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The Executive Directors,
International Finance Corporation
1818 H Street NW
Washington DC, USA

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Dear Executive Directors,

Baku-Tbilisi-Ceyhan Project: IFC Response to Submissions received during 120-day comment period for BTC Pipeline

We are in receipt of the above document, which was posted on the IFC website on 28th October, just two days before the IFC board was originally to meet to discuss financing the project. We regret that the document was not posted earlier in order to allow for a fuller appraisal of its contents.

We have reviewed the document and are bitterly disappointed by both its approach and content, which we find to be partial, incomplete and misleading. Our initial comments are set out below:

1. **General Comment:** Throughout our continued monitoring of the implementation of the BTC project, we have consistently sought to engage both constructively and in good faith with BTC and IFC staff. *IFC and BP staff have consistently dismissed well-founded and accurate criticisms of the project, and maintain an unwillingness to work with groups on the ground to investigate evidence of continuing violations of World Bank policies.* This defensiveness is evident throughout the IFC response: for example, the IFC complains that some NGO submissions were “very lengthy and sought to analyse in-depth each and every IFC policy and procedural compliance or non-compliance”, which is surely the purpose of disclosure. *The underlying impression is that the IFC is simply going through the motions of responding to critical NGO submissions, rather than sincerely engaging with them in order to improve the project.* Such an attitude has encouraged distrust that will be hard to overcome. Indeed, IFC and BTC Co appear only to have responded to concerns about the project when public pressure, and the potential for embarrassment, has forced them to do so. However, such amendments, which include key elements of the RAP Fund, the Human Rights Undertaking and aspects of the Community Investment Programmes, bear testament to the accuracy of NGO critiques. *The IFC’s attitude is regrettable, and it seems almost inevitable that long-term NGO relations with the World Bank will suffer significantly as a result.*
2. **General IFC reaction to NGO critiques:** The “IFC Response to Submissions Received” is a completely unacceptable response to what are unprecedentedly detailed NGO submissions. It is bullish to the point of dismissiveness, definitively opining (after a mere two weeks and in the absence of any further ‘ground-truthing’) that not one of the 173 violations of World Bank standards identified by NGOs is valid. It consistently fails to answer allegations directly; where NGOs have provided evidence that a particular policy is not being implemented properly, it merely redirects attention back to the paper policy without any engagement with the reality on the ground (e.g. Involuntary Resettlement and Cultural Property). It is largely toothless, relying on hortatory banalities (such as

“BTC Co. clearly recognises the importance of being diligent”) to assuage concerns rather than supplying convincing evidence of effective mechanisms to ensure proper project implementation.¹ And the response is peppered with deliberate exaggerations: how, for example, can IFC insist that “100% of land users have been consulted at least once” when the IFC is itself in receipt of signed witness statements – including statements received after the BTC Co.’s Social and Resettlement Action Plan Monitoring Panel undertook its field research - from villagers testifying that they have never been consulted?

3. **Legal due diligence.** We are astounded that the IFC is still undertaking legal due diligence at this late stage in the project (p.22). We fear that such incomplete legal due diligence has led to the Board being misled over the legal implications for the IFC of supporting the project in its current state. For example, the IFC’s response appears to be unaware that that, under the HGA for the project in Turkey, a breach of EC Directives on Environmental Impact Assessment would now constitute a breach of host country law, thus breaking one of IFC’s few golden rules. It is the definite impression of NGOs that IFC staff have consistently failed to understand this. Likewise, the repeated invocation of the project’s “EU standards” is legally meaningless without specifying which precise standards apply.
4. **Strategic Environmental Assessment.** The IFC states that SEA is not a requirement of IFC policies and procedures. This is true but misses the point. SEA is a requirement of EC Directive 2001/42/EC of 27 June 2001 to which the project is bound under the terms of the Intergovernmental Agreement (Art. IV – “the project shall be constructed and operated in accordance with international standards and practices within the petroleum industry (which shall in **no event be less stringent** than those generally applied by member states of the European Union)”. *Since the IGA constitutes part of the legal regime for the project, the failure to observe EC 2001/42/EC constitutes a breach of host country law and thus a breach of the IFC’s legal duty not to violate local law.*
5. **Levels of Compensation:** The IFC quotes favourably from BTC Co.’s Social and Resettlement Action Plan (SRAP) Monitoring Panel, whose report was finally published last week, on the general satisfaction of affected landowners with the price they were offered for their land and crops. We have reviewed the Panel’s report, and, whilst welcoming its appearance, have found its findings in direct conflict with more up-to-date reports from the ground (including signed witness statements from affected villagers). We believe that recourse to the courts should be a last resort, and that if levels of compensation were truly satisfactory there would be little need for villagers to go to court to obtain better terms. Yet, the report itself notes that, “*people in all countries have been actively using . . . judicial complaints resolution avenues*” (p.A-23). We also note that the Panel fails to record the nature of grievances submitted under the grievance processing system.
6. **Emergency Powers used to override OD 4.30.** NGOs supplied evidence that emergency powers had been invoked under Article 27 of the Turkish Expropriation law, threatening key provisions of OD 4.30. IFC emphatically denies such emergency powers have been invoked and states on more than one occasion that, “use of Article 27 of the Expropriation Law is not limited to national emergencies as implied by some NGOs”. *This is impossible to reconcile with the text of Article 27, which is explicit as to its exclusive applicability for circumstances which involve national defence and national emergencies.*² Significantly, the SRAP Panel’s report acknowledges the threat that Article

¹ In that, it is merely a microcosm of the meaninglessness of a large swathe of the project’s “undertakings”, which lack the necessary enforcement mechanisms to raise them above the level of empty pledges.

² The full text of Article 27 reads: “**In cases of expropriation subject to a Cabinet Decree for national defense or an emergency as per the provisions of the law on National Defense Obligations No.3634 or for the expropriation of immovable property in emergency as stipulated in special laws, any immovable property may be seized by the related administration. In that case, the**

27 potentially poses to peoples' rights and recommends that Article 27 cases be kept to a minimum (D-19).

7. **Violations of OD 4.30.** The IFC response fails to acknowledge that the SRAP Panel records breaches of OD 4.30 in all three countries as a result of land being occupied prior to payment of compensation.(p.A-26).³ The SRAP does not give details of the number of cases involved (noting only that they are small relative to the overall number of land transactions) nor does it discuss the legal implications of such breaches. We note, however, that under the terms of Turkey's Lump Sum Turnkey Agreement **any** violation of OD 4.30 would constitute a violation of local law, breaching fundamental World Bank policy and the basic promises of BTC Co.. NGOs can see no defensible reason why a project that the project sponsor's own monitoring shows to have breached local law should be considered for funding. The suggestion that spotting these breaches after they have occurred represents a good example of monitoring in action reveals a fundamental misunderstanding of the purpose of monitoring processes - namely to ensure that effective procedures are being adhered to rather than serve as surrogates for such mechanisms. *We also note that the breaches (which constitute fundamental violations of property rights) occurred whilst IFC was fully engaged in the project, negating claims as to the "additionality" that IFC has brought to the project.*
8. **Compensation Levels.** On the issue of compensation levels, we note that the IFC's assurances are in conflict with sworn evidence received by villagers in July and September and passed to the IFC. We also find it arrogant of IFC to assume that, *"As long as the actual users receive their crop compensation before the land is entered into, they are usually not too sensitive to the land compensation being blocked."* It is not IFC's role to reach this conclusion, nor to justify violations of their own standards because of it.
9. **Numbers of Affected People Consulted:** The IFC claims that the Baku-Ceyhan Campaign's estimate that fewer than 2% of affected people have been consulted is "meaningless without stating what total population is being referred to." Yet the figures come from the project's own EIA. While the EIA lists the number of households and people in each settlement along the route, in a drastic failure of transparency it normally fails to list how many people were consulted in them. In nine cases, however, it does list how many people out of the total settlement were consulted; they comprise a total of 140 people out of the 7771 people in the nine settlements, which amounts to 1.8% of the population.⁴ Since these are figures taken from the 102 villages for which results are listed, less than a quarter of the total of 440 settlements the EIA notes are in the pipeline corridor, the real figure is likely to be considerably lower.⁵ Similarly, the IFC Response misleads the Board when it claims that consultation lasted "more than two and half years", when the EIA clearly states that face-to-face consultation with local people occurred over a six-week period in August and September 2001.⁶

proceedings other than those related to appraisal shall be conducted later. Upon request of the respective administration, the value of the immovable property in question shall be appraised by the experts as per the provisions of Article 10 and 15 within seven days. Seizure shall be made after the amount specified by the invitation and the announcement to be made in accordance with Article 10 herein is deposited by the administration in the name of the owner. The amount to be deposited in cases stipulated in the second paragraph of Article 3 herein shall be the first installment to be paid."

³ BTC SRAP Expert Panel Review, Part A. The report states: "BTC Co must direct more attention to eliminating cases where land is occupied prior to payment of compensation. Whilst the number of instances where this has occurred is small relative to the overall number of land transactions, the practice is contrary to World Bank OD 4.30 principles and should be avoided."

⁴ See Baku-Ceyhan Campaign, Review of the Environmental Impact Assessment for the BTC Oil Pipeline, Section 3, p. 14, for full details.

⁵ While the Baku-Ceyhan Campaign notes that a mere nine settlements is a small sample figure, we are only able to work with the material at hand. The simple solution would be for BTC Co. to release the list of numbers surveyed in each of the 102 settlement for a full statistical analysis. That would of course not solve the problem of the remaining 338 villages for which no details are given.

⁶ See Baku-Ceyhan Campaign, Review of the Environmental Impact Assessment for the BTC Oil Pipeline, Section 3, p. 24, for full details.

10. **Construction and the RAP** – The IFC states that construction did **not** commence before finalization of the RAP for Turkey (p.15) which was released locally in December 2002. **This is untrue and egregiously misleading.** Construction began at Ceyhan on the 26th October 2002, with the opening ceremony widely reported in the press and indeed on the Deputy Prime Minister of Turkey’s own press website. A picture of the Deputy Prime Minister welding the pipes is available from www.theturkishtimes.cm/archive/02/10_15/.
11. **Impacts on Borjomi and Conveying of Risks to Local People:** Notably, the IFC staff report to the board admitted that in the event of a spill, oil would pollute the water from which local people draw their drinking supplies and that, euphemistically, “there was debate” over whether it would affect the mineral springs themselves. Yet a BP video distributed in the region and elsewhere explicitly states, “Experts and consultants say that it is geologically impossible for any oil spill to pollute the main springs because of pressure and elevation factors.” This is only one instance where misinformation over project impacts has been circulated, raising questions as to whether local people who allegedly found the pipeline risk “acceptable” have really “been made fully aware” of its implications.
12. **Protection of the Kurds:** IFC justifies not applying OD 4.20 to Kurds along the route by citing two supposed ways in which they do not meet the criteria They also claim that Kurds are not especially vulnerable, since they are affected by the compensation arrangements in the same way as any other group – a claim that the IFC is in no position to make give that consultation with “vulnerable groups” has, in the words of the SRAP, been “very limited”.⁷ We remain in complete disagreement with IFC on this point, and will be making a formal complaint to the IFC’s Compliance Adviser Ombudsman, as we regard this as a major deviation from IFC’s own policies, and one with potentially very severe consequences for affected people. The IFC approach shows a total misunderstanding of the nature of marginality and vulnerability; it is the circumstances in which they live that makes groups vulnerable, and so the same process will have vastly different impacts upon them. Thus a generic ‘vulnerable peoples’ policy is disingenuous, as by homogenising different groups under one rubric it fails to address the very different reasons why they are vulnerable in the first place.

The above are just a few instances of where the IFC’s response to NGO submissions made during the disclosure period either fails to address the points raised or to reassure NGOs that their concerns have been addressed. Indeed, it is clear that a vast gulf exists between NGO and IFC assessments of the project’s compliance with international best practice and, critically, on what is actually happening on the ground.

The prospects of this gulf being bridged would be significantly enhanced were the IFC Board to delay any decision on financing pending a review period, during which the IFC and others could complete processes they admit are incomplete and, with the help of NGOs, adequately validate the effectiveness of the project on the ground as well as on the computer screen. Indeed, in our view, such a delay is essential if the project is to be brought up to international standards. The Board must recall that one of BTC Co.’s firmest pledges is that “no-one will be disadvantaged as a result of this project.” The opinion of independent NGOs which have been most active in monitoring implementation of the project on the ground is that, as it currently stands, it is impossible for this aim to be achieved

Finally, we would respectfully urge the Board to consider the long-term impacts of a Board decision to press ahead with financing BTC despite its evident breach of IFC standards. Following World Bank approval for the Chad-Cameroon project, NGOs were told that IFC procedures would be improved. The BTC pipeline is thus something of a litmus test for Bank-NGO relations. A groundswell of opinion is developing among many NGOs that, due to unwillingness on the IFC’s part to stand up to its commercial clients, consultation procedures have become often fruitless exercises which produce little change of

⁷ BTC SRAP Expert Panel Review, August 2003, Rev 2, p.A-21: “A limitation of the August 2003 review was that consultation with project affected vulnerable households was very limited”.

consequence. If the World Bank and IFC are to retain their credibility as mediators between corporations and civil society, NGO fears on this score must be allayed. Yet IFC's behaviour during the BTC project - impugning the motives of NGOs⁸ and dismissing the majority of their concerns out of hand - has significantly undermined the confidence and trust of many NGOs in the Bank's good faith.

The Board has an opportunity to correct this. By delaying its decision on financing the project, the Board would send a powerful signal that it was intent on ensuring that IFC projects meet IFC standards. A delay would also make it clear that the Board was unwilling to be coerced into allowing the commercial imperative of the project sponsor to outweigh the IFC's obligations to those who are affected by the project. *A delay would thus help considerably in restoring the trust that has been so badly damaged by the indifference of IFC staff to NGO concerns – trust that will be essential to constructive future monitoring of the project. If the project sponsors are unwilling to accept such a delay, we would urge the IFC to safeguard its reputation by voting against financing the project*

For our part, we are committed to a continued engagement in the project in order to ensure that the rights of affected villagers are fully respected, if necessary through action in the national courts and the European Court of Human Rights. Given that IFC standards are now part of the legal regime for the project, any violation would be contestable in the courts, which may not be as reckless as IFC staff appear to have been in interpreting the Bank's rules. *We believe that IFC's reputation will therefore be critically dependent on ensuring that its standards are strictly adhered to not merely on paper but also in implementation.*

In conclusion, we would urge the IFC board to delay any Board decision for at least 3 months, so that the issues raised by NGOs can be thoroughly investigated and, where possible, resolved. We believe this to be in the interests of all parties if they are sincere in their wish to bring the project into compliance with international standards. We also believe a delay is critical to ensuring that relationships between the World Bank and NGOs are not further damaged – relationships that have, in the past, proved essential not only to improving project implementation but also ensuring proper monitoring and accountability. *It would be of immense regret if the IFC Board passed up this opportunity to improve the BTC project and remove what, in the absence of leadership from the Board on this issue, is likely to become a constant thorn in the side of the World Bank.*

Yours Sincerely

Nicholas Hildyard, The Corner House
Anders Lustgarten, Baku-Ceyhan Campaign
Manana Kochladze, Green Alternative
Petr Hlobil, CEE Bankwatch Network
Kerim Yildiz, Kurdish Human Rights Project
Greg Muttitt, PLATFORM
Regine Richter, Urgewald
Nick Rau, Friends of the Earth (England, Wales and Northern Ireland)
Antonio Tricarico, Campaign to Reform the World Bank
Heike Drillisch, WEED

⁸ If the Baku-Ceyhan Campaign is included among the unnamed "small cadre of international NGOs [which] have expressed a stated objective of stopping the BTC project" (and a degree of honesty when maligning groups would be appreciated, rather than hiding behind anonymity), we would like to point out once again that we have never expressed an aim of stopping the project, merely of insisting that any public funding should be conditional on the project meeting international standards and law..