

3. Consultation on the BTC project (Turkey section)

Evaluation of project documents and performance against World Bank standards, EBRD standards and the EU Directive on Environmental Impact Assessment

3.0 Contents

3.1 Summary

3.2 Introduction

3.2.1 Key questions

3.2.2 Structure of this chapter

3.3 Political and social context of consultation

3.3.1 Background

3.3.2 Absence of analysis of Kurdish situation in EIA

3.4 IFC policy OP 4.01 Environmental Assessment

3.4.1 Consultation with affected communities and NGOs

3.4.2 “The project sponsor initiates . . . consultation as early as possible”

3.4.3 Two consultation periods required

3.4.4 Ongoing consultation

3.4.5 Timely disclosure of project documents

3.4.6 Form and language of materials

3.4.7 Inadequate initial consultation on summary of project impacts

3.4.8 Making documentation accessible

3.5 Other IFC and World Bank standards on consultation

3.5.1 OP 4.04 Natural Habitats

3.5.2 OD 4.30 Involuntary Resettlement

3.5.3 OD 4.20 Indigenous Peoples

3.5.4 OPN 4.11.03 Cultural Property

3.6 EBRD Environment Policy

3.6.1 Meaningful public participation

3.6.2 Opportunity to express concerns

3.7 EU Directive on EIA

3.7.1 Inadequate and flawed consultation with affected villagers

3.7.2 Failure to address trans-boundary impacts of tanker traffic and to inform affected Member States

3.7.3 Failure to consult with authorities and public in affected Member States

3.7.4 Failure to consult on trans-boundary impacts

3.1 Summary

“Consult: v. Seek information or advice from; take counsel; take into consideration, take advice.”

Pocket Oxford Dictionary

The BTC Consortium has undertaken that the project will comply with World Bank Group standards, European Bank for Reconstruction and Development (EBRD) standards and the European Union (EU) Directive on Environmental Impact Assessment (EIA), all of which contain requirements with regard to consultation. In the case of the EU Directive, compliance is a legal obligation under the Host Government Agreement signed between the BTC Co. and Turkey. Breaches would thus constitute breaches of host country law.

For the Turkish section of the pipeline, this review finds:

- **At least 42 violations or partial violations of International Finance Corporation (IFC) operational policies OP 4.01 (Environmental Assessment) and OP 4.04 (Natural Habitats), on consultation on the EIA (a further 41 breaches of 4 other World Bank guidelines relate to consultation on resettlement, on cultural property and on ethnic minorities, and are covered in those respected sections below);**
- **6 breaches of the EBRD’s Environmental Policy with regard to consultation;**
- **4 breaches of the EU Directive on Environmental Impact Assessment, with which the EIA is bound to comply under the Host Government Agreements: these breaches thereby constitute potential violations of host country law.**

Specifically:

- **Lack of freedom of speech and human rights abuses along the route fundamentally invalidates consultation procedures;**
- **Less than 2% of affected people have been consulted face-to-face;**
- **Consultation of affected people began more than a year after the consultation process started, and lasted only two months in total;**
- **Analysis of consultation responses is consistently rushed, imprecise and often cursory, frequently amounting to little more than basic demographic information;**
- **The consultation process was heavily focused on people not directly affected by the project, such as government departments;**
- **The project failed to apply basic protections to vulnerable minorities;**
- **There were insurmountable barriers to affected people participating in planning and designing the project;**
- **Affected people and stakeholder groups did not have access to basic project information;**

- **Affected people were misinformed about the potential benefits and negative impacts of the project;**
- **Affected people were misinformed about their rights;**
- **The project failed to properly consult with listed key stakeholders including NGOs, political parties and women;**
- **The project failed to implement recommendations of affected people;**
- **Those unhappy with the project and what it has brought them often found their opinions ignored and their dissent a source of danger.**

3.2 Introduction

The importance of the consultation process for the Baku-Tbilisi-Ceyhan (BTC) pipeline, and of the Environmental Impact Assessment's (EIA's) role in this, cannot be overstated. The funding policies of the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD), the two main bodies to which the BTC project sponsors have applied for funding, make consultation a central element of their funding criteria.

No fewer than five of the IFC's core Operational Policies applicable to BTC (OP 4.01 Environmental Assessment, OP 4.04 Natural Habitats, OP 4.12 Involuntary Resettlement, OPN 4.11.03 Management of Cultural Property and OD 4.20 Indigenous Peoples) not only make extensive reference to consultation, but give strong indications as to the functions and purposes of the consultation process in relation to the final EIA document.

OP 4.01 Environmental Assessment, for instance, states that,

“during the EA process, the project sponsor consults project-affected groups and local non-governmental organisations (NGOs) about the project's environmental aspects, and takes their views into account. The project sponsor initiates such consultations as early as possible. For Category A projects, the project sponsor consults these groups at least twice (a) shortly after environmental screening and before the terms of reference are finalised, and (b) once a draft EA report is prepared. In addition, the project sponsor consults with such groups throughout project implementation.”¹

Some of the methods by which this should be achieved are further outlined in later paragraphs:

“[T]he project sponsor provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted... [T]he project sponsor makes the draft EA report available at a public place accessible to project-affected groups and local NGOs.”²

The intention is to establish not merely a box-ticking process, but what both the IFC and EBRD guidelines call “meaningful public consultation”³, that is, a process that produces a two-way flow of information that can substantially and substantively affect the route, methodology and impacts of the project. In doing so, such a process would engage locally affected people, making use of their unique knowledge of the environments in which they live and giving them a stake in the project and its success. IFC OP 4.04 Natural Habitats makes explicit how this process would work:

“IFC expects the project sponsor to take into account the views, roles and rights of groups, including non-governmental organisations and local communities, affected

1 International Finance Corporation Operational Policies, OP 4.01 Environmental Assessment, para.12.

2 International Finance Corporation Operational Policies, OP 4.01 Environmental Assessment, paras. 14-15

3 European Bank for Reconstruction and Development, Environmental Policy, para.26; International Finance Corporation Operational Policies, OP 4.12 Involuntary Resettlement para. 2(b). Emphasis added. See also the IFC manual “Doing Better Business Through Effective Public Consultation and Disclosure”, which “provides action oriented guidelines aimed at ensuring that consultation is both effective and meaningful.” (BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, A1-7)

by IFC-financed projects involving natural habitats, and to involve such people in planning, designing, implementing and monitoring such projects.”⁴

Funding agency guidelines therefore mandate the active involvement of local communities from very early in the planning and design stages of projects, giving them the chance to design and define fundamental elements of the planned venture.

The EIA concurs with this description of its remit. It puts considerable stress on the need for, “early consultation with affected people and NGOs [and] early disclosure of information,” in order to permit locally-affected people to play a significant role in formulating fundamental aspects of the project like alternative project design and compensation rates.⁵ It also outlines the benefits of effective consultation along these lines, which “minimises conflict and delays; increases transparency; empowers people ensuring that their views are taken into account.”⁶

It is not only the efficacy and wide dissemination of project benefits that depend on an effective consultation process along the lines described above. It is also crucial for the legitimacy and credibility of the project itself, both with locally-affected people and with the international community.

The BTC Consortium (BTC Co.), the project sponsor, has made great play out of the supposedly comprehensive and inclusive nature of consultation on the project. BTC Co. has repeatedly claimed that the process has been “unprecedented in scope”⁷, and asserts confidently that, “We believe we have contacted every landowner—more than 35,000—and all the 500 or so communities within two kilometres of the route several times during the preparation of the ESIA’s.”⁸ The EIA itself notes with similar confidence that, “the project meets and indeed exceeds [IFC consultation] requirements.”⁹

3.2.1 Key questions

To meet the fairly stringent standards for *meaningful* consultation described above, and particularly to pass them with such apparent flying colours, we should expect the EIA to satisfy scrutiny in several key areas. These include:

- **Timing, duration and scope:** Was the process begun early enough to produce meaningful dialogue? Were the consultations, individually and collectively, clear and open enough to give people the chance to get their views across? Were an adequate number of people consulted to give really comprehensive results?

4 International Finance Corporation Operational Policies, OP 4.04 Natural Habitats, para. 8.

5 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, A1-7-8

6 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, A1-12

7 See e.g. Tom Dimitroff, BP Presentation to NGOs, 10/1/03

8 ‘Baku-Tbilisi-Ceyhan project FAQs’, on BP’s dedicated BTC website, available at <http://www.caspianddevelopmentandexport.com/ASP/FAQ.asp#6>. The significance which BP attaches to its claims on consultation is indicated by the fact that consultation is the second issue dealt with in a long list. The IFC, for its part, appears so persuaded of the accuracy of BP’s claim that it repeats it even more definitively on the FAQs section of its own website. “Landowner users and all the 500 or so communities within two kilometers of the route have now been contacted several times during the preparation of the ESIA’s and RAP’s.” International Finance Corporation, ‘BTC Project: Frequently Asked Questions, Consultation’, available at <http://ifcfn1.ifc.org/ifcext/btc.nsf/Content/Consultation>

9 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, A1-7

- **Focus and environment:** Who made up most of the respondents? Were people able to make comments freely and without overt or covert pressure? Were locally affected people able to obtain sufficient unbiased information to hold an informed view? Were the political, cultural and gender realities of people’s environments understood and taken into account? Were the questionnaires and telephone inquiries open-ended and fair?
- **Results:** Do we see marked changes, concessions and amendments by the project sponsors, even at their own expense, where locally affected people have consistently expressed concerns? Have many of their demands been met? Do they now consider themselves as “key stakeholders” who have been “empowered”? Ultimately, has their counsel been truly taken into account?

3.2.2 Structure of this chapter

The World Bank’s safeguard policies are intended to ensure a positive response to such concerns. Five standards are relevant to the issue of consultation:

- **OP 4.01 Environmental Assessment;**
- **OP 4.04 Natural Habitats;**
- **OP 4.12 Involuntary Resettlement;**
- **Operational Policy Note (OPN) 11.03, Management of Cultural Property; and**
- **OD 4.20 Indigenous Peoples.**

This chapter reviews the Environmental Impact Assessment (Turkey section) for the BTC project against the requirements of those policies, drawing on the raw data presented in the EIA and on the results of interviews conducted with affected communities. It also reviews the consultation procedures against the legally-binding commitment upon the signatories to the Host Government Agreement to ensure that the EIA is “in accordance with the principals of EU Directive 85/337/EEC (as amended by EU Directive 97/11/EC)”.¹⁰

This chapter begins by examining the political and social context of consultation. This section reviews the extent of the EIA’s compliance with World Bank requirements to examine the social context in which the project is being implemented. It looks in particular at the failure of the EIA to consider discrimination against ethnic minorities, notably the Kurds, or the implications of conducting consultation in a repressive political environment.

Subsequent sections go on to examine the extent of compliance of the BTC project with consultation aspects of international standards, specifically:

- IFC’s Operational Policy OP 4.01 (Environmental Assessment);
- Other IFC and World Bank standards: OP 4.04 (Natural Habitats), OD 4.30 (Involuntary Resettlement), OPN 4.11.03 (Cultural Property) and OD 4.20 (Indigenous Peoples);
- EBRD’s Environment Policy; and
- The European Union Directive on EIA (85/337/EEC, amended by 97/11/EC).

¹⁰ Host Government Agreement, para 3.10, p.6.

3.3 The political and social context of consultation

3.3.1 Background

The World Bank's *Resettlement Handbook*, which is cited as one of the guidelines with which the project will comply,¹¹ requires that project sponsors examine "social, environmental and economic conditions beyond simple physical inventories."¹²

These requirements are further reinforced by specific obligations under the World Bank's Indigenous Peoples policy (OD 4.20),¹³ the only safeguard policy which explicitly covers ethnic minorities. **It is therefore of grave concern that IFC staff have exempted BTC Co. from having to comply with OD 4.20, a derogation that has been challenged by NGOs and which is shortly to be the subject of a complaint to the IFC's Complaints Advisor Ombudsman (CAO).** (See chapter 8, *Ethnic minorities and vulnerable groups*, for further details).

With regard to consultation, it may legitimately be assumed that the *Handbook's* requirement for an examination of social conditions would include an assessment of ethnic minority rights and the extent to which those consulted are in a position to voice their views and concerns on the project.

In the case of the BTC project, such an assessment is particularly necessary given the record of the Turkish State on human rights and its known repression of ethnic minority groups who are directly affected by the project. Of these minorities, the Kurds are the most obviously affected. The pipeline skirts the Kurdish region of Turkey throughout its entire length and, in its North-eastern section, passes directly through a region that is over 40% Kurdish.¹⁴

The repression suffered by the Kurds since the establishment of the Turkish Republic in 1923¹⁵ – and in particular during the recent eighteen-year conflict between the Kurdistan Workers' Party (PKK) and the Turkish military¹⁶ – forms a backdrop to the BTC project which cannot be safely ignored.

11 RAP, Chapter Three: Policy and Legislative Framework, November 2002, p.3-14

12 IFC, Handbook for Preparing a Resettlement Action Plan, Washington DC, undated, p.12. The Handbook states: "The ultimate goal of a RAP is to enable those displaced by a project to improve their standard of living – a goal that requires an examination of social, environmental and economic conditions beyond simple physical conditions" (italics in original).

13 For example, para 15 (a) of OD 4.20 Indigenous Peoples requires that project developers assess "(i) the legal status of the groups covered by the OD, as reflected in the country's constitution, legislation and subsidiary legislation, regulations, administrative orders etc) and (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights."

14 Figure supplied by Dr. Mahmut Alinak, former DEP MP and lawyer from the region, in correspondence with KHRP. It was initially suggested by BP and the IFC that since the pipeline route skirted the main Kurdish heartlands, that the Kurdish issue was correspondingly peripheral; in the words of Ted Pollett of the IFC, "This area is a different proposition to the south-east." (Meeting with KHRP, February 26 2003) That assumption may well have informed significantly the EIA process. Yet as missions to the region have discovered, not only are large numbers of Kurdish people both affected by the project and subject to state harassment, but they also lack the weight of numbers and political experience to organise effectively to obtain their rights. In that context, project-affected Kurds are more rather than less vulnerable.

15 The Kurds have been subject to a gamut of state pressures ranging from discrimination and marginalisation through to displacement, abduction and extra-judicial killing. The Kurdish language was banned outright for decades, and even now broadcasting and teaching in Kurdish are effectively forbidden. Kurdish political parties are systematically closed down: Turkish state prosecutors successfully annulling at least five major Kurdish parties over the last decade, and now the current main party, DEHAP, which gained over 2 million votes at the November 2002 elections, is now threatened with closure. See e.g. Amberin Zaman, 'Turkey Threatens to Ban Largest Pro-Kurdish Party', Voice of America, 7 Aug 2003

16 The conflict left over 37,000 people dead, the vast majority of them innocent Kurdish civilians. Between 3 and 4 million civilians were displaced from their homes; the majority of them are still refused permission to return. For more on displacement and its social and economic consequences, see e.g. Human Rights Watch, *Displaced and Disregarded: Turkey's Failing Village Return Program*, October 2002; Kurdish Human Rights Project, *Internally Displaced Persons: The Kurds in Turkey*, June 2002

In particular, the continuing tensions in the region and the accompanying repression, harassment and constraints of freedom of expression render it impossible to achieve the levels of “meaningful consultation” that would comply with any reasonable interpretation of the World Bank’s safeguard policies.¹⁷ It is unrealistic, for example, that people would not engage in some form of self-censorship in filling in forms marked “This pipeline is of high economic and strategic importance to Turkey”¹⁸ in the presence of both foreigners and state representatives.

3.3.2 Absence of analysis of Kurdish situation in EIA

Given this context, it is of grave concern that both the EIA and the Resettlement Action Plan (RAP) fail to examine the implications of such repression for the project. Although a number of villages along the route were abandoned as a result of the recent conflict, the conflict is not mentioned at all. Nor is there any consideration given to the very real possibility of renewed conflict as a result of the recent announcement by KADEK (the successor to the PKK) that it has called an end to its unilateral ceasefire and specifically named pipelines as potential targets.

Indeed, the EIA does not even acknowledge that there are Kurds along the route at all. The Social Impact Tables, the raw data of the consultation process, mention Alevis, another much smaller minority group, at least twice, Circassians/Cerkez twice, and Avsar Turks, yet not once in 850 pages of results do they acknowledge the Kurds per se as a social group.¹⁹

Only once, in fact, is there a reference to “Kurdish” as anything but a language, and the nature of that reference (linked as it is to discrimination) is informative:

*“Bozhoyuk, Kahramanmaras Province: Occasional conflict between families/tension between two different groups is observed. A municipality with quite ‘nationalist’ attitudes. The sub-settlement of Akboyum consists of citizens of Kurdish origin...Political unrest is apparent, ethnic tension between two groups, **discrimination** in the provision of services.”²⁰*

The project sponsors have failed adequately to consider how the “chill effect”²¹ of ongoing discrimination, state surveillance and repression might impact on consultation procedures. Furthermore, the consultation data is presented in a manner which dangerously misrepresents the very “social conditions” that the World Bank requires BTC Co to examine. This is particularly apparent in the following data from the Kars and Ardahan regions:

17 See Part Three. Also see International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline—Turkey Section, March 2003 (report pub. June 2003), pp.28-42 and 54-56.

18 ‘Pipeline Household Questionnaire’, BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A-4, Project Questionnaires, p.4

19 The Social Impact Tables do refer to the existence of the Kurdish language along the route, but never to the social group that speaks that language. By contrast, the data does acknowledge the long-standing tension between Turkey and Armenia following the massacres of the 1910’s. “[There is] an old Armenian settlement, however, people are afraid to talk about its history due to allegations surrounding the genocide.” BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume 2 Supplement I, Gulludere Settlement, p.6-297

20 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume 2 Supplement I, Bozhoyuk Settlement, p.6-696-7, emphasis added.

21 The “chill effect” is a widely used analytical term referring to the tendency among people who do not enjoy true freedom of speech to censor themselves rather than to speak out and risk the punishments they know frequently accompany dissent. For more see e.g. Laurence Lustgarten and Ian Leigh, In From the Cold: National Security and Parliamentary Democracy, Oxford University Press, 1994

“Bozkus, Kars Province: There are tensions between cultural groups in the region. The settlement suffered from political unrest in the 1990s. There are now two opposed groups among local residents. They are divided according to their political alliances—Peoples’ [sic] Democracy Party versus mainstream parties, with the latter group more powerful due to close relations with rural security forces and local government agencies. However, it is unlikely that such issues will disrupt the construction or operation of the pipeline.”²²

To read this analysis without prior knowledge of the events of the last twenty years, one would assume that the “tensions between cultural groups” referred to are simply relatively minor power struggles between one social faction and another. The event referred to, however, is the aforementioned civil war between the PKK and the Turkish army, in which ordinary Kurdish civilians were routinely accused of terrorism or other offences and often displaced, tortured and extra-judicially killed. Those responsible for these gross human rights violations often came from the self-same “rural security forces” referred to above, notably the Gendarmerie, the paramilitary police force cited in the majority of the thousands of cases facing Turkey at the European Court of Human Rights (ECtHR).^{23 24}

In the same vein, there is no mention of the fact that in September 2002 the People’s Democracy Party, or HADEP, became the latest in a long line of Kurdish political parties to be summarily shut down by the authorities; the ECtHR ruled last year that Turkey’s dissolution of one of its predecessors, DEP, violated “the very essence of the right to stand for election and to hold parliamentary office” and “infringed the unfettered discretion of the electorate.”²⁵ In other words, far from being a run-of-the-mill “political alliance”, HADEP, because of its perfectly legal political programme, came under considerable and constant state pressure.

Such misrepresentations reflect a broader failure to take account of human rights concerns in the design of both the consultation procedures and the future operations of the project. For example, when the EIA acknowledges that one “settlement suffered from 1990’s political unrest in Turkey and still has several settlement guards,”²⁶ it makes reference to one of the thorniest problems of post-conflict Turkey, the attempt to reconcile Kurdish groups who collaborated (voluntarily or under duress) as “village guards” for the Turkish army, with other Kurds whose rights they were often responsible for violating.²⁷ The EIA takes no

22 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume 2 Supplement I, Bozkus Settlement, p.6-117

23 The gendarmerie is still regularly implicated in ongoing human rights violations, particularly of Kurds; its record is so consistently appalling that the EU Council of Ministers has called on several occasions for its fundamental reform or even dissolution. See for example Council of Europe Committee of Ministers, Interim Resolution ResDH(2002)98, adopted July 10 2002.

24 The gendarmerie are still omnipresent in the Kurdish regions, including along the pipeline route, so much so that the EIA designates them “key stakeholders” and records having consulted the gendarmes prior to consulting any project-affected people. BTC Project EIA, Final EIA, October 2002, Table 3.2 “Summary of BTC Consultation In Turkey”, p. 3-14

25 See ECtHR, Case of Selim Sadak and others v. Turkey, application no. 00025144/94; 00026149/95 to 00026154/95; 00027100/95; 00027101/95, 11 June 2002, available at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=790&Action=Html&X=902135707&Notice=0&Noticemode=&RelatedMode=1>. Sadak and others is the first case in which Turkey has been found in violation of the right to free elections (Article 3 of Protocol 1). Turkey has however already been found guilty of violating Article 11 (freedom of association) for its banning of political parties on multiple occasions, including United Communist Party v Turkey (19392/92; judgment delivered 30/01/98); Socialist Party and others v Turkey (21237/93; judgment delivered 25/05/98); Freedom and Democracy Party (Ozdep) v Turkey (23885/94; judgment delivered 08/12/99); and Yazar, Karatas, Aksoy and the Peoples’ Labour Party (HEP) v Turkey (22723-25/93; judgment delivered 09/04/02).

26 BTC Project EIA, Turkey, Final EIA, October 2002, Pipeline Impacts and Mitigation, Volume 2 Supplement 1, Yenikoy settlement, p.6-153

27 For more on the difficulties of reconciling village guards and other Kurdish groups, see Human Rights Watch, Displaced and Disregarded: Turkey’s Failing Village Return Program, October 2002, pp.42-5.

account of how that difficult reconciliation process might affect local political stability, the likelihood of violence or the equal dispensation of compensation or other potential benefits.

Indeed, BTC Co.'s failure to acknowledge or deal with the social reality of the region is a crucial and highly damaging lacuna at the core of the EIA, which could exacerbate an already tense situation. In particular, the designation of the Gendarmerie as the force with "overall responsibility" for security for the whole Turkish section of the BTC project is likely to prove highly inflammatory, as are the special powers given to the security forces under the Host Government Agreements.²⁸

The failure to examine this context is a clear breach of World Bank best practice. It is also a deeply flawed foundation on which to base the BTC project.

28 For example, the security forces are permitted to enter peoples' land and houses to "prevent civil disturbance", a nebulous term that could cover even a peaceful protest. Host Government Agreement for Turkey, Article 12.1, available at www.caspiandevlopmentandexport.com. For more on the implications of the HGAs for Turkey and international law, see Baku-Ceyhan Campaign, Submission to the European Commission, 14 July 2003, especially Counsel's Opinion of Philip Moser, available at www.baku.org.uk/publications.htm. See also Baku-Ceyhan Campaign: International Fact-Finding Mission Preliminary Report, Baku-Tbilisi-Ceyhan Pipeline Project, Turkey Section, August 2002, section 2.1 pp.15-25

3.4 IFC policy OP 4.01 Environmental Assessment

The IFC safeguard policy most relevant to consultation is Operational Policy OP 4.01 Environmental Assessment, compliance with which is examined in this section. Other IFC and World Bank policies are dealt with in the next section (3.5).

For ease of reference, the policy is broken down into its specific requirements. The BTC project is evaluated against each of these, based on:

- the data presented in the EIA itself;
- findings of two NGO Fact-Finding Missions to the Turkey section of the pipeline route, in August 2002 and March 2003; and
- testimony received from villagers during the public disclosure period.

The conclusions are summarised for each requirement in a table preceding a more detailed discussion on compliance.

3.4.1 Consultation with affected communities and NGOs

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OP 4.01 Para 12 Consultation with affected people and NGOs	<i>“For all category A projects . . . the sponsors consult project-affected groups and local non-governmental organisations (NGOs) about the project’s environmental aspects and takes their views into account”</i>	<ol style="list-style-type: none"> 1. Only a tiny fraction (less than 2%) of locally affected people consulted in person. 2. Evidence of villages being listed as consulted when no such consultation had taken place. 3. Failure to provide people with clear balanced information on the pros and cons of the project made it impossible for locally affected people to take informed decisions. 4. “Meaningful” levels of consultation precluded by tele-consulting procedures. 5. Many NGOs listed as consulted were in practice not consulted or were unable to significantly contribute to the EIA due to timing of consultation. 6. Inadequate methodology of consultation 7. Lack of freedom of expression and atmosphere of repression along route invalidates consultation process in those regions. 8. Consultation not meaningful to local people; project questionnaires and use of responses skewed in favour of state and project sponsors. 9. Consultation period too short to allow for comprehensive or extensive research: only two 	Partial compliance

		months in total.	
		10. Inadequate consultation of women	
		11. No evidence that affected people were consulted about the project's environmental aspects. 12. No evidence that affected people were given necessary information on project's environmental aspects to allow them to reach informed decisions. 13. No evidence that views of project affected people, especially complaints or reservations about the project, were taken into account. Specific requests have been ignored.	Non-Compliance

3.4.1.1 Only a tiny fraction (less than 2%) of locally affected people were consulted in person

According to BTC Co., all affected communities have been “contacted” by the consortium’s representatives, a claim that is repeated as fact on the IFC’s website.²⁹ **“Contact”, however, does not amount to “consultation”. Indeed, a close analysis of the EIA reveals that a tiny fraction of villagers have in fact been consulted in any meaningful sense of the term.**

The nature of village consultations is summarised in Table 1 (below). The majority of villages named in the EIA as having been consulted were contacted by telephone, a survey method that does *not* equate with consultation (see sec.3.4.1.3, below). Of these 222 settlements, a full 40 have no details and therefore cannot be counted. A further 116 settlements the EIA names as being in the 4km corridor but the BTC Co. declined to survey.³⁰ The EIA thus admits, only **“just under 50% of all settlements within the 4km pipeline corridor...were consulted.”**³¹ If consultation is taken to mean *face-to-face* interaction, then the EIA itself admits to having consulted less than a quarter of affected settlements.

Settlements where face-to-face consultations took place	102
Settlements contacted by telephone for which details of responses recorded	182
Settlements contacted by telephone for which no results recorded	40
Settlements named in EIA but not contacted	116

29 The IFC states in the FAQs section of its own website. “Landowner users and all the 500 or so communities within two kilometers of the route have now been contacted several times during the preparation of the ESIA’s and RAPs.” International Finance Corporation, ‘BTC Project: Frequently Asked Questions, Consultation’, available at <http://ifcln1.ifc.org/ifcext/btc.nsf/Content/Consultation>

30 Figures collated from Social Impact tables, BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I

31 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-20

TOTAL

440

It is only the 102 settlements visited in person that the project sponsors can claim to have consulted in any credible way. The EIA claims that these settlements represent 84% of the corridor population,³² while it has not been possible to verify that claim, it is clear from a scrutinising the consultation data that only a tiny fraction of that group have actually been consulted.

There are at least four references in the Social Impact Tables to the number of *households* consulted in specific settlements — 11 out of 110 in Turkgozu, or 10%; 55 out of 430 in Posof, or 13%; 11 out of 250 in Burmadere, or 4% (all in Ardahan Province); and 9 out of 50 in Bindal, Erzincan province, or 18%.³³ This small sample suggests that only **10.2%** of households in the 102 “consulted” settlements were consulted, or **8.6%** of households in the corridor as a whole when we consider that these settlements represent only 84% of the corridor population.

It is likely that this is an overestimate. The EIA also confirms that, “The household questionnaire was administered to 1,328 households (an average of approximately 10 per settlement) along the pipeline.”³⁴ Calculations reveal that the average number of households per consulted settlement is 335;³⁵ if only 10 of those on average were consulted, that would mean that only **2.9%** of households in each consulted village were actually consulted.

These numbers are unimpressive, yet the reality may be even worse. There are at least five references in the tables to the number of *inhabitants* consulted (as opposed to households): 11 out of 350 in Yaylakent, or 3%; 10 out of 800 in Baliki, or 1%; 11 out of 500 in Yeslikaya, or 2%; 40 out of 150 in Akdag, or 7%; and 11 out of 2200 in Yurtbasi, or 0.5% (all in Erzincan province).³⁶ That produces an average of only **1.4%** of inhabitants in “consulted” settlements who have actually been consulted, which drops slightly to **1.1%** when taking into account the fact that the settlements only represent 84% of the corridor population.

It appears that the project sponsors may have viewed households and individuals as coterminous—that is, having interviewed the head of household, they felt his views represented the views of the entire household. A footnote in the EIA confirms that, “When interviewing people, the ‘household head’, which in Turkey generally means the senior male, was approached.”³⁷

In other words, it is fair to say that in the settlements where the tables say *households* were consulted, consultation was actually focused on *individuals*, the male household heads. If the figures from the two groups listed above are homogenised as individual consultations, we get a total of 140 individuals consulted face-to-face out of a total population of 7771 people in the nine settlements. That amounts to a grand total of **1.8%** of residents. If this figure is representative of all contacted settlements, it would amount to **1.5%** of the total corridor

32 BTC Project EIA, Final EIA, October 2002, Appendix A5—Baseline Data Collection for Social Aspects, p. A5-5

33 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-17, 6-25, 6-61 and 6-403

34 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-20

35 Figures collated from BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I,

36 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-357, 6-360, 6-364, 6-403 and 6-442

37 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-20, footnote 8

population (since the settlements contacted in person contained 84% of the population). This is some distance from BTC Co.'s claims of comprehensive consultation.

3.4.1.2 Evidence of villages being listed as consulted when no such consultation had taken place

The true figure for the numbers consulted in person may be even lower than even the EIA's data suggest. One reason is that the data conflicts with independent research, specifically undertaken to "ground truth" the claims in the EIA.

In August 2002, for example, nearly a year after BTC Co.'s first stage of consultation and during the course of its second stage of disclosure roadshows, an international non-governmental organisation (NGO) Fact Finding Mission (hereafter August 2002 FFM) found that four of the eight settlements (50%) it visited, all of which BTC Co. claimed to have consulted either in person or by telephone, had **not been consulted in any way**.³⁸ This included villages in the area of the marine terminal, where BTC Co. claims to have consulted 100% of settlements.³⁹ Several of the affected settlements only learned of plans for the pipeline when technicians turned up to begin work on it, or even in some cases from the FFM itself.

The story of Hacibayram is illustrative of the unreliability of the consultation data presented in the EIA.⁴⁰ The August 2002 FFM found the village, listed in the EIA as consulted by telephone, to be uninhabited, with neither telephones nor residents to answer them. Following subsequent suggestions by BP and the IFC that the community had been contacted in the nearby town of Tercan and all problems resolved,⁴¹ the second (March 2003) FFM made contact with Hacibayram's Muhtar, Abdurrahman Aksu. Mr. Aksu noted that he had met with representatives of BOTAS, the national pipeline company building the Turkish section of the pipeline, only once, in February 2003 (over six months after it was stated in the draft EIA that he had been consulted), and that he had not been contacted by telephone as stated in the EIA in the summer of 2002, and nor had anyone else in his community.

At least four contradictory explanations have been offered by the project sponsors since the August 2002 FFM uncovered the irregularity. As detailed in the NGO's March 2003 FFM report, all four explanations were rejected by Mr. Aksu as untrue. Most recently, a further explanation has been offered – namely that the village is only occupied in winter months, hence not during August when the 2002 FFM visited.⁴² Given that the houses in the village were destroyed during the recent conflict in the region and are thus uninhabitable during summer or winter, this explanation is entirely lacking credibility.

In March 2003, Mr. Aksu raised other concerns to NGOs. He reported that, earlier in 2003, he had travelled to Erzincan to raise concerns with BOTAS but was denied contact. He also pointed out that far from all complaints being resolved, the leading families of the village

38 International Fact-Finding Mission Preliminary Report – Azerbaijan, Georgia, Turkey pipeline Project: Turkey section, August 2002, pp.33-34.

39 BTC Project EIA, Final EIA, October 2002, Appendix A1, Public Consultation and Disclosure Plan, p. A1-20

40 For more detail, see Baku-Ceyhan Campaign, International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline—Turkey Section, March 2003 (report pub.June 2003), pp.49-52

41 Ted Pollett, IFC, meeting with KHRP, 26/2/03

42 Dermot Kirk of BP told a meeting of the Responsible Investor Network on 15th September 2003 that Hacibayram is a winter village that is uninhabited in the summer while residents are engaged in nomadic grazing.

were in dispute with BOTAS over compensation prices, as a result of which BOTAS had suspended payment, leaving many in the village uncompensated.⁴³ The fact that major unresolved problems and disputes still existed so late in the day in a settlement which the project sponsors are aware had become something of a touchstone in consultation issues is deeply worrying, and indicative of the scale of the problems elsewhere.

3.4.1.3 Failure to provide people with clear balanced information on the pros and cons of the project made it impossible for locally affected people to take informed decisions

Significantly, the Resettlement Action Plan (RAP), published after the EIA was approved, notes:

“As late as May 2002, very few PAPs (project affected people) had detailed information as to the particulars of land acquisition and construction, and few were fully informed of Project impacts on their assets and livelihoods.”⁴⁴

This conclusion is supported by both the August 2002 FFM and by a subsequent FFM undertaken in March 2003.⁴⁵ Even where settlements had been informed about the imminence of the pipeline, the August 2002 FFM found that they frequently remained confused or uninformed about the project and its impacts. Affected people had not been informed about their rights to negotiate compensation, to receive money for communal or orphaned land, or limitations on using land after pipeline construction. Confusion abounded over the likelihood of employment or of getting compensation without title. In particular, they had not been informed of any of the potential negative impacts of the project, such as explosions, accidents, pollution, permanent land damage or the consequences of non-decommissioning the pipeline.

There were suggestions that local people had been consciously misled as to these impacts—villagers reported that professors from the Middle East Technical University, who did not disclose that they were working for BOTAS, had assured them that there would be *no* risks.⁴⁶ (See sec.3.4.3.2, below)

The second FFM confirmed that, although BP had made more contact with affected settlements and awareness of the project was higher, the standard of consultation was still extremely low.⁴⁷ Many of BP’s promises, for instance that compensation would be generous and employment widely available, had proved untrue—compensation was below market value and prices imposed in violation of Turkish law,⁴⁸ while almost all of the workers, materials and even food for the pipeline were imported from outside, causing much local resentment.⁴⁹

43 Abdurrahman Aksu, Muhtar of Hacibayram, phone conversations with FFM, 2/4/03, 8/4/03. See also Baku-Ceyhan Campaign, International Fact-Finding Mission, Baku-Tbilisi-Ceyhan Pipeline, Turkey Section, March 2003 (report pub.June 2003), pp.49-52

44 BTC Project, Resettlement Action Plan – Turkey, Final Report, Chapter 4, Overview of Project Affected Population, November 2002, p.4-3.

45 See: International Fact-Finding Mission Preliminary Report – Azerbaijan, Georgia, Turkey pipeline project: Turkey section, August 2002, pp.34-37 and International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline – Turkey section, March 2003 (report pub.June 2003), pp.52-54.

46 Baku-Ceyhan Campaign, International FFM Preliminary Report, BTC Pipeline Turkey Section, August 2002, p.30.

47 International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline – Turkey section, March 2003 (report pub.June 2003), pp.57-59.

48 International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline – Turkey section, March 2003 (report pub.June 2003), pp.65-84.

49 International Fact-Finding Mission, Baku-Tbilisi-Ceyhan Pipeline, Turkey Section, March 2003 (report pub.June 2003), pp.60-84.

In one of the most extreme examples of promises not being kept, local people now report that BOTAS is taking over a thousand villagers to court in an effort to recover the small sums of compensation it had previously paid to affected people with customary land ownership.⁵⁰ Those payments were themselves only made after considerable pressure on BP and BOTAS from NGOs keen to ensure that all affected people received compensation. Rather than the promised generous benefits, many affected people have garnered only trouble and pressure.

Even more significantly, people had been denied crucial information regarding their rights. For example, not a single person had heard of, let alone benefited from, the RAP Fund set up to compensate people without formal land title, despite BP representing it as a great advance.⁵¹ If people are unaware of their rights, by definition they cannot ask for them. This tallies with the findings in the Social Impact tables that very few people expected to be compensated for land—on average, only 17% of people in consulted settlements expected to receive land compensation.⁵²

Likewise, people were informed that they were not entitled to bargain over the price of their land, in direct violation of Article 8 of the Turkish Expropriation Law, which states that the purchase of land is to be achieved “through bargaining over the estimated cost and through barter”⁵³ (see chapter 4 (Resettlement) for further details). They were also erroneously informed that they were not entitled to take the matter to court, in violation of Article 14 of the Turkish Expropriation Law.⁵⁴

Affected people were also not informed of the security implications of the BTC project. Not a single respondent even on the March 2003 NGO fact-finding mission was aware of the Host Government Agreements, the contracts for the project. Not only do the HGAs severely circumscribe the role of affected people in project design, in violation of IFC guidelines,⁵⁵ but they also give overriding powers to BTC Co. and its representatives. Chief among these is the right given to designated security forces to intervene along pipeline territory under an extremely wide array of poorly defined circumstances, including ‘civil disturbance’ and ‘terrorism’.⁵⁶ Yet not a single person interviewed by the FFM was aware that the BTC project might involve security personnel coming onto their land after construction.⁵⁷

There are many other significant elements of the HGAs which pertain to affected people. They include clauses affecting termination of the project, the rights of governments to intervene in cases of accidents or damage, damage to third parties, rights of BTC Co. to unlimited water in a region often affected by drought and the exception of the project from prevailing environmental and social standards. Again, none of the local villagers interviewed by the FFMs had any knowledge or awareness of these clauses or their implications.

50 Ferhat Kaya, Deputy Chair of Ardahan branch of DEHAP, meeting with Dfid, ECGD, FO, Treasury, 29/5/03

51 International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline – Turkey section, March 2003 (report pub.June 2003), pp.78-79.

52 Figures collated from BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I (17 references in total)

53 Law no.2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, listed in Resettlement Action Plan Turkey, Final Report, Annex 3.1—Expropriation Law

54 See also International Fact-Finding Mission, Baku-Tbilisi-Ceyhan Pipeline, Turkey Section, March 2003 (report pub.June 2003), pp.71-77.

55 The HGA severely restricts the nature and extent of consultation. Article 3.9(iii) of Appendix 5 provides that key stakeholders shall be notified of the nature of the project during the establishment of the EIA and only invited to comment after its completion.

56 HGA Turkey, Article 12.1

57 International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline – Turkey section, March 2003 (report pub.June 2003), pp.58-59.

3.4.1.4 “Meaningful” levels of consultation precluded by tele-consultation procedures

As noted above, the majority of the villages listed as consulted in the EIA were consulted by telephone. As the EIA itself admits, such telephone consultation amounted to mere “additional data gathering.”⁵⁸ The use of a single source has been recently criticised in other fields as unreliable, and rightly so.

Time after time the information elicited by phone is little more than basic demographic material. Certain phrases recur over and over, particularly with regard to the project itself. “According to the Muhtar, inhabitants are generally positive and have no major concerns,” is repeated throughout the village profiles.

Reliance on telephone “consultation” is doubly worrying. First, in the context of potential repercussions against critics, it is unlikely that anyone called out of the blue by the project developers would volunteer criticism of the project. Second, it would appear that, at best, only one member of each village was consulted by telephone. By definition the other inhabitants of a settlement cannot have given their opinions or solicited information from the project sponsors when they have never spoken to them.

The choice of which settlements to contact by phone was also frequently esoteric; the town of Haskoy in Ardahan province, for example, is the largest settlement in the area and located on the main road, so there is no reason people living there could not have been consulted in person.⁵⁹

3.4.1.5 Many NGOs listed as consulted were in practice not consulted or were unable to significantly contribute to the EIA due to timing of consultation

The EIA lists a range of Turkish Non-Governmental Organisations which it claims were consulted. However, interviews conducted by the March 2003 FFM as part of its “ground truthing” exercise revealed that many of these NGOs were dissatisfied with the consultation process and that some were not consulted at all.⁶⁰

For example, WWF Turkey, one of the most important and best informed environmental groups in the country, which BP claimed to have consulted in crucial environmental meetings in Istanbul in December 2001,⁶¹ stated that it had not been notified of the project during the development of the EIA. The group considered this strange given the lack of available information on the environment along the project route.

The first contact WWF Turkey had with the project sponsors was at a public meeting to announce the launch of the EIA after it had been designed and published in draft form. WWF complained in a letter to BTC Co. dated 29.09.02 that this left them no chance to contribute to the EIA, and that they should not be described as supporting the EIA nor listed

58 BTC Project EIA, Final EIA, October 2002, Appendix A5—Baseline Data Collection for Social Aspects, p. A5-5

59 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-642

60 International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline – Turkey section, March 2003 (report pub.June 2003), pp.47-49.

61 BTC Project EIA, Final EIA, October 2002, Appendix A1, Public Consultation and Disclosure Plan, p. A1-19

as having been consulted. BTC Co.'s response referred them back to the very stakeholder list WWF had originally complained about, where they are still listed.⁶²

Likewise, the Chamber of Environmental Engineers (CEE), listed as having been consulted in key mitigation meetings,⁶³ described a similar process of only having received information on the project shortly before the public launch of the EIA, giving them no chance to contribute to it. The CEE noted that even the Ministry of the Environment was merely a guest at BP's public launch of the EIA, giving them no right to enforce changes, in violation of normal practice. Only after the public launch did BTC Co. ask the CEE for comments on the project, giving little chance for submissions to be taken seriously.

The CEE commented that, "the whole process of consultation was all a façade... This sets a terrible precedent: what is the use of professional environmental engineers or civil society? Everything can be done by private companies."⁶⁴

Other NGOs and civil society groups which should have been included in any credible consultation exercise were found to have been excluded. The August 2002 FFM, for example, made contact with three journalists, two mayors, representatives of two political parties, two lawyers, an NGO and four Muhtars of settlements near the pipeline but not within the 4km corridor. More than a year after the main consultation phase, fewer than one quarter of this small, randomly chosen sample had been consulted or even informed about the project. None of the interviewees had even basic information such as the pipeline route. Even representatives of the state lacked rudimentary knowledge of the project – the mayor of Sivas, for example, seemed to believe that residents of the town would have access to the oil flowing through the pipeline, all of which of course is for export.⁶⁵

The second FFM likewise found that significant civic bodies, such as branches on the pipeline corridor of DEHAP, the pro-Kurdish party which is the main source of information for Kurdish people in the region, had neither been consulted nor informed about the project.⁶⁶

3.4.1.6 Inadequate methodology of consultation and failure to provide people with clear balanced information on the pros and cons of the project made it impossible for locally affected people to take informed decisions

Two main methods of consultation were employed by BTC Co; the distribution of leaflets and public meetings. Both were seriously flawed in their design and implementation.

A. Leaflets

The first (and in many cases only) source of information about the pipeline for many people was the project leaflet distributed in August and September 2001. As a means of consultation, however, the leaflet fails to meet IFC guideline criteria, since it neither elicits local knowledge nor imparts enough knowledge of the project to allow affected people to

62 BTC Project EIA, Final EIA, October 2002, Appendix A2-PCDP Stakeholder list, p.A2-5

63 BTC Project EIA, Final EIA, October 2002, Appendix A1, Public Consultation and Disclosure Plan, p. A1-27

64 Baku-Ceyhan Campaign Fact-finding Mission, interview with Chamber of Environmental Engineers, Ankara, March 17 2003.

65 Baku-Ceyhan Campaign, International FFM Preliminary Report, BTC Pipeline Turkey Section, August 2002, p.37.

66 International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline – Turkey section, March 2003 (report pub.June 2003), pp.48-49.

make an informed decision about it during later community or consultation meetings.⁶⁷
Other issues are also of concern:

- (i) Its success as a means of “consultation” clearly depended critically on the universal literacy of affected people, yet many villagers are unable to read.⁶⁸
- (ii) The failure of the project sponsors to take advantage of recent reforms to publish the leaflet in minority languages, especially Kurdish, further disadvantaged members of minority groups, particularly women and the elderly, who frequently do not speak Turkish (see sec.3.4.6.4, below, for further details).
- (iii) The leaflet is far from neutral⁶⁹ and does not adequately inform villagers about their rights or about what might happen to their land or property during and after the construction process, nor does it ask for any information, advice or input into project design or operation.
- (iv) The means of distribution was largely via settlement heads or Muhtars. Quite apart from varying levels of Muhtar competence, that distribution process rests on an assumption: that Muhtars will dispense information about possible employment, compensation, etc., dispassionately and without favouritism across the board. Information supplied in the EIA itself casts doubt on the safety of such an assumption.

The leaflet provides an example of BTC Co.’s failure to supply affected people with adequate information to allow them to make informed decisions. Without even basic knowledge of the pipeline route, function, utility, impacts, legal framework, sponsors or possible accidents, even without the added political pressure, it was clearly not possible for the people whose lives will be changed by this project to make independent decisions about it.

B. Disclosure Roadshows

(See also sec.3.4.3.2, below)

The use of “disclosure roadshow meetings” to meet the criteria for a second post-EIA consultation phase also does not live up to the standards of consultation required by the IFIs. The EIA notes that these meetings were held in only 36 out of 326 project affected settlements, barely more than one in ten. Even if, as the EIA claims, “representatives” of 111

67 International Finance Corporation, Operational Policies, OP 4.01 Environmental Assessment, para. 15. The IFC requires that, “the project sponsor provides for the initial consultation a summary of the proposed project’s objectives, description and potential impacts”, emphasis added.

68 The Social Impact tables in the EIA claim that most, if not all, of the settlements affected have literacy rates of 90% or better.⁶⁸ This figure, which appears to be based, in the majority of cases, on information supplied by telephone by the village muhtar, ⁶⁸ does not accord with official statistics; Turkish state figures list the literacy rate in Eastern Anatolia at a mere 68%.⁶⁸ and local people themselves estimate a figure considerably lower than that, noting that many women in rural parts of Turkey cannot read, particularly in what the EIA several times calls “conservative” settlements.⁶⁸ The Resettlement Action Plan for the project also records that most villagers only have primary school level education.⁶⁸ Even where literate, many may therefore have been unable to absorb the information in the leaflets – a view supported by field interviews conducted by the March 2003 FFM.

69 The leaflet encourages the view that the project is being operated for the benefit of the state. Given the climate of repression in the region, this alone would have deterred many recipients from voicing any criticism of the project. The tone of leaflet is also one of inevitability — “Land acquisition and pipeline construction will begin in June 2002, lasting for 32 months. The starting date of operation of the pipeline is 2005”⁶⁹ — discouraged feelings of ownership and engagement on the part of villagers. In addition, the leaflet lists the many supposed benefits of the project (all of which are benefits to the state and the project sponsors) and methods for supposedly ensuring its safety, yet lists none of the numerous possible negative impacts and disadvantages. It states unequivocally that local people will benefit from the pipeline, when the vast majority of locally affected people have yet to see any real benefits.

affected settlements attended the meetings,⁷⁰ that amounts to only a fraction over one in three affected settlements taking some sort of role.

Given the rush in which these meetings were conducted, it is not surprising that the format was mainly presentational in nature, telling affected people what they would face, rather than consultative, seeking their input. The EIA describes the meetings as mainly comprised of “formal presentations”, often on several subjects, with a question and answer session at the end. Affected people who attended the meetings confirmed that they were long, boring, overly technical and promoted the benefits of the project almost exclusively, often drafting in supposedly ‘independent’ experts to substantiate these claims.⁷¹

3.4.1.7 Lack of freedom of expression and atmosphere of repression along route invalidates consultation process in those regions

Effective consultation is predicated on the existence of genuine freedom of speech and of expression. If people cannot express their opinions of the project, critical as well as supportive, reservations as well as endorsements, in a free and open manner, consultation processes cannot be valid.

As noted in Section 1, consultation is key to the success or failure of the project, both now and in the future. As such, it is important that consultation is *seen* to be comprehensive and fair, both by groups involved in the BTC project and particularly by locally affected people themselves. On any view, at a minimum suggests:

- First, that people are consulted in a genuine way prior to any decision being formulated and that their views, adverse as well as accepting, are taken into account;
- Second, that people have the right and opportunity to express their opinions freely and openly on a wide variety of topics related to the project, not simply to respond to queries on a single subject;⁷²
- Third, that people have the capacity to express dissent in the full knowledge that no adverse consequences, direct or indirect, will result from their doing so. Political culture is the key here: it is disingenuous to expect that people used to framing their words with the greatest of care will bring themselves to speak freely to outsiders on any issue, let alone issues in which they perceive the state to have an interest. Analysts of censorship are familiar with the concept of “the chill effect”, the tendency of people living in repressive or constrained environments to censor themselves rather than bring down trouble on their heads by speaking out against authority.⁷³ In such societies, much dissent is never even voiced, let alone heard.

As documented in Section 2, such conditions do not exist along much of the pipeline route in Turkey, particularly in the North-East, where there has been a marked recent rise of detentions, arbitrary arrests, surveillance and harassment by state and military officials. The March 2003 FFM also notes a pervasive atmosphere of repression and lack of freedom of

70 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-34

71 Baku-Ceyhan Campaign, International FFM Preliminary Report, BTC Pipeline Turkey Section, August 2002, p.30.

72 We agree with the FFM’s view that this not only presupposes a society without systematic inequality, discrimination and repression, but also a political culture in which speaking up and speaking out are normal parts of everyday life.

73 For more on the use of the chill effect in academic and legal discourse, see Laurence Lustgarten and Iain Leigh, *In From the Cold: National Security and Parliamentary Democracy*, Oxford University Press, 1994

speech in the region which precludes dissent about the BTC project and the strong likelihood that the human rights situation in the region will be worsened by the introduction of the pipeline, particularly due to militarisation via the use of the Gendarmerie (Turkey's military police) as the main security force.

Nowhere in the EIA is there any indication that this issue has been taken into account in the design of the consultation procedures. On the contrary, evidence from the EIA suggests a deep-seated lack of social sensitivity, particularly in the Kurdish north-east. For example, it is recorded in both the EIA and the Resettlement Action Plan that the project sponsors often invited the gendarmerie to take part in the same 'stakeholder' meetings as Kurdish Muhtars.⁷⁴ Even if the intention of such a policy is not to repress dissent and achieve compliance, it is highly likely that that will be its effect.

3.4.1.8 Consultation not meaningful to local people; project questionnaires and use of responses slanted in favour of state and project sponsors

The questionnaires used by BTC Co. to elicit the views of affected people are skewed, and limiting with respect to the responses they invite, in both structure and vocabulary. The wording of the questionnaires further discourages frank expression of concerns about the pipeline's impact.

The written information disseminated by BTC Co. is insufficient for respondents to evolve an informed view on the project. For example, the Non-Technical Summary of the EIA contains little information on the practical implications of the Host Government Agreement (HGA) for Turkish law. It cannot be plausibly argued that this information is not of concern to affected communities, since a number of those interviewed by both the August 2002 and March 2003 FFMs along the pipeline route themselves stated that it is. Examples of HGA clauses of concern to affected communities include those affecting termination and damages to third parties, as well as Appendix 5, 3.3 and 4.2, which state that the BTC project cannot be subject to any environmental or social standards promulgated by regional or intergovernmental authority "to the extent they are different from or more stringent than the standards and practices generally prevailing in the international Petroleum pipeline industry for comparable projects".

In addition, the August 2002 FFM found that even villagers who had already met directly with BTC/BOTAŞ representatives and had been surveyed at the household level felt themselves lacking in necessary information about, for example, the comparative experience of Georgia and Azerbaijan in employment, the previous record of oil pipelines in various countries with respect to spills and other accidents, and so forth.⁷⁵

The questionnaires used by BTC Co. — of which there are nine types⁷⁶ — are also skewed, and limiting with respect to the responses they invite, in both structure and vocabulary.

74 For example, Resettlement Action Plan, Chapter 7: Public Consultation and Disclosure, November 2002, p.7-7, "Box 7.1: Kelkit/Gumushane, August 2001: Participants of the BTC information meeting included the district governor, district Director of Agriculture, Commander of Gendarme, district security director, Mayor and 12 villages headmen." "Box 7.2: Askale/Erzurum, August 2001: Participants of the BTC information meeting consisted of the Commander of the Gendarme and 8 village headmen."

75 Baku Ceyhan Campaign, International Fact-Finding Mission: Azerbaijan, Georgia, Turkey pipeline project – Turkey section Preliminary Report August 2002, pp.34-35.

76 There are different questionnaires for communities affected by the pipeline, by the Marine Terminal, by pump stations, and by construction camps. For each of these community types there are, in addition, two questionnaire types: one for surveys of the muhtar alone, and one for surveying various households in the community. In addition, there is a separate form for surveys conducted with muhtars by telephone. There are thus the following questionnaire types: Pipeline Household, Pipeline Settlement, Marine Terminal

Respondents are asked if they would support a pipeline,⁷⁷ and if so, why, but are not asked if they would object to a pipeline. They are queried about possible "benefits" of the pipeline, but not about possible "losses" or "costs". Instead, they are merely asked to mention any "concerns" they might have, or possible "disruptions" foreseen from the presence of construction workers in the locality.

In the Marine Terminal Household Questionnaire, no spaces exist for interviewers to record concerns expressed about the effects of BTC works on fisheries. The Marine Terminal Settlement Questionnaire does not request any views on the pipeline at all.

The wording of the questionnaires further discourages frank expression of concerns about the pipeline's impact. The prefatory paragraph for each questionnaire emphasizes not only that the pipeline is a project of the Turkish Government but also (with the sole exception of the Marine Terminal Settlement Questionnaire) that the pipeline is "of high economic and strategic importance for Turkey".⁷⁸ In a political climate where criticism of the State is viewed as inimicable to the interests of the State, this phrase sends a strong signal at the outset that expression of concerns about the pipeline could be dangerous.

Such signals are reinforced by official behaviour. For example, while the August 2002 FFM was interviewing a group of fisherfolk along the Gulf of Iskenderun, police officers appeared, demanding to know the purpose of the visit and requesting a list of the names of the FFM team. These limitations on free expression of concern are, of course, as well understood by ordinary citizens along the pipeline route as they are unacknowledged in any BTC/BOTAŞ consultation documents. As one village interviewee put it: *"What can we do? Whatever the state does is fine with us."*

There are clear suggestions that the project sponsors have also unfairly raised expectations about the BTC project. Promises of employment, retail opportunities and generous compensation have not subsequently been kept. In one settlement, the EIA records that, "Engineers carrying out detailed engineering works reportedly told local residents, 'After the construction of the pipeline, this place will look like Paris.' This settlement is the poorest settlement of Ardahan and Kars."⁷⁹

It also seems fairly clear from the numerous contradictions listed in the Social Impact tables that the compilers of the EIA did not always report their findings accurately. For example, the EIA records women in Fettahdere settlement in Kayseri province expressing opposition to the project due to impacts on children and animals, then states that, "There were no major concerns."⁸⁰

Other recorded responses stretch credulity: it seems hardly plausible, for instance, that Goksun, a town of 36,247 people, would have nothing more complicated than a "generally

Household, Marine Terminal Settlement, Pump Station Household, Pump Station Settlement, Construction Camp Household, Construction Camp Settlement, and Telephone Settlement. See BTC project EIA, Appendix A4.

77 See, e.g., BTC project EIA, Appendix A4, p. 24. The questionnaire asks: "In general would you support the presence of a pipeline in your area?". Other questions include: "If yes, why would you support the presence of a pipeline?" and "What do you perceive to be the main benefits that may result from construction and operation of the pipeline?".

78 Appendix A4 (Example Questionnaires): i.a., Marine Terminal Household Questionnaire, p. 45; Construction Camp Household Questionnaire, pp. 32, 51; Pump Station Household Questionnaire, p. 64.

79 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-62

80 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-667

positive” attitude to the project, and would list no complaints at all.⁸¹ Likewise, it is hard to see when in Yenigun settlement, Osmaniye province, “the inhabitants do not perceive any benefit from the project,” that they could then be described as having “awareness and general enthusiasm about the project.”⁸²

3.4.1.9 Consultation period too short to allow for comprehensive or extensive research: only two months in total

Two consultation exercises were carried out on the EIA: a six week settlement consultation period of August and September 2001,⁸³ hardly long enough to properly engage with the tens of thousands of people BP has acknowledged will be affected, and a ‘disclosure roadshow’ of mid July to early August 2002 (a mere two to three weeks). Neither adequately fulfils IFI guidelines and legal requirements.

To begin with, having only two short periods of consultation is fundamentally at odds with the idea of consultation as an “ongoing process”⁸⁴ which BP and the EIA have frequently reiterated. The EIA even emphasises this claim, with a diagram in its “Overview of the BTC EIA Process” section depicting consultation as an ever-present, constant element dynamically interwoven with all the other stages of the process.⁸⁵ The reality is that on the ground consultation of project affected people lasted little more than **two months** in total, and began far too late to have a major role in project design or operation.

Clearly, both periods are far too short to cover more than 1000 km and *meaningfully* consult the tens of thousands of people who will be impacted by the project and who have rights regarding it. The requirement is not to get a random sample of those affected, but to meaningfully consult them all. The short time frames allocated to local level consultation effectively preclude that, however, and a look at the methodology used confirms this.

3.4.1.10 Inadequate consultation of women

In another village visited by the FFM, for religious and cultural reasons women are not allowed to see men other than their families and husbands. During the months of construction therefore, these women would have to stay indoors with the curtains drawn. They were not consulted. Considering this type of case, surprisingly, the EIA seems to see this state of affairs as an actual advantage: “Many respondents commented that contact between workers and local women would be a particular source of offence. The conservative traditions of many of the settlements will largely prevent this type of interaction, which is more likely in larger population centres used by workers on their days off.”⁸⁶ The EIA seems to use this observation as an excuse for not applying any mitigation measures against this problem.

81 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-715

82 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-809

83 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1—Public Consultation and Disclosure Plan, p. A1-20. Consultation lasted from September 3 2001 to October 20 2001.

84 E.g. BTC Project EIA, Final EIA, October 2002, Approach and Methodology, p.3-26

85 BTC Project EIA, Final EIA, October 2002, Approach and Methodology, Fig. 3.1, Overview of the BTC EIA Process, p.3-2

⁸⁶ EIA Turkey, Draft for Disclosure, Table 6.12, page 6-40, June 2002

The EIA also records a concern raised by local people that “lack of control over the movements of construction workers (during and after working hours) could result in trespassing and damage to local land and property. This lack of control could also result in residents, particularly women, feeling vulnerable to the behaviour of construction personnel as well as creating a sense of their privacy being invaded.”⁸⁷ Although the EIA states that there will be a Code of Conduct to regulate the behaviour of construction workers, the 11 points listed in the EIA that will be included in it do not include any rules relating to behaviour towards local women.⁸⁸ Nor are other mitigation measures proposed. In addition, there appear to be no specific means of redress where women feel that their rights have been infringed by construction workers or the construction itself.

In conclusion, the FFM found that efforts outlined in the EIA to specifically consult women appear scarcely to have been applied in practice. The EIA sets a target that 40% of its consultees should be women,⁸⁹ but did not report on whether it achieved that target. Perhaps as a result, BTC has at best a limited picture of how women will be impacted by the pipeline. On land expropriation and compensation measures in particular, BTC has sketchily noted some of the difficulties it faces, yet has made little effort to overcome them.

3.4.1.11 No evidence that affected people were consulted about the project’s environmental aspects

No evidence is supplied in the EIA or in the questionnaires that affected people were *specifically* consulted in any respect on the project’s environmental impacts. The failure to do so has been to the detriment of both the project and local people.

For example, for political and other reasons, much of the route has not been environmentally or culturally mapped in detail before the project began, making desk research of limited value. The EIA makes clear that the Ministry of Culture was also poorly informed about the region, to the extent that it was forced to come to the region in August 2001 to validate the findings of the EIA.⁹⁰ In such circumstances, the project sponsors should have relied for detailed knowledge of possible impacts on cultural heritage and the environment on those who really know the area: local people.

Yet the EIA also shows that “based on information gathered in *desk studies*, sites of potential cultural heritage value were identified during a field survey conducted from August to November 2000 in the Basic Engineering Phase.”⁹¹ At the same time, it claims that, “Cultural assets along the route were initially identified by...initial responses to consultation.”⁹² Yet, as just noted, the main work on identifying potentially important cultural heritage sites was undertaken **more than a year before** local-level consultation occurred in September and October 2001. In other words, due to the methodology of the project sponsors, it was **impossible** for locally affected people to have any significant role in influencing cultural heritage impacts, in violation of several IFC guidelines.

⁸⁷ EIA Turkey, Draft for Disclosure, Table 6.12, page 6-40, June 2002

⁸⁸ EIA Turkey, Draft for Disclosure, section 6.12.2.4, page 6-42, June 2002

⁸⁹ EIA Turkey, Draft for Disclosure, Appendix 5, page A5-8, June 2002

⁹⁰ BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline- Baseline Conditions, p.5-139. “The Ministry of Culture (MoC) were advised of the newly identified sites and features. MoC survey teams subsequently visited and surveyed these sites during August 2001.”

⁹¹ BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline- Baseline Conditions, p.5-138.

⁹² BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline- Baseline Conditions, p.5-138.

The same general point applies to the whole project. Failure to consult with locally affected people early enough or long enough has meant that such groups have been presented with effectively a fait accompli, a pre-designed project over which they can have little significant influence and which (as documented in Section Two) many people feel they have little choice but to accept.

3.4.1.12 No evidence that affected people were given necessary information on project's environmental aspects to allow them to reach informed decisions or influence the project

The information supplied to local people on the potential environmental impacts of the project was one-sided and frequently misleading. For example, the August 2002 FFM found that in at least two of the villages it visited where water supplies would be crossed by the BTC pipeline, BTC Co. had not explained the risks of pollution or leaks from the pipeline to the villagers (it has simply claimed that there is zero risk), nor what risk reduction or mitigation measures would be put in place. Nor has BTC Co. explained what could be done if there were an accident – in terms of preventing spread of pollution, setting up alternative emergency water supplies, applying for compensation, or resolving disputes.

The same FFM was told by villagers who had attended the BTC public meetings that “university professors” had told them that there would be *no* negative impacts or risks (these professors were from BOTAS/BTC’s contractor KORA, of the Middle East Technical University – see sec.3.3.3.2, below).⁹³

Both FFMs to Turkey, in August 2002 and March 2003, found that villagers knew nothing about environmental impacts and risks – such as risks of rupture or leak, pollution, safety risks, permanent damage to quality land, and the impacts of decommissioning.⁹⁴

3.4.1.13 No evidence that views of project affected people, especially complaints or reservations about the project, were taken into account. Specific requests have been ignored

Appendix A8 of the EIA lists some 51 pages of responses from various local and national authorities; by contrast, it lists no results whatsoever for the responses of locally affected people.⁹⁵ Other consultation results and “responses to comments” are homogenised: problems raised are listed thematically without any indication of who raised them or what kind of a response was given. The responses to these thematic comments are often vague and hortatory, frequently consisting only of “a clear outline of the Project’s commitment to address these concerns.”⁹⁶

It is impossible to tell from these homogenised results how many of the responses are from locally affected people, but the strong impression is the number is low. Of crucial importance, there is no tabulated indication that any of the complaints, worries or

93 Baku Ceyhan Campaign, International Fact-Finding Mission Preliminary Report: Azerbaijan, Georgia, Turkey pipeline project – Turkey section, August 2002, p.30.

94 Baku Ceyhan Campaign, International Fact-Finding Mission Preliminary Report: Azerbaijan, Georgia, Turkey pipeline project – Turkey section, August 2002, pp.33-35 and 50: Baku-Tbilisi-Ceyhan Pipeline – Turkey section, March 2003 (report pub.June 2003), pp.52-54.

95 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A8--Consultation Results, pp. A8-19-70

96 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A8--Consultation Results, p. A8-13

uncertainties raised by local people resulted in significant practical changes to the route or the functioning of the BTC project. Rather, five examples, are given of routing changes due to “cultural heritage and social considerations”⁹⁷, which appear to be designed to encourage the reader to think that there are many more such examples. Even in these cases, no indication is given as to the process by which these changes came about – such as whether it was because they raised by consultees.

Given the emphasis BTC Co. and BP have placed on the “unprecedented” extent of consultation, and on the “11,000” pages of ESIA, it is surprising that other cases could not be listed or tabulated. One might conclude that BTC Co. has prioritised quantity of effort over effectiveness of consultation; or, on another interpretation, that it has been misleading with its representation of consultation activities carried out.

Affected villagers suggested several times, for example, that as a result of the contractor Alarko’s high-handedness and incompetence on the previous Natural Gas Pipeline, they would not be happy to see them involved in the project.⁹⁸ This request was ignored.

3.4.2 “The project sponsor initiates . . . consultation as early as possible”

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OP 4.01 Para 12 Early as possible consultation	<i>“the project sponsor initiates . . . consultation as early as possible”</i>	1. Consultation with affected people began several years after commencement of project planning and design. 2. Consultation with affected people began over a year after consultation with national and state bodies.	Non compliance

3.4.2.1 Consultation with affected people begun several years after commencement of project planning and design

Planning for the BTC pipeline began in the mid to late 1990s. Although the EIA stresses the importance of local knowledge (“Consultation is also an important opportunity to obtain local knowledge”⁹⁹) and notes that OP 4.01 Environmental Assessment requires consultation in order “to take local views into account in designing the environmental and social management plans as well as in project design,”¹⁰⁰ it was not until more than a year after the

97 BTC project EIA, Turkey, Final EIA, October 2002. Project Development and Evaluation of Alternatives, pp2-23.

98 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-361, p.364. “There is a preference for Alarko not to be involved as reportedly they did not adopt an impartial attitude in the compensation of damage.”

99 BTC Project EIA, Turkey, Final EIA, October 2002, Approach and Methodology, p.3-7

100 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-7

EIA records the preliminary consultation phase beginning that the six weeks of settlement level consultation began, making it impossible to tap into essential local knowledge in the scooping phase of the project.

3.4.2.2 Consultation with affected people began over a year after consultation with national and state bodies

Before undertaking any local-level consultation, the project sponsors spent considerable time with “national authorities” identifying “key constraints” to the pipeline. Elements of the EIA suggest that one of the main “constraints” discussed was that of national security; a large section of the route in the Kurdish region of the north-east, for instance, was moved east “during discussions with the Turkish authorities for reasons of national security.”¹⁰¹ While the government of course retains its right to ensure the security of the project, in the light of the political realities referred to in section 3.3, it is of considerable concern that elements of the Turkish state, which are of course not directly affected by the project, were given so much more of a role in project design than the people who live along it.

Significantly, the EIA, both physically and chronologically (and thus, one might suggest, in level of importance), puts local communities at the bottom of the list of “key stakeholders”. Ahead of the people who will have to live with the direct consequences of the project are listed authorities, which includes the military and police forces, national and local NGOs, interest groups, including the media, and the International Financial Institutions who are being approached for funding for the project.¹⁰²

While all these groups are entitled to a greater or lesser degree to have input into the project, according to IFI guidelines that contribution should not have taken priority over or been at the expense of locally affected people. In particular, BTC Co.’s failure to take account of local opinion at the *planning and design* stage of the project not only violates IFC stipulations that, “The project sponsor initiations such consultations as early as possible,”¹⁰³ but also the EIA’s own insistence on “early consultation with affected people...early disclosure of information.”¹⁰⁴

3.4.3 Two consultation periods required

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OP 4.01 Para 12 Two consultation periods required	<i>“For Category A projects, the project sponsor consults these groups at least</i>	1. First consultation process met with less than 2% of people; second consisted of meetings in just one in ten affected communities	Partial compliance

101 BTC Project EIA, Turkey, Final EIA, October 2002, The Basic Engineering Phase, p. 2-11

102 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-16

103 International Finance Corporation, Operational Policies, OP 4.01 Environmental Assessment, para.12

104 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-13

	<i>twice (a) shortly after environmental screening and before the terms of reference are finalised, and (b) once a draft EA report is prepared."</i>	<p>2. Format of disclosure meetings inappropriate, presentational not consultative</p> <p>3. Lack of availability of EIA meant affected people unsure of project impacts</p>	
		4. The majority of affected people interviewed by FFM to the region do not feel they have been properly consulted	Non-compliance

3.4.3.1 First consultation process met with less than 2% of people; second consisted of meetings in just one in ten affected communities

(For details, see sec.3.4.1.1, above)

3.4.3.2 Format of disclosure meetings inappropriate, presentational not consultative

The larger community- or district-level consultation meetings arranged by BTC Co. were dominated by a lecture format which has left insufficient space for discussion of the concerns of those attending. For example, according to one group of informants, a meeting held on 26 July 2002 at Osmaniye featured 20-minute speeches from three men from BOTAS and three from the pipeline consortium about aspects of the EIA, a total of two hours of lectures.¹⁰⁵

All of the larger community meetings that were described to the August 2002 FFM included presentations both by BOTAŞ staff and by "university professors". This gave the presentations credibility, and several interviewees said they believed what was said (for example, that no safety or environmental risks would result from the pipeline) because it came from professors, who are "experts". The *muhtar* of one village said of one such professor: "We trust his expert opinion. We believe that such an eminent professor would not have got it wrong. We haven't heard of anyone in a similar position criticising the project."¹⁰⁶

Villager testimony suggested, however, that these professors were in fact from the Black Sea and Central Asian Countries Research Centre, at the Middle East Technical University, Ankara – which is working under contract to BTC and BOTAŞ. In no case were the communities aware of a possible contractual relationship between the professors and the pipeline companies.

This raises several concerns: (i) that the villagers may have been misled into supposing that the validation of the project being offered by the academic community was entirely

¹⁰⁵ Baku Ceyhan Campaign, International Fact-Finding Mission – Azerbaijan, Georgia, Turkey pipeline project: Turkey section, August 2002, p.30.

¹⁰⁶ Baku Ceyhan Campaign, International Fact-Finding Mission – Azerbaijan, Georgia, Turkey pipeline project: Turkey section, August 2002, p.30

objective; and (ii) that the academics gave assurances that they were not in a position to give, for example that there would be *no* risks.

3.4.3.3 Lack of availability of EIA meant affected people unsure of project impacts

The collection of opinions from the public on the draft EIA during the 60-day comment period was hampered by the fact that the full draft EIA was, on BTC Co.'s own account, available only in the governancies in the larger cities and sub-governancies within the four-kilometre corridor and in university and national libraries. To obtain the EIA and participate in the public disclosure period, locally affected people would thus either have had to go online, a practical impossibility for virtually all villagers, or go to “relevant State authority offices”¹⁰⁷, often many miles away with limited transport. As detailed in section 3.3, it is naïve to expect that many Kurdish villagers in particular would be inclined to go to state offices to demand their rights to request to see purportedly public documents, particularly when they did not know of their existence.¹⁰⁸

Nor was the Non-Technical Summary of the EIA widely distributed among villagers in the pipeline corridor. Rather, at most, it was sent to *muhtars*. Whether it was shared further depended on the efficiency or commitment to openness of individual *muhtars* (qualities which the August 2002 FFM found to be very variable among the *muhtars* it met).¹⁰⁹

3.4.3.4 The majority of affected people interviewed by FFMs do not feel that they have been properly consulted

Although the level of consultation is undoubtedly higher than in many comparable infrastructure projects in the region, the consultations do not meet international standards and many people do not feel that they have been properly consulted. Sworn testimonies received by the Kurdish Human Rights Project since the beginning of the public disclosure period on the EIA – hence, after the EIA had been approved as “fit for purpose” by IFC staff – provide ongoing evidence of both an outright failure to consult villagers and/or a failure to conduct adequate consultation. As of the time of writing, 29 testimonies have been received, of which 9 are now translated (see Appendix 3). The following extracts highlight the problem:

“The pipeline goes through the pastures of our village and through my land. I have never had any face to face meetings with the company who is going to build this pipeline . . . The construction company has not met with me or my family to discuss these issues in detail. I did not receive any information concerning the risks or the damages involved. I do not know whether I will be receiving any compensation for the possible damages.”

“I did not have any face to face meetings with the construction company which is going to build the pipeline. I found out that my land is also going to be

107 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-23

108 Despite multiple warnings from the European Union and the passing of several legislative reforms, evidence suggests that instances of state torture of detainees, particularly from minority groups, still continues apace. See e.g. Turkish Daily News, “Amnesty International: Torture Still Widespread in Turkey,” September 3 2003.

109 Baku Ceyhan Campaign, International Fact-Finding Mission – Azerbaijan, Georgia, Turkey pipeline project: Turkey section, August 2002, p.29.

expropriated from the list which was sent to our village mukhtar's office announcing the expropriated lands”

“The construction company did not have a face to face meeting with me concerning the expropriation of the lands. I found out that my lands were going to be expropriated when I received the enclosed documents that they sent me. Apart from this notification there has been no face to face meetings neither with me nor any member of my family or relatives.”

3.4.4 Ongoing consultation

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OP 4.01 Para 12 Ongoing consultation required	<i>“In addition, the project sponsor consults with such groups throughout project implementation”</i>	1. No systematic consultation of affected communities since disclosure roadshow	Non compliance

3.4.1.1 No systematic consultation of affected communities since disclosure roadshow

BTC Co has not conducted regular consultation exercises since the 2002 roadshows.

3.4.5 Timely disclosure of project documents

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OP 4.01 Para 14 Timely disclosure of project documents	<i>“For meaningful consultations between the project sponsor and project-affected groups and local NGOs on all Category A projects, the sponsor provides relevant material in a timely manner prior to</i>	<ol style="list-style-type: none"> 1. Material provided, particularly project leaflet, contained imbalanced, uninformative and sometimes misleading information. 2. Many local NGOs not included in consultation process. 3. Significant omissions in distributed material led to failure to inform affected people of project's potential negative impacts. 	Partial COMPLIANCE

	<i>manner prior to consultation””</i>	4. Methods of distribution of information, especially Muhtars, unreliable.	
		5. Little or no useful information distributed before beginning of consultation process. 6. Unbiased information about project not widely available to local people before or during consultation process. 7. No evidence of <i>meaningful</i> consultation of affected people i.e. consultation which has led to major changes in the project or left affected people feeling as though their concerns have been fully addressed.	Non-compliance

3.4.5.1 Material provided, particularly project leaflet, contained imbalanced, uninformative and sometimes misleading information

(For details, see sections 3.4.1.6 and 3.4.1.8, above)

3.4.5.2 Many local NGOs not included in consultation process

(For details, see sec.3.4.1.5, above)

3.4.5.3 Significant omissions in distributed material led to failure to inform affected people of project’s potential negative impacts

(For details, see sections 3.4.1.3, 3.4.1.6 and 3.4.3.3, above)

3.4.5.4 Methods of distribution of information, especially Muhtars, unreliable

The project leaflets and EIA Non-Technical Summaries were distributed via the settlement heads or Muhtars. An overwhelming majority of settlements listed in the Social Impact Tables agreed that, “the Muhtar is the main source of local information and TV for national information.”¹¹⁰ The project sponsors claim to have consulted with 208 Muhtars prior to beginning settlement level consultation (although as noted above, this figure may not be reliable).¹¹¹

¹¹⁰ BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-18

¹¹¹ BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-18

This places undue responsibility on Muhtars to understand the project, to represent the interests of their villagers effectively and to disseminate the material effectively, particularly given that national television has been unabashedly positive about the project. But quite apart from varying levels of Muhtar competence, that distribution process rests on an assumption: that Muhtars will dispense information about possible employment, compensation, etc., dispassionately and without favouritism across the board. The safety of such an assumption is questionable. Even without considering the relationship of the Kurds to the state, eastern Turkey is a highly tribal society, one with many long-standing divisions, and the election of Muhtars reflects that. Tribal loyalties mean that often a Muhtar will represent one group in a settlement at the expense of another, and it should not be assumed that everyone will be treated fairly or as equals.

This is acknowledged in the EIA, yet does not appear to have affected the design of the consultation exercise. It is noticeable that of the 102 settlements the EIA surveyed in person, at least eight of them reported tension or divisions relating to the Muhtar within the village. In Beyoglu village in Kars province, for instance, the EIA notes that the “settlement is separated into two groups due to competition in Muhtar elections. Conflict between current and ex-Muhtar and between Muhtar and teachers.”¹¹² In at least two locations, villagers distrusted the Muhtar to the extent that they wanted him to have no part in the compensation process. In Caykoy in Erzurum province, for instance, “Local residents have a preference for the land owner, not the Muhtar, to participate in the determination of land prices.”¹¹³

A further fifteen of the 102 villages surveyed reported some kind of tension or division between groups in the settlement, often to do with politics or local power.¹¹⁴ Thus in total 23 of the 102 settlements surveyed, or nearly a quarter, reported some kind of internal political division or struggle for power, which would inevitably be reflected in the election of Muhtars. Given that the compilers of the EIA spent very little time in each location and were not specifically looking for problems with Muhtars, it is probable that the true figure for internal divisions is much higher and that tribal schisms are the norm rather than the exception. In that sense, the Muhtar cannot be relied upon as an impartial, egalitarian dispenser of project knowledge, a serious flaw in BTC Co.’s methodology.

3.4.5.5 Little or no useful information distributed before beginning of consultation process

(For details, see sec.3.4.1.6, above)

3.4.5.6 Unbiased information about project not widely available to local people before or during consultation process

(For details, see sections 3.4.1.3, 3.4.1.6, 3.4.1.8, 3.4.1.11 and 3.4.3.3, above)

¹¹² BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-148

¹¹³ BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-291

¹¹⁴ eg in Tekneli settlement in Kayseri province, “there is some hostility and inclination towards violence in the settlement among three dominant families.” BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-642

3.4.5.7 No evidence of *meaningful* consultation of affected people i.e. consultation which has led to major changes in the project or left affected people feeling as though their concerns have been fully addressed

(For details, see especially sec.3.4.1.12, and also sections 3.4.1.4, 3.4.1.7 and 3.4.1.8, above)

3.4.6 Form and language of materials

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
<p>OP 4.01 Para 14</p> <p>Form and language of materials</p>	<p><i>“For meaningful consultations between the project sponsor and project-affected groups and local NGOs on all Category A projects, the sponsor provides relevant material . . . in a form and language that are understandable and accessible to the groups being consulted”</i></p>	<p>1. EIA, even Non-Technical Summary, too technical and convoluted to be useful or comprehensible to ordinary people. Many basic questions not satisfactorily answered.</p> <p>2. EIA hard to access; ordinary people unable to get online and often unwilling to travel to State offices, which in any case are usually many miles away.</p>	<p>Partial Compliance</p>
		<p>3. Failure to provide written or oral material in minority languages, especially Kurdish, discriminates against minority groups.</p> <p>4. Over-emphasis on written materials discriminates against illiterate affected people, especially women and the elderly. Underestimate of illiteracy rates in region.</p>	<p>Non-Compliance</p>

3.4.6.1 EIA, even Non-Technical Summary, too technical and convoluted to be useful or comprehensible to ordinary people. Many basic questions not satisfactorily answered

The March 2003 FFM reports that **the villagers it interviewed expressed serious concerns about the way information on the project had been provided.**¹¹⁵ They said that the information was too technical and that the lecture-format meetings were not helpful; too much was said and shorter, more frequent meetings would have been better. The villagers still had unanswered questions regarding their rights to negotiate a fair price for land, the length of the construction period, the likely damage accruing from the building works and the future use of the land affected by the corridor. Even those who had received written information said that it would be of no use to most of them, as many villagers could not read. Once again, this illustrates that what on paper may seem adequate consultation is sometimes in practice inadequate.

3.4.6.2 EIA hard to access; ordinary people unable to get online and often unwilling to travel to State offices, which in any case are usually many miles away

(For details, see sections 3.4.3.3 and 3.4.5.4, above)

3.4.6.3 Failure to provide written or oral material in minority languages, especially Kurdish, discriminates against minority groups

The failure of the project sponsors to take advantage of recent reforms in Turkey which would have enabled the project documents to be published in minority languages, especially Kurdish, is regrettable. The lack of minority-language documentation has undoubtedly acted to further disadvantage members of minority groups, particularly women and the elderly, who frequently do not speak Turkish. It is notable that in the witness statements from locally affected people submitted to the European Commission on July 14 2003, the inability to understand compensation negotiations conducted in Turkish recurs frequently.

“They spoke to me in Turkish and because of that I was not able to make myself understood very much and I could not understand what they meant a lot of the time either.”

“I do not speak Turkish as a mother tongue since my mother tongue is Kurdish. They spoke to me in Turkish, therefore I did not understand quite a lot of the things they told me.”¹¹⁶

The fact that project negotiations and ‘consultation’ were not conducted in their own language is likely to have given affected Kurdish people an even clearer indication that this was a project being operated for the benefit of the state and thus not to be opposed, and a correlating lack of feelings of ownership and engagement on their own part.

115 International Fact-Finding Mission – Baku-Tbilisi-Ceyhan project: Turkey section, March 2003 (report pub.June 2003), pp.52-54.

116 Witness statements of affected people from Ardahan province, submitted to European Commission by Baku-Ceyhan Campaign July 14th 2003. Full details of the legal submission, which argues that the BTC project breaches Turkish, EU and international law, are available at www.baku.org.uk. Names withheld for respondents’ personal safety.

3.4.6.4 Over-emphasis on written materials discriminates against illiterate affected people, especially women and the elderly. Underestimate of illiteracy rates in region

BTC Co. failed to take adequate steps to ensure the participation of women in the consultation process. In the Kurdish regions of the north-east, for example, it is women who are worst affected by the failure to distribute information on the project, either orally or verbally, in Kurdish. Women in the region are often denied education, and are therefore frequently both illiterate and unable to speak Turkish, rendering them effectively unable to read project materials or to take part in consultation exercises. Thus BTC Co.'s failure to use Kurdish amounts to gender discrimination by language.

While BTC Co. makes considerable play out of its efforts to include women in the consultation process, responses in the Social Impact tables tell a different story. "Women have no freedom of expression."¹¹⁷ "There is no female participation [in consultation exercises]."¹¹⁸ "Females in the settlement did not participate--'Do you want us to be beaten by our husbands?'"¹¹⁹ Moreover, in allowing consultation responses by the male 'household head' to represent the views of the entire household (see sec.3.4.1.1, above), BTC Co. is actually perpetuating female invisibility, not trying to overcome it. Consultation could, and should have been designed, in such way as to include women.

3.4.7 Inadequate initial consultation on summary of project impacts

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OP 4.01 Para 15 Consultation on initial summary of impacts	<i>"the project sponsor provides for the initial consultation a summary of the proposed project's objectives, description and potential impacts."</i>	1. No evidence that locally affected people provided with adequate project summaries sufficiently far in advance of initial consultation phase to allow them to reach informed decisions.	Unknown – no details of when project documents were distributed. But villagers complain of not having received documentation.
		2. None of project materials, especially leaflet, adequately address potential negative impacts of project.	Non-compliance

117 Caykoy settlement, BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-290

118 Yenikoy settlement, BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-308

119 Kartalpinar settlement, BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-82

3.4.7.1 No evidence that locally affected people provided with adequate project summaries sufficiently far in advance of initial consultation phase to allow them to reach informed decisions

According to BTC Co., initial information on the project was distributed "to all stakeholders".¹²⁰ Some 2000 EIA information packs are said to have been distributed to concerned authorities down to village level, 40,000 community pamphlets disseminated widely in affected communities, and 15,000 copies of the Non-Technical Summary distributed along the pipeline route.¹²¹ In addition, 500 press packs are said to have been handed out, with workshops and meetings attended by 260 NGOs and 60 press organizations.¹²²

No details are given in the EIA as to how far in advance of initial consultation projects documents were distributed. However, many villages visited by the August 2002 FFM – particularly fishing villages in the area around Ceyhan terminal – had not received packages.¹²³ Indeed, the FFM reports that in several cases it had to take it upon itself to distribute the BTC Co.'s documents to affected communities who had not received them.

3.4.7.2 None of project materials, especially leaflet, adequately address potential negative impacts of project

(For details, see sections 3.4.1.3 and 3.4.1.11, above)

3.4.8 Making documentation accessible

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OP 4.01 Para 15 Making project documents accessible	<i>"the project sponsor makes the draft EA report available at a public place accessible to project-affected groups and local NGOs."</i>	1. EIA available only from state institutions, not independent bodies with unregulated public access 2. EIA hard to access for rural people, as placed in distant urban areas with unreliable transport links, or online in areas with no computers and unreliable electricity.	Partial compliance

120 BTC project EIA, pp. A3-22; A2-1; A2-28.

121 Ibid., A3-22; Non-Technical Summary, p. 13.

122 Non-Technical Summary, p. 13.

123 International Fact Finding Mission on BTC Project – Turkey Section, August 2002, p.33

3.4.8.1 EIA available only from state institutions, not independent bodies with unregulated public access

(For details, see sec.3.4.3.3, above)

3.4.8.2 EIA hard to access for rural people, as placed in distant urban areas with unreliable transport links, or online in areas with no computers and unreliable electricity

(For details, see sec.3.4.3.3, above)

3.5 Other IFC and World Bank standards on consultation

The World Bank has five safeguard policies and a number of other guidelines that deal specifically with consultation:

- **OP 4.01 Environmental Assessment**
- **OP 4.04 Natural Habitats**
- **OD 4.30 Involuntary Resettlement**
- **OD 4.20 Indigenous Peoples**
- **OPN 11.03 Cultural Property.**

The previous section has dealt with OP 4.01 (specifically the IFC's policy, which corresponds to that of the World Bank Group); this section deals with the others.

In its "commitments appendix", the EIA states variously that the project will comply with "World Bank Operational Directives and Guidelines",¹²⁴ without specifying any exceptions, and elsewhere with "all applicable World Bank ... best practice standards".¹²⁵ Appendix D of the EIA sets out which World Bank standards are deemed applicable to the EIA as a whole – Environmental Assessment, Natural Habitats, Cultural Property, Disclosure of Information, IFC Policy Statement on Child/Forced Labour, Pollution Prevention and Abatement Handbook – and summarises their requirements.

Significantly, the EIA summary fails to make any mention the *consultation requirements* under the policies on Environmental Assessment, Natural Habitats and Cultural Property. It is also of significance that the EIA specifically omits to claim compliance with these consultation requirements.¹²⁶

Although, as noted, the IFC has allowed the BTC Consortium to derogate from applying the Indigenous Peoples policy (OD 4.20), this derogation is contested by non-governmental organisations and is likely to be subject to a complaint to the Complaints Advisory Ombudsman (CAO). For that reason, compliance with OD 4.20 is also evaluated.

For ease of reference, the separate safeguard policies are dealt with individually and broken down into their specific requirements, against each of which the BTC project is evaluated, based on:

- the data presented in the EIA itself;
- findings of two NGO Fact-Finding Missions to the Turkey section of the pipeline route, in August 2002 and March 2003; and
- testimony received from villagers during the public disclosure period.

To avoid unnecessary duplication, the bulk of the supporting data are presented in the preceding section (3.4) on OP 4.01 Environmental Assessment, with violation of other policies being presented in this section in tabular form.

124 BTC Project EIA, EIA Appendices – Commitment Appendices, unnumbered, ID No. APC1E16.

125 BTC Project EIA, EIA Appendices – Commitment Appendices, unnumbered, ID No. APC1E32

126 BTC Project EIA, Appendix D, Legal and Administrative Framework, June 2002, D-15

3.5.1 IFC OP 4.04 Natural Habitats

3.5.1.1 Taking account of views of affected people and NGOs

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
IFC OP 4.04 Para 8 Take account of views of affected people and NGOs	<i>“IFC expects the project sponsor to take into account the views, roles and rights of groups, including non-governmental organisations and local communities, affected by IFC-financed projects involving natural habitats, and to involve such people in planning, designing, implementing and monitoring such projects.”</i>	<ol style="list-style-type: none"> 1. No evidence that views of local communities or NGOs were taken into account regarding impact of project on natural habitats. 2. No evidence that project sponsors conducted sufficient research into local ecosystems to understand or accommodate local communities’ roles in relation to natural habitats. 3. No evidence that local communities were made aware of their rights regarding impacts of project on natural habitats. 4. No evidence that local communities have or will play significant role in planning, designing, implementing or monitoring project in relation to natural habitats. 5. Consultation process begun too late and construction of pipeline begun too early to permit project sponsors to tap into knowledge of local communities with regard to natural habitats. 	Non compliance

3.5.1.2 Consultation and mitigation measures

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
IFC OP 4.04 Para 8 Identify appropriate mitigation measures	<i>“Involvement may include identifying appropriate consultation measures, managing protected areas</i>	<ol style="list-style-type: none"> 1. No evidence that local communities were asked to participate significantly in any of these activities at the project formulation stage, nor that they will be given significant future roles. 	Non compliance

through consultation with local communities	<i>protected areas and other natural habitats and monitoring projects.”</i>		
--	---	--	--

3.5.1.3 Provide appropriate information on habitat protection

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OD 4.04, para 8 Provide people with appropriate information on habitat protection	<i>“IFC encourages the project sponsor to provide such people with appropriate information on the protection of natural habitats.”</i>	1. No evidence that project sponsors passed on any information to affected people with regard to protection of natural habitats. Evidence suggests rather that project sponsors consistently underreported likely negative impacts of project.	Non compliance

3.5.2 OD 4.30 Involuntary Resettlement¹²⁷

The BTC project violates World Bank policy OD 4.30 (Involuntary Resettlement) on 16 counts relating to consultation on resettlement issues.

(See sections 4.4.4 to 4.4.9 of chapter 4 (Resettlement)).

3.5.3 OD 4.20 Indigenous Peoples

The BTC project violates World Bank policy OD 4.20 (Indigenous Peoples) on 19 counts relating to consultation of ethnic minorities.

(See sections 8.7.5, 8.7.7, 8.7.10 and 8.7.11 of chapter 8 (Ethnic minorities and vulnerable groups)).

3.5.4 IFC Policy on Cultural Property OPN 11.03

The BTC project violates World Bank’s Policy on Cultural Property (OPN 11.03) on 3 counts, and the World Bank’s Draft Policy on Physical Cultural Resources (Draft OP 4.11) on 3 counts, both relating to consultation on cultural heritage issues.

¹²⁷ Although OD 4.30 was replaced by OP and BP 4.12 in January 2002, the project has used OD 4.30 for its resettlement programme. It is noteworthy that OD 4.30 is less stringent in many respects, particularly with regard to consultation, than OP 4.12.

(See sections 5.4.6 and 5.5.3 of chapter 5 (Cultural heritage)).

3.6 EBRD Environment Policy

3.6.1 Meaningful public participation

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
EBRD Environment Policy, p.26 Meaningful public consultation	<i>“The EBRD believes meaningful public consultation is a way of improving the quality of projects.”</i>	1. No evidence that meaningful consultation with affected communities i.e. consultation which has led to major changes in the project or left affected people feeling as though their concerns have been fully addressed has taken place during the project.	Non compliance

3.6.2 Opportunity to express concerns

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
EBRD Environment Policy, para 26 Meaningful public consultation	<i>“those people potentially affected will have the opportunity to express their concerns and views about issues such as project design, including location, technological choice and timing.”</i>	<ol style="list-style-type: none"> 1. Vast majority of affected people have not had the opportunity to express concerns in person. 2. Lack of clear and unbiased information about project made it difficult for affected people to come to informed opinions. 3. Social context and lack of freedom of speech made it impossible for people to voice their full opinions. 4. Project sponsors’ failure to inform affected people of their rights and of potential impacts of project has limited the utility of consultation. 	Partial compliance
		5. No evidence that people have been able to exert influence on location, technological choice or timing of project.	Non compliance

3.7 EU Directive on Environmental Impact Assessment

The European Commission has made it a requirement of Turkey's accession to the European Union that Turkey take steps to adopt the EU's Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended by EU Directive 97/11/EC).¹²⁸ The Host Government Agreement signed between the Government of Turkey and the Baku-Tbilisi-Ceyhan (BTC) consortium also stipulates that the EIA for the BTC project should be "in accordance with the principles" of the Directive.

It is thus of grave concern that the EIA for the project, as approved by the Government of Turkey, falls far short of compliance with Directive. As a result, it may be argued that the project not only fails to comply with its own legal regime, as established under the Host Government Agreements, but also places Turkey in potential breach of its accession obligations, by moving Turkey *away from* its obligation to implement the EIA Directive.

Detailed analysis of the EIA for the project reveals 4 major breaches of the Directive in relation to consultation. These are set out below:

3.7.1 Inadequate and flawed consultation with affected villagers

Relevant Paragraph and Key requirement	Specific Obligations	Evaluation of Compliance	Extent of Compliance
Article 6 (2) Disclosure and consultation	<i>"Members shall ensure that any request for development consent and any information gathered pursuant to Article 5 are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted."</i>	<ol style="list-style-type: none"> 1. Majority of people not adequately informed or meaningfully consulted. 2. Information provided was biased and uninformative. 3. Materials not provided in appropriate language and form. 4. Lack of freedom of speech preclude frank comment on the project 	Partial compliance

¹²⁸ Moser, P., In the Matter of the Baku-Tbilisi-Ceyhan Pipeline – Counsel's Opinion, 2003 :“Decision 2001/235/EC expressly provides, under the heading ‘Environment’, that amongst the medium term priorities and interim objectives, Turkey must ‘adopt a detailed directive-specific transposition programme of the acquis; transpose the environmental impact assessment’.”

3.7.1.1 Majority of people not adequately informed or meaningfully consulted.

(See sections 3.4.1 and 3.4.3, above)

3.7.1.2 Information provided was biased and uninformative.

(See sections 3.4.1.3, 3.4.1.6 and 3.4.3.8, above)

3.7.1.3 Materials not provided in appropriate language and form.

(See section 3.4.6, above)

3.7.1.4 Lack of freedom of speech preclude frank comment on the project

(See section 3.4.1.7, above)

3.7.2 Failure to address trans-boundary impacts of tanker traffic and to inform affected Member States

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
<p>Article 7 (1)</p> <p>Transboundary impacts</p>	<p><i>“Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the member in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:</i></p> <ul style="list-style-type: none"> • <i>a description of the project, together with any available information on its possible trans-boundary impact;</i> • <i>information on the</i> 	<p>1. Member States affected by risk of tanker spill not informed or consulted</p>	<p>Non compliance</p>

	<p><i>nature of the decision which may be taken,</i></p> <p><i>and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the Environmental Impact Assessment procedure, and may include the information referred to in paragraph 2.”</i></p>		
--	---	--	--

3.7.2.1 Member States affected by risk of tanker spill not informed or consulted

At present, there is little supertanker (up to 300,000 tonnes or 2 million barrels capacity) traffic in the Eastern Mediterranean. However, as a direct result of the project, such traffic will increase substantially. At full operation, the terminal at Yumurtalik will receive 1 million barrels of oil a day for transportation: this translates into one of the largest available supertankers (300,000 tonnes) leaving the port every other day or over 7,200 over the lifetime of the pipeline. Should smaller tankers be used, the number of shipments will increase proportionately.

The EIA gives no details of the routes that the tankers will take once they leave Yumurtalik. But it is likely that the oil will be transported to refineries in Northern Europe, thus potentially affecting the coastlines of all the Mediterranean EU members states plus the UK, the Netherlands, Germany and Belgium and Portugal. Greece in particular will have considerably more tanker traffic passing its coasts than it would without BTC. Under the EU Directive on EIA, Turkey should have informed the affected states, but the EIA makes no mention of it having done so.

3.7.3 Failure to consult with authorities and public in affected Member States

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
<p>Article 7 (3)</p> <p>Consult with affected Member States</p>	<p><i>“The Member States concerned, each insofar as it is concerned, shall also:</i></p> <p><i>arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6 (1) and the public concerned in the territory of the Member State likely to be significantly affected; and (b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the</i></p>	<p>1. Affected Member States not consulted</p>	<p>Non compliance</p>

	<i>competent authority in the Member State in whose territory the project is intended to be carried out.</i>		
--	--	--	--

3.7.4 Failure to consult on trans-boundary impacts

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
Article 7 (4) Trans-boundary impacts	<i>“The Member States concerned shall enter in consultation regarding, inter alia, the potential trans-boundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.”</i>	1. No consultation on trans-boundary impacts	Non compliance