

# **Evaluation of compliance of the Baku-Tbilisi-Ceyhan (BTC) pipeline with the Equator Principles**

Supplementary Appendix to EIA Review – BTC pipeline (Turkey section)

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# 1. Summary

The Equator Principles (EPs), adopted by seventeen leading private banks, commit those banks unambiguously to not providing loans to projects which fail to comply with their environmental and social policies and processes.<sup>1</sup>

The Principles specify that adopting banks will only provide loans to projects which meet a number of conditions. These include that projects<sup>2</sup> comply with International Finance Corporation (IFC) policies<sup>3</sup>, that requirements of host country laws are addressed<sup>4</sup>, and that a number of other specific requirements are met<sup>5</sup>.

In October 2003, banks have been invited to submit proposals for financing of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline. This Supplementary Appendix examines the compliance of the BTC project with the Equator Principles.

## 1.1 Findings

This review focuses just on the Turkish section of the BTC pipeline. Fact-finding missions to Azerbaijan and Georgia have found many of the same systemic failures as are identified below for Turkey. Indeed, it should be noted that the total number of violations of policy and best practice will be greater for the whole route than that given here, as this analysis deals with only one of the three countries.

Based on a detailed study of the BTC project documents, and on two international Fact-Finding Missions to the pipeline route, this review finds that:

- **The BTC project is in partial or total breach of five EP-referenced IFC standards, on at least 127 counts.** These are:
  - OP 4.01 Environmental Assessment: 53 counts;
  - OP 4.04 Natural Habitats: 7 counts;
  - OD 4.20 Indigenous Peoples: 30 counts;
  - OP 4.30 Involuntary Resettlement: 28 counts;
  - OPN 11.03 Cultural Property: 9 counts.
- **The project potentially breaches the Turkish Expropriation Law on at least two counts.**

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<sup>1</sup> The Equator Principles, 4 June 2003, Preamble

<sup>2</sup> The requirements for compliance with IFC standards and with host country law relate respectively to projects in low- and middle-income countries, and to Category A projects – these are both conditions which apply to the BTC pipeline.

<sup>3</sup> The Equator Principles, 4 June 2003, Statement of Principles, 3: “For projects located in low and middle income countries as defined by the World Bank Development Indicators Database (<http://www.worldbank.org/data/countryclass/classgroups.htm>), the EA [Environmental Assessment] will have further taken into account the then applicable IFC Safeguard Policies (Exhibit II). In each case, the EA will have addressed, to our satisfaction, the project’s overall compliance with (or justified deviations from) the respective above-referenced Guidelines and Safeguard Policies”

<sup>4</sup> The Equator Principles, 4 June 2003, Statement of Principles, 3b: adopting banks are also committed to only providing loans to projects where “the EA report has addressed ... requirements under host country laws and regulations, applicable international treaties and agreements”.

<sup>5</sup> The Equator Principles, 4 June 2003, Statement of Principles, 1-9

- **The project is in partial or total breach of the following international standards on 171 counts, which under the project agreements are requirements of Turkish Law:**
  - World Bank standards: 147 counts<sup>6</sup>;
  - European Union Directive on EIA (Environmental Impact Assessment): 18 counts;
  - EBRD (European Bank of Reconstruction & Development) Environment Policy: 6 counts.
- **The project is in partial or total breach of nine further clauses of the Equator Principles, on 30 counts, specifically:**
  - Eight clauses on content of an EIA report: 15 counts;
  - Clause on consultation: 15 counts.
- **There is a worrying degree of legal uncertainty surrounding the project agreements, notably regarding:**
  - Conflicts between the IGA/ HGA and Turkey's international obligations on environment and human rights;
  - Conflicts between the HGA and Turkey's Accession Agreements with the European Commission (EC);
  - Incompatibilities between undertakings in the Joint Statement on adherence to the OECD Guidelines on Multinational Enterprises and BP's record in respect of the project.

## 1.2 Recommendations

While NGOs have welcomed the fact that banks have addressed environmental and social issues, it is in the *implementation* that it will be determined whether the Equator Principles are meaningful. In other words, the credibility and seriousness of adopting banks' commitment to environmental and social issues will be judged by what projects they provide loans for.

This review has found that the Baku-Tbilisi-Ceyhan (BTC) pipeline breaches the letter and spirit of the Equator Principles on multiple counts. So numerous and extensive are the breaches that simply aiming to improve the project after financing it is not an acceptable approach.

We recommend that:

- **Banks should not provide loans to the BTC pipeline, as it currently stands;**
- **Banks should carry out their own analysis of the project, and of which of their policies apply, not rely solely on opinions of the BTC consortium itself or of the**

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<sup>6</sup> this includes the 127 breaches of IFC standards listed above in section 3, plus 20 breaches of World Bank Draft OP 4.11 (Physical Cultural Resources).

IFC – banks are committed to the standards outlined in the Equator Principles, regardless of whether the IFC upholds its own standards or not;

- **In the interests of transparency, and of demonstrating their ethical credentials, banks should publish their analysis of the BTC project against the Equator Principles and against their other environmental and social standards** – at the very least, they should make a statement outlining the key issues and reasons for their decision.

Specifically, loans should not be considered to BTC until at least the following requirements are met:

- **IFC policy OD 4.20 (Indigenous Peoples) is applied and the project brought into compliance with it**, as required under the Equator Principles;
- **The project is brought into compliance with the Equator Principles** – requiring action on the 127 breaches of the referenced IFC policies, and on the 30 further breaches of other Equator Principles;
- **The project is made fully compliant with host country law** – including both direct, pre-existing laws such as the Turkish Expropriation Law, and international standards brought into the statutes through the project legal agreements;
- **Legal clarity on the project agreements is achieved – the project agreements should be amended to:**
  - clarify both the standards that apply to the project and the order of precedence in which they apply;
  - ensure third party rights;
  - ensure compliance with Turkey’s obligations under international human rights, land rights and environmental law;
  - comply with Turkey’s accession agreements with the European Commission (EC), in particular by ensuring that Turkey moves towards the *acquis communitaires*, rather than away from them; and
  - comply with the Memorandum of Understanding between the World Bank, the EBRD and the EC on assistance to accession countries
- **Ongoing investigations and inquiries by independent authoritative bodies have been satisfactorily concluded – these include:**
  1. The EC completing its ongoing assessment of the project as part of its November review of Turkey’s progress in complying with the Copenhagen criteria;
  2. The OECD National Contact Points for the OECD Guidelines on Multinational Enterprises ruling on a complaint now being considered against BP over the BTC project;

## 2 Introduction

### 2.1 The BTC project

The BTC Consortium (BTC Co.), an eleven-member coalition of oil companies led by BP, has applied for public funding (what BP itself has called “free public money”<sup>7</sup>) from the International Finance Corporation (IFC), the European Bank for Reconstruction and Development (EBRD) and a number of Export Credit Agencies to finance a major new pipeline – known as the Baku-Tbilisi-Ceyhan (BTC) pipeline – from the Caspian Sea to the Mediterranean.

Four banks have recently been appointed as financial arrangers for \$1.2 billion of syndicated loans: ABN Amro, Citigroup, Mizuho and Société Générale. They will invite banks to submit proposals by the end of October 2003. A further \$300m of loans will be syndicated by the IFC and EBRD.

The BTC pipeline would transfer up to 50 million tonnes of crude oil per annum (or one million barrels per day) from south of Baku on the Caspian Sea coast, via Azerbaijan, Georgia and Turkey, to the Mediterranean. Crude oil would be supplied to international markets via tankers loaded at a new marine terminal. Total costs have been estimated to be at least \$3.7 billion<sup>8</sup>, with 70% of that, around \$2.5 billion, coming loans from public and private loans.

### 2.2 The Equator Principles

In June 2003, ten leading banks announced the adoption of the Equator Principles, a voluntary set of guidelines developed by the banks for managing social and environmental issues related to the financing of development projects. As of 13<sup>th</sup> October 2003, seventeen banks have adopted the principles.<sup>9</sup>

Adopting banks:

*“undertake to review carefully all proposals for which our customers request project financing. We will not provide loans directly to projects where the borrower will not or is unable to comply with our environmental and social policies and processes”<sup>10</sup>*

The Principles are clear that adopting banks “will only provide loans to projects” that meet the nine principles.

In particular, Principle 3 commits that:

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<sup>7</sup> Corzine, R., “Wisdom of Baku pipeline queried”, *Financial Times*, 4 November 1998, p.4.

<sup>8</sup> comprising construction costs \$3bn, financing costs \$0.5bn and cost of oil to fill the line \$0.2bn. [International Finance Corporation, BTC pipeline – Summary of Project Information, attachment: Table 2 – Indicative Ownership and Financing Plan, June 2003, on website <http://www.ifc.org/ifcext/btc.nsf/Content/Project+Documents>

<sup>9</sup> ABN AMRO Bank, NV; Barclays plc; Citigroup, Inc; Crédit Lyonnais; Credit Suisse Group; Dexia Group; Dresdner Bank; HSBC Group; HVB Group; ING Group; MCC; Rabobank Group; Royal Bank of Canada; Standard Chartered Bank; The Royal Bank of Scotland; WestLB AG; Westpac Banking Corporation

<sup>10</sup> The Equator Principles, 4 June 2003, Preamble

*“For projects located in low and middle income countries as defined by the World Bank Development Indicators Database (<http://www.worldbank.org/data/countryclass/classgroups.htm>), the EA [Environmental Assessment<sup>11</sup>] will have further taken into account the then applicable IFC Safeguard Policies (Exhibit II). In each case, the EA will have addressed, to our satisfaction, the project’s overall compliance with (or justified deviations from) the respective above-referenced Guidelines and Safeguard Policies”<sup>12</sup>*

The World Bank Database classifies Azerbaijan and Georgia as low income countries, and Turkey as lower-middle income – thus the Equator Principles require that the BTC pipeline complies with the following relevant IFC Safeguard Policies:

- OP 4.01 Environmental Assessment (October 1998);
- OP 4.04 Natural Habitats (November 1998);
- OD 4.20 Indigenous Peoples (September 1991);
- OP 4.30 Involuntary Resettlement (June 1990);
- OPN 11.03 Cultural Property (September 1986).

Under the Equator Principles, adopting banks are also committed to only providing loans to projects where “the EA report has addressed ... requirements under host country laws and regulations, applicable international treaties and agreements”.<sup>13</sup>

Compliance with host country law is one of the most basic ethical requirements for project investments. While the Principles do not explicitly rule out investing in projects that do not comply, it would be very difficult for a bank to justify doing so, and doing so could leave a bank vulnerable to legal challenge.

Furthermore, it is not in any bank’s own financial interest to invest in projects that potentially breach host country law, as that will expose the bank to extra project risks and uncertainties.

## 2.3 The importance of implementation

Non-governmental organisations (NGOs) welcomed the efforts of banks to grapple with environmental and social issues. However, in response to the publication of the principles, they stressed that:

*“Whether or not the Equator Principles represent a major step or a negligible one will be demonstrated through banks’ commitment to ... implementation of the Principles”.<sup>14</sup>*

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<sup>11</sup> Note that while the Equator Principles and IFC policies refer to Environmental Assessments (EAs), the assessment for the BTC pipeline is entitled the Environmental Impact Assessment (EIA). Sometimes the term Environmental and Social Impact Assessment is used (eg it is used for the Azerbaijan and Georgia sections of BTC). In this review, we use EIA rather than EA or ESIA; the three terms are taken as synonymous

<sup>12</sup> The Equator Principles, 4 June 2003, Statement of Principles, 3

<sup>13</sup> The Equator Principles, 4 June 2003, Statement of Principles, 3b

This was reiterated:

*“For the NGO community, the key measure of success will be the ability of these Principles to create demonstrable improvements in environmental quality and social justice in the areas and communities affected by bank transactions. Implementation is a key concern regarding these Principles, and endorsing banks must ensure adequate resources and training to build the internal infrastructure to implement the Principles.”<sup>15</sup>*

Given these concerns about implementation, banks’ decisions on financing the BTC project will be an important test of their commitment to the Equator Principles.

## 2.4 Structure of this Supplementary Appendix

This Supplementary Appendix is intended to be read alongside the detailed Review of the BTC pipeline EIA, carried out by 15 NGOs<sup>16</sup> in October 2003, and submitted to the IFC and EBRD within their consultation periods – and frequent cross-references to that document are made in this.

It should be noted that as well as breaches of IFI safeguard policies, that full Review also documents potential breaches of host country law, and legal uncertainties and irregularities in the Host Government and Inter-Governmental Agreements for the project.

Like the full Review, this Supplementary Appendix focuses on the Turkey section of the pipeline, and in particular draws on the findings of two international Fact-Finding Missions there, in August 2002 and March 2003. However, it should be noted that although they are not analysed here, Fact-Finding Missions to Azerbaijan and Georgia, in June 2002 and May 2003, found many of the same issues<sup>17</sup> – so many of the conclusions presented here will also apply to the other sections of the pipeline; also, the total number of violations of best practice will be higher for the route as a whole.

This Supplementary Appendix looks first (in section 3) at compliance with IFC Safeguard Policies (a requirement under principle 3 of the Equator Principles), then (in section 4) at compliance with Turkish national law (referenced under principle 3b of the Equator Principles) and finally (in section 5) at compliance with others of the Equator Principles.

However, unlike the full Review, the analysis of IFC compliance in section 3 below is structured by Safeguard Policy rather than thematically. However, clear cross-references are made to the full Review.

The EIA Review is based on detailed examination of project documents, including the Environmental Impact Assessment (EIA), Environmental Management Plan (EMP) and

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<sup>14</sup> NGO Collective Analysis of Equator Principles, 1 Introduction - [http://www.financeadvocacy.org/mod.php?mod=userpage&menu=3&page\\_id=12](http://www.financeadvocacy.org/mod.php?mod=userpage&menu=3&page_id=12)

<sup>15</sup> NGO Collective Analysis of Equator Principles, 1 Introduction - [http://www.financeadvocacy.org/mod.php?mod=userpage&menu=3&page\\_id=12](http://www.financeadvocacy.org/mod.php?mod=userpage&menu=3&page_id=12)

<sup>16</sup> Amis de la Terre (France), Baku Ceyhan Campaign (UK), Campagna per la Riforma della Banca Mondiale (Italy), CEE Bankwatch Network (Central & Eastern Europe), The Corner House (UK), Environmental Defense Fund (USA), Friends of the Earth (England, Wales & Northern Ireland), Friends of the Earth Japan, Green Alternative (Georgia), Halifax Initiative (Canada), Kurdish Human Rights Project (UK), Milieudefensie (Netherlands), PLATFORM (UK), Urgewald (Germany), WEED (Germany)

<sup>17</sup> Azerbaijan, June 2002: <http://www.baku.org.uk/pipelines-factfinding-azerbaijan.pdf>  
Georgia, June 2002: <http://www.baku.org.uk/pipelines-factfinding-georgia.pdf>  
Azerbaijan, May 2003: <http://www.foe.org/camps/intl/institutions/AzFFM03.pdf>  
Georgia, May 2003: <http://www.foe.org/camps/intl/institutions/GaFFM03.pdf>

Resettlement Action Plan (RAP), together with ‘ground-truthing’ exercises, using data gathered from two independent international Fact-Finding Missions to the Turkey section of the BTC pipeline route, in August 2002 and March 2003. Thus respectively, the review evaluates compliance with international standards and lending policies of respectively the project design and implementation.

### 3 Breaches of IFC safeguard policies in the Equator Principles

In low- and middle-income countries (which includes the three host countries of the BTC project), the Equator Principles commit adopting banks to only providing loans to projects which have:

*“addressed, to our satisfaction, the project’s overall compliance with (or justified deviations from) the respective above-referenced [IFC] Guidelines and Safeguard Policies”<sup>18</sup>*

Five of the IFC policies thus listed in the Equator Principles are of particular relevance to BTC:

- OP 4.01 Environmental Assessment (October 1998);
- OP 4.04 Natural Habitats (November 1998);
- OD 4.20 Indigenous Peoples (September 1991);
- OP 4.30 Involuntary Resettlement (June 1990);
- OPN 11.03 Cultural Property (September 1986).

In this section, findings of the EIA Review are reported, including numbers of counts of violation of these IFC policies, and a listing of the broad thematic areas they fall into.

The breaches are listed in tables in the summary of the EIA Review, and examined in detail (including supporting data) in the main body of the Review.

#### 3.1 OP4.01 (Environmental Assessment)

For the Turkish section of the pipeline alone, the EIA Review finds at least 53 breaches of OP 4.01, comprising:

- At least 35 partial or total violations of OP 4.01 on consultation on the EIA<sup>19</sup>;
- At least 8 partial or total violations of OP 4.01 on assessment of alternatives<sup>20</sup>;
- At least 10 partial or total violations of OP 4.01 in other areas, including environmental baseline surveys, presentation of information in EIA, independence of EIA consultants and procedural issues<sup>21</sup>.

Specifically, on consultation:

- Lack of freedom of speech and human rights abuses along the route fundamentally invalidates consultation procedures;

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<sup>18</sup> The Equator Principles, 4 June 2003, Statement of Principles, 3

<sup>19</sup> see EIA Review, section 3.4

<sup>20</sup> see EIA Review, section 7.3

<sup>21</sup> see EIA Review, section 6.6

- 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 in the EIA is consistently rushed, imprecise and often cursory, frequently amounting to little more than basic demographic information;
- 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, and about their rights;
- The project failed to properly consult with listed key stakeholders including NGOs, political parties and women;
- There were insurmountable barriers to affected people participating in planning and designing the project;
- 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.

#### On alternatives:

- The “Without project’ option was not seriously considered, with many alternatives not considered at all, and those that were, only in an unbalanced way and with very limited scope;
- Alternative strategic routes were not seriously considered;
- There was a clear failure to properly consult on project alternatives;
- A systematic approach to assessment of alternatives was lacking.

#### On the environmental baseline surveys:

- The project has failed to complete an adequate baseline study;
- There has been insufficient analysis of species;
- The EIA’s treatment of seismic risks is inadequate and flawed.

#### On other aspects of the EIA:

- The independence of EA experts is questioned;
- The HGA has been used to override normal procedures for scoping study;
- The EIA fails to present original data;
- Accuracy, reliability, methodology and gaps are not indicated in the EIA;

- The EIA fails to assess the sustainability of the project.

### 3.2 OP 4.04 (Natural Habitats)

The EIA Review only examines consultation aspects of OP 4.04. It finds, just for the Turkey section of BTC:

- At least 7 partial or total violations of OP 4.04 on consultation on the EIA<sup>22</sup>.

Specifically:

- The 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;
- Project sponsors failed to provide adequate information to affected people with regard to protection of natural habitats, and to their rights in relation to that; project sponsors underreported likely negative impacts of project;
- Views of local communities or NGOs were insufficiently taken into account regarding impact of project on natural habitats;
- Project sponsors failed to conduct sufficient research into local ecosystems to understand or accommodate local communities' roles in relation to natural habitats;
- Local communities have not been given a significant role in planning, designing, implementing or monitoring project in relation to natural habitats.

### 3.3 OD 4.20 (Indigenous Peoples)

The BTC pipeline passes through a number of areas with significant ethnic and religious minorities. In Turkey, these minorities include Alevis, Çerkez and Kurds. The BTC Consortium has declined to apply the World Bank's Operational Directive 4.20, Indigenous Peoples, the only directive specifically aimed at safeguarding the interests of minority groups. In this, BTC Co. has been supported by staff of the International Finance Corporation.

Closer investigation, however, reveals that the Kurds in particular meet every one of the criteria for applying OD 4.20 (see EIA Review, section 8.3), and that the rationale for not doing so is fatally flawed (see EIA Review, section 8.4). BTC Co. and IFC staff's decision not to apply the policy leaves ethnic minority groups unnecessarily and unjustifiably vulnerable to socio-political difficulties connected to the BTC project (see EIA Review, sections 8.5 and 8.6).

A complaint challenging the IFC's decision is now being prepared by NGOs for submission to the IFC's Compliance Advisor Ombudsman.

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<sup>22</sup> see EIA Review, section 3.5.1

However, regardless of decisions by BTC Co. and by IFC, banks adopting the Equator Principles remain committed to applying OD 4.20.

As a result of the decision not to apply OD 4.20, the EIA Review finds widespread failures in the project's treatment of indigenous peoples, including, in the Turkey section alone:

- At least 30 partial or total violations of IFC project requirements under OD 4.20.<sup>23</sup>

Specifically:

- BTC Co. has failed to ensure ethnic minorities benefit from the project;
- The project fails to mitigate adverse impacts on ethnic minorities;
- The project has failed to foster respect for ethnic minority rights;
- The project has failed to ensure informed participation of ethnic minorities;
- The project has failed to draw up an ethnic minorities' development plan;
- The project has failed to assess the relationship of ethnic minorities to mainstream society.

### 3.4 OP 4.30 (Involuntary Resettlement)

BTC Co. has undertaken that the project will comply with Operational Directive *OD 4.30, Involuntary Resettlement*, June 1990, which sets out requirements with regard to resettlement and compensation for land acquisition. As part of this, BTC Co. has published a Resettlement Action Plan (RAP), detailing measures to be taken by the project.

However, Fact-Finding Missions to Turkey have found numerous counts on which resettlement and compensation have taken place out of line with the approach prescribed in the RAP; furthermore, the EIA Review finds that a number of measures described in the RAP for Turkey fail to meet the requirements of OD 4.30:

- Emergency powers have been invoked by the Government of Turkey to override key provisions of OD 4.30<sup>24</sup>;
- The project fails to comply with the World Bank Group's policy on Involuntary Resettlement (OD 4.30) on 28 counts.<sup>25</sup>

Specifically:

- Displacement took place before compensation was completed;
- In many instances, compensation levels are too low to ensure that livelihoods are restored or improved; land compensation has not been paid at full replacement cost;

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<sup>23</sup> see EIA Review, section 8.7

<sup>24</sup> see EIA Review, section 4.3.2

<sup>25</sup> see EIA Review, section 4.4

- Consultation with affected communities on land expropriation and compensation was inadequate;
- Affected communities have not been informed of their rights with respect to land expropriation;
- The project has not adequately considered specific impacts of land expropriation on vulnerable groups and ethnic minorities;
- The RAP has used unreliable information on numbers of people economically displaced and settlements affected;
- The project fails to treat customary land users equally or fairly.

### 3.5 OPN 11.03 (Cultural Property)

The EIA Review finds for the Turkey section of BTC:

- At least 9 violations of IFC policy OPN 11.03 (Cultural Property).<sup>26</sup>

Specifically:

- The EIA fails to predict or adequately prevent likely impacts of construction on cultural resources;
- The project has failed to engage local people as stakeholders in preservation of cultural resources;
- The project over-relies on salvage archaeology;
- Commercial imperative takes precedence over cultural preservation;
- There is evidence of ongoing destruction of cultural resources.

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<sup>26</sup> [see EIA Review, section 5.5](#)

## 4 Potential breaches of Turkish national law and Equator Principles requirements

Under the Equator Principles, adopting banks are committed to only providing loans to projects where

*“the EA report has addressed ... requirements under host country laws and regulations, applicable international treaties and agreements”.*<sup>27</sup>

Thus breaches of national laws of Turkey also constitute breaches of the Equator Principles, as well as of accepted norms of responsible and ethical business practice.

This section looks first at direct potential breaches of the Turkish Expropriation Law, and then at international standards (including IFI policies), which gain the status of Turkish national law through the project Host Government Agreement. Detail on breaches of IFI policies is not repeated, as this has been outlined in the previous section. Finally, it briefly reports on the findings of the EIA Review in relation to the project legal regime and potential breaches of Turkey’s international undertakings.

Again, the analysis does not extend to Azerbaijan and Georgia, however initial indications are that there are also legal concerns there. For example, there is currently a legal challenge by Georgian environmental organisation Green Alternative, which alleges that the approval process for the EIA was unlawful, due to pressure from the consortium on the regulatory authorities, and that the pipeline unlawfully passes through a National Park.<sup>28</sup>

### 4.1 Direct potential breaches of Turkish Expropriation Law

A comparison of the provisions of the Resettlement Action Plan (RAP) against the legally binding requirements of Turkey’s Expropriation Law<sup>29</sup> reveals the RAP’s provisions for negotiating land values would appear to be in direct and incontrovertible conflict with Turkish Law on two specific counts:

- negotiation and bargaining, and
- valuation procedures.

Although these discrepancies were brought to the attention of both the project developers and the IFC and EBRD staff prior to the EIA and RAP being approved as “fit for purpose”, no changes have been made to the RAP’s provisions.

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<sup>27</sup> The Equator Principles, 4 June 2003, Statement of Principles, 3b

<sup>28</sup> Association Green Alternative, press release, 27 June 2003, ‘First BTC court case filed in Georgia’

<sup>29</sup> Law No. 2942, ratified 4 November 1983, published in Official Gazette 8 November 1983, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law.

### 4.1.1 Negotiation and bargaining

Article 8 of Turkish Expropriation Law<sup>30</sup> states that “the administration [in this case, BOTAS, BTC’s Turnkey Contractor] shall assign one or more than one reconciliation commission ... for the purpose of executing and completing the purchasing works through *bargaining* over the estimated cost and through *barter*... the *bargaining negotiations* shall be held on a date designated by the commission.” (Italics added)

By contrast, the RAP explicitly rules out any bargaining or bartering in the negotiation process. In its clearest explanation of the procedure that has been adopted, it states:

*“The Negotiations Commission begins discussions with landowners based on the range of land values established by the Valuation Commission. The “negotiation” process does not consist of bargaining. Indeed, as mentioned in Chapter 2, the negotiation commission has no room for bargaining. Rather, this commission explains the basis of valuation to affected communities and each of the affected titled deed owners. It provides detailed information obtained from each source specified under the Law and shows how valuation decisions have been reached.”*<sup>31</sup>

As documented in the EIA Review (see sections 4.4.2.1 and 4.4.4.4), the breach is not only on paper: the practice on the ground is clearly to impose land values rather than negotiate them.

### 4.1.2 Breaches of valuation procedures

Whilst the Expropriation Law requires that the landowner should not be told of the deemed value of their land,<sup>32</sup> the RAP stipulates precisely the opposite. The RAP’s “Negotiation Commission” has two roles which would appear to be direct breach of the Expropriation Law’s provision, namely:

- “To *inform* the landowner about the value of the land as determined by the Valuation Commission” (this suggests the afore-mentioned imposition of prices, as opposed to the fairer negotiation process called for by the Expropriation Law).
- “To *demonstrate* that the proposed land valuation is fair and detail the appraisal criteria for the individual parcel.”<sup>33</sup>

## 4.2 Breaches of international standards are also potential breaches of Turkish law

The Host Government Agreement (HGA) signed between the BTC Consortium and the Government of Turkey has the status of law in Turkey.<sup>34</sup> Specific sections of the HGA make compliance with certain international standards a requirement of Turkish law:

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30 Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law

31 RAP Turkey Final Report, Chapter 5: Land Acquisition Procedures, 5.2.2, p. 5-12, November 2002

32 Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law. Article 8 states: “The administration shall notify the owner in writing through an official registered letter, without mentioning the estimated cost determined by the value appraisal commission...”

33 RAP Turkey Final Report, Chapter 5: Land Acquisition Procedures, 5.3.3, p. 5-25, November 2002. Emphasis added

- The HGA requires that “Creation of the EIA shall also be in accordance with the principles of EU Directive 85/337/EEC (as amended by EU Directive 97/11/EC).”<sup>35</sup>
- The Lump Sum Turnkey Agreement (LSTA) signed between the BTC consortium and BOTAS – an annexe to the Host Governmental Agreement, and hence also part of Turkish law –requires that the land acquisition procedures are compliant with OD 4.30, the World Bank Group’s policy on involuntary resettlement.<sup>36</sup>
- The LSTA further requires compliance with all World Bank standards, and potentially all relevant IFI standards [ie including also EBRD] – although it is ambiguous on this latter point.<sup>37</sup>

Thus, on top of the two direct potential breaches of Turkish Expropriation Law, points of non-compliance with the above standards also constitute potential breaches of Turkish Law. The EIA Review finds:

- The project breaches World Bank standards on 147 counts<sup>38</sup>, which under the LSTA are potential breaches of Turkish Law;
- The project breaches the EU Directive on EIA on 18 counts<sup>39</sup>, violating the HGA;
- The project breaches the EBRD Environment Policy on 6 counts<sup>40</sup>, which may be a violation of the LSTA.

#### 4.3 Legal regime – potential conflicts with Turkey’s international undertakings, and continuing conflicts between project implementation and project agreements

The BTC project is subject to a specially negotiated legal regime, set out in an international agreement between Turkey, Azerbaijan and Georgia (the Intergovernmental Agreement) and a private contract between the BTC Consortium and the Government of Turkey (the Host Government Agreement).

A number of concerns have been raised by NGOs with respect to:

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<sup>34</sup> See EIA Review, chapter 2, Legal regime

<sup>35</sup> HGA, Appendix 5, Section 3.10. The EIA also quotes “Turnkey Agreement, Appendix A, Section 4.3.7” (see EIA BTC project, Appendix D “Legislative and Policy Framework”, October 2002, p.D-12). This latter reference conflicts with references in the LSTA’s Appendix B

<sup>36</sup> Section 8.42, Appendix A of the Lump Sum Turnkey Agreement. See RAP, Chapter 3: Policy and Legislative Framework, November 2002, p.3-12-3.13: “The LSTK requires compliance with OD 4.30, IFC’s policy on involuntary resettlement and requires that the involuntary settlers and hosts be systematically informed and consulted during the preparation of the plan about their options and rights.”

<sup>37</sup> The EIA states that: “With regard to environmental, social, health and safety (ESHS) protection standards and safeguards, the Turnkey Agreement identifies certain requirements including: . . .The EIA is required to fulfill World Bank requirements and (by implication) International Financial Corporation (IFC) and other international financial institution (IFI) guidelines. . .” EIA BTC project, Appendix D “Legislative and Policy Framework”, October 2002, p.D-7. Appendix A of the LSTA, which lists the specific standards that must be applied, has not been published.

<sup>38</sup> this includes the 127 breaches of IFC standards listed above in section 3, plus 20 breaches of World Bank Draft OP 4.11 (Physical Cultural Resources). On these latter 20, see EIA Review, section 5.4

<sup>39</sup> see EIA Review, sections 3.7 and 6.5

<sup>40</sup> see EIA Review, section 3.6

- Conflicts between the IGA/ HGA and Turkey's international obligations on environment and human rights;
- Conflicts between the HGA and Turkey's Accession Agreements with the European Commission (EC);
- Incompatibilities between undertakings in the Joint Statement on adherence to the OECD Guidelines on Multinational Enterprises and BP's record in respect of the project.

While these concerns do not constitute direct violations of the Equator Principles, they have become a key topic of concern for NGOs, and respect for sovereignty of the host country is seen as a key ethical requirement of project investments.

Banks should address these issues both to comply with the spirit of the Principles and to ensure that the legal framework of the project is clear and predictable.

These issues are therefore noted briefly here – they are covered in detail in chapter 2 of the EIA Review.

The EIA Review finds that:

- **Although BTC Co. has moved to resolve some of the issues raised through the publication of a 'Deed Poll' (the BTC Human Rights Undertaking, 26 September 2003), legal opinion continues to cast serious doubts on its efficacy.** In particular, the fact that it is not binding upon host governments, the continuing uncertainty over third party rights and the failure to waive the 'stabilisation clause' with regard to third party claims. Until it is tested in host country courts, the legal status of the Deed Poll in relation to the project agreements is ambiguous. **As a result, legal certainty is provided neither for affected communities and stakeholders, nor for project investors.** Furthermore, the virtually unlimited security powers are not addressed by the Deed Poll, leaving outstanding human rights concerns.
- **The conflicts between the HGA and Turkey's Accession Agreements remain unresolved.** The Enlargement Directorate General of the European Commission is currently investigating the BTC pipeline. In addition, NGOs have drawn attention to conflicts between the BTC project agreements and a Memorandum of Understanding reached between the EC and IFIs on financing for EU accession countries.
- **BP has failed to comply with the OECD guidelines, as required by the project agreements.** A complaint by NGOs is in the process of being adjudicated upon by the relevant authorities.

## 5 Breaches of other Equator Principles

The Equator Principles consist of a commitment that adopting banks will only provide loans where nine conditions are met. While a number of these conditions are procedural in nature, this section focuses on four which specify concrete requirements of a project: 3, 5, 6 and 7.

Principle 3 is separated into a number of requirements, including the requirements that projects comply with IFC standards and with host country law – these are discussed respectively in sections 3 and 4, above. Some of the other key requirements are examined below.

Again, this analysis focuses only on the Turkish section of the pipeline: indications from fact-finding missions to Azerbaijan and Georgia<sup>41</sup> are that many of the same violations would be found there, plus some additional ones.

### 5.1 Content of EIA

The majority of the requirements of the third in the statement of principles relate to the content of the EIA. The extent of compliance with some of these is tabulated below (others are outside the scope of study of this review), and cross-referenced to the full EIA Review.

Since the EP requirement is that “the EA report has addressed” the listed issues, even if the project’s treatment of an issue is completely inaccurate, if it is merely referenced in the EIA, the project is judged below as in ‘partial compliance’.

No	Content required to be included in EIA	Evaluation of compliance	See section of EIA Review for details	Extent of compliance
3a	<i>Assessment of the baseline environmental and social conditions</i>	1. The project has failed to complete an adequate baseline study, spending too little time, and on too narrow a scope.	6.6.2 – 6.6.4	<b>Partial compliance</b> (addressed inadequately)
3c	<i>Sustainable development and use of renewable natural resources</i>	2. The EIA fails to assess the sustainability of the project.	6.5.8 and 6.6.7	<b>Non-compliance</b>
		3. Use of renewable resources (in contrast to non-renewable oil resources) is not considered.	6.5.7 and 6.6.7	
3d	<i>Protection of human health, cultural properties, and biodiversity, including endangered species</i>	4. Cultural properties not protected – reliance instead on salvage archaeology.	5.4.4, 5.4.5, 5.5.1 and 5.5.2 (also chapter 5 generally)	<b>Partial compliance</b> (addressed inadequately)

<sup>41</sup> Azerbaijan, June 2002: <http://www.baku.org.uk/pipelines-factfinding-azerbaijan.pdf>  
 Georgia, June 2002: <http://www.baku.org.uk/pipelines-factfinding-georgia.pdf>  
 Azerbaijan, May 2003: <http://www.foe.org/camps/intl/institutions/AzFFM03.pdf>  
 Georgia, May 2003: <http://www.foe.org/camps/intl/institutions/GaFFM03.pdf>

	<i>and sensitive ecosystems</i>	5. The EIA fails to predict or adequately prevent likely impacts of construction on cultural resources.	5.4.3 – 5.4.4 (also chapter 5 generally)	
		6. Assessment of impacts on flora and fauna is inadequate.	6.5.2 (also chapter 6 generally)	
		7. The project has failed to reduce or remedy risk of oil spills at Ceyhan and of decommissioning.	6.5.8	
<b>3f</b>	<i>Major hazards</i>	8. The EIA's treatment of seismic risks (including major hazards of leaks, spills and ruptures due to earthquake) is inadequate and flawed.	6.7	<b>Partial compliance</b> (addressed inadequately)
<b>3j</b>	<i>Land acquisition and land use</i>	9. The project compensates land at less than replacement cost and fails to properly restore affected people's livelihoods.	4.4.3, 4.4.8 (also chapter 4 generally)	<b>Partial compliance</b> (addressed inadequately)
		10. The project fails to treat customary land users equally or fairly.	4.4.10	
<b>3l</b>	<i>Impacts on indigenous peoples and communities</i>	11. Impacts on indigenous peoples and ethnic minorities not considered at all (notably the Kurds).	chapter 8	<b>Non-compliance</b>
<b>3n</b>	<i>Participation of affected parties in the design, review and implementation of the project</i>	12. Affected parties inadequately informed and consulted (see below).	chapter 3	<b>Partial compliance</b> (addressed inadequately)
		13. Views of affected people not generally used to influence design or implementation.	3.4.1, 3.4.2.	
<b>3o</b>	<i>Consideration of feasible environmentally and socially preferable alternatives</i>	14. Alternatives only considered cursorily, not genuinely compared.	7.3	<b>Partial compliance</b> (addressed inadequately)
		15. Some alternatives not considered at all (eg non-project option, refining in Azerbaijan).	7.3.1	<b>Non-compliance</b>

## 5.2 Consultation

The fifth in the Statement of Principles of the Equator Principles relates to consultation. Some of its requirements are restricted to Category A projects. The BTC pipeline is a Category A project.

No	Specific obligations	Evaluation of compliance	See section of EIA Review for	Extent of compliance
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			details	
5	<i>"The borrower or third party expert has consulted, in a structured and culturally appropriate way, with project affected groups, including indigenous peoples and local NGOs."</i>	1. Less than 2% of affected people have been consulted face-to-face; some communities were falsely reported in the EIA as having been consulted.	3.4.1	<b>Partial compliance</b>
		2. Affected people and stakeholder groups did not have access to basic project information.	3.4.1, 3.4.5, 3.4.8.	
		3. The project failed to properly consult with listed key stakeholders including NGOs, political parties and women.	3.4.1.5, 3.4.5.2, 3.4.1.10.	
		4. Affected people were misinformed about the potential benefits and negative impacts of the project, and about their rights.	3.4.1.3, 3.4.1.6, 3.4.1.12	
		5. Lack of freedom of speech and human rights abuses along the route undermines consultation procedures – EIA failed to address this problem.	3.3, 3.4.1.7	<b>Non-compliance</b>
		6. Consultation did not generally take place in minority languages, such as Kurdish.	3.4.1.6, 3.4.6.3	
		7. Information materials were often in language too technical to understand; over-reliance on written materials discriminated against illiterate people.	3.4.6.1	
5	<i>"The EA, or a summary thereof, has been made available to the public for a reasonable minimum period in local language and in a culturally appropriate manner."</i>	8. EIA available only from state institutions, not independent bodies with unregulated public access.	3.4.3.3, 3.4.8.1.	<b>Partial compliance</b>
		9. Summaries were not well distributed – many affected people did not receive them.	3.4.1.6, 3.4.5.4.	
		10. 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.	3.4.8.2	
		11. EIA was not published in Kurdish.	3.4.6.3	<b>Non-compliance</b>
5	<i>"The EA and the EMP will take account of such consultations."</i>	12. Analysis of consultation responses is consistently rushed, imprecise and often cursory, frequently amounting to little more than basic demographic information.	3.4.1.13	<b>Partial compliance</b>

		13. Those unhappy with the project and what it has brought them often found their opinions ignored and their dissent a source of danger.	3.4.1.4, 3.4.1.7, 3.4.1.8.	<b>Non-compliance</b>
		14. The project failed to implement recommendations of affected people.	3.4.1.13	
<b>5</b>	<i>"The EA and the EMP ... will be subject to independent expert review."</i>	15. EIA contractors not independent; no third party review.	6.6.1	<b>Non-compliance</b>

## 6 Recommendations

While NGOs have welcomed the fact that banks have addressed environmental and social issues, it is in the *implementation* that it will be determined whether the Equator Principles are a meaningful (albeit limited) step or simply a public relations gesture. In other words, the credibility and seriousness of adopting banks' commitment to environmental and social issues will be judged by what projects they provide loans for.

This review has found that the Baku-Tbilisi-Ceyhan (BTC) pipeline breaches the letter and spirit of the Equator Principles on multiple counts. So numerous and extensive are the breaches that simply aiming to improve the project after financing it is not an acceptable approach.

We recommend that:

- **Banks should not provide loans to the BTC pipeline, as it currently stands;**
- **Banks should carry out their own analysis of the project, and not rely solely on information from the BTC consortium itself or from the IFC** – banks are committed to the standards outlined in the Equator Principles, regardless of whether the IFC upholds its own standards or not;
- **In the interests of transparency, and of demonstrating their ethical credentials, banks should publish their analysis of the BTC project against the Equator Principles and against their other environmental and social standards** – at the very least, they should make a statement outlining the key issues and reasons for their decision.

Specifically, loans should not be considered to BTC until at least the following requirements are met:

- **IFC policy OD 4.20 (Indigenous Peoples) is applied and the project brought into compliance with it**, as required under the Equator Principles;
- **The project is brought into compliance with the Equator Principles** – requiring action on the 127 breaches of the referenced IFC policies, and on the 30 further breaches of other Equator Principles;
- **The project is made fully compliant with host country law** – including both direct, pre-existing laws such as the Turkish Expropriation Law, and international standards brought into the statutes through the project legal agreements;
- **Legal clarity on the project agreements is achieved – the project agreements should be amended to;**
  - clarify both the standards that apply to the project and the order of precedence in which they apply;
  - ensure third party rights;
  - ensure compliance with Turkey's obligations under international human rights, land rights and environmental law;

- comply with Turkey's accession agreements with the European Commission (EC), in particular by ensuring that Turkey moves towards the *acquis communitaires*, rather than away from them; and
- comply with the Memorandum of Understanding between the World Bank, the EBRD and the EC on assistance to accession countries
- **Ongoing investigations and inquiries by independent authoritative bodies have been satisfactorily concluded – these include:**
  1. The EC completing its ongoing assessment of the project as part of its November review of Turkey's progress in complying with the Copenhagen criteria;
  2. The OECD National Contact Points for the OECD Guidelines on Multinational Enterprises ruling on a complaint now being considered against BP over the BTC project;