

Mr. Jean Lemierre,  
President,  
European Bank for Reconstruction and Development,  
One Exchange Square,  
London EC2A 2JN.

BY EMAIL AND POST

Dear Mr. Lemierre,

**Baku-Tbilisi-Ceyhan oil pipeline:**  
**Violations of EBRD/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 oil pipeline project, together with two recent Fact Finding Mission (FFM) reports on the project's implementation in Azerbaijan and Georgia. While the report focuses on violations of policy and best practice in the Turkish section of the BTC pipeline, the enclosed FFM reports make it clear that many of the same systemic failures have occurred in both Turkey and Azerbaijan. **Moreover, although the European Bank for Reconstruction and Development (EBRD) has not been asked to fund the Turkish section of the pipeline, EBRD has made it clear that it will require the *entire* pipeline project to meet its standards.**

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 **possible 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."**<sup>1</sup>

These violations are sufficient both in number and severity to place the project in clear breach or potential breach of many EBRD policy guidelines. For instance, EBRD's Environmental Policy pledges that both that "EBRD-financed projects will support and advance good environmental and health and safety standards throughout the region," and that, "The EBRD will foster the principles of public consultation within its region of operations."<sup>2</sup> The evidence compiled below demonstrates conclusively that the BTC project in its current form fails to meet these requirements.

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<sup>1</sup> EBRD Environmental Policy, 2003, para 21.

<sup>2</sup> EBRD Environmental policy, paras. 20, 26

Specifically, the review finds the project to be in violation or partial violation of EBRD's requirements with regard to:

- **Assessment of Alternatives (8 violations of international financial institution (IFI) standards, including the EBRD's Environment Policy)**
- **Consultation (6 violations of the EBRD's Environmental Policy)**
- **EC Directive on Environmental Impact Assessment (18 violations)**

The review also finds the project in violation of the following World Bank standards, to which the EBRD is committed<sup>3</sup>:

- **Resettlement (28 violations of IFC standards)**
- **Cultural Heritage (29 violations)**
- **Indigenous Peoples (30 partial or total violations)**

**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 EBRD 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 EBRD, 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 EBRD/World Bank safeguard policy on *multiple counts*, including the World Bank's policies on cultural heritage, resettlement and indigenous peoples, with which the EBRD requires compliance.<sup>4</sup> On consultation alone, the project breaks 6 key EBRD guidelines; 6 key World Bank guidelines on 83 counts; and the EC Directive on EIAs on 4 counts.**
- **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 unsupported.** 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

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<sup>3</sup> 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.

<sup>4</sup> 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.

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; for example, BTC Co. 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 IFI 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.** EBRD is required to observe host government law. The evidence suggests that this is not possible at present.
- **The project breaches the EC Directive on EIA, with which it is bound to comply under its project agreements and under EBRD policy, 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. The EBRD is also committed to complying with the EC Directive in all its projects.
- **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. **The EBRD is committed to complying with the World Bank’s policies on resettlement.**
- **EBRD is committed to applying the World Bank’s Operational Directive 4.20, Indigenous Peoples, the only directive specifically aimed at safeguarding the interests of minority groups.** However, the project sponsors have declined to apply the policy – 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 Compliance 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. We note that Amnesty International continues to be concerned over the HGAs and, whilst welcoming the Deed Poll, stresses that its support is qualified by a number of considerations.
- **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.**
- **Funding for the project may therefore breach the EBRD'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. **From the number of violations of EBRD/World Bank policy and EC Directives that have been identified, it would appear that the BTC project has been prematurely approved as "fit for purpose" by EBRD staff. For the Board to approve the BTC project without first ensuring that the violations of Bank policy have been addressed would be to lay the EBRD open to charges of being swayed more by political pressure than the imperatives of the Bank's sustainable development mandate.**
2. **As noted above, the project is currently the subject of 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 EBRD have argued that the Bank's 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 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 EBRD loses rather than increases its capacity to improve project standards. **If the Bank is to have an influence on the project, it is more likely to do so by making its approval conditional on the project remedying the violations of IFI policy 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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