STATEMENT
OF
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1.0 Introduction

1.1 My name is Nicholas Hildyard. I am a director of Corner House Research, a UK non-governmental organisation focussing on environment, human rights and development issues.

1.2 I have over 25 years experience of assessing the environmental and social impacts of large-scale infrastructure development. A prime focus of my work has been the impacts of infrastructure projects funded through UK bilateral and multilateral development programmes. I am the co-author of a three-volume study on the social and environmental impacts of large dams (described by the World Bank's former chief environmental officer as "the definitive study" on the subject) and of a number of in-depth analyses of specific infrastructure projects, such as the Yusufeli and Ilisu dams in Turkey. I am also author or co-author of 6 books relating to the wider social and environmental impacts of development.

1.3 Since 1999, a prime focus of my work has been monitoring the potential and actual impacts of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline. I have participated in four fact finding missions to the region (Azerbaijan, 2001: Turkey, 2002, 2003, 2004) and have extensively analysed the Environmental Impact Assessment (EIA) for the Turkish section project. The EIA was approved by the Turkish Government in

October 2002,[1] although additional reports were subsequently requested by the international financial institutions considering financial support for the project before such support could be approved.[2]

1.4 In 2003, I co-authored a review of the Turkish EIA's compliance with World Bank and other international standards. The study, extracts from which are appended as **Annex 1**, found that the project violated such standards on 173 counts. These included 18 violations or partial violations of the EC Directive on Environmental Assessment, which Turkey is obliged to observe under the terms of its Accession Agreements with the European Commission and with which the project is legally bound to comply under the Host Government Agreement (HGA) signed between Turkey and BTC Co., the consortium building and operating the pipeline. A parallel analysis by Worldwide Fund for Nature (WWF) Turkey (attached as **Annex 2**) found similar problems with the EIA.

2.0 IMPACTS OF BTC PIPELINE ON WILDLIFE

2.1 The final Environmental Impact Assessment for the Turkish section of the BTC pipeline notes that "approximately 10% of Turkey's 1876 globally-threatened plant species" and "28% of the country's 178 globally-threatened vertebrate animals" may occur within the corridor of the preferred pipeline route.[3] This list is likely to be incomplete, since the necessary in-depth surveys have not been undertaken: significantly, no detailed information is provided on vegetation that

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[1] BTC Final EIA, October 2002, available from www.caspiandevelopmentandexport.com For avoidance of doubt, all references to the Turkish EIA refer to this Final EIA, as approved by the Turkish Government.

[2] For example, a Supplementary Lenders Information Pack was produced in April 2003 and, in January 2004, a General Oil Spill Response Plan was published at the request of the Export Credit Agencies considering financial support.

[3] BTC Final EIA, Baseline Conditions, October 2002, 5-121.

might be adversely impacted.[4] Of particular concern to the Corner House are the potential and actual impacts on a number of species and habitats which are subject to special protection under European Union legislation or international conventions. It is the Corner House's contention that Turkey should be paying particular regard to the need to provide special protection for such species and habitats if it is move towards the European *acquis*, as required under the terms of its Accession Agreement with the EU. The following examples are illustrative.

(A) Marine Turtle Nesting Grounds

2.2 Major nesting sites of three species of globally endangered marine turtles[5] [6] - the Green turtle (*Chelonia mydas*), the Loggerhead turtle (*Caretta caretta*) and the Nile Soft-shelled turtle (*Trionyx triunguis*) – are found within the vicinity of the BTC oil terminal, on the North-west shore of the Gulf of Iskenderun. The Mediterranean population of the Green turtle is listed as "critically endangered" by the International Union for the Conservation of Nature,[7] whilst the number of Nile Soft-shelled turtles in the Mediterranean is estimated to be below 500,[8] with the Turkish population representing "a globally significant resource".[9]

2.2.1 There are only three nesting beaches for the Green turtle along the Turkish coast and all are located within the area between

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[4] WWF Turkey, Independent Review of the Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline EIA, Turkey Section, 9 October 2003, p.4: "The EIA submitted to the Government of Turkey . . . did not provide data on vegetation and stated that other environmental information would be submitted at a later date."

[5] BTC Final EIA, Turkey, Marine Terminal – Marine baseline conditions, October 2002, p.11-25: "All marine turtles are classified as threatened species and are protected by most Mediterranean countries."

[6] The International Union for the Conservation of Nature classifies both the Green and Loggerhead turtles as "endangered", IUCN Red list, http://www.redlist.org/search/details.php?species=4615. BTC EIA, Turkey, Marine Terminal – Marine baseline conditions, June 2002, p.11-26

[7] BTC Final EIA, Turkey, Marine Terminal – Marine baseline conditions, October 2002, p.11-26.

[8] Kasparek, M., "Status of the Nile Soft-shelled Turtle, *Trionyx triunguis*, in Turkey: An assessment in the Çukurova Delta With Recommendations for Conservation Management", Report for the 20th Meeting of the Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), September 2000.

[9] BTC Final EIA, Turkey, Marine Terminal – Marine baseline conditions, October 2002, p.11-27: "The Turkish population represents a globally significant resource, most of which is concentrated in the Cukurova delta. The Goksu River, Kazanli, Seyhan River, Adana-Akyatan, Gulf of Iskenderun and Asi River represent important habitats for this species."

Mersin Bay and the Gulf of Iskenderun[10] – thus within the area under threat from a major oil spill from the BTC terminal or from tankers using the facilities. The area "holds more than 70% of the Green turtle nests in the entire Mediterranean basin."[11] Nesting sites for both Green and Loggerhead turtles have been found within the existing BOTAS oil terminal facilities which are currently being expanded to accommodate the BTC terminal.[12] [13] [14] Reporting on the findings of its study of beaches in the areas immediately to the west and east of the BTC pipeline terminal, the EIA for the Turkish section of the BTC project, notes: "High levels of turtle activity (including nesting) were observed over approximately 20% of the study area."[15] The EIA also notes: "The study area is believed to include the major over-wintering location for Green turtles in the Mediterranean Sea and may therefore be an important area for sea turtles all year round."[16] It is essential to recognise that such nesting grounds cannot be moved or replaced, since the turtles only return for nesting to the sites where they were born. Experts tracking the species have established that typically, a surviving female hatchling will leave the nesting ground, and remain in the world's oceans for some thirty years, before returning to exactly the same nesting grounds, to lay her own eggs. The preservation and protection of the nesting site is therefore uncontrovertibly essential to the survival of the species, since alternatives are not sought by the species, and mitigation measures to provide such alternatives therefore

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[10] BTC EIA, Turkey, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-31.

[11] BTC Final EIA, Turkey, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-31.

[12] BTC Final EIA, Turkey, Marine Terminal – Marine baseline conditions, October 2002, p.11-27.

[13] BTC Co reports that both loggerhead and green turtles use this site. See: http://www.caspiandevelopmentandexport.com/Files/BTC/English/Environmental%20and%20Social%20Overview/Content/BTC%20Environmental%20and%20Social%20Overview%20Section%2005%20Environmental%20Land%20and%20Communities%20Issues.pdf

[14] BTC Final EIA, Turkey, The Marine Terminal, October 2002, p.9-1. The BTC terminal will be adjacent to the existing BOTAS terminal.

[15] BTC Final EIA, Turkey, Marine Terminal – Marine baseline conditions, October 2002, p.11-27.

[16] BTC Final EIA, Turkey, Marine Terminal – Marine baseline conditions, October 2002, p.11-27.

become irrelevant. The survival rate of hatchlings to adulthood has been measured to be 1:10,000. The species is held by experts to be the most accurate indicator of the health of the marine eco-system which it inhabits.

2.2.2 The rivers to the west of the BTC oil terminal also represents and important habitat for the Nile soft-shelled Turtle *(Trionyx triunguis)*. In August 2000, a survey of the Çukurova Delta, undertaken for the 20th meeting of the Bonn Convention, found two large individuals of *Trionyx triunguis* approx. 2-3 km above the mouth of the Ceyhan River. "Fishermen reported the species' continuing presence in the lower river course. Sand dunes along the riverbanks were identified as a nesting area. Discarded eggshells were found and several local people confirmed that nesting takes place there on a regular basis. The nesting area extends over the eastern and northeastern river bank, from approx. 3 to 6 km upstream from the river mouth."[17] Nesting sites were also found elsewhere in the Delta, with the largest population in the Seyan River. The sites potentially at risk from a major oil spill at the terminal or from a tanker en route to its facilities.

2.2.3 The EIA for the Turkey section of the BTC project acknowledges the risk posed to turtle populations in the area. "In the Gulf of Iskenderun, [turtles] are particularly susceptible to oil pollution as there are a number of beaches used for nesting during the summer months."[18] The risk is posed not only by oil spills from the BTC terminal itself but also from tankers using the facilities. Although the turtle nesting sites might recover within 4 years from a major oil spill, the damage done to marine life could significantly affect the turtles' food

[17] Kasparek, M., "Status of the Nile Soft-shelled Turtle, *Trionyx triunguis*, in Turkey: An assessment in the Çukurova Delta With Recommendations for Conservation Management", Report for the 20th Meeting of the Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), September 2000.

[18] BTC Final EIA, Turkey, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-39.

supplies and thus their ability to survive a major oil spill. Turtles are also shy creatures and noise from the BTC terminal would also constitute a threat to the nesting sites in the immediate vicinity of the BTC terminal.

2.2.4 Both the Green turtle and the loggerhead are protected under Appendix I of the CITES Convention,[19] Appendix II of the Bern Convention,[20] and Appendices I and II of the Bonn Convention,[21] to which the European Community is signatory.[22] The Special Protected Areas Protocol of the Barcelona Convention, to which all Mediterranean riparian countries are a party, affords further protection, requiring signatory states to take special measures to protect nesting sites of both species.[23] In addition, Loggerhead turtles are protected under Annex II of EC Habitats Directive, where they are listed as a "priority species".[24] The Nile Soft-shelled turtle is protected under Appendix II of the Bern Convention.

(B) Yumurtalik Lagoons

2.3 The Yumurtalik Lagoons area is a wetland complex for breeding birds and large numbers of wintering waterbirds that lies to the west of the proposed BTC oil terminal. The site is recognised nationally as a

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[19] Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES). The species in Appendix I are subject to strict trade and transport regulations.

[20] Convention on the Protection of European Wildlife and Natural Habitats. Species in Appendix II are to be strictly protected by the Contracting Parties, as are their habitats (especially nesting habitats).

[21] Convention on conservation of Migratory Species of Wild Animals. The parties to the Convention are bound strictly to protect Appendix 1 and 2 species and to endeavour to conclude Agreements for their conservation.

[22] See: http://www.seaturtle.org/members/TotEM/monman2004.pdf

[23] Convention on the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention, 1976) - Protocol concerning Mediterranean Specially Protected Areas (Geneva, 1982) Article 3.2a of the Protocol requires parties to "". Within the Framework of the Barcelona Convention the Specially Protected Areas Protocol is the main instrument dealing with the conservation of wilderness. Parties to the Protocol [all Mediterranean riparian countries] engage themselves to take all appropriate measures to protect marine and coastal areas that are important in safeguarding natural resources and natural sites of the Mediterranean Sea area. This is to be achieved by the establishment of protected areas aimed at safeguarding, inter alia, "…The genetic diversity, as well as satisfactory population levels, of species, and their breeding grounds and habitats…" (Art. 3,2a).

[24] Council Directive 92/43/EEC of 21 May 1992 on the Conservation of natural habitats and of wild fauna and flora, Annex II, Animals and Plant Species of Community Interest whose conservation requires the designation of special areas of conservation, http://europa.eu.int/comm/environment/nature/hab-an2en.htm

Nature Reserve Area and qualifies as an Important Bird Area (IBA) under both global and European criteria.[25] It is also a major nursery and breeding ground for fish in the Gulf of Iskenderun. The wetland consists of coastal lagoons, mud and sand flats, saltmarshes, sand dunes, beaches and water fringe vegetation. The EIA recognises that such saltmarshes are "extremely vulnerable to oil spills" since they not only "trap and retain large quantities of oil" but "are difficult to clean and the anaerobic conditions present slow down the natural degradation of oil." The recovery time for saltmarshes following oil pollution "varies from about two years to decades." The EIA deems the Yumurtalik saltmarshes to have the "highest environmental risk due to operation of the proposed BTC Marine Terminal."[26]

2.3.1 Bird species that rely on the lagoons include the White-headed duck, large numbers of the birds winter on the site.[27] The White-headed duck is one of the rarest bird species in the world, with a world population of no more than 15,000 birds.[28] The **White-headed Duck** (*Oxyura leucocephala*)[29] is listed as an Annex 1[30] species under the EC Bird Directive, [31] requiring that special measures be taken to ensure its protection.[32] It is also classified as endangered by the International Union for the Conservation of Nature (IUCN) and BirdLife International and

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[25] BTC Final EIA, Turkey, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-30.

[26] BTC Final EIA, Turkey, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-42.

[27] BTC Final EIA, Turkey, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-30.

[28] http://www.borealforest.org/world/birds/white_headed_duck.htm

[29] BTC Final EIA, Turkey, Marine Terminal – Accidental Events and Accidents, October 2002, p.14-30: "The White-headed duck populations are distributed into a small resident population in Spain and the Western Mediterranean and a larger migratory population in the Eastern Mediterranean across to Central Asia . . . Large numbers of the White-headed Duck winter at Agyatan lake, Akyatan lake and the Yumertalik lagoons. The wintering populations qualify for IBA criteria A1, which means that this species is of global conservation interest. Due to the breeding habitat and the fact that the White-headed duck is a globally threatened species, this bird is very vulnerable to oil pollution."

[30] Council Directive 79/409/EEC of 2 April 1979 on the Conservation of Wild Birds, http://europa.eu.int/comm/environment/nature/bird-an.htm.

[31] Council Directive 79/409/EEC of 2 April 1979 on the Conservation of Wild Birds, http://europa.eu.int/comm/environment/nature/bird-dir.htm.

[32] Council Directive 79/409/EEC of 2 April 1979 on the Conservation of Wild Birds, http://europa.eu.int/comm/environment/nature/bird-dir.htm. *Article 4 states:* "The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution."

is listed in Appendix I of the Bonn Convention,[33] Appendix II of the Bern Convention[34] and Appendix II of CITES[35]. Turkey has the largest wintering population of the White-headed Duck of any state and also holds a major breeding population. Many important sites for the species have been destroyed and most other sites have been degraded.[36] [37] Because of its breeding habitat (wetlands), it is particularly vulnerable to oil pollution.[38]

3.0 WILDLIFE REQUIRE REPRESENTATION

3.1 It goes without saying that the flora and fauna impacted by the pipeline are unable to represent themselves. If their interests are to be protected, it is therefore incumbent on others to represent them. For this reason, governments, including Turkey, have agreed a range of legally-binding conventions aimed at protecting wildlife and ensuring that the impacts of infrastructure development on ecosystems are adequately mitigated.

3.2 Where governments fail to ensure the application of such agreements and laws, the responsibility for representing the interests of wildlife falls by default on concerned groups, such as the Corner House. In this instance, the possibility of groups using local courts in Turkey to enforce Turkish environmental legislation that would protect the interests of affected wildlife is denied as a result of the provisions of the Host Government Agreements, which

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[33] Convention on Migratory Species of Wild Animals (Bonn Convention), Annex 1, effective 23 December 2003, http://www.wcmc.org.uk/cms/

[34] Council of Europe, Convention of the Conservation of European Wildlife and Natural Habitats, Appendix II, http://www.ecnc.nl/doc/europe/legislat/bernapp2.html

[35] Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES).

[36] Green, A and Hughes, B., Action Plan for the White-headed Duck (Oxyura leucocephala) in Europe, Report prepared by Birdlife International on behalf of the European Commission, March 1996, http://europa.eu.int/comm/environment/nature/directive/birdactionplan/oxyuraleucocephala.htm

[37] BirdLife International 2003 *BirdLife's online World Bird Database: the site for bird conservation.* Version 2.0. Cambridge, UK: BirdLife International. Available: http://www.birdlife.org (accessed 2/5/2004)

[38] BTC Final EIA, Turkey, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-30.

specifically override Turkish environmental law. The Host Government Agreements and Intergovernmental Agreement system – the prevailing legal regime – also rules third party challenges to the project: whatever may be the case in relation to third party challenges generally, it is clear in my view that challenges based on environmental grounds are impossible. The Corner House would therefore argue that its civic responsibility as an environmental NGO with a special interest in the project can only be exercised through recourse to those courts outside of Turkey with a jurisdiction over those institutions that have a duty to exercise oversight over aspects of the project. In this instance, the European Court of Justice is the only such court available to those legitimately seeking to represent the interests of wildlife affected by the pipeline.

4.0 INTERESTS OF WILDLIFE INADEQUATELY PROTECTED

4.1 It is the Corner House's contention that the interests of wildlife along the pipeline route have not been adequately protected and that the failure to do so constitutes a breach of Turkey's accession obligations towards the European Union. In addition, that in this situation, the European Commission had no proper legal basis to justify further funding of Turkey with EU public money, whether in the form of pre-accession assistance or through the European Bank for Reconstruction and Development (EBRD). Our specific concerns are as follows:

4.2 That the legal agreements concluded between the BTC Co. and the Government of Turkey for the project has been used to truncate Turkey's Environmental Assessment procedures, as laid down under Turkish law, and to circumvent key processes required of the EIA. In doing so, key elements of the EC Directive on Environmental Impact Assessment were overridden. We believe that this use of the HGA therefore constitutes a major and undeniable

breach of Turkey's accession obligations toward the EU, by forcing Turkey to move away, rather than toward, implementation of the EU acquis, and thus breaches the EU's own funding criteria for assistance to Turkey. Specifically:

4.2.1 Use of HGA to truncate the EIA Scoping Period and waive the requirement for on the ground studies.

4.2.1.1 Council Decision 2001/235/EC on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership expressly provides that Turkey must "transpose the [EC] environmental impact assessment Directive..."[39] Any move away from implementing the Directive thus constitutes a breach of the accession obligations. It is therefore of grave concern that the HGA should have been invoked to circumvent key provisions of the Directive's EIA procedure. Article 3, bullet 1 of the Directive requires that a project's "direct and indirect effects on . . . flora and fauna" should be identified, described and assessed in an appropriate manner.

4.2.1.2 Given that little data existed (or, indeed, exist) on the flora and fauna along the proposed pipeline route, on site investigation was the only "appropriate" means of fulfilling the Directive's requirement that a description be provided "of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological

[39] OJ, L 085, 24/03/2001, p.0013-0023

heritage, landscape and the inter-relationship between the above factors."[40]

4.2.1.3 However, in a letter to the BTC consortium, dated 29th November 2001, the Ministry of Agriculture and Rural Affairs waived the requirement for site investigations before granting approval for the pipeline route "in accordance with the Host Government Agreement".[41] The normal requirement, under Turkey's environmental regulations, for a 60 day period for the Ministry of the Environment to review and approve the final draft of the EIA, in order to give a development consent, was also reduced to 30 days for BTC, in order to ensure that BOTAS could complete the project in the period specified under the Turnkey agreement. In a letter to BOTAS dated 30 November 2001, the Prime Ministry's Undersecretariat of Maritime Affairs states:

4.2.1.4 " . . . our country undertook some commitments by means of the completion of the project on time according to the statements of the project agreement, accordingly, *in order to assure that the project activities would be carried out as determined in the agreements and within the designated period,* we are under the obligation of taking the required permission, licence and documents within 30 days beginning from the presentation date of the project stipulations, in that content the EIA Report studies was started, *the EIA*

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[40] Annex IV, Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended by EC Directive 97/11/EC).

[41] Letter from Dr. Huseyin Sungur, Ministry of Agriculture and Rural Affairs (General Directorate of Protection and Control) to General Directorate of Petroleum Pipeline Corporation, "BTC Crude Oil Pipeline Project EIA Activities", 29 November 2001, in EIA, Appendix A8 – Consultation Results, October 2002: "It is stated that regarding the Baku-Tiblisi-Ceyhan crude oil pipeline project, site investigation is not required by the Ministry of Environment, General Directorate of Environmental Impact Assessment and Planning, in accordance with the Host Government Agreements . . ."

Procedure was carried out different than the EIA Regulations . . ." (italics added).[42]

4.2.1.5 This change to the normal process was also confirmed to NGOs in an interview with a representative of the BTC's environmental baseline contractor, which played one of the main roles in compiling the EIA.[43]

4.2.1.6 The Corner House believes that the truncated scoping period and reduced baseline study period directly and incontrovertibly conflicted with – and compromised – the interests of wildlife along the pipeline route.

4.2.2 The Intergovernmental Agreement exempted the project from proper assessment of alternative routes

4.2.2.1 A key requirement of the EC Directive on EIA is that details of "the main alternatives studied by the developer" should be provided and an indication given "of the main reasons for his choice, taking into account the environmental effects."[44] The Intergovernmental Agreement (IGA) for the project , however, constrained the identification of alternative routes for the pipeline by stipulating, in advance of an EIA being undertaken, both where the pipeline would enter Turkey and the location of the marine terminal. Compliance with the IGA thus meant that the EIA could not address alternative marine terminal

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[42] Letter from Prime Ministry Undersecretariat of Maritime Affairs, General Directorate of Marine Transportation, to Petroleum Pipeline Corporation, 30 November 2001, in EIA, Appendix A8 – Consultation Results, October 2002, A8-30.

[43] Meeting of the Kurdish Human Rights Project, PLATFORM and Campagna Riforma della Banca Mondiale with Coskun Yurteri of Envy, March 2003, reported in Second International Fact-Finding Mission Report, BTC Turkish section, pub. June 2003, p.50

[44] Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended by EC Directive 97/11/EC), para 3, bullet 4.

locations – an issue of considerable concern given the impact on endangered marine turtles.[45]

4.2.3 The HGA overrode the EIA approval process required under the EC Directive on EIA.

4.2.3.1 As noted by WWF Turkey, Article 7.3 of the HGA for the project *required* that BTC Co be granted approval for all project activities within 60 days of submitting an EIA.[46] As such it removed all discretion in the matter from the relevant authorities, in direct contravention of the approval process laid down in the EC Directive on EIA.

4.3 The EIA process for assessing wildlife impacts was critically flawed and thereby breaches turkey's accession undertakings

4.3.1 EIAs are intended to ensure that a project's impacts on flora and fauna are either avoided or mitigated to an acceptable level. Research carried out by the Corner House and its partner environmental NGOs, however, reveals that the EIA for the BTC project was seriously flawed in its design, implementation and conclusions. In particular, the EIA violates a number of cardinal requirements under the EC Directive on EIAs. As a result, Turkey has not only failed to safeguard the interests of affected wildlife but, in doing so, has also moved away from the EU's acquis. Specifically:

4.3.2 Assessment of impacts on flora and fauna was inadequate;

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[45] WWF Turkey, Independent Review of the Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline EIA, Turkey Section, 9 October 2003, p.9.

[46] Article 7.3 of the HGA stipulates that "subject only to the submission of Application Requirements . . . State authorities shall . . . [within] 60 days provide all licences . . . and approvals . . . necessary . . . to enable . . . Project Participants to carry out all Project Activities . . . including . . . environmental and safety approvals (subject to provisions of Appendix 5)." Further, as noted by WWF Turkey, Article 7.3 stipulates that with "respect to all such rights . . . permits . . . approvals and permissions . . . the Project and all Project Participants shall be exempted . . . from all . . . opinion or other evidence of authority or expertise in connection with the issuance thereof."

4.3.2.1 The EC Directive on EIAs requires that the EIA identify the direct and indirect impacts on flora and fauna.[47] Within Turkey and internationally, there is little or no baseline data already published for many of the areas through which the pipeline would pass. Detailed field work, over the full range of seasons, should therefore have been required of BTC Co. in order to identify and assess the full range of impacts on flora and fauna. Yet the EIA was undertaken over less than a year and fieldwork was limited: indeed, the environmental baseline contractor for the project has admitted that all sites were only surveyed **once** for species present, in the summer, and therefore have not been examined for species present in other seasons, and that that some bird species and plant species have not yet been examined, but will be surveyed during construction.[48] The bird survey, for example, was undertaken during one season and over just a couple of weeks. In the case of the Ulas and Alacorak lakes area – currently being considered for listing as an Internationally Important Wetland under the Ramsar Convention - the survey team spent just one day on site. The EIA acknowledges its lack of knowledge on the impacts of the pipeline on birdlife: "The degree to which the lakes are used as a staging point by migratory waders and waterfowl is as yet unknown".[49]

4.3.2.2 Similarly, baseline data are lacking for a range of other species, including on the nesting patterns of the

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[47] Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended by EC Directive 97/11/EC), para 3, bullet 1.

[48] Meeting of the Kurdish Human Rights Project, PLATFORM and Campagna Riforma della Banca Mondiale with Coskun Yurteri of Envy, March 2003, reported in Second International Fact-Finding Mission Report, BTC Turkish section, pub. June 2003, p. 50

[49] EIA, Volume II, Supplement I, June 2002, p.6-542.

Green Turtle, which are potentially affected by the oil terminal at Yumurtalik.[50] The EIA notes, for example, that data on the numbers of nesting females "are not available from all beaches and numbers may be confused due to the uncertainty of how many times an individual nests in a season."[51] Commenting on the paucity of the marine turtle data in the EIA and its inadequacy for drawing substantive conclusions, a review of the draft EIA by Dusan Sevic of Central European University, Budapest notes:

4.3.2.3 "Even though the nesting season of Green turtle is not well defined, variable from one locality to another, and the peak nesting months in Turkish waters are not known, the [initial] survey was undertaken only during July 2001 . . . [The] survey should have been undertaken through the whole year in order to capture seasonal patterns. Later in the text, seasonal sensitivities for marine turtle are indicated using year round data. It is not clear where do these data originate from, but it is obvious that they do not result from an EIA specific study."[52]

4.3.2.4 The majority of the pipeline route was not surveyed at all by BTC. Instead, the survey teams selected out of the vastness and diversity of Turkey's "unsurveyed" ecosystem a mere 23 sites supposedly "representative" of the whole region. Thus the project adopted an approach of quick approximation: noting

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[50] For further details, see: Department of Environmental Sciences and Policy, Central European University, "Environmental Impact Assessment Report – Turkish Section of the Baku-Tbilisi-Ceyhan pipeline: Quality Assessment", Budapest, 2003, p.12.

[51] BTC Final EIA, Turkey, Marine Terminal – Marine Baseline Conditions, October 2002, p.11-26

[52] Sevic, D., Quality Analysis of the EIA Draft Report for the Turkish Section of the BTC Oil Pipeline, CEE Bankwatch, March 2003.

the general types of habitats, then looking at some examples of these, assuming those to be representative.

4.3.2.5 It is very difficult to see how, for a country as biodiverse yet under-surveyed as Turkey, this approach can give an adequate picture. Local experts report that it is still possible in Turkey to discover new species – thus it is almost certain that by reducing the whole 1,000 kilometres to 23 small areas of study, important species were missed.

4.3.2.6 On some animals, extra studies were undertaken. However, for mammals (including the protected Brown Bear), these were done without any field observations, simply by desk study.[53] For birds, a number of observation dates are listed in the impacts tables, but each habitat is recorded as surveyed only on a single day – ignoring any possible movements of the birds:

4.3.2.7 In the Posof Wildlife Protection Area, birds were surveyed on 29/06/01[54], at Cotsuyu River, Ardahan, on 28/06/01[55], at Kuru Lake, Sivas (a potential RAMSAR site), on 26/5/01,[56] and at the Zamanti River Plateau, Kayseri, on 16/5/01.[57]

4.3.2.8 It appears the Alacorak and Ulas Lakes, Sivas was only surveyed at all on one day, as the EIA somewhat vaguely states that "The three small lakes appear to be

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[53] BTC Final EIA, Turkey, October 2002, section 5.7.1.3 – 'Other Surveys'

[54] BTC Final EIA, Turkey, October 2002, volume II, supplement I – 'Environmental and social impact tables', p.6-9

[55] BTC Final EIA, Turkey, October 2002, volume II, supplement I – 'Environmental and social impact tables', p.6-72

[56] BTC Final EIA, Turkey, October 2002, volume II, supplement I – 'Environmental and social impact tables', p.6-518

[57] BTC Final EIA, Turkey, October 2002, volume II, supplement I – 'Environmental and social impact tables', p.6-608

permanently wet, while the largest lake is at best seasonal having been dry for a long time at the point of survey on 22.05.2001".[58]

4.3.2.9 Not only was the flora and fauna survey completely inadequate to capture the whole route, even those areas it looked at were covered only once, in the summer, in the month of July (see table above). Again, it is very difficult to see how this could give any degree of realistic picture of the flora and fauna present.

4.3.3 Insufficient Analysis of Species

4.3.3.1 The EC Directive on EIA – in line with best international practice – requires that various aspects of habitats and ecosystems are assessed before a project is approved. A credible baseline survey, for example, should include information on:

- Distribution, richness and diversity of habitats and ecosystems
- Patchiness, connectivity/ fragmentation of habitat(s)/ ecosystem(s); corridors; fragile habitats and ecosystems
- Carrying capacity and community dynamics
- Population/species level
- Population structure and dynamics, including harvesting pressure(s), abundance/composition of key species

[58] BTC Final EIA, Turkey, October 2002, volume II, supplement I – 'Environmental and social impact tables', p.6-555

- Existence of endemic, rare, vulnerable, and/or endangered species.[59]

4.3.3.2 None of these aspects are covered in the EIA, beyond the simple presence or not of a species. Although BP has refused to make its data available for inspection, the EIA itself notes in several cases that it does not have any population data on certain species - even where it has identified them as rare species. For example, the EIA notes that the Eurasian Brown Bear, Wild Goat, Chamois and Roe Deer are endangered, but simply states *"Population estimates are unknown"*.[60] For an endangered species, one would have expected a first priority to be to assess the population levels; indeed *"abundance / rarity"* is listed as the primary criterion in determining their importance[61] – yet this information is in several cases unknown to BTC. Similarly, for the Caucasian Black Grouse, a globally-threatened species, the EIA states that *"Reliable population estimates are lacking"*.[62]

4.3.4 Insufficient Analysis of Risks to Species

4.3.4.1 Of particular concern is the failure of the EIA to assess the risks to species affected by the project. Commenting on the assessment of oil spills, the Sevic study notes:

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[59] World Bank, Environmental Assessment Sourcebook, Update no. 20, October 1997, 'Biodiversity and environmental assessment', p.5, Box 4 – 'Baseline information and its collection'

[60] BTC Final EIA, Turkey, October 2002, section 5.7.2.4 – 'Erzincan region'

[61] BTC Final EIA, Turkey, October 2002, section 5.7.1.2 – 'Phase 2 Habitat Survey'

[62] BTC Final EIA, Turkey, October 2002, section 5.7.3 – 'Other important conservation sites'

4.3.4.2 "The risk assessment of oil spills impacts caused by accidents on the Pipeline and the Marine Terminal is incomplete. Not all key risks and impacts were proportionally assessed according to their potential magnitudes and significances. Necessary refined analysis for meaningful assessment of risk probabilities and impact magnitudes was announced but not executed. There are no confidence limits of all the calculated risks and magnitudes, and the overall significance of impacts was not properly determined."[63]

4.3.4.3 In the case of marine turtles, for example, there is no analysis of how oil pollution would impact turtles as a result of the reduction in the fish stocks on which the turtles depend. Indeed, the only risk assessed is of a spill from the BTC terminal itself or from a tanker accident 3km offshore. In the case of the tanker accident, the modelling of impacts is predicated on a maximum spillage of 70,000 barrels or 10,000 tonnes, far below the potential spillage if a supertanker (load: 300,000 tonnes) was involved in a serious accident. For reference, 10,000 tonnes is approximately the size of the *Erika* spill off France. *Exxon Valdez* (approx 40,000 tones), *Braer* (70,000 plus) and *Sea Empress* (84,000) were all much larger and each of these vessels was much smaller (except the *Sea Empress*) than this terminal will be accommodating.

4.3.4.4 The EIA does not consider the risks of spillage outside the Gulf of Iskenderun. This of great concern

[63] Sevic, D., Quality Analysis of the EIA Draft Report for the Turkish Section of the BTC Oil Pipeline, CEE Bankwatch, March 2003, p.6.

given that the EIA itself acknowledges that the endangered **monk seal** (*Monachus monachus*) is at risk from "accidental oil discharge from transport vessels in the sailing lanes to an from the BTC Marine Terminal".[64] The seal is listed as "critically endangered" on the IUCN Red List and as an Appendix I species under CITES. It is also listed as an Appendix II species under the Bern Convention, as an Appendix I and Appendix II species under the Bonn Convention, and as an Annex II and Annex IV species under the European Community's Habitats Directive.[65] Although the EIA for the project "strongly recommended" that BTC Co carry out an "ERA for the ship sailing lane", no such ERA was undertaken. In effect, the necessary mitigation measures to protect seal populations in the tanker lanes were not even considered.

4.3.5 Failure to address Transboundary Impacts of Tanker Traffic and to inform affected Member States

4.3.5.1 The EIA for the project acknowledges that "a catastrophic tanker incident has the potential for major transboundary impacts". [66] The only incident that is considered is an accident in the Gulf of Iskenderun, potentially affecting Cyprus, Syria, Lebanon, Israel and Egypt.[67] This now includes a member state of the EU – Cyprus. However, pre-2004 member states of the EU could also be impacted. The EIA gives no details of the routes that the tankers will take once

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[64] BTC Final EIA, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-41.

[65] http://www.pinnipeds.org/species/medmonk.htm

[66] BTC Final EIA, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-51 and Appendix B4 – Marine Oil Spill Modelling Report, January 2002.

[67] BTC Final EIA, Appendix B4 – Marine Oil Spill Modelling Report, January 2002.

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 member states plus the UK, the Netherlands, Germany and Belgium and Portugal. Under the EC Directive on EIA,[68] Turkey should have informed the affected states, but the EIA makes no mention of it having done so.

4.3.6 Failure Adequately to Assess Alternatives

4.3.6.1 As noted above, the EC requires that alternatives to the project, including in this instance alternative routes, be properly assessed. Two such routes were identified in 1998 study by Rice University, both of which were deemed environmentally preferably.[69]

4.3.7 Contravention of EC Procedures on Evaluation of Cumulative Impacts – Ulas Lakes

4.3.7.1 As WWF Turkey notes, "BOTAS, the BTC pipeline contractor, and an affiliate of the Turkish Petroleum Corporation which has a 6.5% equity in the BTC project, is currently laying about a one and quarter metre diameter gas pipeline across a wetland, the Ulas

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[68] Article 7 (1 of the EC Direct on EIA states: "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:

a) a description of the project, together with any available information on its possible transboundary impact;

b) information on the nature of the decision which may be taken, 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."

[69] Soglio, R. and Jaffe, A., The Economics of Pipeline Routes: The Conundrum of Oil Exports from the Caspian Sea, Rice University, April 1998, cited in WWF Turkey, Independent Review of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline EIA, Turkey Section, 9 October 2003, p.15.

Lake, which is designated an Important Bird Area." Ulas Lake will also be crossed by the BTC pipeline. Yet the cumulative impact of the two pipelines was not addressed in the BTC EIA. As such, the EIA contravenes the EC Direct on EIAs which requires a description of "direct effects and any indirect, secondary, cumulative . . . effects of the project."[70]

4.3.8 Concerns over Mitigatory Measures

4.3.8.1 The EC Directive on EIA requires that project EIAs describe "measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment."[71]

4.3.8.2 In the case of the marine terminal, this requirement is clearly breached. In my view, a detailed, comprehensive oil spill response plan is unarguably an integral part of an EIA. Yet, despite the risks of oil spills and their acknowledged adverse impacts on wildlife, notably turtles and the bird species in the saltmarshes of the Yumurtalik Lagoons, the EIA as approved by the Government of Turkey in October 2002 only contained a *framework* document,[72] outlining how an oil spill response plan would eventually be developed. Indeed, the EIA's Appendix on the marine terminal stresses the preliminary nature of the framework document.[73] I would contend that

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[70] Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended by EC Directive 97/11/EC), para 7 (7).

[71] Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended by EC Directive 97/11/EC), para 5.

[72] This is acknowledged in BTC General Oil Spill Response Plan, AGT 000-0000-OP-PLN-0004-Rev A2, January 2004, p.7.

[73] "The framework for the development of the OSRP has been developed as part of the preliminary work programme to address the following: ensuring appropriate emergency response resources and procedures are in place; ensuring appropriate training is undertaken". See BTC Final EIA, Marine Terminal – Accidental Events and Incidents, October 2002, p.14-48. See also:

approving the EIA without a comprehensive Oil Spill Response Plan having been approved was in direct breach of EC requirements.

4.3.8.3 Although, in January 2004, BTC subsequently issued a report entitled "General Oil Spill Response Plan", the document fails to set out a credible and comprehensive emergency response strategy. Indeed, the report tellingly describes itself as no more than "an update on the planning process", intended to inform lenders about "the strategy being developed in addressing key aspects of oil spill planning."

4.3.8.4 Significantly, the report admits that BTC Co. is still "working to develop a comprehensive set of plans"[74] and "to ensure that an effective response capability is established in Turkey."[75] Moreover, the Plan lacks any evidence of agreements requiring BOTAS, as operator of the pipeline and marine terminal, to respond to a spill after a tanker has departed from the Ceyhan terminal. The plan merely states: "spills from a tanker are *assumed* to be the responsibility of the ship operator and the host government" (italics added).[76] The document makes clear, however, that no responsibility will be taken by BTC Co for spills arising from where "the pipeline passes the fence line at the Sangachal terminal (Azerbaijan) to the end of the loading arm at Ceyhan terminal …"[77]

WWF Turkey, Independent Review of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline EIA, Turkey Section, 9 October 2003, p.10.

[74] BTC General Oil Spill Response Plan, AGT 000-0000-OP-PLN-0004-Rev A2, January 2004, p.11.

[75] BTC General Oil Spill Response Plan, AGT 000-0000-OP-PLN-0004-Rev A2, January 2004, p.20.

[76] BTC General Oil Spill Response Plan, AGT 000-0000-OP-PLN-0004-Rev A2, January 2004, p.12.

[77] BTC General Oil Spill Response Plan, AGT 000-0000-OP-PLN-0004-Rev A2, January 2004, p.12.

4.3.8.5 As WWF Turkey notes, this lack of clear-cut arrangements for responsibility in the event of a tanker accident has important implications, based on the precedent of the *Exxon Valdez* oil spill in Alaska. "In that situation, BP headed a consortium of companies with facilities to pipe oil from Alaska's North Slope to Valdez, where oil is stored and loaded onto ocean-going tankers. The tanker *Exxon Valdez* ran aground with a full load of crude shortly after leaving the loading terminal. There was no obligation on the loading operator to clean-up the oil spill, so 35 hours passed before a spill response was assembled and commenced activities."[78]

4.3.8.6 More generally, although an environmental management plan has been drawn up for the project, there is strong evidence that many of the mitigatory measures agreed by the Turkish authorities are not being implemented and will not be implemented. As BP's own independent advisory body, the Caspian Development Advisory Panel (CDAP), warns:

4.3.8.7 "[T]he pressure to complete the Project on schedule and on budget, coupled with a weak if evolving environmental and social compliance culture in BOTAS and its contractors, may give rise to pressures to ignore standards and cut corners. *In fact, in meetings with the Panel, key senior Turkish government officials demonstrated little appreciation of the need for such standards. Instead, they voiced complaints about BP's insistence on maintaining its environmental, health, and safety standards and*

[78] WWF Turkey, Independent Review of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline EIA, Turkey Section, 9 October 2003, p.11.

suggested that a relaxation of these standards would better enable BOTAS to complete construction on time and under budget. The Panel left these meetings with serious questions about the political commitment by the responsible Turkish government ministries to ensure that the pipeline is constructed and operated in compliance with the environmental, health, and safety standards stipulated in the various Project agreements, including the EIA for Turkey."[79]

4.3.8.8 The CDAP report further opines that so weak is BP's control over their Turkish partners that the only real leverage the oil major has over BOTAS is the prospect of stopping the BTC project altogether. "BP and BTC personnel lacked the authority, short of stopping work or exercising other severe contract remedies, to ensure that BOTAS and its contractors meet BTC's EIA commitments."[80] This strongly suggests that whatever BP's good intentions, they face a very difficult struggle in turning them into reality.

4.3.8.9 A report by the environmental consultants Mott McDonald, commissioned by project lenders, notes a wide range of problems, including inadequacy in contractor staff numbers and training, particularly in environmental and social matters; failure in auditing and self-auditing from both BTC Co. and its contractors; insufficient resources on the part of contractors to complete environmental and social

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[79] Caspian Development Advisory Panel, Second Report, December 2003, p.40, available at http://www.caspiandevelopmentandexport.com/Downloads/MediaLibrary/Download/59/CDAP%20Turkey%20Report%20Final.pdf

[80] Caspian Development Advisory Panel, Second Report, December 2003, p.40, available at http://www.caspiandevelopmentandexport.com/Downloads/MediaLibrary/Download/59/CDAP%20Turkey%20Report%20Final.pdf, p.9.

work, perhaps as a result of budgetary and time constraints; inadequate treatment of waste water and discharges of effluent into irrigation and drinking water; not doing the requisite surveys and getting the necessary permits before starting work; failures to meet or even report on Key Performance Indicators; and non-implementation of policies, particularly on noise and other pollution.[81]

5.0 CONCLUSION

5.1 In the light of the above, the Corner House believes that the interests of wildlife affected by the BTC project have been inadequately protected by the Turkish government, in direct contravention of the EC Directive on EIAs, other relevant EC Directives and international agreements to which the EC is committed. As such, implementation of the project has clearly moved Turkey away from the EU acquis, in violation of its accession obligations. This runs contrary to the Commission's own funding criteria for pre-accession assistance. We know from BP's own response to the World Bank's Extractive Industries Review[82] that without support from international financial institutions, the pipeline would not proceed. The same applies, for example, to the Commission's direct support for the pipeline project in its capacity as a member of the Board of the EBRD[83] where the EBRD has decided on funding for the BTC project itself. On either of these bases, the Commission's actions are directly causative of allowing the pipeline project to go ahead.

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[81] Mott McDonald, "BTC Pipeline Project, Pre-Financial Close Environmental and Social Construction Monitoring, December 2003, available at http://www.caspiandevelopmentandexport.com/ASP/LatestNews.asp?ArticleID=37&Language=English

[82] Reactions to EIR Report from Representatives of the Oil Industry, OGP, BP, Shell, December 2003.

[83] European Commission, reply to oral questions H-0123/04 by Baroness Sarah Ludford MEP, March 2004: "The European Bank for Reconstruction and Development (EBRD) Board of Directors, *where the European Community is represented by the Commission*, approved a loan of €105.8 million in favor of the Baku-Tbilisi-Ceyhan (BTC) pipeline project on 11 November 2003. A further loan of €105.8 million was approved for the account of participants." (Emphasis added)

5.2 In conclusion, we submit that the adverse impacts on the wildlife affected by the BTC project must be addressed if the interests of such wildlife are to be protected and the violations identified rectified. We also submit that the Corner House, as an established environmental group which has monitored the project throughout the EIA period, is a body with both the legitimacy and expertise to represent such wildlife interests.

Signed

Nicholas Hildyard

Date: