

**International Fact-Finding Mission  
Preliminary Report**

**Azerbaijan, Georgia, Turkey  
Pipeline Project**

**Turkey Section**

**Campagna per la Riforma della Banca Mondiale**

**Kurdish Human Rights Project**

**The Corner House**

**Ilisu Dam Campaign**

**PLATFORM**

**August 2002**

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# Executive Summary

Turkey is currently planning to construct a 1000 kilometre-long oil pipeline, running from the Georgian border in the north of the country to the Mediterranean coast in the south, on behalf of a consortium of oil companies,<sup>1</sup> led by the UK's BP and known as the BTC company.

The pipeline, which forms part of the Azerbaijan-Georgia-Turkey (AGT) pipelines project, which in Turkey consists of the construction of the Baku-Tbilisi-Ceyhan (BTC) crude oil pipeline and the expansion of the marine export terminal at Yumurtalik, south of Ceyhan. In Turkey, construction work is to be carried out by BOTA<sup>a</sup>, the nationalised Turkish pipeline company, under a US\$1.4 billion Lump-Sum Turnkey Agreement, whereby BOTA<sup>a</sup> agrees to construct the pipeline for an agreed price.

The pipeline, which would be buried along its entire route, save surface facilities, would transfer up to 50 million tonnes of crude oil per annum (or one million barrels per day) from Sangachal on the Caspian Sea coast, via Azerbaijan, Georgia and Turkey, to the Mediterranean. Crude oil would be supplied to international markets via tankers loaded at a new marine terminal.

The route chosen is one of the most expensive possible for Caspian oil exports. According to the Chair of BP, the project's profitability is dependent on "free public money" becoming available, principally loans from publicly-funded financial institutions such as the World Bank and export credit agencies.

## The Fact-Finding Mission and its Remit

The oil companies have promised major benefits for the communities directly affected by the pipeline, principally in terms of jobs. The BTC consortium has also stated that the project will comply with the World Bank's social and environmental standards, which require full consultation with affected communities and fair compensation for damage caused.

However, major concerns have been raised over the pipeline's human rights, environmental and development implications.

To assess these concerns, an independent international Fact-Finding Mission (FFM) consisting of five people, representing five national and international non-governmental organizations (NGOs), visited Turkey from 26 July – 3 August 2002. The FFM

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<sup>1</sup> The BTC Company is led by BP, which, with a 34.76 per cent share, would be also the operator of the project as a whole. Other shareholders in the BTC Company are the State Oil Company of the Azerbaijan Republic (SOCAR), Unocal, Statoil, Turkish Petroleum (TPAO), ENI, TotalFinaElf, Itochu and Delta Hess.

conducted in-depth interviews with local community leaders, local officials, affected people and local NGOs. The remit of the Turkish FFM was to:

- Review the environmental and social implications of the Host Government Agreement (HGA) which Turkey has signed with the oil companies and which provides the legal framework for the project;
- Assess the adequacy of the consultation process conducted as part of the Environmental Impact Assessment (EIA) for the project;
- Assess the extent to which affected communities had been informed about the social and environmental impacts of the project and of their legal rights with respect to damages and compensation;
- Record the concerns expressed by affected communities and assess the extent to which they are being addressed by the project developers;
- Assess the proposed arrangements for compensating those affected by the project against both the requirements of the Host Government Agreement and the safeguard policies of the World Bank, the benchmark standards to which the project developers have committed themselves;
- Review the impacts of the project on ethnic minorities living in the country and affected by the project and examine the extent of the project's compliance with relevant World Bank standards.

## **The Mission's Findings**

### **THE HOST GOVERNMENT AGREEMENT: ABROGATING EXECUTIVE POWER**

The project would be implemented within the framework of an Inter-Governmental Agreement (IGA) between the three countries through which the pipeline would pass. The IGA includes specific Host Country Agreements (HGAs) which define the fiscal and legal regime under which the BTC Project is to be developed. Both the IGA and HGA constitute binding international law and are part of the Turkish legal system as the controlling domestic law of Turkey governing the BTC project.

The Mission reviewed the HGA. It found that, under the HGA:

- The Turkish Government has exempted the consortium seeking to build the pipeline from any obligations under Turkish law, aside from the Constitution.<sup>2</sup> In doing so, the

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<sup>2</sup> The Agreement has the same legal standing as any domestic law and prevails "over all Turkish law (other than the Constitution)".

FFM finds, it has effectively abrogated its executive and legislative powers to protect Turkish citizens from potential environmental damage and associated health and safety hazards.

- The Turkish Government has also granted BP the power to refuse to implement any new environmental, social or any other laws affecting the pipeline that Turkey may introduce in the next forty years, the lifetime of the Agreement. In addition, it has undertaken to compensate the BTC consortium if new taxes or health or safety laws adversely affect the finances of the project.
- Once the project is underway, only BP and its partners have the power to terminate the HGA, except in exceptional circumstances. The Turkish Government is thus not in a position to regulate or ensure *de facto* oversight of the operation or construction of the pipeline. This inevitably limits the ability of the World Bank to place compliance conditions on the Project.
- Even a future Turkish Government committed to human rights would not have the ability to invoke its executive powers to prevent or remedy a human rights violation. The HGA also appears to deny Turkish citizens a right to an independent tribunal in the event of disputes or claims for damages.

**The FFM is deeply concerned about the human rights, environmental and developmental implications of the HGA and recommends that these are analysed in detail – and publicly discussed – before any public funding is given for the project. The FFM itself has attempted to assess the project’s compliance with international private and public laws. On a preliminary analysis, it would appear that the HGA places the project in potential violation of the European Convention on Human Rights, European Union laws and regulations and other international law instruments.**

## **CONSULTATION — INADEQUATE DESIGN AND FLAWED EIA DATA**

The FFM also reviewed the Public Consultation and Disclosure for the project. The FFM found that, on paper, the BTC/BOTA<sup>a</sup> consultation procedures are more elaborate than one would have expected to find for a project of this kind 10 or 20 years ago. The FFM found, moreover, that many communities and groups have indeed been consulted at some level. **Nonetheless, the FFM also found numerous inadequacies and failures in both the design and the implementation of the consultation procedures. The FFM believes that the project violates four of the World Bank’s safeguard policies on consultation.**

### ***Inadequate design***

- The FFM found that the written information disseminated by BTC/BOTA<sup>a</sup> through the PCDP is insufficient for respondents to evolve an informed view on the project.

- When BP/BOTA<sup>a</sup> used questionnaires in surveying *muhtars* and households, they did not provide information adequate to secure an informed response.
- The questionnaires are also skewed, and limiting with respect to the responses they invite, in both structure and vocabulary.
- The wording of the questionnaires further discourages frank expression of concerns about the pipeline's impact.
- The recent larger community- or district-level consultation meetings arranged by BTC/BOTA<sup>a</sup> have apparently been dominated by a lecture format which has left insufficient space for discussion of the concerns of those attending.
- The Community Liaison Programme which is scheduled to operate during pipeline construction is designed in a way which would make its findings highly vulnerable to being overruled by purely engineering concerns.
- The BTC/BOTA<sup>a</sup> consultation package fails to acknowledge anywhere the crucial issue of the status and concerns of Turkey's minority groups.
- The consultation package fails completely to take account of aspects of current political culture in Turkey which prevent the free expression of critical views about a state-backed project such as the BTC pipeline.

### ***Inadequacies in implementation***

The FFM team found even more serious failures in the implementation of the consultation process.

- The FFM team visited seven rural communities and a fishing community listed in the BOTA<sup>a</sup>/BTC EIA as having been consulted about the pipeline either in person or by telephone. The FFM found, however, that three of the rural communities had not been consulted in any way, nor had the fishing community. *In other words, only half of those rural settlements visited by the FFM -- all of them both directly affected by the pipeline and on the BTC/BOTA<sup>a</sup> list as having been consulted -- have, in fact, been consulted.*
- A group of fisherfolk based near the pipeline terminus along the coast of the Gulf of Iskenderun and dependent on an area of the sea which included the site of the proposed BTC jetty testified that they had never been consulted about the project. Yet they would lose some of their fishing area, and be impacted both by persistent pollution and by the risk of a major spill.

- Villagers interviewed in a community within about one kilometre of the pipeline route in Osmaniye province, listed in the EIA as having been consulted by telephone, and included in the EIA's list of consulted "stakeholders", stated that they had never been approached about the pipeline, nor did they know anyone who had. *"They never consulted us."*
- Haçibayram village in Erzinçan province, marked in the EIA as having been consulted by telephone, had been deserted for many years, its houses having fallen into ruins. There were neither telephones nor anyone to answer them.
- The FFM found that even in communities whose leaders had been in frequent contact with BOTA<sup>a</sup>, villagers remained full of questions that had not been answered. These questions covered a range of topics from BP and its record, expropriation, compensation, safety, employment, the benefits accruing to Turkey through the HGA.
- The FFM team also visited a number of other concerned individuals and groups who belong to the "stakeholder" groups identified in the EIA. The FFM found that *fewer than one-quarter of this sample of concerned parties had been officially informed about the project.*

### ***Violating World Bank Standards on Consultation***

The findings of the FFM indicate that the project has not satisfied either the conditions of the HGA<sup>3</sup> nor the standards of the World Bank, including those of the International Finance Corporation (IFC), or the European Bank for Reconstruction and Development (EBRD).

Of the World Bank's Safeguard Policies, four lay down requirements that are relevant to consultation: Operational Policy 4.01 Environmental Assessment; Operational Policy 4.04 Natural Habitats; Operational Policy 4.12 Involuntary Resettlement; Operational Directive 4.20 Indigenous Peoples. **The FFM found the project currently in violation of all four Operational Policies. The FFM also found that the project fails to satisfy the guidelines contained in the IFC's manual *Doing Better Business through Effective Public Consultation and Disclosure*, according to which a project sponsor is to ensure that the process of public consultation is accessible to all potentially affected parties, from national to local level.**

## **LAND EXPROPRIATION AND COMPENSATION**

Although the BTC consortium claims that the pipeline project would not result in any person having to be physically resettled, it acknowledges that it would cause "the

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<sup>3</sup> The HGA requires that "affected public and non-governmental organizations shall be notified about the nature of the proposed project during the development of the EIA" and that following its completion the "public shall be provided with information on the environmental aspects of the project" (BTC Project EIA, p. A1-5).

potential for economic displacement for a relatively large number of people.” Hence any public money received by the consortium for the project from the World Bank must be conditional on the project's meeting the World Bank’s standards on Involuntary Resettlement

**The FFM found that the procedures which the BTC claims to be following were universally violated in the villages which the FFM visited. Moreover, it heard evidence that strongly suggests that such violations are common along the entire pipeline route.**

More specifically, the FFM found that:

- On the BTC’s own admission, current practices in Turkey fail to meet the standards of the World Bank. Although the EIA claims that steps have been taken to remedy this, the FFM found no evidence that they had affected expropriation procedures in practice.
- Although the BTC consortium has committed itself to paying compensation to anyone affected by the project, regardless of whether or not they hold title to land, BOTA<sup>a</sup> has repeatedly stated to villagers along the route that it will only compensate *formally registered* land owners. In one village, the FFM was told that this would result in only five or six land users being compensated out of a total of 50-60 affected.
- The BTC recognises that an up-to-date record of landholdings is “a critical step towards fair and full compensation.” However, of the eight villages visited by the FFM, none had had a recent cadastral survey. In one case, the survey was 56 years old, in another 28 years.
- Although many of the registered landowners are now long dead, the land remains in their names, even though it has been inherited by their children. Nonetheless, BOTA<sup>a</sup> is insisting on paying only those whose names appear on the land registry. Payments are to be made into a bank account set up in the deceased landowners’ name, and it would then be up to villagers to extract the money from the bank. This could only be done through the civil courts, the costs of which are beyond the means of most landowners. In effect, the vast majority of those whose land would be affected by the pipeline would be deprived of any compensation whatsoever.
- BTC/BOTA<sup>a</sup> states in the pipeline EIA that the value of lost assets “would be made in accordance with fair market value.” The FFM heard evidence, however, which strongly suggests that the price paid for land lost is likely to be well below the land's market value.



- In several of the villages surveyed by the FFM, BOTA<sup>a</sup> had not spoken to landowners. There was thus considerable worry and uncertainty about whether they would be compensated for loss of their land.
- Aside from the pipeline's direct corridor, there are further land, resources and infrastructure that would be damaged by pipeline construction and operation. BOTA<sup>a</sup> has, however, given no indication that it would be willing to compensate for losses incurred.
- In all villages visited, there was a complete lack of knowledge about possible recourse in the event of unexpected damage. Most thought that all they could do would be to ask BOTA<sup>a</sup>.
- Of the eight villages the FFM surveyed, only four knew how the compensation regime was supposed to work. In all four of these villages, the FFM was told that BOTA<sup>a</sup> proposed to negotiate with individual landowners, one-by-one. The FFM deems that this approach is likely to cause tensions, mistrust, jealousy and resentment between different landowners, particularly where different prices are paid to landowners.

**The FFM found that BTC/BOTA<sup>a</sup> has misrepresented the work it has undertaken to “close the gap between local policies and those of the World Bank” and that the project violates at least two World Bank guidelines — those on Involuntary Resettlement and Indigenous Peoples. The FFM is also of the view that were public money to be provided for the project as it currently stands, there would be strong grounds for a legal challenge under the European Convention on Human Rights and other international human rights instruments.**

## **ETHNIC MINORITIES: A VIOLATION OF WORLD BANK SAFEGUARD STANDARDS**

The EIA for the BTC pipeline acknowledges that "Turkey is characterised by a diversity of languages, cultures and traditions" and implies, without saying so explicitly, that a proportion of those living along the pipeline are from minority groups. At no point, however, does the EIA name such minorities; nor, despite the BTC consortium's stated commitment to ensuring compliance with the World Bank's safeguard policies, does it discuss the implications of the presence of ethnic minorities for the project.

This issue is especially serious given the Turkish polity's powerful commitment to an ideology of civic unity and the "indivisible integrity" of the state. This ideology has been associated with the often brutal repression of political and cultural expressions of ethnic minority identity.

While The FFM is concerned to note that once again BTC and BOTA<sup>a</sup> make no reference to the delicate socio-political context in which they operate, it was unable to

examine this issue in depth. It notes, however, that the pipeline skirts the predominantly Kurdish region of Turkey and that a number of settlements along the pipeline route contain a Kurdish majority. It also notes that the pipeline crosses land occupied by the Çerkez people and also passes through a province, Sivas, recently troubled by conflicts between people of the Alewi sect and other groups.

Both the Kurds and the Çerkez are peoples with their own language, distinctive culture and ancestral ties to the land. As such, both groups fulfill the World Bank's definition of an "ethnic minority" and the project should thus be subject to the Bank's Indigenous Peoples policy. These require that a development plan be drawn up through negotiation with the affected minority.

**The FFM found no evidence that such a plan existed or had even been initiated for either the affected Kurdish or the Çerkez minorities. The FFM accordingly recommends that no public funding be made available for the project until the pipeline complies with the requirements of OD 4.20.**

# 1. Background and Remit

An independent international Fact-Finding Mission (FFM) consisting of five people, representing five national and international non-governmental organizations (NGOs), visited Turkey from 26<sup>th</sup> July – 3<sup>rd</sup> August 2002.

The purpose of the FFM was to survey the social, human rights and environmental impacts in Turkey of the proposed **Azerbaijan-Georgia-Turkey (AGT) pipelines project**, which in Turkey consists of the construction of the **Baku-Tbilisi-Ceyhan (BTC) crude oil pipeline** and the expansion of the **marine export terminal at Yumurталik**, south of Ceyhan. The US\$2.9 billion pipeline is proposed by a consortium of oil companies named the BTC Company,<sup>4</sup> which is led by BP. In Turkey, construction work would be carried out by BOTA<sup>a</sup>, the nationalised Turkish pipeline company, under a US\$1.4 billion Lump-Sum Turnkey Agreement, whereby BOTA<sup>a</sup> agrees to construct the pipeline for an agreed price.

The pipeline, which would be buried along its entire route, except for surface facilities, would transfer up to 50 million tonnes of crude oil per annum (or one million barrels per day) from Sangachal on the Caspian Sea coast, via Azerbaijan, Georgia and Turkey, to the Mediterranean. Crude oil would be supplied to international markets via tankers loaded at a new marine terminal. According to BTC, "Construction of the pipeline will enable crude oil to be transported more economically and safely and with less environmental risk than if it was to be transported by a combination of pipelines and tankers via the Turkish Straits."

The entire pipeline route is 1760 kilometres long: within Turkey, the pipeline would run "between Turkgozu, in Ardahan Province, on the Georgian-Turkish border, and Ceyhan in Adana Province" on the Mediterranean coast. "Routing this oil pipeline through Turkey will facilitate the development of an energy corridor between Asia and Europe," argues the BTC. The consortium also hold out the promise of major economic benefits for Azerbaijan, Georgia and Turkey, suggesting that Turkey could earn some US\$200 million per annum in transit and operating fees during the first 16 years of operation and up to US\$290 million per annum during the following 24 years of operation, "depending upon the actual volumes of crude oil transported". Turkey would also allegedly benefit "from a share of the profits from the proceeds of oil sales by TPAO (Turkish Petroleum Company), construction and operation of the pipeline by BOTA<sup>a</sup> and through the employment and skills training opportunities for local Turkish people."<sup>5</sup>

The consortium also promises major benefits for the communities directly affected by the pipeline, "particularly during the construction period in terms of short-term and, to a lesser extent, long-term employment." In addition, "off-set benefits will accrue to the environment and settlements in the vicinity of the pipeline and marine

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<sup>4</sup> The BTC Company is led by BP, which, with a 34.76 per cent share, would be also the operator of the project as a whole. Other shareholders in the BTC Company are the State Oil Company of the Azerbaijan Republic (SOCAR), Unocal, Statoil, Turkish Petroleum (TPAO), ENI, TotalFinaElf, Itochu and Delta Hess.

<sup>5</sup> BTC, Environmental Impact Assessment: Non-Technical Summary, June 2002, p.4.

terminal by virtue of the planned community and environmental investment programmes currently under development."

Such claims of macro-economic and community benefits are currently extremely contested, but it was not within the remit of the FFM to examine them. They are not discussed in this report.

The project would be implemented within the framework of an Inter-Governmental Agreement (IGA) between the three countries through which the pipeline would pass. The IGA includes specific Host Country Agreements (HGAs) which define the fiscal and legal regime under which the BTC project is to be developed. The HGAs specify "the environmental and social standards and procedures as well as a broader range of national and international standards and guidelines" to which the pipeline would be subject. The HGAs also "define the transit fee regime and the tax framework for the pipeline for the lifetime of the BTC Project", in addition to setting out "the administrative responsibility of different governments for the BTC Project" and the security arrangements for the pipeline.

Under the terms of the HGAs, environmental and social impact assessments (ESIAs) must be undertaken for the project. Draft ESIAs, written to "fulfil the requirements of the World Bank Guidelines, EC Directives and [national] legislation", have now been prepared for all three countries. Once finalised, they are to be submitted for approval by the relevant national authorities — in Turkey's case, the Ministry of Environment (MoE).

Funding for the BTC project would be from a variety of sources including the equity funding of the BTC Owners themselves, commercial banks and — critically, public institutions. Indeed, John Browne, Chief Executive of BP, has said that the BTC pipeline would not be financially viable without the provision of "free public money" — in other words, publicly-subsidised financing. This financing is to be sought from the International Finance Corporation (the commercial funding arm of the World Bank Group), the European Bank for Reconstruction and Development, and national financial institutions from Europe, the USA and Japan. If the project were to receive this financing, it would have to comply with the standards and guidelines of the World Bank.

### **The Fact-Finding Mission's Remit**

Following the publication of the draft Environmental and Social Impact Assessment for Azerbaijan and Georgia, concerned non-governmental organisations (NGOs) from the region and from European countries which are likely to be approached for public funding for the project undertook a Fact Finding Mission (FFM) to both countries.<sup>6</sup> The FFM's purpose was to assess the environmental and social impacts of the project as well as proposed remedial measures in the light of likely international sponsorship of the project, published Environmental and Social Impact Assessments (ESIAs), and the project's

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<sup>6</sup> The NGOs were: Green Alternative, CEE Bankwatch Network, Campagna per la riforma della Banca mondiale, Platform, Friends of the Earth US, Bank Information Center, National Ecological Centre of Ukraine (NECU).

obligations to comply with World Bank guidelines. The FFM's findings regarding Georgia were published on 1 August 2002. Those regarding Azerbaijan are due to be released in late August 2002.

To compliment this field research, a Fact Finding Mission was also organised for Turkey. As with the Azerbaijan and Georgia FFMs, the Turkish FFM was charged with examining the project's impacts and proposed remedial measures in relation to World Bank requirements. More specifically, the FFM's remit was to:

- Review the environmental and social implications of the legal framework for the project and assess the extent to which local communities have been informed of the provisions of the Host Government Agreement;
- Assess the adequacy of the consultation process conducted as part of the Environmental Impact Assessment (EIA) for the project;
- Assess the extent to which affected communities have been informed about the social and environmental impacts of the project and of their legal rights with respect to damages and compensation;
- Record the concerns expressed by affected communities and assess the extent to which they are being addressed by the project developers;
- Assess the proposed arrangements for compensating those affected by the project against both the requirements of the Host Government Agreement and the safeguard policies of the World Bank, the benchmark standards to which the project developers have committed themselves;
- Review the impacts of the project on ethnic minorities living in the country and affected by the project and examine the extent of the project's compliance with relevant World Bank standards.

The FFM conducted in-depth interviews with three *muhtars* (see Box: "Turkey's Administrative System") and two mayors, including the mayor of the major city of Sivas midway along the pipeline route. The FFM also met and interviewed journalists, lawyers, NGOs, opposition political parties, fishermen, farmers and other members of rural communities. The interviewing process was qualitative, beginning with open-ended questions about peoples' lives and livelihoods and their opinions on the project, and following up with specific questions about issues such as consultation and the compensation procedures as a "spot check" of BTC's claims in the EIA.

The FFM visited three urban centres (Ceyhan, Sivas and Erzurum), and eight villages affected<sup>7</sup> by the BTC pipeline project. **The FFM was questioned by plainclothes**

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<sup>7</sup> According to the project sponsors: "Pipeline affected communities are defined as those that are located within (or partly encroach into) a 2km corridor either side of the route, or are within 5km of a potential worker camp or pipe yard. These communities are likely

security police about its purpose. Many of the FFM's interviewees related that they were subject to far more serious police surveillance and harassment. Several even noted that they would almost certainly be interviewed by police specifically about their meetings with the FFM, and asked that their names not be mentioned. Therefore it has been deemed necessary to omit the names of many villages and interviewees from this report in order to protect the individuals and communities concerned. This information is, however, available from the authors.

The FFM took full account of the information and data contained in the ESIA studies produced by project sponsors for the AGT project and specifically the BTC project EIA.

### **Box: Turkey's Administrative System**

Turkey has four tiers of government: national, provincial, district and settlement levels. Power in Turkey is very centralised in the national government, which appoints the major positions in the administrations of the lower tiers.

Turkey is divided into 81 provinces. The administration of each province is headed by a **governor**, appointed by the Ministry of Interior of the Republic of Turkey.

Each province is sub-divided into districts. A district may be either a borough of a city, or a town together with its surrounding villages. A district is headed administratively by a **sub-governor**, who is also appointed by the Ministry of Interior. Also within the district administration is the **mayor**, who is elected. Mayors have limited powers and jurisdiction within the administration; in some instances, mayors will not have a budget nor any control over regional budgetary issues. Mayors are considered to be the "real representatives of the people" and serve as the administration's public face. In large cities, there is also a **major city mayor** as well as mayors for individual boroughs.

Each settlement (a village, or a community area within a town or within a city borough) is headed by a **muhtar**, who is elected but has no budget (other than his salary) and limited powers. His or her main roles are liaison between the settlement and external actors, resolution of disputes within the settlement and provision of personal documents to members of the community.

The BTC pipeline would cross 10 provinces (Ardahan, Kars, Erzurum, Erzincan, Gümü<sup>o</sup>hane, Sivas, Kayseri, Kahramanmara<sup>o</sup>, Osmaniye and Adana) and 22 districts, a total of 1076 kilometres.

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*to experience and be affected by the activities of construction, operation and decommissioning of the pipeline." Executive Summary, BTC project EIA, Turkey, Draft for Disclosure.*

## 2. Findings

### 2.1 The implications of the Host Government Agreement

The BTC project is to be designed, built and operated in a manner intended to conform with a number of legislative measures, the main categories of which are listed hierarchically below:

1. The Constitution of the Republic of Turkey;
2. The Inter-Government Agreement (IGA);
3. The Host Government Agreement (HGA);
4. Turkish domestic law not superseded by the IGA or HGA;
5. Other regulatory requirements such as Governmental Decrees, Regulations, Communiqués, Ministerial Orders, Instructions, to the extent that they do not conflict with the IGA or HGA.

Upon publication in Turkey's Official Gazette on 10<sup>th</sup> September 2000 (No 24166),<sup>8</sup> the IGA and HGA for Turkey constitute binding international law and are part of the Turkish legal system; they constitute the controlling domestic law of Turkey governing the BTC project. These Agreements define the capital and resources that each signatory is to provide to the project, the timetable by which it would be developed and the standards that it must meet.

The IGA is an international agreement signed by the three transit countries (the Azerbaijan Republic, Georgia and the Republic of Turkey) and thus is binding only on these three countries. The HGA is defined as a private law contract signed by the Republic of Turkey and the oil companies<sup>9</sup> ("the Consortium").

Under the HGA, the Turkish Government has exempted the consortium seeking to build the pipeline from any obligations under Turkish law, aside from the Constitution.<sup>10</sup> In doing so, the FFM finds, it has effectively abrogated its executive and legislative powers to protect Turkish citizens from potential environmental damage and associated health and safety hazards.

Under the HGA, the Turkish Government has also granted BP the power to refuse to implement any new environmental, social or any other laws affecting the pipeline that Turkey may introduce in the next forty years, the lifetime of the Agreement. In addition, it has undertaken to compensate the BTC consortium if new taxes or health or safety laws adversely affect the finances of the project.

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<sup>8</sup> Environmental Impact Assessment, June 2002, Appendix A3-13.

<sup>9</sup> The State Oil Company of the Azerbaijan Republic, BP Exploration (Caspian Sea) Ltd, Statoil BTC Caspian AS, Ramco Hazar Energy Limited, Turkiye Petrolleri A.O., Unocal BTC Pipeline LTD, Itochu Oil Exploration (Azerbaijan) Inc., Delta Hess (BTC) Limited.

<sup>10</sup> The Agreement has the same legal standing as any domestic law and prevails "over all Turkish law (other than the Constitution)".

Once the project is underway, only BP and its partners have the power to terminate the HGA, except in extraordinary circumstances. The Turkish Government is thus not in a position to regulate or ensure *de facto* oversight of the operation or construction of the pipeline. This inevitably limits the ability of the World Bank to place compliance conditions on the project.

Even a future Turkish Government committed to human rights would not have the ability to invoke its executive powers to prevent or remedy a human rights violation. The HGA also appears to deny Turkish citizens a right to an independent tribunal in the event of disputes or claims for damages.

The FFM has attempted to assess the project's compliance with international private and public laws. It would appear that the HGA places the project in potential violation of the European Convention on Human Rights, European Union laws and regulations and other international law instruments. The HGA's most relevant provisions are briefly analysed in this report. The FFM would like to indicate that this is a preliminary analysis pending the reading of the IGA and other instruments to which the FFM has not obtained access to date.

**The FFM is deeply concerned about the human rights, environmental and developmental implications of the HGA and recommends that these are analysed in detail – and publicly discussed – before any public funding is given for the project.**

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## **BOX: The Turkish Constitution and the HGA**

The Turkish Constitution does not directly address environmental matters. But Section III of the Turkish Constitution establishes an "environment right" as one of the Social and Economical Rights and Duties. Under Article 56 "*Everyone has the right to live in a healthy and stable environment. It is the duty of the State and the citizens to develop the environment, to protect environmental health and to prevent environmental pollution*". Under this Article, it is one of the functions of the State to develop the environment, to protect environmental health and to prevent environmental pollution.<sup>11</sup>

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The most relevant parts of the HGA are reproduced below in bold, together with commentaries on their implications.

### **PREAMBLE**

**"WHEREAS, in connection therewith, the Intergovernmental Agreement shall become effective as law of the Republic of Turkey and (with respect to the subject**

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<sup>11</sup> Environmental Impact Assessment June 2002, Appendix D-2.1.1



**matter thereof) prevailing over all other Turkish Law (other than the Constitution) and the terms of such agreement shall be the binding obligation of the Republic of Turkey under international law; this Agreement shall gain legal effect following publication in the *Official Gazette* as a part of the appropriate Decree of the Council of Ministers of the Republic of Turkey; the Government Guaranty and the Turnkey Agreement shall become effective and shall be binding and enforceable in accordance with their terms; and any other Project Agreements shall be binding instruments, enforceable in accordance with their respective terms."**

*Implications*

- The Turkish Government has abrogated its executive and legislative powers in that it exempts the consortium from any current or future domestic law that may conflict with the project in any manner during the lifetime of the contract. This includes World Bank standards.
- Accordingly, the Turkish Government has limited its powers to protect Turkish citizens from potential environmental damage and associated health and safety hazards.
- Notwithstanding the fact that the HGA has the same standing in law as any other international agreements binding upon Turkey, no system is therein put in place to resolve potential conflicts of laws.
- Any conflict would have to be resolved in favour of the HGA as otherwise the Turkish Government would be in breach of contract and a claim for damages would be open to the consortium.

**ARTICLE 3 - Agreement, Term and Duration**

*Para 3.2*

**"Notwithstanding the foregoing Section 3.1, this Agreement may be terminated at any time by the MEP [Main Export Pipeline] Participants giving their written notice of termination to the Government and shall be of no further force or effect for any purpose as of the date specified by the MEP Participants in said notice."**

*Para 3.3*

**"If the MEP Participants have not taken steps to commence the construction phase respecting the Facilities (by, for example, giving notice to the Turnkey Contractor under the Turnkey Agreement to commence such activity) by not later than thirty-six (36) months after the Effective Date, then for a period of one hundred twenty (120) days thereafter the Government shall have the right to give written notice to the MEP Participants of the termination of this Agreement."**

*Para 3.4*

**"If the Government concludes that the MEP Participants have committed a material breach of any of their joint and several obligations (as those obligations are**

set forth in Section 11.3), then the Government shall have the right to give written notice to the MEP Participants of such breach in detail sufficient for the MEP Participants to undertake cure. During the pendency of any discussions to attempt resolution and/or any subsequent arbitral proceedings, the MEP Participants may, but shall have no obligation to, undertake to address and/or cure the alleged breach; provided, however, in the event the MEP Participants do not commence efforts to effect cure of a disputed breach, the Government may undertake cure."

#### *Implications*

- The consortium has the power to terminate the contract at any time and thus the Turkish Government would not be able to demand compliance with new regulations or to ensure *de facto* oversight of the operation or construction of the pipeline. Accordingly, the World Bank's ability to place compliance conditions on the project may be severely limited.
- In the case of a material breach of contract by the consortium, the consortium has no obligation to address and/or cure that breach unless and until the time the Government has proven knowing and persistent failure or frustration of contract. The latter requirements would be difficult to satisfy and hence it is unclear who would be liable to remedy the breaches whilst the dispute is being resolved. Such an extended delay would potentially have severe consequences for the environment and those affected.

### **ARTICLE 4 - Grant of Rights**

#### ***Para 4.1(iii)***

**"For purposes of the Project, the State Authorities hereby grant pursuant to the Project Agreements:**

**"to each of the MEP Participants, the exclusive and unrestricted property right (other than ownership) to use, possess, control and construct upon and/or under the Permanent Land, and to restrict or allow (at the MEP Participants' sole discretion) the use, occupation, possession and control of, and construction upon and/or under, the Permanent Land by any other Persons."**

#### *Implication*

- The consortium has the right to restrict the geographical development of villages, without compensation. It would be for the consortium to decide whether it can build structures over the buried pipeline regardless of how severely those structures interfere with the use of the adjacent land (for example, by blocking movements of livestock). In essence, a strip of Turkey a thousand kilometres long is transferred to the jurisdiction of BP and other oil companies.

*Para 4.1(vi)*

[ . . . ] **"to the MEP Participants and their designated Contractors free of charge, readily available water of sufficient quality and quantity located proximate to the Facilities in order to perform hydrostatic and other testing of the Facilities, together with the right to dispose of same at location(s) proximate to said Facilities upon completion of such testing."**

*Implications*

- Local authorities are to have no power to dispose and control the use of available water resources and thus would be unable to afford redress to their constituents in case of droughts, urgent water need or changes in agricultural infrastructure.
- Local populations will be able to demand access to water of sufficient quality and quantity only to the extent that their demands do not conflict with demands of the project as stated by the consortium.
- The polluted water resulting from hydrostatic and other testing may be disposed of at the same location without any determination of responsibility and liability.

**ARTICLE 5 - Government Guarantees**

*Para 5.2(iii)*

**"Without limiting the breadth and scope of the foregoing, the Government hereby commits the State Authorities to perform and guarantee to each of the MEP Participants :**

**"that the State Authorities shall not act or fail to act in any manner that could hinder or delay any Project Activity or otherwise negatively affect the Project or impair any rights granted under any Project Agreement (including any such action or inaction predicated on security, health, environmental or safety considerations that, directly or indirectly, could interrupt, impede or limit the flow of Petroleum in or through the Facilities, except under circumstances in which continued operation of the Facilities without immediate corrective action creates an imminent, material threat to public security, health, safety or the environment that renders it reasonable to take or fail to take, as the case may be, such action and, then, only to the extent and for the period of time necessary to remove that threat)."**

*Implications*

- The preservation of the stability of the project prevails over any other considerations except where there is an imminent, material threat to public security, health and the environment. Thus the project has power over the state in the relevant area.
- It is unclear as to what would be allowed as constituting an "imminent and material threat" and who would decide if such a threat existed.

- Local populations would have no redress where the Government has not acted or has failed to act to protect its interests.

## **ARTICLE 6 - Representations and Warranties**

### *Para 6.2(v)*

**"The Government hereby represents and warrants to each of the MEP Participants that as of the Effective Date the Government and throughout the term of this Agreement:**

**"the State Authorities have not granted and are not obligated to grant to any Person any rights or privileges that are inconsistent or conflict, or that may limit or interfere, with the exercise and enjoyment of the rights and privileges held by any Project Participant under any Project Agreement."**

### *Implication*

- Any natural or legal person adversely affected by the project would not be able to demand from the Turkish Government the grant of any rights or privileges that the consortium or the Government consider as against the project.

## **ARTICLE 7 - Certain Covenants and Consents of the Government**

### *Paras 7.2 (vi) and (xi)*

**"The Government hereby covenants and agrees (on its behalf and acting on behalf of and committing the State Authorities) that throughout the term of this Agreement:**

**"if any domestic or international agreement or treaty; any legislation, promulgation, enactment, decree, accession or allowance; any other form of commitment, policy or pronouncement or permission, has the effect of impairing, conflicting or interfering with the implementation of the Project, or limiting, abridging or adversely affecting the value of the Project or any of the rights, privileges, exemptions, waivers, indemnifications or protections granted or arising under this Agreement or any other Project Agreement it shall be deemed a Change in Law under Article 7.2(xi).**

**"the State Authorities shall take all actions available to them to restore the Economic Equilibrium established under the Project Agreements if and to the extent the Economic Equilibrium is disrupted or negatively affected, directly or indirectly, as a result of any change (whether the change is specific to the Project or of general application) in Turkish Law (including any Turkish Laws regarding Taxes, health, safety and the environment)."**

### *Implications*

- The Turkish Government is bound by the HGA not to act upon, accede or enact any other international or domestic laws of general or specific application to the project that would disrupt or affect its 'Economic Equilibrium'.
- Accordingly, provisions under the European Convention on Human Rights, European environmental or other directives, United Nations Conventions and declarations would not be applicable insofar as these disrupt the 'Economic Equilibrium' as defined by the consortium. This potentially places Turkey in direct contravention of international and European laws by which Turkey is currently bound or would be bound in the future.
- The Turkish Government is thus put in a position not to be able to regulate or ensure *de facto* oversight of the construction and operation of the pipeline.
- These provisions must be seen in conjunction with Article 16 of the HGA, which binds the state to the agreement notwithstanding any change in the constitution, nature or effect of the state authorities. The present Government has thereby bound all subsequent governments to the HGA.

## **ARTICLE 10 - Compensation for Loss or Damage**

### ***Para 10.1***

**"Without prejudice to the right of the MEP Participants to seek full performance by the State Authorities of the State Authorities' obligations under any Project Agreement, the Government shall provide monetary compensation as provided in this Article 10 for any Loss or Damage which is caused by or arises from:**

- (i) any failure of the State Authorities, whether as a result of action or inaction, to fully satisfy or perform all of their obligations under all Project Agreements;**
- (ii) any misrepresentation by the State Authorities in any Project Agreement;**
- (iii) any failure by the State Authorities, whether as a result of action or inaction, to maintain Economic Equilibrium as provided in Section 7.2(xi);**
- (iv) any requisitioning by Governmental forces or authorities of the assets of any Project Participant or any damage or destruction by Governmental forces or authorities of the assets of any Project Participant during any event of war (declared or undeclared), armed conflict or similar event in the Territory; or**
- (v) any act of Expropriation by the State Authorities.**

**The Government shall compensate the MEP Participants for any Loss or Damage set forth in this Article 10 suffered by the MEP Participants and/or another Project Participant."**

### *Implications*

- The only reference to compensation is to compensation to the consortium. Compensation to the state or to third parties is not provided for and thus the consortium is exempt from all liability for loss or damage.
- Local populations have no right to an independent tribunal in the event of disputes or claims for damages.

## **ARTICLE 11 - Limitation of Liability**

### ***Paras 11.2 and 11.4***

**"The MEP Participants shall be liable to a third party (other than the State Authorities and any Project Participant) for Loss or Damage suffered by such third party as a result of the MEP Participants' breach of the standards of conduct set forth in the Project Agreements; provided, however, that the MEP Participants shall have no liability hereunder if and to the extent the Loss or Damage is caused by or arises from any breach of any Project Agreement and/or breach of duty by any State Authority.**

**"Except as set forth in Section 3.4 hereof, it is understood and agreed that under no circumstances whatsoever shall the Government or any State Authorities have the right to seek or declare any cancellation or termination of this or any other Project Agreement as a result of any breach by the MEP Participants or any other Project Participants."**

### *Implication*

- The consortium is to be liable to third parties only in those instances in which the consortium concludes that the loss or damage did not arise as a result of breach of duty by the state. Thus it is for the consortium, as opposed to the affected third party, to determine whether or not is liable and no procedure for such determination is set forth in the HGA.

## **ARTICLE 12 - Security**

### ***Para 12.1***

**"[...] the State Authorities shall ensure the safety and security of the Rights to Land, the Facilities and all Persons within the Territory involved in Project Activities and shall protect the Rights to Land, the Facilities and those Persons from all Loss or Damage resulting from civil war, sabotage, vandalism, blockade,**

**revolution, riot, insurrection, civil disturbance, terrorism, kidnapping, commercial extortion, organised crime or other destructive events."**

*Implication*

- The inclusion of the broad concept 'civil disturbance' could justify serious human rights breaches and limitations at the hands of the state in its attempts to ensure the stability of the project and its compliance with the HGA.

**ARTICLE 16 - Binding Effect**

*Para 16.1(i)*

**"This Agreement and the rights, obligations and other provisions of this Agreement and any other Project Agreement shall bind and apply to the Parties and:**

**"in the case of the State Authorities, shall continue to bind the Government, all State Entities and all Local Authorities notwithstanding any change in the constitution, control, nature or effect of all or any of them and notwithstanding the insolvency, liquidation, reorganisation, merger or other change in the viability, ownership or legal existence of the State Authorities (including the partial or total privatisation of any State Entity)."**

**ARTICLE 18 - Dispute Resolution and Applicable Law**

*Para 18.1*

**"Arbitration pursuant to this Article 18 shall not be subject to the condition of exhaustion of local remedies such as that referred to in Article 26 of the ICSID Convention."**

*Para 18.4*

**"An arbitral tribunal constituted pursuant to this Agreement shall consist of three (3) arbitrators, one of which shall be appointed by the Arbitrating Party or Arbitrating Parties first requesting arbitration, and one of which shall be appointed by the opposing Arbitrating Party or Arbitrating Parties. The third arbitrator, who shall be the presiding arbitrator of the arbitral tribunal, shall be appointed by agreement of the first two arbitrators appointed. [...] The Parties agree that, regardless of the payment scales otherwise prescribed by any institution administering an arbitration under this Agreement, the Arbitrating Parties shall compensate the members of the arbitral tribunal at rates sufficient to secure their service as arbitrators."**

**Para 18.6**

**"[...] The language used during any arbitration proceeding shall be the English language and the English language text of this Agreement will be used and relied upon for all purposes by the arbitral tribunal."**

***Para 18.12***

**"This Article 18 shall be governed in accordance with the substantive law of England, but excluding any rules or principles of English law that will (i) prevent adjudication upon, or accord presumptive validity to, the transactions of sovereign states or (ii) require the application of the laws of any other jurisdiction to govern this Article 18."**

*Implications*

- The HGA supersedes the International Centre for Settlement of Investment Disputes (ICSID) Convention with regard to exhaustion of local remedies.
- The Arbitration Tribunal provided would not be independent of the consortium. Serious concerns about impartiality arise.
- The exclusion of any language other than English places the Turkish Government and any other non-English speaking parties at a disadvantage.
- Only the law of England binds the Tribunal and thus a knowledge of its law is required in order to succeed in any claim.

**APPENDIX 5 - Codes of Practice**

***Paras 5.3 and 5.4***

**"If any regional or intergovernmental authority having jurisdiction enacts or promulgates environmental standards relating to areas where Pipeline Activities occur, the MEP Participants and the Government will confer respecting the possible impact thereof on the Project, but in no event shall the Project be subject to any such standards to the extent they are different from or more stringent than the standards and practices generally prevailing in the international Petroleum pipeline industry for comparable projects.**

**"If any regional or intergovernmental authority having jurisdiction enacts or promulgates social regulations or guidelines applicable to areas where Project Activities occur, the MEP Participants and the Government will confer respecting the possible impact thereof on the Project, but in no event shall the Project be subject to any such standards to the extent they are different from or more stringent than the standards and practices generally prevailing in the international Petroleum pipeline industry for comparable projects."**



### *Implications*

- The status in law of environmental or social impact regulations enacted by local authorities will be dependent on their impact on the project and therefore the consortium has powers to disregard and/or annul such legislation.
- Local populations would not be able to seek redress in accordance with regional legislation to the extent that the latter conflicts with the project.
- The fact that the term ‘comparable projects’ is not defined creates difficulties of interpretation.

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### **BOX: MAI by the Back Door?**

The Host Government Agreement signed by BTC and the Government of Turkey has many of the provisions of the now-discredited Multilateral Agreement on Investments (MAI).

Negotiated in secret within the Organisation for Economic Cooperation and Development — a grouping of the world’s 29 richest countries, including Turkey [1] — the MAI was roundly rejected by national parliaments and the public after its contents were leaked to non-governmental organisations and broadcast on the internet.

Branded a “corporate charter” by its critics, due to concerns over its social and environmental implications, the MAI provoked demonstrations on the streets of several OECD capitals. Opponents ranged from environment and development NGOs to consumer groups, human rights bodies, trade unions, local governments, parliamentarians and church groups. The MAI negotiations, initiated in 1995, finally fell apart in 1998.

The MAI agreement would have empowered private investors to extract compensation from foreign governments for legislation that adversely affected their investments, regardless of the public interest. The HGA’s provisions on Turkey having to compensate BTC if any new social or environmental laws affect the “economic equilibrium” of the BTC pipeline reflect these MAI provisions.

The MAI was also criticised for protecting the interests of the investor without any corresponding attention being paid to establishing legally-binding investor obligations and accountability. Its proposed “investor-state” dispute mechanism, involving secret tribunals, was also seen as biased in favour of companies and lacking in mechanisms which would give effective legal standing for citizens to bring actions. Again, the HGA can be criticised on both counts.

**The Fact-Finding Mission is gravely concerned that BP and the other western oil companies that form the BTC consortium have sought to achieve the MAI's provisions via a bilateral agreement when those provisions have been so decisively rejected at the multilateral level by the public in their home countries.**

[1] The OECD comprises 29 of the world's richest countries, including European countries, the US, Japan, Australia, New Zealand, Finland, Mexico, the Czech Republic, Hungary, Poland, Turkey and Korea. Based in Paris with an annual budget in excess of \$200 million, the OECD calls itself "a club of like-minded countries", which believe in market economics and pluralistic democracy. It provides a forum for discussion on economic and social policy, as well as producing research, policy papers and international treaties and agreements. See [www.oecd.org](http://www.oecd.org).

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## 2.2 Consultation

### The Public Consultation and Disclosure Plan

As the December 2002 date for commencement of construction on the Baku-Tbilisi-Ceyhan pipeline approaches,<sup>12</sup> the BTC Co. and BOTA<sup>a</sup> have been carrying out a Public Consultation and Disclosure Plan (PCDP) which, it is claimed, will conform not only to Turkish regulations and the standards of BP and BOTA<sup>a</sup>, but also to the standards of the World Bank, the World Bank's International Finance Corporation (IFC), the European Bank for Reconstruction and Development (EBRD), the European Commission, and relevant International Conventions.<sup>13</sup> The PCDP is thus in line with the Host Government Agreement (HGA) signed by Turkey, which requires that affected public and non-governmental organizations be informed about the nature of the project, and comment on it, during the development of its environmental impact assessment (EIA).<sup>14</sup>

The BTC/BOTA<sup>a</sup> EIA defines project-affected people as "those living within a 2km band either side of the pipeline corridor, and within 5km of a pump or pressure reduction station, a primary construction camp or pipe yard or the marine terminal facility, who may be affected by the activities of construction, operation and decommissioning"<sup>15</sup> (although "public and non-governmental organizations" can also be "affected").<sup>16</sup> The EIA defines "stakeholders" as "any persons or parties with an interest in the project".<sup>17</sup> According to the PCDP, all of the following parties have been consulted: government authorities, non-governmental organizations (NGOs), media, provincial governors, sub-governors and a large proportion of village heads (*muhtars*) and settlements within the four-kilometre pipeline corridor and in the vicinity of the marine terminal as well as

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<sup>12</sup> BTC project *Environmental Impact Assessment, Baku-Tbilisi-Ceyhan Crude Oil Pipeline: Turkey*, Draft for Disclosure, June 2002, p. 4-6.

<sup>13</sup> *Ibid.*, pp. A1-5, A3-21.

<sup>14</sup> *Ibid.*, A1-5; Host Government Agreement Appendix 5, pp. 4-6.

<sup>15</sup> BTC project EIA, p. A1-1. However, p. A5-11 defines "non-neighbouring" settlements likely to be affected by "secondary impacts" as being up to six kilometres from the marine terminal.

<sup>16</sup> *Ibid.*, p. A1-5.

<sup>17</sup> *Ibid.*, p. A1-1.

coastal settlements along the Gulf of Iskenderun.<sup>18</sup> Further consultations have been promised during the EIA process, construction and operation, involving a Community Relations Team "empowered to stop the works" if necessary.<sup>19</sup>

Three key pre-construction stages of consultation are identified by BTC/BOTA<sup>a</sup>:

- According to BTC/BOTA<sup>a</sup>, information on the project has been distributed "to all stakeholders".<sup>20</sup> Some 2000 EIA information packs are said to have been distributed to concerned authorities down to village level, 40,000 community pamphlets disseminated widely in affected communities, and 15,000 copies of the Non-Technical Summary distributed along the pipeline route.<sup>21</sup> In addition, 500 press packs are said to have been handed out, with workshops and meetings attended by 260 NGOs and 60 press organizations.<sup>22</sup> Meetings with provincial and district officials, as well as *muhtars*, are claimed to have been undertaken in August and September 2001.<sup>23</sup>
- During September and October 2001, according to BTC/BOTA<sup>a</sup>, opportunities were given to all stakeholders "to raise issues of concern relating to the proposed pipeline and marine terminal, as well as discuss potential mitigation measures" to help identify "issues for input into project design".<sup>24</sup> According to BTC/BOTA<sup>a</sup>, community level meetings were arranged and 96 community and 1328 household questionnaires filled out in just under half of the communities in the four kilometre-wide pipeline corridor and all potentially affected communities along the Mediterranean coast.<sup>25</sup> The Non-Technical Summary claims that face-to-face interviews have been carried out with 1855 households along the pipeline route and near the Marine Terminal and an additional 534 interviews with *muhtars* in affected settlements.<sup>26</sup>
- According to BTC/BOTA<sup>a</sup>, a Non-Technical Summary of the EIA, including a revised and updated Public Consultation and Disclosure Plan, was "distributed to all stakeholders"<sup>27</sup> for the purpose of eliciting comments on its contents over a 60-day period prior to its revision and submission to the Turkish Ministry of Environment and the International Finance Corporation of the World Bank.

The final Public Consultation and Disclosure Plan is then to be used as a guide for ongoing public consultation during project construction and operation.

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<sup>18</sup> Ibid., pp. A1-15. See also Project Leaflet (BTC Project EIA, Appendix A3), p. 23. According to the EIA, p. A5-5, out of a total of 248 settlements within the four kilometre-wide corridor, 94 rural settlements and eight district centres were singled out for consultation and 80 rural settlements and eight district centres for survey. The 102 settlements consulted allegedly represented 84 per cent of the corridor population. The 88 settlements surveyed represented 71 per cent of the corridor's people. Further data were to be gathered from other settlements whose land intersected the corridor. Maps list approximately 270 communities consulted either by direct survey or by telephone, some of them outside the corridor (BTC Project EIA, Supplement II Series C: Social Baseline Maps). According to the BTC project EIA, 301 settlements would have at least some lands intersected by the pipeline corridor (p. A5-5).

<sup>19</sup> Project Leaflet (Appendix A3, EIA); EIA Non-Technical Summary, p. 39.

<sup>20</sup> BTC project EIA, pp. A3-22; A2-1; A2-28.

<sup>21</sup> Ibid., A3-22; Non-Technical Summary, p. 13.

<sup>22</sup> Non-Technical Summary, p. 13.

<sup>23</sup> Ibid., A1-16.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., A3-22; A1-19.

<sup>26</sup> BTC project EIA, Non-Technical Summary, p. 13.

<sup>27</sup> BTC project EIA, p. A3-22.

On paper, the BTC/BOTA<sup>a</sup> consultation procedures are more elaborate than one would have expected to find for a project of this kind 10 or 20 years ago, before local and international public pressure forced changes in the guidelines adopted by governmental and intergovernmental agencies. The international Fact-Finding Mission found, moreover, that many communities and groups have indeed been consulted at some level. Nonetheless, the FFM also found numerous inadequacies and failures in both the design and the implementation of the consultation procedures.

### **Inadequacies in Design**

The FFM found many flaws in the design both of PCDP publications and of PCDP procedures.

- The FFM found that the written information disseminated by BTC/BOTA<sup>a</sup> through the PCDP is insufficient for respondents to evolve an informed view on the project. For example, the Non-Technical Summary of the EIA contains little information on the practical implications of the Host Government Agreement (HGA) for Turkish law. It cannot be plausibly argued that this information is not of concern to affected communities, since a number of FFM interviewees along the pipeline route themselves stated that it is. Examples of HGA clauses of concern to affected communities include those affecting termination and damages to third parties, as well as Appendix 5, 3.3 and 4.2, which state that the BTC project cannot be subject to any environmental or social standards promulgated by regional or intergovernmental authority "to the extent they are different from or more stringent than the standards and practices generally prevailing in the international Petroleum pipeline industry for comparable projects". In addition, the FFM found that even villagers who had already met directly with BTC/BOTA<sup>a</sup> representatives and had been surveyed at the household level felt themselves lacking in necessary information about, for example, the comparative experience of Georgia and Azerbaijan in employment, the previous record of oil pipelines in various countries with respect to spills and other accidents, and so forth (*see* "Inadequacies in Implementation" below).
- When BP/BOTA<sup>a</sup> used questionnaires in surveying *muhtars* and households, they did not provide information adequate to secure an informed response. The brief paragraph prefacing each questionnaire states little more than that an oil pipeline is planned near or in the settlement being surveyed. Moreover, most affected people interviewed by the FFM had been given extremely little, if any, information about the corporate members of the BTC consortium.
- Some of the latter items in the questionnaires are so vaguely phrased as to discourage a detailed or nuanced response. ("In general would you support the presence of a pipeline in your area?").<sup>28</sup>

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<sup>28</sup> See, e.g., BTC project EIA, Appendix A4, p. 24. Other questions include: "If yes, why would you support the presence of a pipeline?" and "What do you perceive to be the main benefits that may result from construction and operation of the pipeline?".

- The questionnaires — of which there are nine types<sup>29</sup> — are also skewed, and limiting with respect to the responses they invite, in both structure and vocabulary. Respondents are asked if they would support a pipeline, and if so, why, but are not asked if they would object to a pipeline. They are queried about possible "benefits" of the pipeline, but not about possible "losses" or "costs". Instead, they are merely asked to mention any "concerns" they might have, or possible "disruptions" foreseen from the presence of construction workers in the locality. In the Marine Terminal Household Questionnaire, no spaces exist for interviewers to record concerns expressed about the effects of BTC works on fisheries. The Marine Terminal Settlement Questionnaire does not request any views on the pipeline at all.
- The wording of the questionnaires further discourages frank expression of concerns about the pipeline's impact. The prefatory paragraph for each questionnaire emphasizes not only that the pipeline is a project of the Turkish Government but also (with the sole exception of the Marine Terminal Settlement Questionnaire) that the pipeline is "of high economic and strategic importance for Turkey".<sup>30</sup> Given the prevailing political culture in Turkey, this phrase sends a strong signal at the outset that expression of concerns about the pipeline could be dangerous. Such signals are reinforced by official behaviour. For example, while the FFM was interviewing a group of fisherfolk along the Gulf of Iskenderun, police officers appeared, demanding to know the purpose of the visit and requesting a list of the names of the FFM team. These limitations on free expression of concern are, of course, as well understood by ordinary citizens along the pipeline route as they are unacknowledged in any BTC/BOTA<sup>a</sup> consultation documents. As one village interviewee put it: "*What can we do? Whatever the state does is fine with us.*"
- The collection of opinions from the public on the draft EIA during the 60-day comment period is hampered by the fact that the full draft EIA is, on BTC/BOTA<sup>a</sup>'s own account, available only in the governancies in the larger cities and sub-governancies within the four-kilometre corridor and in university and national libraries. Nor has the Non-Technical Summary of the EIA, the FFM found, been widely distributed among villagers in the pipeline corridor. Rather, it has, at most, been sent to *muhtars*. Whether it has been shared further has depended on the efficiency or commitment to openness of individual *muhtars* (qualities which the FFM found to be very variable among the *muhtars* it met). In addition, the feedback form provided by BTC/BOTA<sup>a</sup> to some villagers to collect opinions on the draft EIA contains only three-quarters of a page for comments and requires respondents to provide contact details. The form assures respondents that these will be kept

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<sup>29</sup> There are different questionnaires for communities affected by the pipeline, by the Marine Terminal, by pump stations, and by construction camps. For each of these community types there are, in addition, two questionnaire types: one for surveys of the *muhtar* alone, and one for surveying various households in the community. In addition, there is a separate form for surveys conducted with *muhtars* by telephone. There are thus the following questionnaire types: Pipeline Household, Pipeline Settlement, Marine Terminal Household, Marine Terminal Settlement, Pump Station Household, Pump Station Settlement, Construction Camp Household, Construction Camp Settlement, and Telephone Settlement. See BTC project EIA, Appendix A4.

<sup>30</sup> Appendix A4 (Example Questionnaires): *i.a.*, Marine Terminal Household Questionnaire, p. 45; Construction Camp Household Questionnaire, pp. 32, 51; Pump Station Household Questionnaire, p. 64.

confidential, but this is unlikely to be believed.<sup>31</sup> Most affected people along the pipeline route interviewed by the FFM closely identify the pipeline project with the Turkish state; they have good reason to assume any information collected by consortium consultants will become available to state bureaucracies, including the security apparatus.

- The recent larger community- or district-level meetings which some of the FFM's interviewees reported as having been arranged by BTC/BOTA<sup>a</sup> have apparently been dominated by a lecture format which, to judge from interviewees' own reports, has left insufficient space for discussion of the concerns of those attending. For example, according to one group of informants, a meeting held on 26 July 2002 at Osmaniye featured 20-minute speeches from three men from BOTA<sup>a</sup> and three from the pipeline consortium about aspects of the EIA, a total of two hours of lectures. Even in the two villages surveyed by the FFM in which there had been the most extensive contact with BOTA<sup>a</sup> — through household surveys and repeated meetings with the *muhtar* and others — villagers testified that they had many unanswered questions about the pipeline relating to expropriation, compensation, tree-planting or construction over the pipeline, safety, employment and payments to the state (*see* "Inadequacies in Implementation", below).
- All of the larger community meetings that were described to the FFM included presentations both by BOTA<sup>a</sup> staff and by "university professors". This gave the presentations credibility, and several interviewees said they believed what was said (for example, that no safety or environmental risks would result from the pipeline) because it came from professors, who are "experts". The *muhtar* of one village said of one such professor: "We trust his expert opinion. We believe that such an eminent professor would not have got it wrong. We haven't heard of anyone in a similar position criticising the project." Villager testimony suggested, however, that these professors were in fact from the Black Sea and Central Asian Countries Research Centre, at the Middle East Technical University, Ankara – which is working under contract to BTC and BOTA<sup>a</sup>. In no case were the communities aware of a possible financial link between the professors and the pipeline companies. This raises several concerns: (i) that academics were being used by BOTA<sup>a</sup> and BTC companies to give their presentations an undeserved air of independence; (ii) that the expertise implicitly claimed by some of the academics may also have been undeserved: the social scientists contracted by BTC/BOTA<sup>a</sup> and their contractor, Environmental Resource Management (ERM), to carry out the social impact assessment for Turkey would not have been qualified to speak on environmental, safety and technical issues; and (iii) that the academics gave assurances that were clearly untrue: that there would be *no* risks.
- The Community Liaison Programme which is scheduled to operate during pipeline construction is designed in a way which would make its findings highly vulnerable to being overruled by purely engineering concerns. According to the project EIA, it is

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<sup>31</sup> BTC/BOTA<sup>a</sup>/BP Feedback Form, "The Contribution of the Public to the Draft EIA of the the BTC Crude Oil Pipeline" (in Turkish).

the construction contractor who "will have day-to-day responsibility for community liaison and will be the primary point of contact with affected settlements."<sup>32</sup> The idea that a firm whose interests lie in successful technical completion of an engineering project can be sufficiently receptive to views which may conflict with its plans to the extent of being willing to vote to "stop the works" if a Social Management and Monitoring Plan has been deviated from<sup>33</sup> would be implausible in any national context.

- The BTC/BOTA<sup>a</sup> consultation package fails to acknowledge anywhere the crucial issue of the status and concerns of Turkey's minority groups. Nowhere, for instance, do the documents even mention the Kurdish minority group which makes up more than one-fifth of the country's population, nor the state of emergency so closely connected to ethnic conflict in Turkey.<sup>34</sup> Nor do the documents mention the Alewi people, a particularly important minority in Sivas province, through which the pipeline passes, and their relationships with other groups. Yet minority concerns are an unavoidable factor in relations and consultation between pipeline builders and operators and affected settlements. As the International Finance Corporation (IFC) of the World Bank notes, it is necessary for project sponsors to put in place measures which ensure that vulnerable or minority groups are consulted,<sup>35</sup> and Appendix C9 of the BTC project EIA claims that World Bank/IFC guidelines on resettlement and compensation would be followed.<sup>36</sup> If minority groups are not even identified and differentiated, and their existence clearly acknowledged, it is difficult to see how the proper measures can be crafted.
- Bearing in mind the Turkish state's long-standing intolerance of domestic dissent, broader questions may be asked about the viability of the consultation process in general, particularly in affected areas with a predominantly Kurdish population. No written Kurdish documents on the proposals are available, for example, since broadcasting or publishing in Kurdish was banned until August 2002. Those interviewed by foreign delegations are fully aware that dissenters are likely to be visited by police or village guards (korucular), and so may modify their responses accordingly. Turkey's tendency towards intimidation of protesters is exemplified by the more than 34 European Court cases in which it has been found guilty of violations of Article 34 of the European Convention on Human Rights, the right to make individual court applications. The FFM is disturbed to note that BP and BOTAS's rubric makes no mention, and therefore presumably takes no account, of these barriers to effective and legitimate consultation (see Box: Background to Repression).

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<sup>32</sup> BTC project EIA, p. A1-24.

<sup>33</sup> Ibid., p. A1-26.

<sup>34</sup> See David McDowall, *A Modern History of the Kurds*, London, I.B., Taurus, 2000.

<sup>35</sup> Ibid., p. A1-6.

<sup>36</sup> Ibid, p. C9-3.

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## **BOX: Background to Repression**

Consultation requires freedom of expression: a climate of repression makes that difficult. In Turkey, challenging state-sponsored projects is often interpreted as a challenge to the state itself, and invites repression.

This political climate has a long history. Born in 1923 in the aftermath of the humiliating decay of the Ottoman Empire, modern Turkey has been shaped by a nationalistic ideology stressing the “indivisible integrity” of the state since the days of its first leader Mustafa Kemal Atatürk, who is still officially lionised in the country.<sup>37</sup> The idea of Turkey as a unitary, secular republic has percolated deep into official and unofficial consciousness.

Inevitably, this has meant attempts to exclude potentially ‘separatist’ elements from the Turkish body politic. Turkey is the most profoundly secular Muslim nation in the world and avowedly Islamic political parties are frequently dissolved and their leaders impeded from political participation. The string of cases in which the European Court of Human Rights has censured Turkey for curtailing the right to free expression testify that the same applies to radical or pro-minority parties.<sup>38</sup> Recently, the Court also censured Turkey for violating the right to free elections by dissolving the pro-Kurdish Democracy Party (DEP) and imprisoning some of its MPs for up to fifteen years.

Very recently, Turkey has undertaken legal reforms<sup>39</sup> opening up political space for minority groups, partly in order to smooth the way for membership in the European Union. For instance, citizens now have, on paper, more freedom to broadcast in and study the Kurdish language and to criticise the state. Yet the new laws are sufficiently hedged with warnings not to “contradict the fundamental principles of the Turkish Republic enshrined in the Constitution” to provide plenty of latitude for the state, should it so please, to continue its policy of forced cultural homogeneity.

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## **Inadequacies in Implementation**

If BTC/BOTA<sup>a</sup> consultation procedures have major limitations in design, the FFM team found even more serious failures in their implementation.

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<sup>37</sup> In the first 35 Articles of the Turkish Constitution, explicit reference to national integrity or indivisibility is made in Articles 2, 5, 13, 14, 28, 30, 33 and 34, and the same principle is suggested or implied in a dozen more. The Constitution refers to Atatürk as “the founder of the Republic of Turkey, its immortal leader and unrivalled hero”, and sentences “anyone who publicly insults or demeans the memory of Atatürk...to a term of imprisonment of between one and three years.” Prosecutions under this rubric are carried out with surprising regularity.

<sup>38</sup> See for example *The United Communist Party v. Turkey*; *The Socialist Party et al v. Turkey*; *The Freedom and Democracy Party (ÖZDEP) v. Turkey*; *The Welfare (Refah) Party v. Turkey*; *Yazar, Karatas, Aksoy and the People’s Labour Party (HEP) v. Turkey*.

<sup>39</sup> Harmonisation Law, August 3, 2002, unofficial translation, Office of the Prime Minister, Directorate General of Press and Information, available from [www.bvegm.gov.tr/on-sayfa/uyum/uyum-ing-3.htm](http://www.bvegm.gov.tr/on-sayfa/uyum/uyum-ing-3.htm)



### Rural and fishing communities.

The FFM team visited seven rural communities along the pipeline route in Osmaniye, Kahramanmaraş, Sivas, Erzincan and Erzurum provinces, as well as a fishing community on the Gulf of Iskenderun southwest of the proposed BOTA<sup>a</sup> jetty in Adana province. All of the rural communities were within the four-kilometre-wide pipeline corridor, all would have their lands bisected by the pipeline, and all are listed in the BTC/BOTA<sup>a</sup> EIA as having been consulted about the pipeline either in person or by telephone. The fishing community visited also falls within the category of communities asserted by BOTA<sup>a</sup>/BTC to have been consulted; the EIA claims 100 per cent consultation of at least the *muhtars* of affected fishing communities "in the broad project area" along the Gulf of Iskenderun.<sup>40</sup> The FFM found, however, that three of the rural communities had not been consulted in any way, nor had the fishing community. In other words, ***only half***<sup>41</sup> **of those rural settlements visited by the FFM – all of them both directly affected by the pipeline and on the BTC/BOTA<sup>a</sup> list as having been consulted – have, in fact, been consulted.** Ironically, the FFM team in several cases had to take it upon itself to distribute BTC/BOTA<sup>a</sup>'s own community relations material to affected communities who had not received it.

- A group of fisherfolk based near the pipeline terminus along the coast of the Gulf of Iskenderun and dependent on an area of the sea which included the site of the proposed BTC jetty testified that they had never been consulted about the project (flying in the face of the EIA's claims of comprehensive consultation in this area which are noted above). Yet they would lose some of their fishing area, and be impacted both by persistent pollution and by the risk of a major spill. The fisherfolk interviewed, who belonged to a community in which some 180 families are completely dependent for their livelihoods on fishing, had heard about the pipeline once or twice but had not been informed of the exact location of the terminus, nor did they know whether they had a right to compensation for disrupted fisheries.<sup>42</sup>
- Villagers interviewed in a community within about one kilometre of the pipeline route in Osmaniye province, listed in the EIA's Supplement II Series C: Social Baseline Maps as having been consulted by telephone, and included in the EIA's list of consulted "stakeholders" in Appendix A2, stated that they had never been approached about the pipeline, nor did they know anyone who had. "*They never consulted us.*" The interviewees had learned about the pipeline only when technicians arrived on private village land two or three months previously, using modern tools and painting white signs. When queried by the villagers, the technicians revealed little, saying only that construction would start this year, that there would be expropriation and compensation and that the pipeline would belong to the state. The

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<sup>40</sup> According to p. A5-11 and 12 of the BTC project EIA, all of the following were consulted: "local fishermen, fishing associations and local fishermen in Yumurtalik, Incirli and Golovasi", residents of "Karatepe, Incirli and Golovasi, including secondary homeowners in Sahil Sitesi" and fisherfolk in Sahil Sitesi and Golovasi; "non-local fishermen"; "tradesmen" and authorities from Yumurtalik and Ceyhan; and the settlements of Sogozu, Karayilan, Hamzali, Haylazli and Devecikupađi.

<sup>41</sup> The FFM's sample is, of course, small, and the FFM does not suggest that it is representative of the whole route. However, for a random sample to find so many communities wrongly reported as having been consulted is very worrying.

<sup>42</sup> The possibility of compensation for lost fisheries is mentioned in the Non-Technical Summary, p. 10.

interviewees had no knowledge of possible risks and were unaware that they would not be allowed to grow trees over the pipeline or build over it for 40 years.

- In a pipeline corridor village in Sivas visited by the FFM team, the *muhtar* was in possession of a project pamphlet and aware of the impending pipeline project. However, although the community appears on the consulted stakeholder and Appendix B6 lists and is mapped as having been surveyed by telephone, this survey had apparently not been carried out. The *muhtar* related that BOTA<sup>a</sup> had tried to reach him by telephone to invite him to a recent meeting in a nearby town, but that he had been working in the fields at the time. The *muhtar* was unsure of when construction would start and was skeptical of BTC/BOTA<sup>a</sup> claims. He referred to the community's previous experience with the East Anatolian Natural Gas Pipeline: *"They are telling lies. They say the environment would be lovely. It was lovely before the gas pipeline, but it isn't now."*
- Hacibayram village in Erzincan province, marked on Map 20 C of the EIA's Supplement II Series C: Social Baseline Maps as having been consulted by telephone, had been deserted for many years, its houses having fallen into ruins. There were neither telephones nor anyone to answer them. Some former residents still come to the village area, but from the FFM's interviews, it was clear that none of them had been consulted. There had been rumours of plans for the pipeline, but never from official sources.
- An interviewee in a rural community in Erzurum identified as having been surveyed by telephone and appearing in Appendix B6 of the EIA as a surveyed settlement said that a BOTA<sup>a</sup> representative had visited about a month previously to present information about the pipeline. He had talked privately with the *muhtar*, but the interviewee said he did not know what opinions the *muhtar* had expressed.

The FFM found that even in two rural Kahramanmara<sup>o</sup> province communities, many of whose households had been surveyed as part of the PCDP and whose leaders had been in frequent contact with BOTA<sup>a</sup>,<sup>43</sup> villagers remained full of questions that had not been answered. These questions covered a range of topics from BP and its record, expropriation, compensation, safety, employment, the benefits accruing to Turkey through the HGA, the comparative experience of Georgia and Azerbaijan in employment, and the accident record of oil pipelines elsewhere. One villager whose house is situated 50 metres from the pipeline route, although told by the FFM team that accidents were statistically unlikely, asked the FFM whether it was possible to refuse expropriation. Many villagers did not know whether they could be compensated for expropriation of communal lands or for fruit and poplar trees lost to pipeline construction. Nor had

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<sup>43</sup> One of these communities was a roadside settlement whose lands are crossed by the pipeline and whose residents confirmed that they had been consulted, that household surveys had been undertaken, and that three to four months previously, the *muhtar* had traveled to Osmaniye to attend a large public meeting divided by gender, featuring experts from BOTA<sup>a</sup> who assured the crowd that the pipeline would benefit Turkey and be harmless. The other settlement was a mountain community 50 to 60 of whose inhabitants would see their land bisected by the pipeline, which would run parallel to and then under a stream as well as cross irrigation channels and a water distribution pipe. Here, residents told the FFM that they had met at length with BOTA<sup>a</sup> and consortium members and consultants several times.

BTC/BOTA<sup>a</sup> explained the mechanisms by which the pipeline would be maintained or disputes settled.



***Hacibayram: the BTC/BOTA<sup>a</sup> EIA claims to have consulted this village by telephone. There were neither telephones nor anyone to answer them.***

Among the interviewed communities who had been consulted, in addition, the FFM team was unable to find any that had been consulted according to the PCDP timetable. Most reported contact with BTC/BOTA<sup>a</sup> much later than scheduled.

The FFM also found that BTC/BOTA<sup>a</sup>'s attempt to identify "customary landholdings through consultations with owners, *muhtars*, members of councils of elders"<sup>44</sup> had been unsuccessful in several villages. In the Sivas village, for instance, the *muhtar* testified that the EIA's claim that village lands are 50 per cent communal was mistaken. "*People who have left the village still own fields here but we don't use them. The companies must have seen them and decided they were commons.*"

Finally, evidence collected during the FFM's interviews with affected rural communities suggests that in those cases in which consultation took place, BTC/BOTA<sup>a</sup> has not undertaken adjustments to the project in the way described in the PCDP.<sup>45</sup> The most

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<sup>44</sup> Project Leaflet, p.11.

<sup>45</sup> E.g., in BTC Project EIA, pp. A1-1, 17, 20, 23.

outstanding example relates to the lack of fit between the BTC/BOTA<sup>a</sup> programme of compensation for expropriated private lands, which relies on formal land title, and the realities of land tenure in most of the areas surveyed by the FFM, according to which, to avoid legal complications and inheritance tax, ownership is typically not formally transferred to the younger generation but divided up informally (*see* 2.3, "Land Expropriation and Compensation", below). One after another affected community — as well as a town mayor in Kahramanmara<sup>o</sup> province — observed to the FFM team that the BTC/BOTA<sup>a</sup> compensation scheme meant that the vast majority of payments would never reach the *de facto* owners of expropriated land, but would instead be deposited in the bank accounts of the deceased registered titleholders who were their ancestors. In such cases, recourse to the courts would be impracticable due to legal costs. Yet BTC/BOTA<sup>a</sup> had given little sign of negotiating other than on occasion to moot the possibility of appointing special local land commissions in which villagers said they could place little hope. Several villagers interviewed by the FFM team were also critical of the BTC/BOTA<sup>a</sup> strategy of attempting to negotiate with affected people one by one rather than as a community. One villager summed up his resentment as follows: *"Companies know we are repressed and they invest because oil and gas is worth only 1 pfennig at the start of the pipeline and \$1 at the end. Only BP and BOTA<sup>a</sup> get this money. BP is feeding BOTA<sup>a</sup>, but no-one is feeding us, although it's our fields that are destroyed."*

#### **Other concerned parties**

The FFM team also visited a number of other concerned individuals and groups who were not explicitly identified by BTC/BOTA<sup>a</sup> as having been consulted, but who belong to the "stakeholder" groups identified on p. A1-16 of the EIA. This group included three journalists, two mayors, representatives of two political parties, two lawyers, and an NGO. In addition, the FFM contacted by telephone four *muhtars* or village heads from settlements in Ceyhan district of Adana province which lie outside the four-kilometre-wide pipeline corridor. These village heads, strictly speaking, do not fall into the EIA's "stakeholder" categories but, in their own estimation and that of the FFM, have, like the other individuals above, an interest in information about the pipeline. The FFM found that of all of these concerned parties, **fewer than one-quarter<sup>46</sup> of its sample of concerned parties had been officially informed about the project.**

- Three prominent journalists in Ceyhan district, Adana province (through which the pipeline runs) were unaware even of the pipeline's route through Erzincan and Sivas, believing instead that it would follow the route of a previous pipeline through Ufur, Shamufer, and Mardin. *"We only learned the correct route today – from you."* They also were concerned that they had not been informed of the existence of the HGA. While they were aware of a BTC/BOTA<sup>a</sup> meeting on the pipeline which had been held in Osmaniye on 26 July 2002, and which was not open to the general public, they had not attended. Interestingly, the venue for the interview was Devecikuşađı, which is listed on p. A5-11 of the BTC project EIA as itself a consulted community.

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<sup>46</sup> As above, the FFM's sample is, of course, a small one, and it is not suggested that it is representative of the whole route. However, for a random sample to find so many parties wrongly reported as having been consulted is of great concern.

- Representatives of political parties in Ceyhan district town in Adana province and in Sivas city had also not been officially informed about the pipeline. *"There has been no discussion about the pipeline,"* said the Adana political party representatives, noting that with another project slated for their province, a coal-fired power plant, *"people at least had a chance to have a voice"*.
- The mayor of Sivas city was, by his own admission, uninformed about the pipeline and unaware even of its exact route through his province, although he had heard about a recent meeting about the project. He appeared to be under the inaccurate impression that the oil in the pipeline would at some point be directly available for the use of Sivas residents, although he did correctly downplay the possibility of the pipeline construction's providing many local jobs. As the mayor of a major city, he is one of the most senior municipal officials on the pipeline route: the FFM was thus surprised and concerned that even he had not been properly informed about the pipeline.
- Representatives of a Sivas NGO had heard even less about the pipeline than the mayor of their city and were particularly surprised to learn that Turkey had signed an HGA giving sweeping legal powers to BP and other companies in the consortium. They had to ask the FFM for BTC/BOTA's own EIA Non-Technical Summary, community information pack and other documents.
- Four *muhtars* in Ceyhan district centre west of the pipeline route whom the FFM reached by telephone had neither been consulted nor heard of any consultations taking place.

## **Project Obligations and Implications for International Support**

The inadequacies and failures of consultation associated with the proposed BTC pipeline have serious implications for the support the project expects to receive from international financial institutions. The findings of the FFM indicate that the project has not satisfied either the conditions of the HGA<sup>47</sup> nor the standards of the World Bank, including those of the International Finance Corporation (IFC), or the European Bank for Reconstruction and Development (EBRD).

### ***World Bank Safeguard Policies and Consultation***

Of the World Bank's Safeguard Policies, four lay down requirements that are relevant to consultation:

- **Operational Policy 4.01 Environmental Assessment**

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<sup>47</sup> The HGA requires that "affected public and non-governmental organizations shall be notified about the nature of the proposed project during the development of the EIA" and that following its completion the "public shall be provided with information on the environmental aspects of the project" (BTC project EIA, p. A1-5).

*World Bank standards require the project developer to consult with project-affected people and local non-governmental organisations (NGOs) on the project's environmental impacts and to take account of their views. A minimum of two rounds of consultation is required: first, prior to finalising the EIA's terms of reference; and second, once a draft of the EIA is prepared.<sup>48</sup> The borrower should initiate such consultations as early as possible.*

The FFM deems that these requirements have been breached. Specifically, the FFM found that no consultation on the project's environmental impacts had taken place with the affected communities it visited prior to setting the EIA's terms of reference. In addition, as documented above, such consultation as has taken place on environmental impacts has generally been top-down and inadequate — and, in some cases, virtual. **The FFM therefore finds the project in violation of the Bank's guidelines on consultation as required under OP 4.01 on Environmental Assessment.**

- **Operational Policy 4.04 Natural Habitats**

*World Bank standards require the project developer "to take into account the views, roles and rights of groups (including local non-governmental organisations and local communities) affected by projects involving natural habitats." They require that these people are involved "in planning, designing, implementing, monitoring and evaluating the project. Involvement may include identifying appropriate conservation measures, managing protected areas and other natural habitats, and monitoring and evaluating specific projects". The World Bank also encourages governments "to provide such people with appropriate information and incentives to protect natural habitats".<sup>49</sup>*

The FFM learned that no consultation had taken place with the affected communities it visited on the impacts of the project on natural habitats. The local communities affected by the project have not been involved at all in the planning and designing of the project and there is no evidence that BOTA<sup>a</sup> intends to involve them in implementation, monitoring and evaluation. **The FFM therefore finds the project in violation of the Bank's guidelines on consultation as required under OP 4.04 on Natural Habitats.**

- **Operational Policy 4.12 Involuntary Resettlement**

*A key requirement of World Bank guidelines is that project-affected people "should be meaningfully consulted and have opportunities to participate in planning and implementing resettlement programmes".<sup>50</sup> The guidelines also require that affected communities are involved at "an early stage" in the project and that the project's design "takes their views into account". Indeed, consultation — and the active*

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<sup>48</sup> OP 4.01, para 15.

<sup>49</sup> OP 4.04, para 10.

<sup>50</sup> OP 4.12, paras 2b and 19.

*participation*<sup>51</sup> of those — is considered fundamental to the successful outcome of projects involving disruption of livelihoods.

As documented in the previous sections, there is no evidence that affected communities have been "meaningfully consulted". Nor have they been given opportunities to negotiate the terms of the compensation package required for projects which involve "economic displacement" due to "the loss of assets or access to assets". **The FFM therefore finds the project in violation of the Bank's guidelines on consultation as required under OP 4.12 Involuntary Resettlement.**

- **Operational Directive 4.20 Indigenous Peoples**

*As discussed in Section 2.4, the Bank's Operational Directive on Indigenous Peoples applies to ethnic minorities. As such, it is applicable to the project which affects a number of discrete ethnic communities. The Directive requires the "the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project."*

The FFM's discussions with ethnic minority communities affected by the project revealed that no such development plan has been drawn up. **The FFM therefore finds the project in violation of the Bank's guidelines on consultation as required under OD 4.12 on Indigenous Peoples.**

The FFM also finds that the project also fails to satisfy the guidelines contained in the IFC's manual *Doing Better Business through Effective Public Consultation and Disclosure*, according to which a project sponsor is to ensure that the process of public consultation is accessible to all potentially affected parties, from national to local level.<sup>52</sup>

The FFM did not have an opportunity to assess the land acquisition procedures against the guidelines adopted by the European Bank for Reconstruction and Development but notes that they are, in many respects, similar to those of the World Bank.

## **2.3 Land expropriation and compensation**

### ***World Bank Requirements***

According to the BTC consortium, some 3128 hectares of land<sup>53</sup> would have to be acquired, either temporarily or permanently, for the construction of the pipeline, the

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<sup>51</sup> The Bank defines participation as follows: "Participation is a voluntary process in which people including marginal groups (poor women, indigenous, ethnic minorities) come together with project authorities to share, negotiate and control the decision-making process in project design and management." See: World Bank, *Environmental Assessment Sourcebook Update, Public Involvement in Environmental Assessment: Requirements, Opportunities and Issues*, October 1993, p.1.

<sup>52</sup> BTC project EIA, A1-6.

<sup>53</sup> According to the BTC project Environmental Impact Assessment, p.C9-3: "The land acquisition process would be carried out in two phases: (i) temporary use of about 2,168 hectares would be acquired for pipeline construction. The pipeline would be buried and the ground surface above restored to its original use, subject to certain conditions (eg. deep ploughing, any construction of buildings, tree

pump and pressure stations, construction camps and access roads.<sup>54</sup> Although the BTC consortium claims that this would not result in any person having to be physically resettled, it acknowledges that it would cause “the potential for economic displacement for a relatively large number of people.”<sup>55</sup>

Hence any public money received by the consortium for the project from the World Bank would be conditional on the project's meeting the World Bank's standards on Involuntary Resettlement.<sup>56</sup> These standards cover all World Bank-financed projects involving “economic displacement” due to “the loss of assets or access to assets”; the “loss of income sources or means of livelihood, whether or not the persons must move to another location”; and the “loss of access or restriction of access to communal resources and services.”<sup>57</sup>

The Bank requires that those affected by any project involving such “economic displacement” should be:

- “informed about their options and rights . . .”<sup>58</sup>
- “provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project”<sup>59</sup>
- “provided with development assistance in addition to compensation measures.”<sup>60</sup>

In addition, the Bank further requires that “displacement or restriction of access does not occur before necessary measures for resettlement are in place;”<sup>61</sup> the “taking of land and related assets may take place only after compensation has been paid”;<sup>62</sup> and that procedures are developed that provide for “meaningful consultations with affected persons and communities, local authorities, and, as appropriate, non-governmental organisations (NGOs) and (which) specifies grievance mechanisms.”<sup>63</sup>

**The FFM notes with concern that although the EIA states that "the project has adopted several measures . . . to ensure that there is a full understanding of World Bank/IFC guidelines", all those interviewed were unaware of the Bank's compensation provisions.**

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planting), (ii) acquisition of about 856 hectares for the pipeline and 105 hectares which would be needed permanently for the project's Above Ground Installations (AGIs) and permanent access roads. The total amount that would be used for the pipeline is 3128 hectares.”

<sup>54</sup> BTC project EIA, Turkey, Draft for Disclosure, Overview of Land Acquisition Process (OLAP),p. C9-2.

<sup>55</sup> Ibid.,p. C9-4.

<sup>56</sup> The BTC cites the Bank's Operational Directive 4.30 Involuntary Resettlement. The FFM notes that this Operational Directive was replaced in December 2001 by Operational Policy 4.12 and Band Policy 4.12. No explanation is given by the BTC for not complying with the more recent standards.

<sup>57</sup> World Bank, Involuntary Resettlement, OP 4.12 para 3a, December 2001.

<sup>58</sup> World Bank, Involuntary Resettlement, OP 4.12 para 3a, December 2001, para 6a.i.

<sup>59</sup> Ibid., para 6a.iii.

<sup>60</sup> Ibid., para 6c ii.

<sup>61</sup> Ibid, para 10.

<sup>62</sup> Ibid., para 10.

<sup>63</sup> Ibid., para 14.



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## **BOX: Turkey's Resettlement Record**

Turkey has a dire reputation when it comes to resettlement and paying compensation to those adversely affected by infrastructure projects.

Turkish law does not offer the guarantees required by the law of the Council of Europe, of which Turkey is a member. Lack of respect for private property, recognition of which is nevertheless a fundamental right, has been the object of 95 adverse judgments against Turkey by the European Court of Human Rights.

The experience of those affected by Turkey's South Eastern Anatolia Project (known as GAP after its Turkish initials), which involves building a series on major dams on the Tigris and Euphrates, is illustrative. Many of those who have been forcibly displaced to make way for GAP dams, for example, have yet to receive adequate compensation years after they were moved.

Lawyers who have acted on compensation claims highlight the following problems:

1. There is no public funding available to people who wish to appeal against the sums awarded in compensation for the value of land appropriated. Consequently, only those who can afford to do so would make an application to the domestic court for the sums awarded in compensation to be increased. This appears to be a small proportion of the many who feel that they have not been given adequate compensation in the first place.
2. Even where the domestic court finds in favour of the application, and re-calculates the sum to be awarded, the Government frequently takes a very considerable time to pay the sum. This is in contravention of Article 46 of the Constitution, which states *inter alia* that “*Indemnity for expropriation will be paid immediately and in cash . . . a part of an indemnity not paid thus will be subject to indemnity costs and the maximum level of interest payable on debts of the State.*”
3. Calculation of compensation appears to be confined to the issue of the value of the land which is being appropriated. There appears to be no mechanism by which other consequential losses can be reflected in any award.
4. The economic situation within Turkey has been so extremely volatile that inflation rates have generally been exceptionally high. Delays in receiving compensation therefore erode the value of the amount awarded, often to the point where it is a fraction of its original value.

The project developers for the Baku-Tbilisi-Ceyhan oil pipeline acknowledge the criticisms made of Turkey's procedures for compensating project-affected communities but state: "Major changes were made in the Turkish Expropriation Law in 2001 aimed at both protecting the interests of people and shortening the period of dispute over resolution of expropriation and compensation cases, especially by promoting negotiated solutions between directly affected populations and Project developers." [1]

As the FFM records, however, little has changed on the ground. Indeed, the EIA for the pipeline project itself admits: "The Law and its applications are so recent that issues around its implementation remain largely unknown, both among the affected population and Turkish public and legal institutions. Consequently, those aspects of previous legislation that were considered most burdensome and unfair, and which have changed in the new Law, continue to adversely influence the perceptions of potentially affected people." [2]

Although the EIA claims that steps have been taken to remedy this, the FFM found no evidence that they had affected expropriation procedures in practice. Moreover, the prospect of villagers being able to reach fairly negotiated settlements appears remote: in a political culture which is hostile to challenges to state agencies such as BOTA<sup>a</sup>, villagers have limited bargaining power.

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[1] BTC project EIA, Overview of Land Acquisition Process, Appendix C9, para 1.6, page 6.  
[2] Ibid.

### ***The BTC's Land Acquisition Process***

The BTC accepts that there are "gaps between local policies and those of the World Bank."<sup>64</sup> Nonetheless, it claims to have evolved a Land Acquisition Process (LAP) which "ensures" (our italics) that:

- "there are mechanisms for fair and transparent compensation for lands acquired from private landowners, *whether these lands are formally or customarily owned*, and also that that arrangements have been made for compensating tenant farmers" (our italics);
- "there is an adequate legal framework for the compensation of the public sector, especially for the acquisition of Treasury and forestlands, which adequately protects the public interest. This framework does not allow public resources to be captured by private interest without compensating the public";
- "the rights of the users of public land are recognized and they are compensated for assets and crops."<sup>65</sup>

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<sup>64</sup> BTC project EIA, Turkey, Draft for Disclosure, Overview of Land Acquisition Process (OLAP),p. C9-5.

<sup>65</sup> EIA, Appendix C9, p.C9-4.

**On reviewing the consortium’s Land Acquisition Process, the FFM found that the procedures which the BTC claims to be following were universally violated in the villages which the FFM visited. Moreover, it heard evidence that strongly suggests that such violations are common along the entire pipeline route. It also found that BTC/BOTA<sup>a</sup> has misrepresented the work it has undertaken to “close the gap between local policies and those of the World Bank” and that the project violates at least two World Bank guidelines — those on Involuntary Resettlement and Indigenous Peoples. The FFM is also of the view that were public money to be provided for the project as it currently stands, there would be strong grounds for a legal challenge under the European Convention on Human Rights and other international human rights instruments.**

The FFM’s findings on compensation are outlined in more detail below.

- **Exclusion of Users of Public Land**

The EIA for the project states that Turkish law does not recognise the “rights of users of public lands who are not owners of public lands, especially forests and pastures.”<sup>66</sup> The BTC acknowledges that this constitutes a “major difference between Turkish legislation and World Bank/IFC guidelines,”<sup>67</sup> but claims that its land acquisition process “contains elements to close the gap.”<sup>68</sup> BTC claims, for example, to have “made an effort to estimate the losses that may accrue to forest communities” and to be developing “strategies to compensate for the losses.”<sup>69</sup>

**Given that BOTA<sup>a</sup> intends to start work on the project at the end of 2002, the FFM finds it disturbing that compensation arrangements consistent with the World Bank’s policies are still be drawn up. The FFM also finds the BTC/BOTA<sup>a</sup>’s discussion of this violation obfuscating: the “gaps” identified by BTC/BOTA<sup>a</sup> are not, in fact, "gaps", but rather violations of the Bank's guidelines. The EIA should be candid in acknowledging this. Euphemisms have no place in EIAs and other project documents if they are to serve their purpose of informing decision-making.**

From the interviews conducted by the FFM, it would appear that the strategies which BTC/BOTA<sup>a</sup> claims it has developed to address the problem of compensating users of public lands, if they exist, have yet to be communicated to villagers or to local authorities. For example, when directly questioned as to compensation for forest users, one town mayor was unsure as to whether or not forest users would be compensated, reflecting a generalised failure on the part of the project authorities and developers to inform those affected of their rights. *“A small number of people [here] use forest land. I don’t know whether they will get compensation – but I think it unlikely that they will. They will lose out on land that they have had for centuries.”*<sup>70</sup>

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<sup>66</sup> EIA, Appendix C9, p.C9-4.

<sup>67</sup> EIA, Appendix C-9, p.C9-6.

<sup>68</sup> EIA, Appendix C9-6

<sup>69</sup> EIA, Appendix C9-4

<sup>70</sup> Interview, 30 July 2002.

- ***Paying only Registered Landowners***

The BTC consortium has committed itself to paying compensation to anyone affected by the project, regardless of whether or not they hold title to land. The Non-Technical Summary of the EIA states: "In accordance with the recently revised Turkish Law and international best practice guidelines, an agreement on compensation will be reached with all landowners and users on the price of the land as well as for physical assets (trees, fences, water wells, etc.), and any crops on it." Appendix C9 ("Overview of Land Acquisition Process") amplifies this, asserting that "all affected parties" will be "fairly and equitably compensated and assisted in restoring their livelihoods". Moreover, as noted above, BTC/BOTA<sup>a</sup> claims that a land acquisition procedure is currently in place which "*ensures*" (our italics) that "there are mechanisms for fair and transparent compensation for lands acquired from private owners, whether these lands are formally or customarily owned, and also that arrangements have been made for compensating tenant farmers."<sup>71</sup>

Despite these commitments, however, the FFM heard that BOTA<sup>a</sup> has repeatedly stated to villagers along the route that it will only compensate *formally registered* land owners. In one village, the FFM was told that this would result in only five or six land users being compensated out of a total of 50-60 affected.<sup>72</sup> The FFM therefore views the statements made in the EIA with regard to universal compensation as being highly misleading.

**The FFM notes that BOTA<sup>a</sup>'s current practice is in violation of World Bank guidelines which clearly state that those who do not have formal legal rights to the land should be eligible for compensation<sup>73</sup> and that particular attention should be paid to vulnerable groups such as the landless.<sup>74</sup> The FFM recommends that no funding should be forthcoming for the project until BOTA<sup>a</sup> has demonstrated publicly that negotiated compensation agreements have been agreed with *all* those affected, regardless of whether or not they hold land titles, and that the money has been set aside to pay them, as required under the World Bank's Involuntary Resettlement guidelines. The FFM further recommends that would-be funders insist on the project developers explaining their failure to document the discrepancy between the claimed Land Acquisition Process and the realities on the ground.**

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<sup>71</sup> BTC project EIA, Appendix C-9

<sup>72</sup> Interview, 29 July 2002

<sup>73</sup> World Bank, OP 4.12 Involuntary Resettlement, para 15: "*Criteria for Eligibility*. Displaced persons may be classified in one of the following three groups: (a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country); (b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan; and (c) those who have no recognizable legal right or claim to the land they are occupying. Persons covered under para. 15(a) and (b) are provided compensation for the land they lose, and other assistance in accordance with para. 6. Persons covered under para. 15(c) are provided resettlement assistance in lieu of compensation for the land they occupy, and other assistance, as necessary, to achieve the objectives set out in this policy, if they occupy the project area prior to a cut-off date established by the borrower and acceptable to the Bank. "

<sup>74</sup> World Bank, OP 4.12 Involuntary Resettlement, para 8: " To achieve the objectives of this policy, particular attention is paid to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation."

- ***Out-of-Date Cadastral Surveys***

The BTC recognises that an up-to-date record of landholdings is “a critical step towards fair and full compensation.”<sup>75</sup>

However, of the eight villages visited by the FFM, none had had a recent cadastral survey. One town’s last survey was 56 years ago (1944); another’s 28 years ago (1974); another’s also in the 1970s; and still another’s 10-11 years ago. The others had had no cadastral survey, to the knowledge of those interviewed.

The FFM also heard evidence that brings into question the EIA’s claim that “In the areas where title deed registry systems are not available, cadastral surveying has been undertaken for the unregistered parcels.” In only one community surveyed by the FFM had BOTA<sup>a</sup> carried out its own survey. In another, the FFM was told that BOTA<sup>a</sup> “*had been to the land registry and got a list of landowners — but it had not shown the list to villagers for confirmation.*”

In one village in Sivas, for example, there has been no cadastral survey, but figures generated as part of the EIA put 50 per cent of the land in the village as privately-owned and 50 per cent as common land. The local *muhtar* pointed out, however, that the village has seen high emigration in the past decades – with the number of houses falling from 60 to seven. “*People who have left the village still own fields here but we don’t use them,*” he told the FFM. “*The companies must have seen them and decided they were commons.*”

The FFM views the failure to identify an up-to-date list of those who use the land — and who would therefore be eligible for compensation — as extremely worrying. In the FFM’s view, an up-to-date land registry, agreed with villagers, is a *sine qua non* of a just compensation settlement.

- ***Paying the Dead, Depriving the Living***

According to the BTC project EIA, landowners have *already* been identified “where title deed registry is available, in accordance with the Expropriation Law.”<sup>76</sup> Whilst this may ensure the project’s bureaucratic compliance with Turkish law, however, it serves little purpose if the aim is to ensure that the current landowner receive “fair and full compensation”, since the official registry — where it exists — rarely reflects current land ownership.

As documented above, many villages do not have an up-to-date cadastral survey. Land inheritance generally takes place through informal systems involving mutual discussion, rather than legal transfer, both for cultural reasons and in order to avoid the high legal costs of re-registering land. Although many of the registered landowners are now long dead, the land remains in their names, even though it has been inherited by their children. According to one villager: “*Transferring land titles takes several months and means that*

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<sup>75</sup> EIA, Appendix C-10

<sup>76</sup> BTC project EIA, Appendix C-10.

*we would be subject to inheritance tax — amounting to TL (Turkish Lira) 1.5 billion for 150 acres. It just isn't worth it. We prefer to register the land holdings informally — the traditional way."*

Villagers confirmed that this practice had been explained to BOTA<sup>a</sup>. Nonetheless, BOTA<sup>a</sup> is insisting on paying only those whose names appear on the land registry, a large proportion of whom are now dead. Payments would be made into a bank account set up in the deceased landowner's name, and it would then be up to villagers to extract the money from the bank. This could be done only through proceedings in the civil courts, the costs of which would be beyond the means of most landowners along the route, and would be as much as or more than the amount of money they would be seeking.

**Identifying landowners on the basis of old surveys is thus likely to lead to serious miscarriages of justice with regard to compensation. Indeed, if compensation is paid on the basis of identifying landowners from the official land registry, the FFM believes that the vast majority of those whose land would be affected by the pipeline would be deprived of any compensation whatsoever.**

The FFM heard from villagers that BOTA<sup>a</sup> had already used this procedure when compensating those affected by the East Anatolian Natural Gas Pipeline, built in 2000-2001. In many instances, the money remains in the bank, where its value has been eroded by inflation. In one village, landowners received TL 160 million per hectare: with inflation, that should now be TL 500 million. The original money has never been retrieved from the bank, however, and the difference has now been lost.

Several *muhtars* said that they had raised the problem with BOTA<sup>a</sup>. One town mayor has proposed that compensation be paid on the basis of a declaration by villagers that they owned or used the land. This proposal has been rejected by BOTA<sup>a</sup> on the ground that the villagers cannot be trusted.

As result of BOTA<sup>a</sup>'s intransigence on this issue, maintained the mayor, *"Eighty per cent of the people affected by project will not be able to get compensation . . . It is becoming clear that they won't pay compensation for land whose title lies with dead people. They will pay it into dead people's bank accounts, but 80 per cent of the people will not be able to access it from there"*.

**The FFM finds the practice of paying compensation to dead landowners to be in violation of World Bank guidelines which insist on prompt payment to those who are *actually* affected by the project. Given the confusion over current landownership, the FFM recommends that no work be undertaken on the project until land rights have been agreed with villagers and fair and full compensation has been delivered to those who are eligible.**

- **Compensation at Below-Cost Prices**

BTC/BOTA<sup>a</sup> states in the pipeline EIA that the value of lost assets "will be determined by a land evaluation team and will be made in accordance with fair market value through a negotiation team prior to the land being acquired and construction commencing."<sup>77</sup>

**In practice, however, it would appear that this procedure is not being followed. Although BOTA<sup>a</sup> has assured villagers that they will get a fair price for their lost land, the FFM was told that the price to be offered had not been discussed with landowners. Moreover, the FFM heard evidence which strongly suggests that the price paid for land lost is likely to be well below the land's market value.**

In much of Turkey, people register their land as of less than its true value. This is because they are poor and cannot afford the high land taxes and registration fees. For example, the FFM met one villager who bought his land a few years ago for TL 60 billion, but registered it as worth TL 800 million. This is a common practice. There are serious fears that with BOTA<sup>a</sup>'s insistence on compensating only registered title-holders, it will also offer to compensate them only at the registered price.

The experience of the East Anatolian Natural Gas Pipeline (NGP) – built by BOTA<sup>a</sup> in 2000-2001 – presents cause for concern. In some cases, BOTA<sup>a</sup> paid the same price per hectare for productive, fertile land as for unusable, rocky mountain slopes. In one village, when the NGP was built, surveyors would deem some trees to be too old to be of value: *"What we got paid was the cost of cutting the trees down."* In another, haymakers received considerably less money in compensation than it would take either to buy new land or to replace the loss of income from the hay. *"Although I lost only three hectares to the project, I used to get 30 bags of hay from the land. They paid me 50-60 million lire. But I would have made 187 million from the hay. This is a lot of money for a family like mine to lose."*

Generally, people were told before the building of the NGP that they would be able to use the land as before once the pipeline had been built. But pipeline contractors did not replace the topsoil – thus the dug earth is now infertile and unusable. The area of land lost in this way usually extends beyond the eight metres of land bought by the company, into the surrounding 20 metres rented, and beyond that into completely uncompensated land.

**The FFM finds that while the size of compensation payments has not yet been discussed, recent experience with BOTA<sup>a</sup> gives cause for concern that landowners would not be compensated for the full and true value of their land if the pipeline were built. Although it was unable to undertake a survey of current market prices for land along the pipeline route, it notes that, according to one *muhtar*, some state-owned land which was to be sold near Sivas had been valued at TL 1.15 billion per hectare.**

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<sup>77</sup> Non-Technical Summary, p. 36.

- ***Inadequate Information about Compensation Mechanisms***

In several of the villages surveyed by the FFM, BOTA<sup>a</sup> had not spoken to landowners. There was thus considerable worry and uncertainty about whether they would be compensated for loss of their land. In one village in Erzincan province, the FFM heard that when the NGP pipeline was built, no-one had been told where the pipeline would pass, nor when it would be built: villagers only learned the answers to these two questions when the bulldozers arrived. Compensation was arranged entirely after the event, based on how much land had been taken.

Even in cases where BOTA<sup>a</sup> has met with villagers, often they do not know that they cannot grow trees above the pipeline, nor put up buildings. In some cases, villagers were very concerned about these restrictions when informed of them by the FFM.

It was clear to the FFM that in general, people's level of understanding about how compensation would work was very low. The FFM was often asked whether there were rights to compensation for particular resources – such as lost trees or lost crops.

In particular, no information has been given to villagers as to what channels are open to them should they disagree with what the company has offered them, or should there be further damage. In one village, residents had heard rumours that if they accepted compensation for the land they lost, they would thereby relinquish all rights to claim compensation in the event of any future damage, such as from a spill.

**The FFM notes that basic information about the mechanisms of compensation has not been made available to landowners along the route – a fundamental requirement for people to be able to negotiate a fair deal and understand their rights. This lack of information has led to confusion, uncertainty and worry.**

- ***Lost Resources not Recompensed***

Aside from the pipeline's direct corridor, there are further land, resources and infrastructure that would be damaged by pipeline construction and operation. BOTA<sup>a</sup> has, however, given no indication that it would be willing to compensate for losses incurred.

Again, the experience of the East Anatolian NGP pipeline (recently built by BOTA<sup>a</sup>) is worrying. All of the villages the FFM surveyed on the route of the NGP reported that substantial areas of land had been damaged outside the pipeline corridor itself, and that no compensation had been given. This damage had occurred through the construction of access roads, and through heavy machinery being driven directly across crop fields.

In some cases, local roads were also damaged by heavy construction machinery and trucks carrying equipment, and were neither repaired nor compensated for. In Sivas, one village's asphalt road had previously been in good condition. During construction of the NGP pipeline, the asphalt was broken and the road torn up by heavy machinery, leaving it unusable. Afterwards, BOTA<sup>a</sup> delivered two truckloads of gravel to resurface the road.



The result was a road of much lower quality, and much less long-lasting, than the previous asphalt surface. Already, just one year later, the gravel is coming away and the earth left bare in several places. But villagers felt they had to accept the gravel, as otherwise they would have got nothing.

In one of the most serious omissions found, no compensation has been offered to the fishing community visited by the FFM, who ply their trade in the immediate vicinity of the marine export terminal where BTC oil would be loaded onto tankers. The project EIA claims that “compensation was applied, e.g., for affected agricultural land users/landowners and fishermen”,<sup>78</sup> but the FFM discovered that this was in fact not the case. These fishermen (including officials of their co-operative) have had no contact at all with BOTA<sup>a</sup>, BP or other consortium members; in fact, they did not even know that the pipeline would come to their district. They specifically asked the FFM if they had a right to compensation, and if so, from whom and how to ask for it. They recalled that they had been badly affected by oil spills in the past and had received no compensation.

The fishermen would be affected in four ways:

- The BOTA<sup>a</sup> terminal is a security area, in which they are not allowed to fish – thus with the expansion of the terminal they would lose some of their fishing grounds; meanwhile, the passage of supertankers from the terminal would both cause disruption and further restrict available fishing areas;
- Their catches of fish would be likely to be reduced due to persistent pollution from the terminal, from discharge of ballast water and of hold-cleaning water;
- In the event of major spills, they risk sustaining substantial or devastating damage to their livelihoods;
- Much of their sales are to summer holidaymakers (mainly from the Ceyhan area), an income source which could be impacted if the sea were considered polluted.<sup>79</sup>

**The FFM found that the scope of the compensation regime is far too narrow in focusing only on the direct corridor of the pipeline: it is unrealistic to suggest that this would be the only area affected. There are considerable resources – both privately owned and common – which would be substantially impacted or damaged by the pipeline, for which BOTA<sup>a</sup> and BTC have no plans to compensate, including fishing areas around the marine terminal at Yumurталик, land crossed for construction access to the corridor and local roads.**

- ***Risks to Water Supply***

At least two of the villages visited by the FFM have water supplies crossed by the route of the BTC pipeline; in one, the pipeline does not just cross but travels along the path of the river for several kilometres. These villages are completely dependent on this water. As one villager explained, “*If the water stops, we die*”.

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<sup>78</sup> EIA, Non-technical summary, page 10, box 2

<sup>79</sup> The district's population reportedly jumps from 5,000 in winter to 100,000 in summer.

BOTA<sup>a</sup> has not explained the risks of pollution or leaks from the pipeline to the villagers (it has simply claimed that there is zero risk), nor what risk reduction or mitigation measures would be put in place. Nor has BOTA<sup>a</sup> explained what could be done if there were an accident – in terms of preventing spread of pollution, setting up alternative emergency water supplies, applying for compensation, or resolving disputes.

- ***Dispute Settlement Mechanisms***

In all villages visited, there was a complete lack of knowledge about possible recourse in the event of unexpected damage. Most thought that all they could do would be to ask BOTA<sup>a</sup>.

Some villages knew of commissions that could be set up to resolve disagreements about the price of land to be compensated, but understanding of these was at best vague. For example, one town mayor believed that if several landowners disputed the compensation offer, the commission would select one landowner to negotiate a uniform settlement on behalf of all of them. There was also considerable confusion about who would be represented on the commission – whether BOTA<sup>a</sup>, national government, district sub-governorships, *muhtars*, or landowners. When the NGP was built, villagers in one rural community had been told that owners of fields in the village would be members of the commission; in the event, only officials of the sub-governorship gained membership.

In some villages, the FFM heard that BOTA<sup>a</sup> had said that if there was a problem, landowners should take BOTA<sup>a</sup> to court. Landowners uniformly dismissed this suggestion as unrealistic, as court costs would be beyond their means. This was the experience of the NGP pipeline – in cases of dispute, BOTA<sup>a</sup> suggested only that villagers go to court. Some wealthier landowners did sue successfully, but for most this action was not an option.

The FFM found that many villagers were simply resigned to being inadequately compensated, if compensated at all. One man who had lost a considerable proportion of his land to the NGP pipeline with no compensation (due to BOTA<sup>a</sup>'s title-holder rule) was asked by the FFM how he felt. *"I'm not angry"*, he replied. *"It's the state – they treat everyone like that"*.

**The FFM found that no clear information had been made available on how disputes may be resolved – either in relation to land value in compensation, or in relation to damage additional to that covered in the settlement. The experience of BOTA<sup>a</sup>'s recent NGP pipeline is that when challenged, BOTA<sup>a</sup> simply offers a court battle, which most landowners are unable to afford.**

- ***Lack of Common Negotiation Procedures***

The FFM found a complete absence of transparency in how settlements would be worked out, thus limiting the possibility of fairness in negotiations. In some villages, the *muhtars* had asked to be involved in a collective bargaining process, but BOTA<sup>a</sup> refused. In other

cases, interviewees talked about agricultural experts being brought in to assess land values. It appeared that such experts would serve an arbitration role, rather than acting to provide information. Interviewees could not assess the affiliation or independence of these experts.

Of the eight villages the FFM surveyed, only four knew how the compensation regime was supposed to work. In all four of these villages, the FFM was told that BOTA<sup>a</sup> proposed to negotiate with individual landowners, one-by-one. As a result, individuals would likely have great difficulty in knowing whether they are getting a reasonable deal, making it easier for BOTA<sup>a</sup> to drive the price down.

Furthermore, the secrecy of BOTA<sup>a</sup>' approach is likely to cause tensions, mistrust, jealousy and resentment between different landowners, particularly where different prices are paid to landowners. When the NGP pipeline was built, payments around one village ranged from TL 100 million to TL 200 million per hectare of equivalent land.

- ***Failure to Inform Villagers of How their Rights to Third Party Damages are to be Curtailed as a Result of the HGA***

The Host Government Agreement significantly restricts the scope for villagers to seek third-party damages in the event of losses incurred as a result of accidents and spillages along the pipeline (*see* Section 2.1). **The FFM found, however, that villagers were completely unaware of these restrictions — and indeed of the HGA itself.**

**The FFM finds the restrictions on third-party damages in the HGA to be unacceptable. It strongly recommends that any public funding for the project be made conditional on villagers enjoying their full rights to third-party damages under Turkish and international law**

## **2.4 Ethnic Minorities: A Violation of World Bank Safeguard Standards**

The EIA for the BTC pipeline acknowledges that "Turkey is characterised by a diversity of languages, cultures and traditions"<sup>80</sup> and implies, without saying so explicitly, that a proportion of those living along the pipeline are from minority groups.<sup>81</sup> At no point, however, does the EIA name such minorities; nor, despite the BTC consortium's stated commitment to ensuring compliance with the World Bank's safeguard policies, does it discuss the implications of the presence of ethnic minorities for the project.

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<sup>80</sup> EIA, Non-Technical Summary, p.17

<sup>81</sup> Ibid. The EIA states "the majority of surveyed respondents are Turkish speaking Sunni Muslims", thereby implicitly acknowledging that a minority belong to other ethnic or religious groups.

This issue is particularly serious given Turkish polity's powerful commitment to the Kemalist ideology of civic unity and the "indivisible integrity" of the state. This ideology has been associated with the often brutal repression of political and cultural expressions of ethnic minority identity. For this reason, groups with a valid ethnic heritage are often inclined not to view themselves as separate cultural entities, or at least choose not to assert themselves publicly as such. The FFM is concerned to note that once again BTC and BOTA<sup>a</sup> make no reference to the delicate socio-political context in which they operate.

While the FFM was unable to examine this issue in depth, it notes that the pipeline skirts the predominantly Kurdish region of Turkey and that a number of settlements along the pipeline route contain a Kurdish majority. It also notes that the pipeline crosses land occupied by the Çerkez people and also passes through a province, Sivas, often troubled by conflicts between people of the Alewi sect and other groups.

Both the Kurds and the Çerkez are peoples with their own language, distinctive culture and ancestral ties to the land. As such, both groups fulfill the World Bank's definition of an "ethnic minority" and the project should thus be subject to the Bank's Indigenous Peoples policy (OD 4.20, September 1991).<sup>82</sup>

Where ethnic minorities are affected by projects, as in this instance, the World Bank requires preparation of "a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project."<sup>83</sup> The Bank specifically requires that "mechanisms should be devised and maintained for participation by indigenous people in decision making throughout project planning, implementation and evaluation."<sup>84</sup>

**The FFM found no evidence that such a plan existed or had even been initiated for the affected Kurdish, Çerkez or other minorities. The FFM accordingly recommends that no public funding be made available for the project until the pipeline complies with the requirements of OD 4.20.**

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<sup>82</sup> Hereafter OD 4.20 available from: <http://wbln0018.worldbank.org/institutional/manuals/opmanual.nff/texttoc1?OpenNavigator&Start=1&Count=30&expand=2.1.1> The policy applies to "indigenous peoples," "indigenous ethnic minorities," "tribal groups," and "scheduled tribes". The policy notes: "Because of the varied and changing contexts in which indigenous peoples are found, no single definition can capture their diversity... Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics: (a) a close attachment to ancestral territories and to the natural resources in these areas; (b) self-identification and identification by others as members of a distinct cultural group; (c) an indigenous language, often different from the national language; (d) presence of customary social and political institutions; and (e) primarily subsistence-oriented production."

<sup>83</sup> OD 4.20, para 14a

<sup>84</sup> OD 4.20, para 14d.