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URGENT – Re Baku-Tbilisi-Ceyhan pipeline Board meeting

SENT BY FAX AND EMAIL
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Dear Executive Director,

IFC Staff Report to Board on Baku-Tbilisi-Ceyhan oil pipeline

We are in receipt of the report prepared by IFC staff for the Board meeting on 30th October 2003 that will consider IFC financing for the Baku-Tbilisi-Ceyhan oil pipeline.

We have analysed the document and are shocked by its failure even to report a range of material facts that would be central to enabling the Board to make an informed decision as to project risks, legality, compliance with IFC standards and benefits. For example:

- **Conflict risk to pipeline:** Although the pipeline passes through areas where PKK Kurdish guerrillas were active during the recent 18-year armed conflict between the PKK and the Turkish state, *the report fails to mention that the PKK has now abandoned its unilateral cease-fire or that it has specifically named pipelines as "legitimate targets"*. Significantly, the report fails to make any mention or comment on the Kurdish conflict in Turkey when assessing project risks.
- **Potential breach of International Law:** The report states that Armenia, Iraq and Syria have been notified as to potential downstream impacts from oil spills, as required under the Bank's safeguard policy on International Waterways. However, *it fails to inform Executive Directors that general international law requires not only notification but also consultation and negotiation, neither of which are reported to have taken place.*
- **Political Instability :** The report states that the Government of Azerbaijan has a "strong interest" in maintaining stability. The events surrounding the seriously compromised elections in Azerbaijan, featuring the first dynastic transfer of power in the post-Soviet states amid widespread allegations of vote-rigging and well-chronicled assaults on journalists and members of the opposition, suggest that *the IFC staff's assessment is highly misleading or based on inadequate intelligence about political stability in Azerbaijan.* Indeed, all the evidence suggests that the region is becoming less democratic rather than more so.
- **Azerbaijan Oil Fund:** In Azerbaijan, the State Oil Fund used for BTC revenues is non-transparent, accountable only to the president and its uses and aims have not been clarified,

although it was previously used to pay for BTC construction costs, in contradiction to IMF rules. *The IFC report discusses the oil fund (p.40) but omits to mention the abuse of the fund to date or the problems experienced in ensuring its democratic oversight.*

- **Non-compliance with IFC Safeguard Policies and Project Agreements:** *The report neither mentions, nor responds to, the 173 violations of World Bank safeguard policies identified by NGOs for the Turkish section of the pipeline alone, despite IFC staff being informed of them during the EIA public disclosure period. Such violations include: 153 partial or total violations of IFC and EBRD Operational Policies; 18 partial or total violations of the European Commission's Directive on EIA; 2 direct violations of other Turkish law.*
- **Breaches of Host Country Law:** *Because compliance with the above standards is required under the legal regime for the project, such violations of relevant standards put the project potentially in conflict with host country law. As such, the project appears to be in fundamental breach of the IFC's requirements that the projects which it finances comply with domestic law. The report neither addresses this issue nor replies to violations identified by NGOs.*
- **Continuing concerns over human rights implications of Host Government Agreements:** *The report suggests that Amnesty International's concerns over human rights issues related to the Host Agreements have been resolved (p.14). In fact Amnesty has stated that it still has reservations about the agreements, despite the Deed Poll signed by BTC Co. Although Amnesty responded before the IFC staff report was written, the group's disclaimer is not mentioned.*
- **Outstanding Legal Issues:** *The report fails to mention that the project is subject to an official complaint to the European Commission (EC) by non-governmental organisations and affected villagers from Turkey. The complaint argues that the project agreements with Turkey put Turkey in breach of its Accession Partnership with the European Union, since in derogating from so many sovereign powers it is moving away from rather than towards the *acquis communitaires*. The EC is currently investigating the project and will report on 5th November 2003. IFC have stated to NGOs that a ruling by the EC in favour of the NGOs' case would mean that the IFC could not fund the project.*
- **Inadequate Consultation:** *The report states that there has been "comprehensive consultation" and that consultation procedures go beyond IFC requirements. This is highly misleading. The EIA for the project itself reveals that fewer than 2% of people were consulted face to face and NGOs have identified 83 violations of 6 key World Bank guidelines related to consultation. The report neither mentions nor discusses these violations. Claims made in the report on consultation also conflict with the evidence presented in the EIA. – for example it is stated that consultation took place "before specific corridor selected" (p.35-36) when the EIA only places the start of face to face consultation with communities at September-October 2001.*
- **Natural Habitats:** *IFC staff have given Executive Directors an incomplete list of sensitive natural habitats (para 9.21). In particular, no mention is made of the Ulas and Alacorak potential Ramsar wetland sites, which contain species significantly at risk.*
- **Use of Emergency Powers to speed up resettlement in Turkey:** *In order to keep to the project's construction timetable, Emergency Powers available to the Government of Turkey have been invoked to override key provisions of OD 4.30, in breach of both Turkey's obligations under the Host Government Agreement for the BTC project and in flagrant violation of the BTC Consortium's commitments within the Resettlement Action Plan. For poorer people, the likely outcome is that they will be worse off than before the project. Some are already talking of having to leave their lands. The invocation of emergency powers is not mentioned in the report nor are its implications discussed, including the high probability of cases being brought to the European Court of Human Rights.*
- **Cumulative Impacts:** *The IFC staff report misleadingly states that the EIAs have reviewed all known regional oil developments (para 9.39). No mention is made in the EIA of trans-Caspian oil shipments from Kazakhstan which are likely to be routed via BTC and without which BTC is arguably financially marginal.*

- **Alternative Routes through Borjomi:** *The report omits to mention that the Dutch Commission for EIA, which reviewed the EIA for Georgia at the request of the Georgian Government, has deemed a number of alternative routes technically feasible. Other inadequacies in the assessment of alternatives raised by NGOs during the disclosure period are neither mentioned nor addressed.*
- **OD 4.20:** *The report argues that OD 4.20 is not applicable. It fails to respond to detailed NGO representations made during the disclosure period which contest this view or to inform the Board that NGOs are preparing a complaint to the Compliance Advisor Ombudsman on the failure to apply OD 4.20. It also fails to inform the Board that its “vulnerable peoples” approach does not reflect any agreed IFC policy.*
- **Monitoring:** *Although the report stresses the multi-layered monitoring procedures for the project (p.20), it fails to mention that the BTC Consortium had failed to comply with its commitment to publish an external resettlement review at the beginning of September, as required under its resettlement monitoring plan. The report was still not published at the time IFC wrote to EDs. Yet timely publication of monitoring reports is described as “key” by the report (p.20). Other statements claiming that the mitigation procedures have been “proven” to be in compliance with IFC standards are simply not true.*
- **Doubts over Competence of Implementing Agency:** *The report acknowledges the poor social and environmental record of BOTAS, the company that will build and operate the pipeline in Turkey (p.43). However, it claims that this risk has been mitigated. No mention is made of the fact that BOTAS’s implementation of the resettlement programme has already led to major violations of the Bank’s resettlement policy which have not been addressed through mitigation measures (see also below).*
- **Financial Profitability:** *The IFC report states that the transit fee will be \$4.67 a barrel. BTC Co. has repeatedly given figures in public that are below \$3.50. As recently as September 2003, SOCAR stated publicly that the fee will be in the range \$3.30-\$3.50. The discrepancy is not mentioned, nor discussed, despite the clear implications for the finances of the project.*

The above omissions constitute a serious abuse of the IFC’s decision-making procedures and raise serious questions as to whether or not the IFC staff have deliberately attempted to mislead the Board. If EDs are not properly informed by staff of the full range of risks associated with a project, they are not in a position to make an informed judgment as to a project’s legality, political risks, development impacts and reputational risks to the World Bank Group.

In addition to investigating the IFC staff’s failure to present key material facts before the Board, we would therefore urge you to press for a delay in the Board’s decision on the Baku-Tbilisi-Ceyhan project. We believe the case for such a delay is now overwhelming:

1. **Unresolved Problems:** Can the IFC confirm that none of the 173 identified violations identified by NGO are valid? Does the project not need to be amended if they are? Are the necessary structures in place in the three countries and within BTC Co. to ensure local ‘stakeholders’ really benefit? What is the likely impact of Kazakh oil if, as predicted, it enters the pipeline?
2. **Ongoing investigations into the project:** As well as the European Commission investigation, there is an OECD complaint pending against BP, a court case ongoing in Georgia and a complaint to be raised with the IFC CAO about the failure to apply OD 4.20. Why decide to fund the project before all these are completed, particularly when the IFC report admits an adverse ruling in the Georgian courts would amount to a default in the loan?
3. **Lack of legal clarity:** Does the HGA imperil Turkey’s EU accession? Why does BTC Co. insist on retaining the ‘stabilisation clause’ allowing it to get compensation from the host countries if, as it insists, it doesn’t intend to use it? How are affected people supposed to get their rights to effective redress?

- 4. Due Diligence Concerns:** There are serious failures of due diligence in the IFC's work thus far. Bearing in mind the very critical report of its own CAO, will this report simply confirm that the IFC seems willing to put political pressure over its own mandate for development?

Yours Sincerely

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