including rivers, irrigation channels and ditches, marshes, lakes and ponds
- Agricultural (275km)

Specific protected areas and sites of recognised conservation value:

Gobustan Cultural Reserve

An area crossed by a short length of the RoW (see section 5.1.2.1 of this report). The working width of the construction corridor will be reduced to 38m to minimise the area of disturbance and the RoW will be fenced to deter workers from straying outside the working width.

Proposed Gobustan State National Park

An area crossed by the RoW. The route selection process has minimised the length of the crossing of the park to 9km while preferentially utilising areas already degraded by human activity. Some special construction techniques will be employed to minimise habitat disturbance.

Barda State Forbidden Area

An area near to but not crossed by the RoW.

Korchay Forbidden Area

An area near to but not crossed by the RoW.

Samukh Hunting Area

An area near to but not crossed by the RoW.

Shamkir State Forbidden Area

An area near to but not crossed by the RoW.

Karayazi State Nature Reserve

An area near to but not crossed by the RoW.

³⁶ Data taken from BTC Co's "Environmental and Social Overview – Baku-Tbilisi-Ceyhan Pipeline Project (September 2002)"

2.3.2 Georgia

Types of habitat:

- Forest (14km)
- Sub-alpine forests and meadows (50km)
- Wetlands (7km)
- Dry steppic grassland and scrub (90km)

Specific protected areas and sites of recognised conservation value:

Algeti State Nature Reserve

An area near to but not crossed by the RoW.

Ktsia-Tabatskuri Managed Reserve

The Ktsia-Tabatskuri Managed Reserve is a wetland area regarded as equivalent to an IUCN Category IV area (Habitat/Species Management Area) which does not appear to have been formally designated as such. The selected route avoids the areas of greatest sensitivity. Mitigation measures include preferential use of areas already degraded by human activity, seasonal restrictions on construction activity and the requirement for site-specific reinstatement plans.

Borjomi-Kharagauli National Park Support Zone

This support zone was designated in 1995 and was established to secure support from the Park neighbours for sustainable protection of the Park. Its designation does not correspond with any IUCN protected area category. Local routing refinements will minimise the impacts on the high quality forest habitats present in this area.

Tetrobi Managed Reserve

An area near to but not crossed by the RoW.

2.3.3 Turkey

Types of habitat:

- Forest (26km)
- Scrub habitats (35km)
- Grasslands (472km) including alpine zones, sub-alpine meadows, mountain steppes, plain steppes and rocky hillsides
- Wetland (71m) including wet meadows, riparian habitats, marshes and aquatic habitats
- Coastal habitats (1km)
- Agriculture (524km)

Specific protected areas and sites of recognised conservation value:**Posof Wildlife Preservation Area**

An area crossed by the RoW (see section 5.1.2.3 of this report). The route selection process minimised the impact on the rhododendron habitat and hence the potential impact on the Caucasian black grouse. Seasonal restrictions on construction activities may also be applied.

Ardahan Forest

An area near to but not crossed by the RoW.

Sarakamis Forest

An area crossed by the RoW. The RoW crosses only the edge of this area and passes through an existing narrow clearing in the forest.

Erzurum Plain

An important bird area crossed by the RoW. The environmental impacts are discussed in the Turkey EIA. This area has already been degraded through the installation of drainage systems and electricity transmission lines and by the installation of the East Anatolian National Gas Pipeline. The BTC activities will have some positive impacts – restoration of the drainage network disrupted by the gas pipeline and improved reinstatement of areas where the BTC RoW is adjacent to the gas pipeline³⁷

Gumushane-Kelkit-Cemali Wildlife Preservation Area

An area near to but not crossed by the RoW.

Kuru Lake

A potential Ramsar site near to but not crossed by the RoW.

Alacorak Lake

A potential Ramsar site crossed by the RoW. The RoW passes through this area but has been routed to avoid the actual lakes and wetland areas.

Ulas Lake

A potential Ramsar site crossed by the RoW. The RoW passes through this area but has been routed to avoid the actual lakes and wetland areas.

Karatepe Aslantas National Park

An area near to but not crossed by the RoW.

Yumurtalik Lagoons Nature Reserve

An area near to but not crossed by the RoW.

The EIAs and Route Report³⁸ state that the route selection process sought to minimise the impacts on habitats and wildlife through the avoidance of

³⁷ IFC Responses to submissions received during the 120-day Public Comment Period, October 27, 2003

³⁸ BTC Pipeline Route Report dated April 2003

sensitive areas. Where avoidance was found to be impossible for other reasons, the routing was chosen to minimise potential impacts and other mitigatory measures imposed to limit the impacts.

The recommendations in the EIAs for potential impacts on habitats and wildlife have been imposed on the construction contractors through Contractor Control Plans with which contractors must comply. For all activities contractors must develop a "method statement" that must be approved by BTC Co (or Botaş in Turkey) before the contractor can begin work. Some contractors apparently started work before the Contractor Control Plans were complete, but BTC Co has explained this by stating that the contractors concerned used the EIAs as the sources of site-specific requirements when they developed their method statements. MM has confirmed that virtually all contractors' method statements have been approved prior to the contractor starting work.

As a mechanism for cross-checking that the contractors are complying with all the requirements of the EIAs, BTC Co has produced a Commitments Register for each country and the BTC Co in-country teams use these to check on compliance by the contractors.

NGO comments

Various NGOs, in particular WWF³⁹ have claimed that the route should not cross areas that have the potential for being designated as international sites of importance.

NGOs have also stated that the project has failed to comply with OP 4.04's requirements to consult with and involve project-affected groups in the planning, design and implementation of this project. This conflicts with the information provided by BTC⁴⁰ that indicates that early consultation started in March 1998 and continued throughout the environmental impact assessment process. MM⁴¹ and IFC⁴² have both confirmed their beliefs that the project has complied with the requirements of OP 4.04.

NGOs have also expressed concerns⁴³ that the assessment of impacts on flora and fauna was inadequate since the EIA was undertaken in less than 1 year and fieldwork was limited, some major sites were not surveyed, and the time spent on individual sites was inadequate to obtain the necessary baseline information. WWF also states⁴⁴ that several areas were not adequately considered including: Erusheti and Narianis Veli in Georgia and the Yalnizcam Mountains and Hafil Zara Gypsum Hills in Turkey.

³⁹ BTC Applications to IFC and EBRD for Finance: WWF Comment (October 2003)

⁴⁰ BTC "Environmental and Social Overview Baku-Tbilisi-Ceyhan Pipeline Project" Figs 1.6 and 1.8

⁴¹ MM "BTC Pipeline Project Environmental and Social Review Report" (September 2003) p S-2

⁴² IFC "Response to Submissions Received During the 120-day Public Comments Period" p 9

⁴³ CHES p 29

⁴⁴ BTC Applications to IFC and EBRD for Finance: WWF Comment (October 2003)

IFC states⁴⁵ that it "has worked closely with BTC Co to ensure that the Natural Habitats policy is followed and adhered to". IFC also refers to a document entitled "BTC project and IFC Safeguard Policies OP 4.04 Natural Habitats and OPN 11.03 Cultural Property (April 2003)" which "documents the US\$2.5 million Offset plans to ensure compliance with this OP and an approximately US\$8.75 million environmental enhancement project called the Environmental Investment Program".

BTC Co has also committed to ensuring that surveys of flora and fauna construction will be carried out before, during and on completion of construction activities to monitor the impacts, if any, of the construction activities and to ensure any negative impacts are minimised.

BPU assessment

BTC Co's commitment coupled with MM's and IFC's confirmation that the project complies with the relevant World Bank Group Safeguard Policies leads the BPU to consider that the proposed routing is acceptable with respect to its impacts on wildlife and habitats.

2.4 Degradation of land

The main causes of land degradation by the project are the construction activities and oil spills during the pipeline operation.

2.4.1 Construction phase

BTC Co will minimise the potential for land degradation caused by construction activities by tight control of the construction contractors. It has developed 34 Contractor Control Plans with which all construction contractors must comply.

In addition, specific plans for pressure testing with water of completed sections of the pipeline will be drawn up. These hydrotest plans will include where the water will be obtained and how it will be disposed of following the tests.

MM and the Lender Group environmental specialists have reviewed the Contractor Control Plans and have confirmed that they provide sufficient detail to ensure that, if followed, all the recommendations contained in the EIAs will be implemented and that the potential for land degradation during construction will be minimised.

All of the contractors are required to produce method statements that detail how they will implement the requirements of the Contractor Control Plans. As part of its pre-financial close implementation monitoring visits, MM has confirmed the existence of these method statements and their implementation

⁴⁵ IFC "Response to Submissions Received During the 120-day Public Comments Period" p 9

by the contractors. In a few instances MM found that a contractor had started work before its method statement had been approved. This was pointed out to BTC Co who took immediate action to rectify the situation.

A example hydrotest plan (for Azerbaijan) has been provided to the Lender Group as a blueprint for all other hydrotest plans. MM and [NAME REDACTION] have confirmed that they consider it to be satisfactory, although [NAME REDACTION] has asked for clarification of the methodology in areas of high ground permeability.

BTC Co will provide to the Lender Group environmental consultant specific hydrotest plans which are consistent with the general hydrotest plan no later than 20 days before the start of the particular hydrotesting activities. The Lender Group environmental consultant will check the specific plans for consistency with the general plan and all Lender Group standards and respond to BTC Co with 15 days stating either his agreement of their compliance or the reasons for his disagreement. This will not, however, prevent BTC Co or its contractor going ahead with the hydrotesting.

NGO comments

None that the BPU is aware of despite the fact that the contractor control plans were amongst the public disclosure documents that were published on the project website and by IFC and EBRD in June 2003. NGOs have not been involved in the recent detailed discussions about the hydrotest plans.

BPU assessment

The BPU reviewed a sample of the Contractor Control Plans and found them to be satisfactory. The BPU accepts the confirmation from [NAME REDACTION] MM that the other Contractor Control Plans are satisfactory and also MM's reports of compliance with them by the contractors.

The BPU therefore considers that the Contractor Control Plans are an acceptable means for reducing the potential for land degradation during the construction phase to a acceptable level.

The BPU agrees with MM's [NAME REDACTION] confirmation that the example hydrotest plan provides an acceptable blueprint.

The BPU would have preferred that BTC Co would require the Lender Group's environmental consultant's approval of the specific hydrotest plans before hydrotesting activities commence. However BTC Co claimed that this might impede the project schedule at a critical moment and other members of the Lender Group [NAME REDACTION] agreed with this. The BPU accepts that the specific hydrotest plans will be reviewed by the Lender Group's environmental consultant but that BTC Co will not need the consultant's formal approval before the relevant testing commences.

2.4.2 Operations phase

BTC Co will minimise the potential for land degradation caused by operational activities through the development of an Operations Environmental and Social Management System (ESMS) with which all operating companies must comply. BTC Co has, in the ESAP main document (Section 7) committed that the Operations ESMS will be certified to ISO 14001 within 9 months of commencement of pipeline operations.

However the main mechanism through which land degradation will be minimised is through Oil Spill Response Plans (OSRPs) that will be implemented to limit the impact of any oil spills.

BTC Co, the Lender Group environmental specialists and MM have had several discussions about the OSRPs and the ESAP contains an outline of an acceptable OSRP. BTC Co intends to produce a generic OSRP covering all three countries initially and then 3 (or more) country/site-specific OSRPs nearer the time of line-fill. BTC Co has committed that all the OSRPs will comply with the ESAP and all the relevant Lender Group standards.

[NAME AND TEXT REDACTION] all these OSRPs will be provided to the Lender Group well in advance of line-fill and an independent OSRP expert will comment on them on behalf of the Lender Group.

As at 26th November 2003, the ECA environmental experts were insisting that they should have approval rights for the generic OSRP and that the country/site specific OSRPs should be provided to the independent OSRP expert in sufficient time for him to either confirm that they complied with the ESAP and all the relevant Lender Group standards or to proposed amendments to bring them into compliance.

NGO comments

The NGOs have criticised the EIAs for containing insufficient information about measures to mitigate oil spills⁴⁶.

WWF has criticised the project for not implementing an Environmental Management System (EMS) until after the EIA had been completed.

BPU assessment

The BPU recommends that if ECGD decides to provide support to the project, ECGD should approve the general OSRP prior to financial close or, failing this, that ECGD's approval of the general OSRP should be a condition of ECGD's support becoming effective.

The BPU considers WWF's criticism to be illogical since the first stage in the development of an EMS is an analysis of the potential impacts on the environment - which is precisely what the EIA is for.

⁴⁶ CHES p 29

2.4.3 Decommissioning phase

Under the terms of the HGAs, BTC Co, or its successor, is required to provide the 3 governments with an Abandonment Plan that they must approve. An ESIA of the decommissioning phase will be prepared and submitted for governmental approval at that time.

NGO comments

The Azerbaijan NGO System Development Association states that the issue of dismantling after the expiration of the exploitation period should have been addressed in the ESIA⁴⁷.

BPU assessment

The BPU considers the requirements of the HGAs for the production of the Abandonment Plan and the related ESIA at the appropriate time to be acceptable.

2.5 Unsustainable consumption of natural resources

There are no specific international guidelines for assessing the acceptability of projects that promote the unsustainable consumption of natural resources.

The implementation of the BTC project itself will involve the unsustainable consumption of fossil fuels for transport, energy generation for the activities of BTC Co and its contractors and energy generation for the production of the plant and equipment that comprises the hardware of the project.

The project will also facilitate the much more significant unsustainable consumption of the crude oil that it conveys from the Caspian Sea to the Mediterranean Sea - although even without the BTC pipeline it is still likely that this oil would eventually reach the international markets through existing or alternative new pipelines.

The project is projected to convey around 50 million tonnes of crude oil during each year of its operating life. This is the reason for the project and the project sponsors can be expected to try to increase this quantity if doing so is commercially viable. The HGAs require the pipeline to be designed and built for a 40 year operating life. Thus, the project is likely to convey at least 1,000,000,000 tonnes of crude oil during the first 20 years of its operating life whilst it is owned by BTC Co. Following this period, ownership will pass to the Azerbaijan shareholder and it is expected that it will continue to be operated for as long as oil is available in commercial quantities.

⁴⁷ Annex 2 of letter from The Corner House to Jeanette Swindon at ECGD dated 10 November 2003

NGO Comments

The Friends of the Earth fundamentally oppose all projects that supply fossil-based fuels. As such they oppose the concept of the BTC project.

BPU assessment

Diversity of energy supply is an important facet of UK Government energy policy and facilitating the delivery of crude oil from the Caspian region contributes to this. However **the BPU considers that the Underwriting Authority may wish to take account of the potential negative, long-term impacts of this level of unsustainable consumption of natural resources when making its decision.**

2.6 Waste generation and disposal

Waste generated by the construction activities must be minimised and disposed of in accordance with the Contractor Control Plans relating to Waste Management.

The Waste Management Contractor Control Plans have been reviewed by MM and some of the Lender Group environmental specialists. They were found to be satisfactory.

During the site visit the BPU observed the rigorous attention paid by the contractors to waste management which included the provision of waste segregation and recycling facilities at regular intervals and "Portaloos" every kilometre along the RoW under construction. The requirement to avoid disposing of any material through other means was stressed in the briefings before access to the RoW was allowed.

Compliance with their Waste Management Plans forms part of MM's pre-financial close monitoring. Non-compliances relating to the operation of the waste water treatment plants were identified during the September-October 2003 visit at the Mugan camp in Azerbaijan, and PSG1 and Tsalka camp in Georgia. MM reports that it understands that means to resolve all these problems have been identified.

NGO comments

WWF has criticised the project on the basis that the "polluter pays" principle has not been observed⁴⁸. BTC Co refutes this and IFC concurs with the BTC Co view by stating "this principle has not been violated and any additional environmental costs arising from the findings of the EIA that are consistent with the environmental standards under the IGA and HGAs will be met by BTC Co rather than the Host Governments"⁴⁹.

⁴⁸ BTC Applications to IFC and EBRD for Finance: WWF Comment (October 2003)

⁴⁹ IFC "Response to Submissions Received During the 120-day Public Comments Period" p 40

BPU assessment

In the circumstances referred to above, particularly the BPU's own observations during the field visit, and the conclusions reached by MM [NAME AND TEXT REDACTION], the BPU is satisfied that the generation and disposal of waste is being managed in an acceptable manner.

2.7 Noise

BTC Co has committed in the ESAP to comply with all applicable Lender Group standards. These include the World Bank environmental guideline no. 26 relating to Oil and Gas Development (Onshore) and the IFC environmental guideline no. 15 relating to Offshore Oil and Gas developments (only for the Ceyhan terminal). These environmental guidelines are ECGD's main criteria for acceptability of environmental impacts, including those due to noise, in this industry sector.

Noise will be generated by the construction activities and by the pumping equipment at the pumping stations during the operations phase. BTC Co has committed to comply with the noise limits set by the Lender Group standards. These requirements have been delegated to the implementation contractors through the Contractor Control Plans. These Contractor Control Plans have been reviewed by MM⁵⁰ and some of the Lender Group environmental specialists and were found to be satisfactory.

NGO comments

Green Alternative has stated that, in Georgia, villagers of Jandari (near a work camp and aggregate quarry) and Sigrashani have complained to BTC about the noise levels caused by heavy truck movements.

BPU assessment

The villages identified by Green Alternatives in October were not visited by the BPU during the field visit in June, as the BPU was not aware of these allegations at that time, but is confident that BTC Co will address these complaints through the Community Liaison Officers that are now in place. The BPU is satisfied that the noise levels generated by both construction and operating activities will be below the limits set by the World Bank Group guidelines and are acceptable.

⁵⁰ MM's Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review Report Addendum No.1 – Operations – Maintenance Environmental Review: Section 1.3 (undated)

3. Potential Social Impacts

3.1 Involuntary resettlement and compulsory land acquisition

In assessing the acceptability of involuntary resettlement and compulsory land acquisition processes relating to projects, ECGD considers whether the project complies in all material respects with the World Bank Group's Safeguard Policy no. OP/BP 4.12 (December 2001) relating to involuntary resettlement. "OP and BP 4.12 together replace OD 4.30 [June 1990], *Involuntary Resettlement*. OP and BP apply to all projects for which a Project Concept Review takes place on or after January 1, 2002"⁵¹.

Since the BTC pipeline project was defined before December 2001, the BPU agrees with BTC Co and all the other members of the Lender Group that OD 4.30 is the relevant World Bank Group policy.

BTC Co has committed in the ESAP⁵² that the project will comply with the World Bank Group's Safeguard Policy relating to involuntary resettlement no. OD 4.30 (June 1990).

The project involves no physical resettlement, as no homes will need to be vacated either permanently or temporarily. There will however be some economic resettlement, as normal use of areas of land will be either permanently or temporarily interrupted.

3.1.1 Azerbaijan

Land is being permanently acquired for all "Above-ground installations", such as pumping stations.

All the land for the pipeline RoW is being leased for a period of 3 years even though landowners may have the opportunity to recommence use before this.

Any "orphaned" pieces of land (small areas of land that are separated from the main area by the RoW) are being leased for a period of one year.

Landowners were informed about the project and the land acquisition process through documents - a Guide to Land Acquisition (GLAC) and the Resettlement Action Plan (RAP) - which were available in Azeri, Russian and English. The GLAC was distributed well in advance of the start of land acquisition and the RAP was distributed immediately before the start of land acquisition.

The support of an independent NGO, the Centre for Legal and Economic Education (CLEE), is available to all landowners during the land acquisition process.

⁵¹ World Bank Group's Safeguard Policy no. OP 4.12 (December 2001) - Involuntary Resettlement.

⁵² ESAP Section 5.3.

BTC Co, with the encouragement of the Lender Group, has constituted an Expert Panel to monitor the implementation of the RAP - the Social and Resettlement Action Plan (SRAP) Expert Panel.

Robert Barclay, a member of the SRAP Expert Panel, visited the Azerbaijan section of the pipeline in July 2003. His report⁵³ generally compliments the BTC Co team on its handling of the land acquisition process and confirms that the compensation rates were substantially higher (~30%) than the equivalent State Fixed Rates. As a result he comments that "the rapid acceptance of compensation offers by project affected people is hardly surprising".

This report also contains comments from the CLEE lawyers that they were confident that anyone who wanted legal advice was aware of, and had access to, their services. Approximately half of the 4000+ private landowners had taken this up.

The SRAP Expert Panel's August 2003 report⁵⁴ contains an extract from BTC Co's Internal Monitoring Report on the status of the land acquisition as at 31 July 2003. This states that 100% of the agreements for the pipeline corridor had been negotiated and signed, 100% of the agreements for the above ground installations had been negotiated and signed, and 99% of all payments had been made. A total of 4,253 owners, users and municipalities had been identified compared to the 4,182 expected in the RAP.

NGO comments

NGO comments on the land acquisition in Azerbaijan focussed on two villages, Chiyni and Garabork, where it was reported that the pipeline was to pass directly under peoples homes.

During the site visit, the BPU reviewed aerial photographs with the BTC and SCP pipeline routes marked on that showed these reports to be inaccurate. In both cases the pipeline will be laid using the horizontal directional drilling (HDD) technique rather than open trenching and will be up to 20m below ground level at the closest points to the nearest houses. In Garabjork the horizontal distances between the nearest house and the pipe centre lines will be 20m for the SCP and 40m for the BTC pipe. In Chiyni the nearest house will be 46m from the SCP and 43m from the BTC pipe. BTC agreed to provide copies of these photographs to the Lender Group and did so in September 2003.

The SRAP Expert Panel visited these 2 villages in July 2003 and met with some of the affected households and other interested parties. These confirmed that BTC Co had met with the 7 adjacent landowners in the 2 villages on several occasions. The landowners were apparently disappointed that they had not received compensation payments at the same time as other landowners (despite the fact that they were not being inconvenienced) and

⁵³ Part B Azerbaijan SRAP review findings, August 2003

⁵⁴ Part B Azerbaijan SRAP review findings, August 2003, Table 2-1 Summary of Land Acquisition Progress (31 July 2003) – page B-4.

were uncertain about the level of compensation they would eventually receive for restrictions on the use of the land over the pipeline.

Following these meetings the SRAP panel met with BTC Co to discuss the situation. In response, BTC Co has agreed to adopt the same 58m wide protection zone for HDD areas as it uses for trench laid pipe and to make compensation payments to the affected households as soon as possible. The SRAP Expert Panel's report includes the statement "BTC Co has subsequently advised that payments to the seven affected households (Chiyni, 4 households, Garabork, 3 households) for restriction of use have been made"⁵⁵.

BPU assessment

Based on the information obtained during the field visit and that contained in the August 2003 report of the SRAP Expert Panel, the BPU is satisfied that the land acquisition process in Azerbaijan complies with the World Bank Group's Safeguard Policy relating to involuntary resettlement no. OD 4.30 (June 1990).

3.1.2 Georgia

Land is being permanently acquired for all "Above-ground installations", such as pumping stations.

All the land for the pipeline RoW is being permanently acquired as this was found to be necessary in order for BTC to be able to impose restrictions on its usage after installation of the pipeline. It also enabled BTC to acquire land owned by absentee landowners.

Any "orphaned" pieces of land are also being permanently acquired.

Landowners were informed about the project and the land acquisition process through documents - a Guide to Land Acquisition (GLAC) and the Resettlement Action Plan (RAP) - which were available in Georgian, Russian and English. The GLAC was distributed well in advance of the start of land acquisition and the RAP was distributed immediately before the start of land acquisition. These stated that the land would be acquired but also indicated that ownership/usage rights would be returned to previous owners/users after 3 years.

The support of an independent NGO, the Association for Protection of Landowners' Rights (APLR), is available to all landowners during the land acquisition process.

Robert Barclay, a member of the SRAP Expert Panel, visited the Georgian section of the pipeline in July 2003. His report⁵⁶ is generally positive about the

⁵⁵ Part B Azerbaijan SRAP review findings, August 2003 – Section 3.5.2 on page B-13

⁵⁶ Part C Georgia SRAP review findings, August 2003

land acquisition process although he did identify a small number of potential non-compliances with OD 4.30. These related mainly to occupation by contractors of land beyond the nominal 44 metre construction corridor and the Expert Panel has recommended appropriate measures for BTC Co to take to address these. BTC Co has agreed to commit, in the ESAP (Section 6.6.2) that it will normally implement the recommendations set out in the SRAP Monitoring Reports.

The SRAP Expert Panel's August 2003 report⁵⁷ contains an extract from BTC Co's Internal Monitoring Report on the status of the land acquisition as at 30 June 2003. This states that 67% of the agreements for the pipeline corridor had been negotiated, and compensation paid.

BTC Co has committed in the ESAP⁵⁸ to "returning ownership of land to original land owners in Georgia ... as soon as ownership or usage of such land is no longer required by the BTC Project. BTC Co will establish, as promptly as reasonably possible, a legal mechanism for returning ownership of land ... as set out above".

NGO comments

The BPU met with the NGO "Green Alternative" during the field visit on Thursday 19th June. The main comments made by the NGO were: that it was not necessary for BTC Co to purchase the land for the ROW as a leasing option was available; landowners were concerned that the contracts they were being asked to sign were silent on the issue of return of ownership after 3 years; users of common land in the villages of Nasrlo and Kasalo were not receiving compensation; land on which the owners wished to build was being compensated as agricultural land rather than building land and landowners were receiving extortion threats at the time they received their compensation payments.

The SRAP Expert Panel addressed most of these issues during its visit to Georgia in July/August 2003. In particular it identified that:

villages have to establish and register a community entity before compensation for common land can be paid to that entity by BTC Co for onward distribution to villagers.

landowners are entitled to build one house on each individual piece of land they own and there are only ~2% of households that own a single piece of land which is completely within the 58 metre wide protection zone and thus are prevented from building a house. The Expert Panel reports that in the view of the APLR regional officers "the compensation paid by BTC Co was sufficiently high to fairly compensate for any housing rights that were extinguished".

⁵⁷ Part B Georgia SRAP review findings, August 2003, Table 2-1 Summary of Land Acquisition Progress (late June 2003) – page C-5.

⁵⁸ In Section 3.2 of the draft ESAP dated December 2, 2003

The Expert Panel reported that "none of the project affected people interviewed ... indicated that they had experienced any form of coercion or extortion with respect to their compensation payment, nor were they aware of any such cases". It also reported that "it appears likely that there have been relatively few extortion incidents along the pipeline corridor outside of the Akhaltsikhe District" and "in Akhaltsikhe, there has been one incident reported by the media, and rumours received by APLR about others".

The NGO Green Alternative has criticised the project⁵⁹ for not transferring compensation to community entity bank accounts before construction started. The NGO specifically refers to villages where there is an ownership dispute between the community and the state and that it became clear in March 2003 that the lands in question are "still under state ownership ... [and] [a]ccording to the HGA, this means that BTC Co is under no obligation to compensate the CBOs [community entities] for the land, as they are not owners of the land"⁶⁰.

This NGO has also raised concerns that the village of Dgvari is not mentioned in the RAP. The issues about Dgvari are discussed in section 1.2.2 of this report.

BPU assessment

Based on the information obtained during the field visit and that contained in the August 2003 report of the SRAP Expert Panel, the BPU is satisfied that the land acquisition process in Georgia complies in all material respects with the World Bank Group's Safeguard Policy relating to involuntary resettlement no. OD 4.30 (June 1996).

The BPU recommends that:

- the commitment made by BTC Co that it will normally implement the recommendations set out in the SRAP Monitoring Reports should be included in the final version of the ESAP, and
- if ECGD decides to provide support to the project, ECGD should approve the ESAP prior to financial close or, failing this, that ECGD's approval of the ESAP should be a condition of ECGD's support becoming effective.

⁵⁹ Annex 1 of letter from The Corner House to ECGD dated 10 November 2003

⁶⁰ Annex 1 of letter from The Corner House to ECGD dated 10 November 2003

3.1.3 Turkey

Land is being permanently acquired for all "Above-ground installations", such as pumping stations.

All the land for an 8 metre wide strip of land directly above the pipeline RoW is being permanently acquired, while the land on each side of this strip for a total RoW width of 28 metres is being leased for a period of 3 years.

Any "orphaned" pieces of land are being leased for a period of 1 year.

Landowners were informed about the project and the land acquisition process through documents - a Guide to Land Acquisition (GLAC) and the Resettlement Action Plan (RAP) – which were available in Turkish and English. The GLAC was distributed well in advance of the start of land acquisition and the RAP was distributed immediately before the start of land acquisition. These stated that the land would be acquired/leased as above but also indicated that ownership/usage rights would be returned to previous owners/users after 3 years.

An independent NGO, the Rural Urban Development Foundation (RUDF), has been contracted by BTC Co to monitor the land acquisition process.

Frédéric Giovannetti, a member of the SRAP Expert Panel, visited the Turkish section of the pipeline in July/August 2003. His report⁶¹ states "satisfaction with [compensation] rates offered for land has been observed to be almost unanimous". Only one village, on the outskirts of Erzurum, has complained that their land should be valued as urban or industrial rather than agricultural and have challenged the offered rates in court. Botaş will comply with the court's rulings.

At the time of the BPU's field visit RUDF had been contracted to review the land valuation methodology and to monitor its implementation. However, unlike in Azerbaijan and Georgia, RUDF was only contracted to attend a sample of all the negotiation meetings and was not required to provide any assistance to the people whose land was being acquired. IFC's social issues specialist who had observed several land acquisition meetings has commented that RUDF did, in fact, provide advice directly to landowners. Following discussions between the ECAs' environmental specialists and BTC Co, RUDF's Terms of Reference have now been changed to include its availability to all landowners who seek independent advice during the land acquisition process.

The SRAP Expert Panel's August 2003 report⁶² contains an extract from BTC Co's Internal Monitoring Report on the status of the land acquisition as at 31 July 2003. This states that 42% of the agreements for the pipeline corridor had been negotiated, and compensation paid.

⁶¹ SRAP Monitoring Panel 1st Mission – July/August 2003 - Turkey

⁶² SRAP Monitoring Panel 1st Mission – July/August 2003 - Turkey, Section 2 Land Acquisition and Resettlement Status at time of review – page 3 of 32

The latest version of the ESAP⁶³ contains the commitment that "BTC Co will ... return land usage rights to original land owners in Turkey as soon as ... usage of such land is no longer required by the BTC Project". As it is not clear whether this applies to the 8 metre wide strip immediately above the pipeline, clarification is being sought from BTC Co.

NGO comments

The main comments from NGOs relate to the use of Article 27 of the Turkish Expropriation Law rather than Article 10. Article 10 is the normal procedure whereas Article 27 is for "Urgent Expropriation". The NGOs state that Article 27 is only for use in "Emergency situations". However, the Lender Group's Turkish Counsel has stated that "As asserted by the NGOs, "national defense" under Law on National Defense Obligations No. 3634, is among those circumstances under which accelerated expropriation proceedings may be utilized. However, so are circumstances of urgency that are determined by Council of Ministers' decrees or extraordinary circumstances that are stipulated by special laws. In our case, Council of Ministers Decree numbered 2001/3523, provides that due to the urgency of realizing energy investments by BOTAS, the provisions of Article 27 of the Expropriation Law can be utilized by BOTAS in its expropriations."⁶⁴

According to the SRAP Expert Panel⁶⁵, Article 27 allows the RoW to be entered as soon as the proposed compensation amount has been paid into a specifically designated bank account and crop compensation has been paid to the user. This is essential when not all shareholders attend negotiations and engage in the land registration and transfer process.

The implication of the SRAP Expert Panel's report is that Botaş attempts to use Article 10 in all cases but is forced to use Article 27 when not all the shareholders can be identified or contacted within the time constraints of the construction schedule. However, the RAP states that Article 27 will be used in all cases.

During the field visit, the BPU met with Mr Ferhat Kaya the Chair of the Ardahan Central Group of Demokratik Halk Partisi (DEHAP). He stated that Botaş had been attempting to recover compensation paid under the RAP Fund which was set up by BTC Co to take care of those groups that are not eligible for compensation under Turkish law but are entitled to it according to the RAP. When asked to substantiate these allegations he was unable to do so.

⁶³ In Section 3.2

⁶⁴ Email entitled "FW: 2249 BTC/ Accelerated Expropriation Question" from Birsal Hukuk Burosusu & Co [mailto:gunizgokce@birsal.com] to Freshfields Bruckhaus Deringer dated 12 November 2003 at 05:54 PM and forwarded to Richard Drummond and David Allwood on 12 November 2003 at 17.54

⁶⁵ SRAP Monitoring Panel 1st Mission – July/August 2003 – Turkey – page 8 of 32

Mr Kaya and other NGOs⁶⁶ have also alleged that Botaş was not paying for orphaned pieces of land. When asked to substantiate these allegations Mr Kaya was again unable to do so.

NGOs⁶⁷ have also alleged that compensation rates were being imposed rather than negotiated and that disclosure to the landowner of the maximum acceptable payment was contrary to the Turkish Expropriation Law and precluded negotiation. The action by Botaş of starting the negotiation at the highest value it was allowed to offer may well have precluded further negotiation but it did ensure that the landowner was aware of the highest compensation valuation available immediately. This provided the best information on which to decide whether to accept or to challenge the valuation through the courts.

The NGOs have also alleged that the consultation requirements of OD 4.30 have not been followed, that no alternative to money has been offered to people to be economically displaced, that the needs of minorities and other vulnerable groups have not been addressed and that valuations are too low. These allegations are refuted by the SRAP Expert Panel whose report⁶⁸ contains the conclusion that "land acquisition activities in Turkey were observed to be carried out in compliance with the Resettlement Action Plan, applicable Turkish Laws and World Bank Group Policies". This latter includes OD 4.30.

BPU assessment

Based on the information obtained during the field visit, that contained in the August 2003 report of the SRAP Expert Panel, and the Legal Counsel's statement regarding the use of Article 27, the BPU is satisfied that the land acquisition process in Turkey complies in all material respects with the World Bank Group's Safeguard Policy relating to involuntary resettlement no. OD 4.30 (June 1990).

The BPU recommends that, if ECGD decides to provide support to the project, ECGD should approve the ESAP prior to financial close or, failing this, that ECGD's approval of the ESAP should be a condition of ECGD's support becoming effective.

⁶⁶ CHES p 22

⁶⁷ CHES p 21

⁶⁸ BTC, SCP & ACG Social and Resettlement Action Plan Monitoring Panel: 1st mission – July/August 2003 – Turkey p 16

3.2 Employment

ECGD's main concerns regarding employment are for there to be no discrimination on the basis of race, religion, gender or, social grouping and for local employment opportunities to be maximised commensurate with the project's needs.

Pipeline projects by their nature generate significant short-term employment opportunities during the construction phase and few long-term jobs throughout the operations phase.

In all 3 countries Contractor Control Plans have been developed relating to Employment and Training. These establish targets for training and employment of national and local staff at various skill levels.

MM reports that during its September/October monitoring visit⁶⁹ all the contractors were meeting national and local employment targets except the Facilities contractor in Turkey where a few exceptions were noted.

At the time of the MM monitoring visit the contractors in all 3 countries were employing just over 6,000 people and over 4,000 of these were project country nationals.

The BTC Co indemnity and Value Protection Agreement being negotiated between BTC Co and GGMWC will go some way to protecting jobs at GGMWC in the event that an oil spill in the Borjomi area results in a significant reduction in sales of Borjomi mineral and spring water.

NGO comments

NGOs have commented that the project will not bring sufficient benefit to ordinary people in the 3 countries⁷⁰. Significant employment opportunities were amongst the benefits expected.

BPU assessment

Based on the targets set in the Employment and Training CCPs and the information provided by MM, the BPU is content that ECGD's concerns relating to employment are being satisfactorily addressed.

⁶⁹ MM's "Baku-Tbilisi-Ceyhan (BTC) Pipeline Project Pre-Financial Close Environmental and Social Construction Monitoring September-October 2003" dated 31 October 2003

⁷⁰ Informal record of UK Government meeting with NGOs about the BTC pipeline on 30th October 2002.

3.3 Damage to sites of cultural, historic or scientific interest

ECGD's main criterion for the acceptability of projects' impacts on sites of cultural, historic or scientific interest is compliance in all material respects with the World Bank Group's Operational Policy Note no. OPN 11.03 (September 1986) relating to the management of cultural property.

BTC has committed in the ESAP⁷¹ that the project will comply with the World Bank Group's Operational Policy Note no. OPN 11.03 (September 1986) relating to the management of cultural property.

In Azerbaijan and Georgia, BTC Co has established specific management plans entitled "Cultural Heritage Management Plan" and "Cultural Heritage Chance Finds Protocol". In Turkey the equivalent management plans have been incorporated in the Botaş Environmental and Social Management Plan⁷².

MM reports⁷³ that each contractor has developed Cultural Heritage Protection Procedures and, in addition, topsoil stripping and excavation is undertaken under the supervision of a qualified archaeological supervisor.

One chance find of minor importance has been found in Azerbaijan. Late finds have been found in 3 locations in Georgia including an iron-age settlement which required 20 days to excavate. In Turkey several archaeological sites requiring excavation have been identified although minor re-routes now mean that these areas will be avoided. At the time the BPU visited Lot B in Turkey 87 archaeologists and 540 archaeological site workers were being employed on several excavations. Two of the chance finds in Turkey were of rock tombs and one of these sites has been partially excavated. The BPU visited this site during the field visit. A significant reroute is required to avoid the project disturbing this area further. This reroute will be subjected to rigorous analysis, including consideration of the potential impact on cultural heritage, before being finalised.

NGO comments

Some NGOs have criticised the project for its failure to comply with the World Bank Groups Operational Policy OP 4.11. However this policy is still in preparation and has not been issued (the pro-forma title page refers the reader to the previous, and current, document Operational Policy Note 11.03). BTC Co has committed to comply with the previous WBG policy OPN 11.03.

NGOs have also criticised the project for alleged failure to comply with the requirements of OPN 11.03. The allegations include: failure to consider the potential impacts on cultural heritage at an early stage; failure to consult affected people and to take their advice into account; failure to integrate

⁷¹ ESAP Section 5.3.

⁷² ESAP Table 7

⁷³ MM's "Baku-Tbilisi-Ceyhan (BTC) Pipeline Project Pre-Financial Close Environmental and Social Construction Monitoring September-October 2003" dated 31 October 2003— Sections 2.4.2, 3.4.2 and 4.4.2

cultural heritage impacts into the environmental assessment process; lack of awareness of resources in the region; inappropriate or ineffective mitigation measures, and failure to disclose the findings of the cultural heritage impact assessment.

BPU assessment

MM has confirmed⁷⁴ that the first step of the route refinement process was to undertake a detailed desktop study that included "Proximity to known or potential cultural heritage interest". MM's report states that the 1999 Feasibility Study commissioned by the World Bank considered cultural heritage sites⁷⁵ and that in the detailed engineering phase in Turkey "over 160 modifications were made to the route, mainly to minimise/exclude affectation [sic] of cultural heritage sites"⁷⁶.

The Turkish EIA includes several sections on cultural heritage (e.g. sections 3.8.10 and 6.10) and, as Appendix C-7, a Cultural Management Plan.

The Turkey SLIP contains, in Section 4, further details of the archaeological field studies carried out by Gazi University Foundation covering 84 sites of which 16 were subjected to intensive studies and 13 that required special mitigation measures.

The analysis of the reroutes required to avoid impacts on the rock tombs will be monitored by the Lenders' post financial close Environmental Consultant.

There is no reference in any of the project documentation to any consultation with affected peoples, however the text of OPN 11.03 is also silent on this issue.

Based on its observations during the field visit and the information provided in the EIAs and SLIPs and by MM, the BPU is content that the project is being implemented, in all material respects, in compliance with the World Bank Group's Operational Policy Note no. OPN 11.03.

3.4 Impacts on minority or vulnerable groups

In assessing the acceptability of projects' impacts on minority or vulnerable groups ECGD requires compliance in all material respects with the World Bank Group's Operational Directive no. OD 4.20 (September 1991) relating to "Indigenous Peoples".

BTC has stated that it does not consider there to be any group that are Indigenous Peoples along the entire pipeline route. It does, however, recognise that there are a number of minority groups who could be

⁷⁴ MM "BTC Pipeline Project Environmental and Social Review Report" (September 2003) Section 2.3.4

⁷⁵ MM "BTC Pipeline Project Environmental and Social Review Report" (September 2003) Section 3.2

⁷⁶ *ibid* Section 3.9.1

considered as vulnerable and has taken special care to ensure that they are not marginalized or discriminated against by the project, in particular, the ethnic background of the owner/user of land is not a factor in the route selection process.

The IFC position paper entitled "IFC's Approach to Vulnerable Groups in the ACG Phase 1 and BTC Pipeline Projects" concludes that the Kurds living in communities along the pipeline route in Turkey **do not** meet the definition of "Indigenous Peoples" of the World Bank's Indigenous Peoples policy (OD 4.20) and therefore the project should not be required to develop and implement an "Indigenous Peoples Development Plan" for this group⁷⁷. Instead IFC recommends that they should be considered one of several vulnerable groups whose needs should be addressed through the BTC Community Investment Program and Social Investment Program.

The definition of "Indigenous Peoples" according to the World Bank's Indigenous Peoples directive (OD 4.20) is "social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process". OD 4.20 list the characteristics of indigenous peoples as follows:

Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:

- a close attachment to ancestral territories and to the natural resources in these areas;
- self-identification and identification by others as members of a distinct cultural group;
- an indigenous language, often different from the national language;
- presence of customary social and political institutions; and
- primarily subsistence-oriented production.

The IFC paper acknowledges that the Kurds do constitute an ethnic minority with distinct language and dialects in a complex socio-political environment but is silent on the issue of ancestral homes, (self-)identification as a distinct cultural group and the existence of customary institutions. The IFC paper then states that the group does not meet key characteristics of indigenous people as defined in World Bank's OD 4.20. In particular, project affected Kurdish communities are not:

- i) primarily involved with subsistence orientated production;
- ii) reliant/dependent on local natural resources;

⁷⁷ An "Indigenous Peoples Development Plan" developed under OD 4.20 would need to be done in consultation with the "Indigenous Peoples" and its implementation should result in the economic and social development that the "Indigenous Peoples" have requested and the project has agreed to provide.

iii) isolated or disconnected from larger socio-economic structures of the area.

There is no wording in OD 4.20 to indicate that the three characteristics identified by IFC are more important than the others. However, many people, irrespective of their ethnic origins, living in north-eastern Turkey are involved in subsistence orientated production that is reliant on local natural resources. Thus the only factors that specifically identify the Kurds are their language, self-identification and identification by others, and their customary institutions. Many Kurds were reported⁷⁸ as wanting to integrate within their communities rather than be isolated.

NGO comments

The Kurdish Human Rights Project (KHRP) NGO has stated that it believes that the Kurdish communities on the pipeline route **do** meet the definition of "Indigenous Peoples".

OD 4.20 provides "guidance to (a) ensure that indigenous people benefit from development projects, and (b) avoid or mitigate potentially adverse effects on indigenous people". It also states: "The [World] Bank's policy is that the strategy for addressing the issues pertaining to indigenous peoples must be based on the informed participation of the indigenous peoples themselves". The Kurds, as represented by the KHRP, therefore expect to benefit from the project in addition to the mitigation of any negative impacts and to be asked to participate in the decisions about what these benefits should be and how they will be obtained.

BPU assessment

The BPU recognises the potential vulnerability of the Kurds in north-eastern Turkey and considers that identifying them as a vulnerable, minority group provides them with sufficient protection from marginalisation and discrimination. The BPU concurs with [NAME REDACTION] that the Kurds in north-eastern Turkey do not constitute an Indigenous Peoples under the definition contained in OD 4.20.

⁷⁸ Informal report from IFC's Social Issues specialist following a visit to north-eastern Turkey

3.5 Child or bonded labour

It is ECGD's policy not to provide support to projects that involve harmful child labour or bonded or forced labour.

BTC Co has committed, in the ESAP⁷⁹ to comply with the IFC Policy Statement on Forced Labour and Harmful Child Labour but has not proposed the use of any child, bonded or forced labour. In the "Joint Statement"⁸⁰ the 3 Host Governments and BTC Co confirmed that the "International Labour Organisation's conventions on Forced Labour, Freedom of Association and Right to Organise, Collective Bargaining, Discrimination, Equal Remuneration and Minimum Age, all as in effect from time to time, will apply to the development and operation of the Project".

In none of the many field visits by staff from the Lender Group or MM has any form of child, bonded or forced labour been observed.

NGO comments

None that the BPU is aware of relating to child or bonded labour.

BPU assessment

The BPU is content that the project complies with ECGD's policies on child, and bonded or forced labour.

3.6 Use of armed security guards

BTC has stated that it will employ mounted observers to monitor the entire pipeline route and that these observers will be unarmed.

The HGAs require the host governments to provide the necessary security for both BTC Co's and its contractors' staff and the pipeline itself.

The "Joint Statement"⁸¹ and the "Security Protocol"⁸² contain commitments to promote respect for and compliance with human rights principles, including those set forth in the Universal Declaration of Human Rights, the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials, the United Nations Code of Conduct for Law Enforcement Officials, the European Convention on Human Rights and, in manners consistent with national laws, the Voluntary Principles on Security and Human Rights.

⁷⁹ Section 5.3

⁸⁰ Joint Statement on the Baku-Tbilisi-Ceyhan Pipeline Project (May 16, 2003)

⁸¹ Joint Statement on the Baku-Tbilisi-Ceyhan Pipeline Project (May 16, 2003)

⁸² Protocol among the Republic of Azerbaijan, Georgia and the Republic of Turkey relating to the provision of security for the East-West Energy Corridor (23rd July 2003)

BTC Co has stated that it will be assisting the host governments in the development of the Terms of Engagement for the government security forces with responsibility for protection of the BTC project and will share these with the Lender Group. ECGD will need to take advice from the Human Rights Policy Department (HRPD) in the FCO on these. As at 27th November 2003 ECGD had not yet received copies of the Terms of Engagement for the government security forces with responsibility for protection of the BTC project.

During the field visit, the BPU visited several sections of the WREP in Azerbaijan and Georgia. The only indications of its existence below ground were the marker posts and, in some areas, the poor reinstatement of the ground. There was no sign of any security for the pipeline or any need for it.

Since the recommencement of operation of the WREP for oil from the Early Oil Project there have only been two instances of physical intervention (tapping into the pipeline to extract oil) on the pipeline and both of these appeared to have taken place whilst the pipeline was empty.

NGO comments

When the project was first publicised the international NGOs claimed that there would be a 4km wide militarised corridor stretching from Baku to Tbilisi⁸³. Once it became clear that this was not the case, the NGOs became silent on this issue. However, NGOs have alleged that the use of security forces may lead to human rights abuses⁸⁴.

BPU assessment

Based on the BPU's own observations and the lack of attacks on the WREP, there would appear to be limited need for security for the BTC pipeline by the host countries. However this may change in the event of any form of terrorist threat and the BPU would wish to ensure that the potential responses by the government security forces were controlled through appropriate Terms of Engagement. The BPU cannot comment on the acceptability of the Terms of Engagement proposed by the 3 host countries, with assistance from BTC Co, until it has received them and also the comments on them from the HRPD in the FCO.

The BPU recommends that, if ECGD decides to provide support to the project, ECGD's approval of the Terms of Engagement for the government security forces with responsibility for protection of the BTC project should be a condition of ECGD's support becoming effective or, failing this, a precondition to the second drawdown or some other key milestone during the projects implementation .

⁸³ New Statesman (14 July 2003) and Tony Juniper, FoE, at the House of Lords seminar (28 October 2003).

⁸⁴ FFMT (August 2002)

3.7 Health and safety

3.7.1 Occupational Health and Safety

ECGD's main criterion for the acceptability of projects' occupational health and safety impacts is compliance in all material respects with the IFC General Health and Safety Guidelines (July 1998).

BTC Co has committed, in the ESAP⁸⁵ to comply with the IFC General Health and Safety Guidelines (July 1998). BTC Co's health and safety commitments are described in the Health and Safety Plan that is attached to the ESAP⁸⁶.

MM has reviewed the BTC Health and Safety Management Plan and found it to be acceptable. MM has also reviewed the health and safety performance of the contractors as part of its pre-financial close construction monitoring.

One fatality has occurred in Azerbaijan and three fatalities and one major injury have occurred in Turkey. MM's report states that it considers that the health and safety performances in Azerbaijan and Georgia are good⁸⁷ while in Turkey root cause analysis has been undertaken to identify the underlying causes of the major injury. The Lenders' post financial close Environmental Consultant will review the implementation of the recommendations stemming from this analysis and the analyses of the fatalities in early 2004.

NGO comments

None that the BPU is aware of relating to occupational health and safety.

BPU assessment

Based on MM's review of the BTC Health and Safety Management Plan and its reports on the construction activities, the BPU considers that the project complies in all material respects with the IFC General Health and Safety Guidelines (July 1998).

The BPU recommends that, if ECGD decides to provide support to the project, the health and safety aspects of construction activities, particularly in Turkey, should be monitored closely.

⁸⁵ Section 5.3

⁸⁶ Annex H

⁸⁷ MM's "Baku-Tbilisi-Ceyhan (BTC) Pipeline Project Pre-Financial Close Environmental and Social Construction Monitoring September-October 2003" dated 31 October 2003— Sections 2.6 and 3.6

3.7.2 Health and Safety of affected people

[TEXT REDACTION]⁸⁸ private citizens in all three countries have the right to seek to prevent contamination of their persons or property through complaints to the relevant administrative authority.

BTC Co has issued a "Human Rights Undertaking"⁸⁹ (formerly referred to as "the Deed Poll") to limit its use of any defence previously available to it under the HGAs against the imposition of more stringent environmental, health and safety and human rights legislation and/or legal challenges from NGOs/private citizens.

NGO comments

Amnesty International (AI)⁹⁰ and other NGOs have criticised the IGA/HGAs in that, although they contain general commitments to meet acceptable environmental and social standards, they prevent the 3 Host Governments from introducing more stringent legislation or from intervening in the project unless there is an imminent and material threat – thus gradually accumulating problems cannot be effectively addressed. Following discussions between AI and BTC Co, BTC Co issued the "Human Rights Undertaking". Through this BTC Co has agreed not to use the "economic equilibrium" argument when the states are acting reasonably in pursuit of their evolving international obligations regarding the environment, health and safety issues and human rights.

AI remains concerned that the "Human Rights Undertaking" does not provide state regulatory bodies with the same rights as NGOs/private citizens.

BPU assessment

The BPU acknowledges that the scope and effect of the "Human Rights Undertaking" are limited in certain respects. However the BPU considers that it is unlikely that any of the 3 states would in any event attempt to impose standards that are more stringent than those applicable to EU countries, and that those (evolving) standards will be acceptable. BTC Co has committed to meeting these standards. This, plus the advice from the legal counsel, leads the BPU to consider that the health and safety of people living close to the RoW will not be jeopardised by the BTC project.

⁸⁸ Email from [NAME REDACTION], to David Allwood, ECGD, entitled "BTC – Compliance with HGA standards" dated 24 October 2003 09:34

⁸⁹ The Baku-Tbilisi-Ceyhan Pipeline Company: BTC Human Rights Undertaking (22 September, 2003)

⁹⁰ AI's Human Rights on the line: The Baku-Tbilisi-Ceyhan pipeline project (May 2003)

4. Host country legal requirements

ECGD takes host country legal requirements into consideration in its determination of the acceptability of projects⁹¹ and, through its due diligence, seeks confirmation that the implementation of projects is in compliance, in all material respects, with the relevant host country legislation.

BTC Co has committed, in the ESAP⁹² to comply with the constitutions of the 3 host countries, the requirements of the IGA and HGAs and national legislation in force in the host countries to the extent that it does not conflict with the IGA and HGAs.

BTC Co has published a Citizens' Guide⁹³ to provide more easily accessible information relating to environmental, social and human rights issues.

The Lender Group environmental specialists have asked legal counsel in each of the 3 host countries to produce a list of the environmental legislation in place prior to the advent of the IGA and HGAs that could potentially be breached by the BTC project. This list has then been forwarded to BTC Co for comment. BTC Co has responded stating that none of the potential breaches identified are actual breaches and explained the reasons why this is the case. The legal counsel in the 3 host countries have each confirmed that they have not identified any statement of law in BTC Co's responses to be incorrect or misleading.

NGO comments

NGO allegations relating to breaches of law have been mainly concerned with the use of Article 27 of the Expropriation Law in Turkey (see Section 3.1.3 of this report) and breaches of the requirements of the international standards cited in the HGAs which have now become part of the national laws. (Compliance with the Expropriation Law in Turkey is considered in section 3.1.3 above and compliance with the HGAs is discussed in section 5 below.)

BPU assessment

The BPU is content that, given the operation of the IGA and HGAs, the implementation of the BTC project does not involve any material breach of any current environmental legislation or environmental legislation that was in place in any of the 3 host countries prior to the IGA and HGAs.

⁹¹ ECGD Business Principles Unit – Case Impact Analysis Process para. 9.2

⁹² Section 5.2

⁹³ Citizens' Guide to the BTC Project Agreements: Environmental, Social and Human Rights Standards (undated)

5. IGA and HGAs

In the ESAP⁹⁴ BTC Co has stated its commitment to comply with the constitutions of the 3 host countries and the requirements of the IGA and HGAs. The IGA⁹⁵ contains the requirements for the project to be designed and operated "in accordance with international standards and practices within the Petroleum pipeline industry (which shall in no event be less stringent than those generally applied within member states of the European Union)"⁹⁶.

BTC Co has published a Citizens' Guide⁹⁷ to provide more easily accessible information relating to environmental, social and human rights issues.

The requirements in the IGA and HGAs have been clarified and amended through the Joint Statement⁹⁸, the Security Protocol⁹⁹ and the Human Rights Undertaking¹⁰⁰.

NGO comments

The NGOs allege¹⁰¹ that the requirement, in the IGA to comply with "international standards and practices within the Petroleum pipeline industry" and corresponding requirements in the HGAs incorporate a requirement not only to comply with the World Bank Group environmental guidelines relating to onshore and offshore oil and gas development but also to comply with all the World Bank Group Safeguard policies (including IFC OP 4.01 relating to Environmental Assessment¹⁰²).

NGOs have also expressed concerns that the "economic equilibrium" clause in the HGAs amounts to an abrogation of sovereign powers and that the Turkish HGA conflicts with agreements relating to Turkey's accession to the EU. These issues are dealt with section 3.7.2 of this report and also in the Underwriting paper prepared by BG with assistance from GCO.

BPU assessment

Compliance with the World Bank Group environmental guidelines relating to onshore and offshore oil and gas development and the IFC Safeguard Policy relating to natural habitat is considered in section 2 of this report. The BPU

⁹⁴ Section 5.2

⁹⁵ 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 (1999)

⁹⁶ IGA Article IV Technical, Safety and Environmental Standards.

⁹⁷ Citizens' Guide to the BTC Project Agreements: Environmental, Social and Human Rights Standards (undated)

⁹⁸ Joint Statement on the Baku-Tbilisi-Ceyhan Pipeline Project (May 16, 2003)

⁹⁹ Protocol among the Republic of Azerbaijan, Georgia and the Republic of Turkey relating to the provision of security for the East-West Energy Corridor (23rd July 2003)

¹⁰⁰ The Baku-Tbilisi-Ceyhan Pipeline Company: BTC Human Rights Undertaking (22 September, 2003)

¹⁰¹ For example in a letter from The Corner House to Vivian Brown, ECGD, dated 23rd October 2003

¹⁰² IFC Operational Policy OP 4.01 Environmental Assessment (October 1998)

considers that the BTC project is in compliance, in all material respects, with the World Bank environmental guideline no. 26 relating to Oil and Gas Development (Onshore), the IFC environmental guideline no. 15 relating to Offshore Oil and Gas developments (only for the Ceyhan terminal) and IFC OP 4.04 Natural Habitats (November 1998).

Compliance with the World Bank Group Safeguard Policies relating to indigenous peoples, involuntary resettlement, cultural heritage and child or bonded labour is considered in section 3 of this report. The BPU considers that the BTC project is in compliance, in all material respects, with the World Bank Safeguard Policies WBG OD 4.20 Indigenous Peoples (September 1991), WBG OD 4.30 Involuntary Resettlement (June 1990), WBG OPN 11.03 Cultural Property (September 1986) and IFC Policy Statement on Forced Labor and Harmful Child Labor (March 1998).

Compliance with the World Bank Group Safeguard Policies relating to environmental assessment, forestry, projects in international waterways and projects in disputed areas is considered in section 7 of this report.

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6. International conventions

BTC Co has committed to comply with applicable EU Environmental Legislation and Multilateral Environmental Treaties and listed these in the draft ESAP¹⁰³. These include the EU Directive on Environmental Impact Assessment and the Espoo Convention.

The Lender Group environmental specialists and MM have reviewed this list and have not identified any significant omissions.

The "Joint Statement"¹⁰⁴ and the "Security Protocol"¹⁰⁵ contain commitments to comply with human rights principles, including, amongst others, the European Convention on Human Rights.

6.1 EU Directive on the assessment of projects' impacts on the environment¹⁰⁶

This European Directive requires, amongst other things, EIAs to "identify, describe and assess in an appropriate manner ... the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage;
- the interaction between the [se] factors"¹⁰⁷

"The information to be provided by the [project] developer ... shall include at least:

- a description of the project comprising information on the site, design and size of the project,
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- the data required to identify and assess the main effects which the project is likely to have on the environment,
- an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account environmental effects,
- a non-technical summary of the information mentioned [above]"¹⁰⁸.

Article 6 of Directive 85/337/EEC requires states to ensure that "any request for development consent and any information gathered ... are made available to the public [and] the public concerned is given the opportunity to express an opinion before the project is initiated"¹⁰⁹. However the Directive states that

¹⁰³ Annex G

¹⁰⁴ Joint Statement on the Baku-Tbilisi-Ceyhan Pipeline Project (May 16, 2003)

¹⁰⁵ Protocol among the Republic of Azerbaijan, Georgia and the Republic of Turkey relating to the provision of security for the East-West Energy Corridor (23rd July 2003)

¹⁰⁶ Council Directive 85/337/EEC as amended by Council Directive 97/11/EC

¹⁰⁷ Para 5 of Article 1 of Directive 97/11/EC

¹⁰⁸ Para 7 of Article 1 of Directive 97/11/EC

¹⁰⁹ Para 2 of Article 6 of Directive 85/337/EEC

"[t]he detailed arrangements for such information and consultation shall be determined by the ... States"¹¹⁰.

In circumstances where the impact on the environment is likely to affect the territory of another State, the Directive¹¹¹ requires the project State to provide the potentially affected State with "a description of the project, together with any information on its possible transboundary impact ... and shall give the other ... [potentially affected] State a reasonable time in which to indicate whether it wishes to participate in the Environmental Impact Assessment procedure".

BTC Co considers that it has done all it can to ensure compliance with this Directive.

NGO comments

The NGOs have alleged a number of non-compliances with this EU Directive¹¹²:

- In respect of the requirements for information disclosure and consultation, the NGOs allege that most people were not consulted, insufficient and biased information was provided, information was sometimes not provided in an appropriate language or form and the lack of freedom of speech precluded frank comments.
- NGOs have also pointed out that this Directive requires States to provide this information to other potentially affected States if the project is likely to have significant effects on the environment of the other State. The NGOs allege that other States have not been informed or consulted on the impacts of a tanker spill.
- NGOs have alleged that construction began prior to the approval of the Turkish EIA by the Turkish Government.

BPU assessment

BTC Co has refuted the NGO allegations about information disclosure and consultation and [NAME AND TEXT REDACTION] MM support BTC Co's view (see section 7.1 for further details). In addition the Directive states that the State shall determine the detailed arrangements for the dissemination of information and public consultation. The fact that the EIAs were each approved by the respective host government supports the view that the consultation was carried in accordance with the respective legal requirements.

The Ceyhan OSRP will address the issue of oil spills during tanker loading and virtually all spillages should be confined to Turkish waters, thus the BPU considers that other states need not be informed (see section 2.2.7 for further details). Potential spills from oil tankers sailing through the Mediterranean are

¹¹⁰ Para 3 of Article 6 of Directive 85/337/EEC

¹¹¹ Para 9 of Article 1 of Directive 97/11/EC

¹¹² CHES p 19, 20, 29 and 30.

outside the scope of the BTC project, although BTC Co has committed¹¹³ that, where possible, it will ensure that only double-walled tankers are used through its ship vetting procedures.

The only activities resembling construction that took place before the EIAs were approved were the symbolic lowering of a single length of pipeline into a purpose dug trench to mark the launch of the project in each of the 3 host countries. The BPU does not consider these ceremonies to be the start of construction.

In these circumstances and for the reasons given in section 7.1 below, BPU considers that the BTC project has complied in all material respects with the requirements of the EU Directive on the assessment of projects' impacts on the environment.

6.2 Espoo Convention¹¹⁴

The objectives of this Convention are to enhance international cooperation in assessing environmental impact in a transboundary context and thus to promote environmentally sound and sustainable economic development.

In the field covered by the Espoo Convention, EC Council Directive 85/337/EEC applies. It enables the European Community, and thus each Member State, to comply with most of the obligations under the Convention. Only Azerbaijan amongst the three host countries of the project has ratified the Espoo Convention.

Although BTC Co as a private company is not a Contracting Party to the Convention, it has indicated that it will follow so far as possible the requirements of the Espoo Convention by sending the relevant documents to the Minister of Environment in the countries concerned and providing them with contact information for any responses they may have. BTC Co has stated¹¹⁵ that it will utilise the risk assessment modelling already undertaken and base its decision as to whether notification is necessary on the worst case scenarios.

NGO comments

WWF has alleged¹¹⁶ that there is no evidence in the environmental documentation that EBRD has followed its own policy in terms of providing guidance and assistance to project sponsors in relation to projects in countries which are not party to the Espoo Convention.

¹¹³ ESAP Section 5.4

¹¹⁴ United Nations Economic Commission for Europe. (1991). The Convention on Environmental Impact assessment in a Transboundary Context. Espoo: UNECE

¹¹⁵ BTC Co response to request to prepare a response that describes the relevant requirements of OP 7.50 and Espoo.

¹¹⁶ Independent Review of the Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline EIA, Turkey Section. Prepared by WWF Turkey (9 October 2003)

BPU assessment

The BPU considers it highly unlikely than any country other than the 3 project countries would be affected by any potential transboundary environmental impact, and Article IV of the IGA¹¹⁷ relating to technical, safety, and environmental standards should ensure that the necessary information is shared. In view of this, the BPU considers that the BTC project is likely to comply in all material respects with the requirements of the Espoo Convention.

6.3 European Convention on Human Rights

The European Convention on Human Rights (ECHR) contains 12 "rights and freedoms" defined in Section 1 of the convention. The BPU has considered all these rights and freedoms and has concluded that most of these are not relevant to the implementation and operation of the BTC pipeline project. Those that appear relevant are each discussed below.

Prohibition of slavery and forced labour

The BPU considers that BTC Co's commitments on child and forced labour together with its own observations and those of MM (see Section 3.5 of this report) provide sufficient safeguards in relation to this right.

Right to liberty and security

The BPU considers that BTC Co's and the 3 Host Governments' commitments regarding the use of armed security personnel (see Section 3.6 of this report) provide sufficient safeguards in relation to this right.

Right to a fair trial

This right may, in certain circumstances, include a right to free legal assistance if the relevant party does not have sufficient means for payment. The principal project activity potentially involving court proceedings relate to the land acquisition processes in the three host countries. In the RAP BTC Co commits that "any costs associated with court proceedings will be borne by the Project and not by project-affected people"¹¹⁸. In addition, BTC Co is paying for NGOs in each country to provide information and legal advice to land owners/users during the negotiation proceedings. In these circumstances the BPU considers that sufficient safeguards have been provided in relation to this right.

¹¹⁷ 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 (1999)

¹¹⁸ BTC Project: Resettlement Action Plan Turkey Final Report: Executive Summary (November 2002)

Right to respect for private and family life

The BPU considers that BTC Co's commitment to abide by the requirements of the EIAs, RAP and ESAP plus the monitoring of the commitment by the Lenders' post financial close Environmental Consultant and the SRAP Expert Panel provide sufficient safeguards in relation to this right in respect of the implementation of the BTC project.

The BPU considers that BTC Co's and the three Host Governments' commitments regarding the use of armed security personnel (see Section 3.6 of this report) provide sufficient safeguards in relation to this right in respect of any activities relating to the provision of security for the pipeline and project staff.

Article 1 of the First Protocol to the ECHR - protection of property rights

The BPU considers that BTC Co's commitment to abide by the requirements of the RAP and the monitoring of the commitment by the Lenders' post financial close Environmental Consultant and the SRAP Expert Panel provide sufficient safeguards in relation to this right.

NGO comments

Several NGOs, including the FoE¹¹⁹, have raised general concerns about the impact of the project on human rights and the obligations of the host countries under the ECGR, and have made allegations of matters that could potentially involve breaches of the ECHR.

BPU assessment

As described above, BPU considers that rights guaranteed by the ECHR are sufficiently safeguarded in connection with the BTC project.

¹¹⁹ Legal opinion of Philip Moser, contained in the FoE Legal Seminar of 14 July 2003, refers to potential breaches of Articles 6 and 8 and Article 1 of the First Protocol.

7 Other World Bank Group Safeguard Policies

7.1 IFC OP 4.01 - Environmental Assessment¹²⁰

OP 4.01 describes the methodology through which the IFC assesses the potential environmental impacts of projects that have requested IFC financing. The Case Impact Analysis Process describes the equivalent process for ECGD.

BTC Co has committed to comply with "the sections of IFC Operations Policy 4.01 "Environmental assessment" ("OP 4.01") relating to the contents of an ESAP or ESIA ... for the purposes of preparation of the Operations ESAP ... and any amendment, supplement or replacement to an ESIA". IFC considers that the development of the project has been in compliance with all "applicable IFC environmental, social safeguard policies and health and safety guidelines¹²¹" including IFC OP 4.01. MM and the Lender Group environment specialists have confirmed that the ESIA and the Construction ESAP conforms to the requirements of OP 4.01.

NGO comments

The NGOs have alleged that the project does not comply with the requirements of IFC OP 4.01. Their main concern appears to be lack of compliance with the consultation requirements¹²². These requirements are described in paragraphs 12 and 13 of IFC OP 4.01 and require the project sponsor to consult project affected groups and local NGOs about the project's environmental aspects as early as possible and (a) before the terms of reference for the EIA are finalised and (b) once a draft EIA report has been prepared. In addition, the project sponsor is required to consult with these groups throughout project implementation to address issues that affect them.

NGOs have also alleged that IFC OP 4.01 was violated because a proper analysis of alternatives was not carried out. IFC provided a robust rebuttal¹²³ to this allegation in its response to submissions received during the 120-day public disclosure period.

BPU assessment

Section 3 of MM's report¹²⁴ on its review of the project summarises the environmental assessment process undertaken during the pre-construction phase of the project. Part of MM's scope of work was to evaluate the EIAs in each project state against the requirements of IFC OP 4.01. The MM report

¹²⁰ IFC Operational Policy OP 4.01 Environmental Assessment (October 1998)

¹²¹ Para 9.46 of IFC Report to the Board of Directors on Proposed Investments in ACG Phase 1 and the BTC Pipeline (October 14, 2003)

¹²² CHES pp 5, 15 – 17 and 33, WWF pp 28-29, CIEL p 17

¹²³ Section II of BTC Pipeline and ACG Phase 1 Projects Environmental and Social Documentation – IFC Response to submissions received during the 120-day Public Comment Period (October 27, 2003)

¹²⁴ MM "Baku-Tbilisi-Ceyhan Pipeline Project Environmental and Social Review" dated September 2003

describes some of the public consultation carried out prior to the approval of the EIAs in each of the 3 project states¹²⁵. In all 3 states draft EIAs were made available for review prior to their formal approval.

The 3 EIAs were formally approved by the project states in autumn 2002. Further information relating to environmental and social issues was subsequently produced by BTC Co in response to the environmental and social due diligence of the Lender Group. This information was accumulated into Supplementary Lenders' Information Packs (SLIPs). The EIAs and these SLIPs were disclosed by BTC Co, IFC and EBRD for a 120-day public disclosure period starting in June 2003.

BTC Co has produced a Public Consultation and Disclosure Plan for each project state that is appended to the EIA¹²⁶. The Plan documents the consultation that took place during the scoping stage of the project (September 2000 – January 2001) and the consultation that has subsequently occurred. Documentation including leaflets describing the project were prepared in Azeri, Russian and English in Azerbaijan; Georgian, Russian and English in Georgia and Turkish and English in Turkey. These were distributed to people in the vicinity of the pipeline route prior to meetings with provincial governors and settlement heads within a 4km wide consultation corridor. Meetings were also held with local NGOs and other interest groups¹²⁷.

BTC Co has established Community Relations Officers in each of the project states to act as focuses for the ongoing dialogue with the affected communities.

In the light of the above and for the reasons given in section 6.1 above, the BPU considers that the BTC project has complied in all material respects with the requirements of IFC OP 4.01. The BPU acknowledges that it is extremely difficult for the sponsors of linear projects like the BTC pipeline to consult with every person that would like to have his or her view listened to and taken into account.

7.2 IFC OP 4.36 - Forestry¹²⁸

IFC OP 4.36 describes IFC's policies for its involvement in the forestry sector through which it aims to reduce deforestation, enhance the environmental contribution of forested areas, promote afforestation, reduce poverty and encourage economic development.

The only potential relevance of this policy to the BTC project appears to be to encourage BTC Co to avoid, where possible, direct deforestation for the RoW or the above ground installations or indirect deforestation through the provision of improved access to previously inaccessible areas of forest.

¹²⁵ *ibid* Section 3.5.4 for Azerbaijan, Section 3.7.4 for Georgia and Section 3.9.7 for Turkey.

¹²⁶ E.g. BTC Project EIA Turkey: Appendix A1 – Public Consultation and Disclosure Plan (PCDP) (October 2002)

¹²⁷ *ibid* Section 4.3

¹²⁸ IFC Operational Policy OP 4.36 Forestry (November 1998)

NGO comments

None that the BPU is aware of relating to forests and IFC OP 4.36.

BPU assessment

The BPU considers that IFC OP 4.36 is only marginally relevant to the BTC project and considers that BTC Co has taken the direct and indirect impact of the project on forests into account as part of the route selection process.

7.3 IFC OP 7.50 - Projects in International Waterways¹²⁹

IFC OP 7.50 relates to, among other things, industrial projects that involve the potential pollution of international waterway. This OP requires the project sponsor or IFC to request the project state to formally notify the other riparian states of the proposed project and to provide them with details of the proposed project. If the project state indicates that it does not wish to give this notification, then the project sponsor or IFC should do so and, for the purposes of this notification, IFC may request the assistance of the relevant members of IFC's Board of Directors.

On July 24, 2003 IFC notified its Executive Directors of the riparian countries of Armenia, Syria, Iraq, Bulgaria, Romania, Ukraine and Russia with details of the BTC project. IFC has stated that no responses have been received.

NGO comments

The NGOs state that the riparian states of the Mediterranean Sea should also have been notified.

BPU assessment

The Ceyhan OSRP will address the issue of oil spills during tanker loading and virtually all spillages should be confined to Turkish waters, thus the BPU considers that other states need not be informed (see section 2.2.7 for further details). Potential spills from oil tankers sailing through the Mediterranean are outside the scope of the BTC project, although BTC Co has committed¹³⁰ that, where possible, it will ensure that only double-walled tankers are used through its ship vetting procedures.

The BPU considers that the BTC project has complied in all material respects with the requirements of IFC OP 7.50.

¹²⁹ IFC Operational Policy OP 7.50 Projects on International Waterways (November 1998)

¹³⁰ ESAP Section 5.4

7.4 WBG OP 7.60 - Projects in Disputed Areas¹³¹

WBG OP 7.60 relates to projects proposed for location in areas under dispute by two or more governments. Whilst there are several disputed areas in the South Caucasus region, the BTC pipeline route avoids all of them.

NGO comments

NGOs have stated that the presence of the pipeline will inflame territorial disputes in the area.

BPU assessment

The BPU considers that the BTC project does not pass through any disputed areas as described in WBG OP 7.60 and therefore that this OP is not relevant to the project.

However the BPU is concerned about the unrest caused by the recent presidential election in Azerbaijan and parliamentary elections in Georgia. **The BPU considers that the Underwriting Authority may wish to take account of advice from the UK Embassies in each of the host countries about the relationship between the BTC project and the political stability of the region when making its decision.**

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¹³¹ The World Bank Operational Manual – Operational Policy OP 7.60 Projects in Disputed Areas (June 2001)

8 Productive expenditure

For HIPC and IDA-only countries ECGD will only provide support to projects if those projects contribute to the economic and social development of the country and do not lead to the build up of unsustainable debt.

Georgia is an IDA-only country. The Georgian state is not part of the funding for the BTC project. However, under the terms of the HGA, it is responsible for providing the necessary security for both the BTC's and its contractors' staff and the pipeline itself.

BTC Co estimates that the costs of providing this security in Georgia are less than US\$100,000 per year¹³² and that these costs will be incurred from the commencement of construction activities.

The revenue to the Georgian government from transit fees will be around US\$120,000 per day at full throughput but this income stream will not start to flow until oil starts to flow in 2005. It is therefore possible that Georgia will have to borrow US\$2-300,000 to fund the initial security costs.

NGO comments

At an early meeting hosted by DFID the NGOs asked for confirmation that ECGD will be confirming that any Georgian expenditure is "productive" and reminded us that the HGAs contain commitments to expenditure by the host governments¹³³.

BPU assessment

The BPU considers that the BTC project will contribute to the economic and social development of Georgia and that the incurring of up to US\$300,000 of additional debt should not contribute in a material way to the build up of unsustainable debt. However the agreement of DFID and HMT on this will be required before ECGD can make a firm commitment of support.

¹³² Email entitled "RE: Georgia – security costs" from William E. Browning, BP, to Roger Gotts, ECGD, sent on 16 October 2003 at 18:30

¹³³ Informal record of UK Government meeting with NGOs about the BTC pipeline on 30th October 2002.

9 Environmental and social benefits arising from the project

The following environmental and/or social benefits are expected to arise as a result of the BTC project:

- Oil sales revenue to Azerbaijan which may be used for social development;
- Transit fees revenue to Georgia and Turkey which may be used for social development;
- Increased oil exports from the region without adding to the traffic in the Turkish Straits;
- Significant temporary employment during construction and some permanent employment;
- Opportunities for supplying local goods and services;
- The establishment of high quality operations to international standards and the potential to transfer these to local businesses;
- Follow-on foreign direct investment in operations to international standards as a result of realising successful commercial projects, and
- Benefits to the local communities arising from the community, social and environment investment programmes.

NGO comments

Insufficient benefits will accrue directly to the project-affected communities.

BPU assessment

The BPU considers that it is the responsibility of the 3 host governments to decide how to spend the income from the project and that the project-affected communities may not be the most deserving groups. The project affected communities will be the direct recipients of the Project Community Investment Programmes (totalling ~US\$25 million from the BTC and SCP projects), BP's social investment programme and BTC Co's Project Environmental Investment Programme.

The BPU considers that these benefits must be considered by the Underwriting Authority in addition to the project's potential negative impacts. The potential negative impacts will be minimised and mitigated if the project is implemented and operated in accordance with the ESAP and its supporting documents, thus **the BPU recommends that, if ECGD decides to provide support to the project, ECGD should approve the ESAP prior to financial close or, failing this, that ECGD's approval of the ESAP should be a condition of ECGD's support becoming effective.**

10 Overall assessment

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.

Review carried out and report written by:

David Allwood, Business Principles Adviser
Export Credits Guarantee Department

3rd December 2003

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Schedule 1. Synopsis of BPU recommendations etc

Page no.	Section	The BPU:
9	1.2.2	recommends that, if ECGD decides to provide support to the project, ECGD should approve the ESAP prior to financial close or, failing this, that ECGD's approval of the ESAP should be a condition of ECGD's support becoming effective.
12	2.1.1	recommends that the potential negative, long-term climate change impacts should be taken into account by the Underwriting Authority when making its decision.
17	2.2	recommends that, if ECGD decides to provide support to the project, ECGD should approve the ESAP and general OSRP prior to financial close or, failing this, that ECGD's approval of the ESAP and general OSRP should be conditions of ECGD's support becoming effective.
24	2.4.2	recommends that, if ECGD decides to provide support to the project, ECGD should approve the general OSRP prior to financial close or, failing this, that ECGD's approval of the general OSRP should be a condition of ECGD's support becoming effective.
26	2.5	considers that the Underwriting Authority may wish to take account of the potential negative, long-term impacts of this level of unsustainable consumption of natural resources when making its decision.
32	3.1.2	recommends that: <ul style="list-style-type: none"> - the commitment made by BTC Co that it will normally implement the recommendations set out in the SRAP Monitoring Reports should be included in the final version of the ESAP, - if ECGD decides to provide support to the project, ECGD should approve the ESAP prior to financial close or, failing this, that ECGD's approval of the ESAP should be a condition of ECGD's support becoming effective.
35	3.1.3	recommends that, if ECGD decides to provide support to the project, ECGD should approve the ESAP prior to financial close or, failing this, that ECGD's approval of the ESAP should be a condition of ECGD's support becoming effective.

Page no.	Section	The BPU:
42	3.6	recommends that, if ECGD decides to provide support to the project, ECGD's approval of the Terms of Engagement for the government security forces with responsibility for protection of the BTC project should be a condition of ECGD's support becoming effective or, failing this, a precondition to the second drawdown or some other key milestone during the projects implementation .
43	3.7.1	recommends that, if ECGD decides to provide support to the project, the health and safety aspects of construction activities, particularly in Turkey, should be monitored closely.
56	7.3	considers that the Underwriting Authority may wish to take account of advice from the UK Embassies in each of the host countries about the relationship between the BTC project and the political stability of the region when making its decision.
58	9	recommends that, if ECGD decides to provide support to the project, ECGD should approve the ESAP prior to financial close or, failing this, that ECGD's approval of the ESAP should be a condition of ECGD's support becoming effective.

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Annex 1**LIST OF ACRONYMS**

ACG	Azeri Chirag Gunashli oil field
APLR	Association for Protection of Landowners' Rights
BG	Business Group
BOTAS	Boru Hatlari ile Petrol Tasima A.S
BP	BP plc
BPU	Business Principles Unit
BTC CO	Baku-Tbilisi-Ceyhan Pipeline Company
CBO	Community entity
CCP	Contractor Control Plan
CHES	The Corner House, Baku-Ceyhan Campaign, PLATFORM, KHRP, FoE
CLEE	Centre for Legal and Economic Education
COFACE	Compagnie Francaise d'Assurance pour le Commerce Extérieur
DEFRA	Department for Environment Food and Rural Affairs
DEHAP	Demokratik Halk Partisi
DFID	Department for International Development
EBRD	European Bank for Reconstruction and Development
ECA	Export Credit Agency
ECGD	Export Credits Guarantee Department
EIA	Environmental Investigation Agency
EMS	Environmental Management System
ESAP	Environmental and social action plan
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Management System
EU	European Union
EU BREF	Industry best practice guidance notes produced by the EU
FoE	Friends of the Earth
GCO	General Counsel's Office
GGMWC	Georgia Glass and Mineral Water Company
GHG	Greenhouse gas
GLAC	Guide to Land Acquisition
HERMES	Euler Hermes Kreditversicherungs-AG
HDD	Horizontal Directional Drilling
HGA	Host Government Agreement
HIPC	Heavily Indebted Poor Country
HR	Human Rights
HRPD	Human Rights Policy Department
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
IFC	International Finance Corporation

IGA	Inter-Governmental Agreement
IMO	International Maritime Organisation
IUCN	World Conservation Union
JBIC	Japan Bank for International Cooperation
KHRP	Kurdish Human Rights Project
MIGA	Multilateral Investment Guarantee Agency
MM	Mott MacDonald
NEXI	Nippon Export and Investment Insurance
NGO	Non-governmental organisation
OD	Operational Directive
OP	Operational Policy
OPIC	Overseas Private Investment Corporation
OSRP	Oil Spill Response Plan
PS2	Pumping Station 2
PSG1	Pumping Station Georgia 1
PSG2	Pumping Station Georgia 2
RAP	Resettlement Action Plan
RoW	Right of Way
RUDF	Rural Urban Development Foundation
SACE	Instituto per I Servizi Assicurativi del Commercio Estero
SCP	South Caucasus Pipeline
SEA	Strategic Environmental Assessment
SLIP	Supplementary Lender Information Pack
SRAP	Social and Resettlement Action Plan
ToE	Terms of Engagement
UNFCCC	United Nations Framework on Climate Change
US EX-IM	Export-Import Bank of the United States
VOC	Volatile organic compound
WBG	World Bank Group
WREP	Western Route Export Pipeline (otherwise known as the Baku-Supsa pipeline)
WWF	World Wildlife Fund

