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Rt Hon Hilary Benn MP
Secretary of State for International Development
Department for International Development
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BY EMAIL AND POST

Dear Secretary of State,

Baku-Tbilisi-Ceyhan oil pipeline:
Violations of World Bank safeguard policies and host country law

Please find enclosed a review of the Environmental Impact Assessment for the Turkish section of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline project.

BTC Co, the project consortium, has applied for \$600 million in loans from the International Finance Corporation (IFC, part of the World Bank Group) and the European Bank of Reconstruction and Development (EBRD). The Board of the IFC is due to discuss the project on 30th October, and the Board of the EBRD on 11th November. You will instruct the UK Executive Directors of the two institutions on how to cast the UK's vote. The project will also apply for export credits from the Export Credits Guarantee Department, on whose decision you will advise. We therefore draw your attention urgently to the findings of this review.

While the review focuses on violations of policy and best practice in the Turkish section of the BTC pipeline, fact-finding missions to Azerbaijan and Georgia have found many of the same systemic failures by the project in those countries as in Turkey.

In all, the review finds that **the project violates every major safeguard policy of the World Bank, as well as European Commission Directives, on at least 173 counts.** Under the project agreements, such violations also constitute **potential breaches of host country law.** We note that, in these circumstances, **any funding for the project would conflict with the EBRD's policy requirement that "projects [be] structured so as to meet applicable national**

environmental law,”¹ and with IFC’s non-discretionary requirement that it will not finance projects that do not comply with local legislation².

Based on these and other findings, we would urge you to delay any decision until major changes have been made to the project’s design and implementation so that it complies with World Bank policies, host country law and, at this stage, Turkey’s international obligations.

The review’s findings are summarised in the attached Executive Summary, with the major violations of World Bank and other project standards tabulated in Table 1 (also attached). We are also sending you the full review, which examines in detail the specific violations of these standards.

The following are of particular importance:

- **The review reveals the BTC project to be in violation of every relevant World Bank safeguard policy on multiple counts. On consultation alone, the project breaks 6 key World Bank guidelines on 83 separate counts.** This is of particular concern given the findings of the recent critical review of IFC policy by its Compliance Advisor Ombudsman. Indeed, it is clear that the project repeats the exact failures identified by the CAO: “Too often public consultation occurred too late to affect project design, did not facilitate local stakeholders’ understanding of the project and ability to express their concerns, allowed insufficient time for stakeholders to process the information and provide thorough feedback, and was not sustained after project approval.”
- **The review also finds the project to breach the EBRD Environment Policy on at least six counts. It breaches World Bank policies OD 4.30 (Involuntary Resettlement) on 28 counts, OPN 11.03 (Cultural Property) and Draft OP 4.11 (Physical Cultural Resources) on 29 counts, and OD 4.20 (Indigenous Peoples) on 30 counts – all four policies which both IFC and EBRD³ are committed to applying.**
- **As a result of these myriad breaches, many of the claims made in the EIA, and elsewhere during the course of the project, are misleading and unsupportable.** For example, BTC Co. claims to have conducted comprehensive consultation exercises, yet those exercises lasted little more than two months in total and fewer than 2% of people were consulted face to face. Likewise, BTC Co. promised to negotiate generous compensation payments, yet payments in reality have been consistently well below the budgeted average and prices have been imposed on recipients in violation of Turkish law. There are also reports that measures the EIA has promised are not being implemented in practice; BTC Co.

¹ EBRD Environmental Policy, 2003, para 21.

² For example, IFC’s environmental and social review procedure (ESRP) “requires the project sponsor to ensure compliance with host country requirements”.

³ EBRD Environmental Policy, para 21: “. . . projects will also be structured to meet IFC Safeguard Policies on indigenous peoples, involuntary resettlement and cultural property, if they involve potential impacts related to such matters.” See also: EBRD, Presentation on New Environmental Policy (2003), Room Document 2, Consultation between ECG Members and Stakeholders on Officially Supported Export Credit and the Environment, 15 September 2003, OECD, Paris.

pledged to preserve cultural heritage, yet there are reports that the pipeline constructors BOTAS have stumbled across relics and cultural items near the city of Damal in north-east Turkey and have allegedly refused to “move the pipeline a centimetre from the original plan.” **So numerous are the errors and omissions in the EIA that it is difficult to regard the document as anything but deeply and unacceptably flawed.**

- **Since World Bank standards form part of the legal regime for the project as mandated by the Host Government Agreement (HGA) and the Lump Sum Turnkey Agreement, such breaches potentially constitute violations of host country law.** Both IFC and EBRD are required not to finance projects which violate host country national law.
- **The project breaches the EC Directive on EIA, with which it is bound to comply under its project agreements, on 18 counts.** The Host Government Agreement (HGA) signed between the Government of Turkey and the Baku-Tbilisi-Ceyhan (BTC) consortium stipulates that the EIA for the BTC project should be “in accordance with the principles” of the Directive. As a result, it may be argued that the project not only fails to comply with its own legal regime, as established under the HGA, but also places Turkey in breach of its accession obligations, by moving Turkey *away from* its undertaking to the European Commission to implement the EIA Directive.
- **In order to keep to the project’s construction timetable, Emergency Powers available to the Government of Turkey have been invoked to override key provisions of OD 4.30, in breach of both Turkey’s obligations under the Host Government Agreement for the BTC project and in flagrant violation of the BTC Consortium’s commitments within the Resettlement Action Plan.** For poorer people, the likely outcome is that they will be worse off than before the project. Some are already talking of having to leave their lands.
- **BTC Co. 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** – a decision which has been endorsed by IFC staff. Closer investigation, however, reveals that the Kurds in particular meet every one of the criteria for applying OD 4.20, and that the rationale for not doing so is fatally flawed. 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. **A complaint challenging the IFC’s decision is now being prepared by NGOs for submission to the IFC’s Complaints Advisor Ombudsman.**
- **The legal framework for the project is in potential breach of Turkey’s obligations under international human rights and environmental law.** In particular, the HGA’s clauses regarding payment of compensation to the BTC consortium, in the event of new laws being introduced that adversely affect the profitability of the project, are likely to have a “chilling effect” on the State’s adherence to human rights standards. In addition, concern has been expressed over the restricted remedies available to third parties damaged by the pipeline; the removal of the project from the domain of the public interest, thus creating immunity from intervention by the state; and the wording of the clauses relating to security along the pipeline route. **The recent Deed Poll recently signed by BTC Co. (Human**

Rights Undertaking, 26 September 2003) fails to remedy the concerns that have been raised, particularly with regard to third party rights and security.

- **The HGAs conflict with Turkey’s accession agreements with the European Commission. A formal complaint has been submitted to the EC.** The complaint argues that the clauses in the HGA exempting the BTC consortium from all Turkish laws that might affect the project “amount to a clear potential breach of what would be Turkey’s EU law obligations, namely accepting the supremacy of Community law.” **The EC is currently investigating the project’s compliance with the Copenhagen political criteria.** It is not due to report until 5th November 2003.
- **Funding for the project may therefore breach the World Bank’s Memorandum of Understanding with the EC on finance for accession countries (attached).**
- **The Host Government Agreements conflict with the OECD’s Guidelines on Multinational Enterprises on at least five major criteria. A complaint by NGOs to the OECD national contact points in five countries has been admitted as eligible and is currently being assessed.**

In the light of the above, we believe the case for a delay in any decision on financing the project is overwhelming:

1. **Given the extent of violation of Bank policy, approval of the BTC project at this stage would send an undesirable signal that the Bank had failed to take on board the lessons of the Compliance Advisor Ombudsman (CAO)’s recent review of IFC policy.** The CAO severely criticised IFC staff for their willingness to allow commercial pressures to interfere with adherence to the Bank’s guidelines, noting: “This review found cases where the political importance of the deal meant that due diligence was rushed, corners cut, sponsors hurried, and effectiveness and impact compromised.” **From the number of violations of World Bank policy that have been identified, it would appear that the BTC project has been pushed through by IFC staff without the lessons of the CAO report being learned. For the Board to approve the BTC project without first ensuring that the violations of Bank policy have been addressed would be to signal that the Bank was either unwilling or unable to remedy the policy failures identified by the CAO. It would also lay the IFC open to charges of being swayed more by political pressure than the imperatives of the World Bank’s mandate for development.**
2. As noted above, the **project is currently the subject to two formal complaints – one to the European Commission and the other under the OECD Guidelines on multinational enterprises--**which the relevant authorities are still investigating. Any decision to fund the project prior to adjudication on the complaints would serve to undermine due process.

We note that voices within the IFC and EBRD have argued that the Banks’ immediate involvement is necessary to improve the project. Whilst this recognition of the project’s current failings is welcome, we feel the argument is misplaced. The involvement of the Bank to date has **not** succeeded in improving the project: although IFC and EBRD staff have actively engaged

with BTC Co. in order to prepare the project for Board appraisal, such engagement has not prevented many of the project's provisions, for example on resettlement, from being drastically weakened. By acquiescing to BTC Co.'s rush to complete the project before the necessary revisions are made to ensure that **all** stakeholders benefit from the project, the IFC and EBRD lose rather than increase their capacity to improve project standards. **If the Banks are to have an influence on the project, they are more likely to do so by making their approval conditional on the project remedying the violations of IFC / EBRD policies and national law that are the project's most notably current characteristic.**

We would therefore **conclude that the project cannot yet be deemed fit for purpose** and urge you to insist that the project developers undertake the following measures before the project is considered for financing:

- **The project clearly meets IFI policies and guidelines, notably the requirement to observe host country law, and has satisfactorily rectified the almost two hundred serious violations outlined below;**
- **The rights of and benefits due affected people (such as the requirement of the World Bank Resettlement policy to ensure that affected land users receive *negotiated* compensation payments *prior* to construction) are observed in full, retroactively as well as in future operations;**
- **The project agreements have been 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.**

If, as the Deed Poll suggests, BTC Co. now has no intention of seeking compensation under the HGA's stabilisation clause in the event of action by Turkey to protect its citizens, and if other parties are agreeable to this as suggested by the acceptance of the Deed Poll by host governments, then we see no reasons why the HGA itself should not be changed to *strike out the stabilisation clause*. Specifically, we would urge that IFIs insist on the HGA and/or the Deed Poll being revised so that they:

- 1. Contain a clear-cut undertaking to grant rights to third parties;**
- 2. Rescind the economic equilibrium clauses;**

We also recommend that the security clauses be redrafted in order to protect the rights of those along the pipeline route.

- **Legally enforceable assurances are made that the HGAs will not be used by any participant in the project to undermine environmental, social or human rights best practices, as they already have been on site investigation and consultation procedures during the scoping phase of the EIA in order not to compromise the construction schedule.**
- **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.**

We trust that you share our concerns over the continuing serious flaws in the BTC project and will move to rectify them to our collective satisfaction. We look forward to your response.

Yours sincerely,

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