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BY EMAIL AND POST

Dear Mr. Brown,

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 oil pipeline project, which the ECGD is currently considering for support.

The ECGD has stated that its support for the project will be conditional on the project meeting IFC safeguard standards. In evidence to the Environmental Audit Committee, ECGD also made it clear that it would not support any project that failed to meet host government law.

The enclosed review finds the project breaks both conditions. It found the project to be in violation or partial violation of every relevant World Bank safeguard policy, as well as European Commission Directives, on at least 173 counts in total. Under the project agreements, such violations also constitute possible breaches of host country law..

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. The full review, which examines in detail the specific violations of these standards, is being sent by post.

We believe that the following findings 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 the 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.”
- **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 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. 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.** IFC's environmental and social review procedure (ESRP) “requires the project sponsor to ensure compliance with host country requirements”. 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, 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 and local law, approval of the BTC project at this stage would send an undesirable signal that the ECGD was not committed to following its own stated policies.** It would also represent a regressive move away from the ECGD's increasing acceptance of the need to establish - and adhere to - environmental and human rights standards for the projects which it supports.
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 some supporters of the project have argued that the immediate involvement of International Financial Institutions, including the ECGD, 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 IFIs to date has **not** succeeded in improving the project: although IFC 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 ECGD loses rather than increases its capacity to improve project standards. **If the ECGD is to have an influence on the project, it is more likely to do so by making its approval conditional on the project sponsors remedying the violations of World Bank policy and national law that are the project's most notably current characteristic.**

We would also urge the ECGD not merely to follow the decisions of other IFIs but to undertake its own assessment of the project and to publish its reasoning for any decision.

We **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.** We note that the HGAs have already have been invoked to override 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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