

**DEVELOPMENTAL, HUMAN RIGHTS  
AND ENVIRONMENTAL IMPACTS  
OF  
THE BAKU-TBLISI-CEYHAN OIL PIPELINE**

**MEMORANDUM FROM CONCERNED NON-GOVERNMENTAL ORGANIZATIONS  
TO  
DEPARTMENT FOR INTERNATIONAL DEVELOPMENT  
FOREIGN AND COMMONWEALTH OFFICE  
H.M TREASURY  
&  
UK EXPORT CREDITS GUARANTEE DEPARTMENT**

**November 2002**

**BAKU CEYHAN CAMPAIGN  
BRETTON WOODS PROJECT  
CORNER HOUSE  
FRIENDS OF THE EARTH  
KURDISH HUMAN RIGHTS PROJECT**

## Background

Within the coming months, funders such as the World Bank and the European Bank for Reconstruction and Development (EBRD) will decide whether to provide up to \$1.5 billion of public money to finance a major new pipeline system from the Caspian Sea to the West.

BP is the lead company in the BTC Consortium (BTC) which intends to build the pipelines and is also the operator and lead shareholder in the oil and gas fields which will supply them. BP has said that the pipeline cannot be built without „free public money“. The pipeline consortium is seeking public funds via the International Finance Corporation and the EBRD. The UK's Export Credit Guarantee Department has also been approached for support by BTC but has not, as yet, received any application from a UK exporter.

The project has not yet been accepted into the project pipelines of IFC and EBRD; and the UK Department for International Development (DfID), which has an indirect interest as a shareholder in IFC and EBRD, has seen no early appraisals. However, despite the project still being in its pre-appraisal stage, IFC staff have already given presentations on the project to banks such as ABN Amro and Deutsche Bank. NGOs are concerned that the IFC is associating itself publicly with the project at this stage and fear that such presentations may be read as an indication that IFC support for the project has already been secured.

In June 2002, over 60 regional and international non-governmental organisations (NGOs) wrote to the IFC, the EBRD and other financial institutions raising a range of environmental, human rights, developmental and environmental concerns (**Attachment 1**). The groups urged that the IFC and other potential funders „impose a number of conditions on loan approval at the earliest possible stage of project appraisal“ and that no funding be provided „unless the project is able to clearly demonstrate positive local and regional development impacts associated with the project over the next 30 years.“ Replies were received from the EBRD and a number of other institutions (**Attachment 2**).

Since then, three international NGO Fact Finding Missions have travelled the route of the proposed pipeline and revealed major discrepancies between claims made by the BTC consortium about consultation and compensation arrangements and the realities on the ground (**Attachment 3**). Major violations of World Bank and EBRD standards were identified. Concerns were also raised that the Host Government Agreements signed between the BTC and the governments of Turkey, Georgia and Azerbaijan are in potential violation of the European Convention on Human Rights, European Union laws and other international law instruments (**Attachment 4**).

We understand that DfID will shortly prepare its instructions to UK Executive Directors at the IFC and the EBRD and that ECGD is currently undertaking due diligence and environmental screening of the project. This Memorandum is intended to inform relevant UK government departments of continuing NGO concerns with regard to the project's impacts on **regional development, poverty reduction, debt, human rights, good governance and democracy**.

## 1. Denial of Public Purpose

The legal framework for the BTC project is subject to a hierarchy of agreements,<sup>1</sup> of which the second most important is the Inter-governmental Agreement between the states of Azerbaijan, Georgia and Turkey. It is an incumbent duty on the signatory governments of those states to act in the interests of their respective publics; likewise, serving the public interest is a fundamental requisite of any project which requests „free public money“. It is thus of major concern to NGOs that Article II (8) of the Intergovernmental Agreement specifically and unequivocally denies that the BTC project should be required to have any public purpose:

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<sup>1</sup> 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, listed hierarchically, are: the Constitutions of the Republics of Azerbaijan, Georgia and Turkey; the Inter-Government Agreement (IGA); the Host Government Agreement (HGA); domestic law not superseded by the IGA or HGA; 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.

*„ (i) the MEP Project shall not involve the provision of services to the public at large in its Territory for purposes of satisfying the general of common needs of the populace, (ii) the MEP Project is not intended or required to operate in the service of the public benefit or interest in its Territory . . . “*

BP pleads that Article II (8) was introduced to avoid the project being treated as a concession under Turkish law. However, the wording (which BP acknowledges to be „clumsy“<sup>2</sup>) is such that the BTC consortium could resist any measures introduced by host governments to require that the BTC project is operated in the public interest – surely a *sine qua non* of any public funding being approved for the project.

This concern is reinforced by provisions in the Host Government Agreement which severely constrain the ability of Azerbaijan, Georgia and Turkey to introduce social and environmental measures that would impose any public purpose on the project, since such measures would require the states involved to pay compensation to BP should the „Economic Equilibrium“ (in itself a highly nebulous term) of the project be affected.

We find the use of public money to support a project that explicitly denies any public interest requirement impossible to justify. Indeed, BP was given ample opportunity to provide such justification at a House of Lords seminar on the BTC project on October 28; significantly, they refused to do so. Were such support to be given, we believe that it would seriously undermine public confidence in the IFC, the EBRD and the ECGD. As such, the project, as currently conceived, poses a major reputational risk for all three institutions.

We therefore urge that the UK government makes any support for the project conditional on:

- a) *The BTC consortium giving legally binding undertakings as to the public purpose of the BTC pipeline;*
- b) *The IFC, EBRD and the ECGD reaching legally binding agreements with the BTC that permit the host governments, where necessary, to require that the project operates in the public interest and to exclude any measures so introduced from the compensation clauses embodied in the Host Government Agreements.*

## **2. Regional Development and Poverty Alleviation Concerns**

Azerbaijan, Georgia and Turkey suffer high levels of economic hardship and poverty. Although the project will generate revenues in transit and other fees, its poverty alleviation benefits are questionable. Moreover, the potential for exacerbating social divides as a result of the unequal distribution of benefits and burdens is high:

- Revenues may not be as high as anticipated. BP has a history of minimising the amount of revenue that goes to the host state in similar pipeline projects that it operates elsewhere (for example, Forties in Scotland, OCENSA in Colombia and TAP in Alaska).<sup>3</sup> Georgia is already engaged in a dispute with BP over the royalties due from the Baku-Supsa pipeline, a previous BP venture in the region;<sup>4</sup>
- Widespread corruption is likely to result in revenues being creamed off or used for the benefit of the elite (see section 7);
- The need to export almost all of the oil produced in Azerbaijan to ensure the economic viability of the pipeline could stunt the development of domestic industry and lead to the closure of Azerbaijan’s petrochemical industry;

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<sup>2</sup> Tom Dimitroff, lawyer, BP, Meeting with Kurdish Human Rights Project, Friends of the Earth and The Corner House, 8<sup>th</sup> November 2002.

<sup>3</sup> Platform et al., *Some Common Concerns*, London, 2001, p.74 ff.

<sup>4</sup> For the Baku-Supsa pipeline, Georgia was expecting to be paid a port fee for the use of Supsa port, as well as transit fees for the land passage of the pipeline. But tankers refused to pay anything for loading at Supsa, resulting in an estimated loss to the Georgian state of US\$2.5 million a year. In June 2002, a Greek tanker was detained at Supsa due to its unsettled account, but BP intervened and forced the port authorities to release the tanker without payment, pointing to the terms of the Host Government Agreement for the pipeline. The Agreement does not specify a precise arrangement for tankers: BP claims this means that tankers cannot be taxed, but the Georgian government believes no such restriction can be interpreted from the contract. BP has threatened that it will go to international arbitration if Georgia attempts to charge the tankers.

- The pipeline threatens the mineral water springs in the Borjomi district of Georgia, undermining or even destroying Georgia's main source of export income (Borjomi currently supplies 70% of the Russian mineral water market) and threatening the major source of employment in the area. Even the prospect of BTC has meant severe reputational damage to the Borjomi plant;
- The pipeline will bring few jobs along its route. NGOs in Azerbaijan also complain of discriminatory labour practices by BP with jobs going to non-Azeri staff despite the local availability of the required skills ;
- Although communities along the route in Azerbaijan used to have electricity under the Soviet system, they now lack secure supplies of energy. BP has declined to give undertakings that it will supply energy to such communities;<sup>5</sup>

Given these concerns, we are alarmed to find that BP has written to the President Of Georgia demanding that Georgia approve the Environmental Impact Assessment for the project by the end of November, despite major outstanding issues with regard to the route, in order not to upset the consortium's commercial timetable. As the letter puts it, „Without . . . timely approval we cannot move forward with the construction phase and we will halt work in Azerbaijan and the Lump Sum Turnkey Contract in Turkey. This will have an immediate knock on effect on the upstream investment and the Shah Deniz project and destroy the benefits detailed in the Declaration of Intent signed between BTC and GIOC on October 30th in your presence“ (**Attachment 5**). We view BP's letter as an unwarranted attempt to influence the EIA process: indeed, it makes a mockery of the purpose of the EIA, namely to identify problems and agree mitigatory measures prior to the EIA being approved.

We urge that DfID insist that the Georgian government be given the time it needs to give full consideration to the EIA and to agree mitigation measures prior to granting any approval for the study.

We would further urge DfID to delay any decision on the project until:

- a) A review of revenue and tax agreements reached between BTC and the host governments has been undertaken in order to ensure that the agreements are fair and have not and will not be used to drive down revenue streams;*
- b) A review of the macro-economic national and regional impacts of the project has been undertaken and made available for public review and comment;*
- c) Social development programmes, including programmes to supply sustainable and affordable sources of energy, have been negotiated with communities along the route and the requisite funds for their implementation have been made available by the project sponsors. In the case of Turkey, any costs arising from such programmes should be excluded from the terms of the Turnkey Agreement. In all cases, the social development programmes should be subject to a specific, legally binding timetable.*
- d) An International Advisory Group with guaranteed NGO representation on a self-elected basis has been established to monitor the implementation of the agreed social development programmes.*

### **3. Effective and independent oversight of the Azeri Oil Fund**

In January 2001, the World Bank and the IMF promoted the establishment of the State Oil Fund of the Azerbaijan Republic (SOFAR) with the aim of ensuring that the oil revenues from new projects in the country would be used to spur development in non-oil sectors of the economy and fund investment in socially useful infrastructure.

The IMF originally wanted expenditures from the Oil Fund to be subject to parliamentary approval, but agreed to subject expenditures only to presidential approval. Furthermore, to date no civil society representative has been proposed as a member of the board overseeing the Oil Fund, which is appointed by the President of Azerbaijan.

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<sup>5</sup> In the case of Georgia, BP has stated that: "Access to energy/gas is a wider issue for the Georgia government." See: BP, "BTC crude oil pipeline project. Georgian Section. Environmental and Social Overview and Scoping,, BTC-PRO-REF-003, Revision 2, 17 July 2001, p.74.

Of immediate concern is the decision by SOFAR to fund 25% of the Azerbaijan State Oil Company's (SOCAR's) share of the construction of the BTC pipeline. The minimum project costs, excluding financing costs, are currently estimated at \$2.94 billion, meaning that SOFAR would allocate about \$220 million for investment in the project. In the view of NGOs, the decision is a gross abuse of the fund's objectives, since the fund monies are supposed to decrease – not increase – dependence on the oil sector.

NGOs have urged the World Bank and IMF to insist that the Azerbaijan government change its decision so that the Oil Fund is not used to finance SOCAR's involvement in BTC, and to require that projects supported by the Fund be demonstrably geared to relieving poverty and improving social, environmental and public health conditions (**Attachment 6**). The IMF has replied that it shares the NGOs view that „the Oil Fund's assets not be used to finance commercial projects“ and that „the use of the Oil Fund to finance part of the State Oil Company of the Azerbaijan Republic's stake in the Baku-Tbilisi-Ceyhan (BTC) pipeline is not consistent with the Oil Fund's asset management or budget rules and, as such, this investment is not allowed under the asset management rules of the Oil Fund“ (**Attachment 7**). The IMF also states that, in its view, the funding of SOCAR's involvement in BTC through SOFAR money „creates a precedent that could undermine the objectives of maintaining macroeconomic stability and supporting the long-term economic development of Azerbaijan.“

Despite these concerns, however, the IMF has agreed to waive its own rules and permit the use of Oil Fund assets to fund SOCAR's share in BTC. We find this unacceptable, particularly given the IMF's own warnings as to the long-term consequences of such a precedent being set.

We urge that the UK government, as a shareholder in the World Bank and IMF, condition any support for the BTC project on:

- a) *The IMF and World Bank upholding their commitment to the use of oil funds to decrease dependency on the oil sector, and thus on SOCAR finding other sources of finance to fund its participation in BTC;*
- b) *Greater independent oversight of the Azeri Oil Fund, including having civil society representatives on the oversight committees;*
- c) *Ensuring transparency in the auditing of the Oil Fund;*
- d) *Requiring projects financed by the Fund to be geared to relieving poverty and improving social, environmental and public health conditions.*

#### **4. Debt Implications of the Host Government Agreements**

The Host Government Agreements for Azerbaijan, Georgia and Turkey commit the governments to a number of open-ended expenditures. These include the full costs of ensuring security for the pipeline and the costs of compensating the BTC consortium for any losses incurred as a result of the introduction of new social and environmental laws over the next 40 years.

No budgetary provisions appear to have been made by any of the host governments to cover such expenditure. In the case of Georgia, however, the implications for debt sustainability are of particular concern: the country is currently off limits to the ECGD due to its lack of creditworthiness.

NGOs have been informed that no due diligence has yet been carried out by either the EBRD or the ECGD as to the implications of such commitments for debt sustainability, although both institutions have committed to undertaking such a review. The position and activities of the World Bank Group are unknown.

We urge that the UK government make any support for the BTC project conditional on:

- *The IFC, EBRD and ECGD undertaking a full review of the debt sustainability implications of the Host Government Agreements for Georgia, Azerbaijan and Turkey and making the review available for public comment;*

- *Ensuring the BTC project does not impose unsustainable levels of debt on the host governments.*

## **5. The Turnkey Agreement and IMF loan ceilings**

Turkey has undertaken to build the Turkish section of the BTC pipeline under a Lump Sum Turnkey Agreement (LSTA) valued at £1.4 billion; any costs over and above that figure would be covered by the Turkish state.

NGOs have expressed concern that the final costs of the construction could far exceed the \$1.4 billion that Turkey will receive to build the pipeline. Indeed, some analysts have estimated that the deal saved the BTC consortium \$600 million – costs that BOTAS, the Turkish construction company that has undertaken the contract, will have to cover. Furthermore, in a project as complex as BTC, cost escalation is inevitable – and could prove unsustainable. Comparable pipelines in Alaska and the UK, for example, respectively cost ten times and two times more than their original estimates.<sup>6</sup>

A major question is whether Turkey can afford the guarantees it has made under the Turnkey Agreement. As part of the loan package that Turkey recently agreed with the IMF, a ceiling of US\$6.5 bn has been placed on guarantees issued by the Turkish government with a maturity of more than one year. Cost rises on the scale of the Alaska pipeline would take Turkey well beyond such a ceiling. When other guarantees issued by Turkey are taken into account, even the two-fold rise experienced in BP's Forties Project in the UK would press upon the ceiling.

Given the pressure on Turkey to keep within budget, there is also a severe risk that costs associated with resettlement (for which BOTAS is responsible under the Host Government Agreement) will be cut back. With around 20,000 parcels of land to acquire, BOTAS will almost certainly be faced with a bill far in excess of the \$99 million stipulated in the Agreement. The implications for compensation of those economically displaced by the project could be severe (no-one, according to BP, will be physically displaced). Moreover, there are further concerns about the „double displacement“ effect of the project, in preventing people displaced during the war between the Turkish state and Kurdish forces from returning to their land. It is noticeable that in all the documentation produced by BP on the project, the political context of that war is conspicuous only by its absence.

We urge that the UK government insist that:

- a) *The IMF review the guarantees made under the Turnkey Agreement against Turkey's IMF commitments, taking account of possible cost escalations;*
- b) *A resettlement budget, covering the full compensation costs negotiated with affected parties, be set aside prior to the start of construction.*

## **6. Overwhelming Georgia's Institutional Capacity and Undermining the Transition to Democracy**

Both the UK government and the World Bank have been active in funding civil society initiatives to build democratic institutions in the Caspian region. The BTC consortium is promoting BTC as supportive of that process: through the pipeline, it is argued, Azerbaijan, Georgia and Turkey will become integrated into western markets and, consequently, into democratic politics.

By contrast, NGOs in Georgia express grave fears that BTC threatens to overwhelm Georgia's fledgling state, jeopardising its transition to democracy. In particular, they argue, the commercial practices of the oil companies are undermining efforts to promote probity and transparency in business dealings, with the judiciary and other institutions reverting to the same corrupt practices that held during the Soviet era.

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<sup>6</sup> Platform et al, *Some Common Concerns*, Platform et al, London 2002.

There are also concerns that Georgia is too weak to hold its own in the negotiations that surround the project, allowing the oil companies to have too great a say in the country's affairs. Georgia's heavy debts and lack of legal experts with knowledge of English, for example, rendered it vulnerable to exploitation in the complex negotiations over the Host Government Agreements. An indication of how the government may have fared in the negotiations may be gleaned from the fact that, in August 2001, the World Bank pointed out that Georgia's tariff for the South Caucasus pipeline (which is intended to run alongside the BTC line) was too low and insisted that it be increased.

We urge that the UK government:

- a) *Press for any decision on public support for the BTC project to be delayed until Georgia and Azerbaijan are further along the route to democracy and have the institutional capacity to engage with the oil industry on equal terms;*
- b) *Undertake a review of the legal negotiations surrounding the Intergovernmental Agreements and the Host Government Agreements in order to satisfy itself that the agreements were fairly negotiated, as required under EU contract law, and make the findings of the review public.*

## 7. Corruption Concerns

DfID and the World Bank have both highlighted the role that corruption in infrastructure and other projects plays in exacerbating poverty.<sup>7</sup> The UK government has also acknowledged the adverse social impacts of corruption in Azerbaijan,<sup>8</sup> which is ranked by Transparency International as the world's third most corrupt country. The World Bank and the European Bank for Reconstruction and Development have both reported high levels of corruption in Azerbaijan and Georgia. The Bank has also highlighted problems of corruption in Turkey, noting in a 2001 report that contractors in Turkey have traditionally been asked to pay up to 15% of the value of state contracts to politicians as „state contributions“.

Corruption allegations have already been made with regard to the BTC project and its associated developments. Specifically:

- NGOs report that villagers have had to pay bribes of \$500 to secure pipeline jobs, in some cases being forced to sell cattle and property to raise the money;
- A complaint has been made to the World Bank regarding contract rigging in the award of a contract by the Georgian International Oil Company for work on the Environmental and Social Impact Assessment for BTC;<sup>9</sup>
- Corruption allegations also surround the Production Sharing Agreement reached between the Azerbaijan Government and the Azerbaijan International Oil Company (AIOC) in 1994.<sup>10</sup> The PSA underpins the economic viability of the BTC pipeline and commits the Azerbaijan government to establishing an export corridor for the oil produced under the agreement. According to BP, the PSA is linked contractually to a Transportation Agreement which remains confidential.<sup>11</sup> Parts of the PSA have also not been disclosed due to commercial confidentiality. The off-shore status of a number of companies involved in the AIOC also denies the public access to the names of their shareholders and directors and to their annual reports and accounts.

We urge the UK government to make any support for BTC conditional on:

- a) *Investigating the corruption allegations surrounding the award of contracts and jobs for BTC-related work and making the results of the investigations available for public comment;*

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<sup>7</sup> See: **Chyba! Záložka není definována.** and **Chyba! Záložka není definována.**

<sup>8</sup> See: **Chyba! Záložka není definována.** Roger Thomas, Britain's ambassador to Azerbaijan is quoted as saying, "What is hard to accept is the hijacking of assets and wealth by a few people while a large part of the country goes empty-handed."

<sup>9</sup> „Rigged bid allegations halt World Bank loan“, 17 October 2002, Eurasianet, <http://www.eurasianet.org>

<sup>10</sup> Bribes were allegedly channeled through two offshore companies in the AIOC consortium. The names of the companies, which are alleged to have been owned by the Aliyev family, were allegedly not disclosed in the PSA.

<sup>11</sup> Tom Dimitroff, lawyer, BP, Meeting with Kurdish Human Rights Project, Friends of the Earth and Corner House, 8 December 2002.

- b) *The AIOC making public the names of all directors and shareholders of the offshore companies that are or have been contracting parties to the PSA for Azerbaijan, the Transportation Agreement and the Host Government Agreements for the BTC pipeline, and explanations being given for their registration offshore. Why, for example, was McDermott Azerbaijan incorporated in Panama when the company already has an offshore base in Nassau?*<sup>12</sup>
- c) *Any side agreements that accompanied the Azerbaijan PSA, the Transportation Agreement and the Host Government Agreements for the BTC pipeline being reviewed, and assurances being obtained that they did not involve corrupt practices;*
- d) *Details of any facilitation payments made by any of the contracting parties to the PSA, the Transportation Agreement and the Host Government Agreements for the BTC pipeline being made public and explanations being obtained as to the intent and purpose of such payments;*
- e) *The AIOC making public any representation agreements made with agents or other parties with respect to the PSA, the Transportation Agreement and the Host Government Agreements for the BTC pipeline and ensuring that such representation agreements, where they exist, comply with International Chamber of Commerce guidelines;*
- f) *Obtaining warranties stating that neither the BTC consortium nor anyone acting on its behalf has engaged or will engage in corrupt activity in connection with either the BTC pipeline contracts or the oil exploration and exploitation contracts that underpin the BTC project.*

## **8. Legal Implications of the Intergovernmental and Host Government Agreements: Concerns over conflicts with international law, EU law and Turkey's accession undertakings**

The legal regime for the BTC is set by the Intergovernmental Agreements and Host Government Agreements signed between the BTC consortium and the governments of Azerbaijan, Georgia and Turkey. Although the HGAs differ from country to country, they share a number of common elements. These are exemplified by the Turkish HGA, which:

- *Exempts the BTC consortium from any obligations under Turkish law, aside from the Constitution, which conflict with the terms of the HGA/IGA.*<sup>13</sup> In doing so, the Turkish government has severely limited its executive and legislative powers to protect Turkish citizens from potential environmental damage and associated health and safety hazards
- *Effectively protects the BTC from the financial impacts of 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 order to improve the regulatory regime should changes in our understanding of the risks require it.* In addition, Turkey has undertaken to compensate the BTC consortium if new taxes or health or safety or environment laws adversely affect the financial viability or profitability of the project..
- *Grants BP and its partners exclusive 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.
- *Effectively denies a future Turkish Government the ability to invoke its executive powers to amend the agreement so as to afford its citizens greater protection.*

A preliminary analysis has been undertaken by NGOs to assess the HGA's and IGA's compliance with international private and public laws (**Attachment 4**). We are concerned that the legal structure of the project agreement will lead

<sup>12</sup> Agreement on the Joint Development and Production Sharing for the Azeri and Chirag Fields and the Deep Water Portion of the Gunashli Field in the Azerbaijan Sector of the Caspian Sea, 1994, p.129

<sup>13</sup> The Agreement has the same legal standing as any domestic law and prevails "over all Turkish law (other than the Constitution)".

to violations of the European Convention on Human Rights and to conflicts with European Union laws and other international law instruments.

NGOs have also written to the EC Commissioner for Enlargement expressing concern over the implications of the HGA for Turkey's potential accession to the EU (**Attachment 8**). For example, Turkey guarantees that the project will not be bound by any law that creates environmental or social protection standards higher than those generally adhered to in the petroleum industry, even where such laws are enacted by a regional authority with the authority to require such compliance (including potentially the European Union). Serious questions arise about the compatibility of such a provision with Turkey's progress towards accession. This should be read in conjunction with Art. 21.2 (HGA) in which Turkey gives express recognition to its intention that no future law shall abridge or affect adversely the rights granted to the Consortium or take precedence over any part of the Project Agreements. In this context, far from benefiting local people as BP claims, BTC could imperil the political progress made by the Kurds in recent months as Turkey loosens linguistic and political controls in an attempt to meet the Copenhagen criteria for EU accession.

To date, no due diligence has been undertaken by the EBRD or ECGD on the compatibility of the HGAs and IGA with international law. EBRD has, however, undertaken to conduct such a review. The issue has also been raised with the IFC.

*We urge the UK government to delay any decision on support for BTC until:*

- a) The human rights, environmental and developmental implications of the HGA have been analysed in detail and publicly discussed;*
- b) A review of the legal implications of the HGA and IGA has been undertaken by the EBRD, the IFC and the ECGD and made available for public consultation;*
- c) Clear-cut legal advice has been obtained as to the compatibility of the HGAs and IGA with international law;*
- d) The implications for Turkey's accession to the EU have been assessed and potential conflicts that arise from the agreements satisfactorily resolved.*

## **9. Pipeline Security, Human Rights, Conflict and Militarisation of the Region**

The 1,730 km BTC pipeline poses a major security risk, with international implications. The pipeline passes through or close to a number of areas of recent conflict, including the Kurdish region of Turkey. Its potential to heighten conflicts within an already unstable region is thus of grave concern. As the scoping paper undertaken by BP for Georgia itself notes: "Technically, Armenia and Azerbaijan have yet to resolve their regional conflict. A pipeline carrying oil sourced in Azerbaijan which passes close to previous areas of conflict could create a significantly increased security threat to construction and operations personnel, as well as pipeline facilities."<sup>14</sup> NGOs in Georgia also report that ethnic tensions have been inflamed as communities vie over the anticipated spoils of the pipeline.

The militarisation of the pipeline corridor is already a reality. Recently, US special forces have been deployed in Georgia, a move that BP has welcomed: "The pipelines will of course benefit from the military presence."<sup>15</sup>

NGOs have expressed particular concern over the human rights implications of the security arrangements laid down in the Intergovernmental Agreement for the project. Under Article II (7) of the agreement, the host states agree to ensure the safety and security of all project personnel, project facilities and all other project assets, as well as the petroleum in transit. In the case of Turkey, pipeline security will be the responsibility of the Gendarmerie. Significantly, the Council of Europe passed a resolution in July 2002 highly critical of the Gendarmerie, condemning the severe and ongoing human rights abuses committed by Turkish security forces and naming the Gendarmerie as one of the forces in urgent need of reform. BP itself has acknowledged that the Gendarmerie's record „is not good“.<sup>16</sup>

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<sup>14</sup> BP, "BTC crude oil pipeline project. Georgian Section. Environmental and Social Overview and Scoping,, BTC-PRO-REF-003, Revision 2, 17 July 2001, p.31.

<sup>15</sup> Paton Walsh, N., "Oil fuels US Army Role in Georgia", The Observer, 12 May 2002.

<sup>16</sup> Barry Halton, Meeting with Kurdish Human Rights Project, Friends of the Earth and The Corner House, 8<sup>th</sup> November 2002.

Turkish NGOs working in the Kurdish region also point out that many villages in the area were abandoned or forcibly evicted during the recent conflict between the Turkish state and the Kurdistan Workers Party and have expressed fears that pipeline security will be used as an excuse for preventing villagers from returning to their homes.

Moreover, as the pipeline passes close to the headwaters of both the Tigris and Euphrates, the two most significant sources of fresh water in the entire Middle East, any spillage from BTC would prove absolutely catastrophic not just to local people but to populations hundreds of miles away from the pipeline site. Such a spillage might be the result not only of regional terrorism, but of seismic shifts; the pipeline route follows a highly active earthquake fault line, along which there have been several enormous quakes in recent decades.

We urge that the UK Government delay any decision on public support for the BTC pipeline pending:

- a) *A review of the risk that the pipeline poses for conflict and human rights in the region;*
- b) *Legal assurances that support for the project would not infringe the UK government's positive obligations under the Human Rights Act;*
- c) *Legally-binding assurances that the pipeline will not prevent those who were forced to leave their villages during the recent conflict in Turkey from returning to their homes.*

## **10. Violations of World Bank Safeguard Standards – Consultation and Ethnic Minority Issues**

The BTC consortium has stated that the project will conform with the safeguard policies of the World Bank. ECGD has also stated that it expects the project to comply with World Bank standards.

Fact Finding Missions undertaken by international NGOs along the route of the pipeline, however, have revealed major violations of applicable World Bank operational policies:

In Turkey, for example, NGOs reported that although, on paper, the consultation procedures are more elaborate than would have been found on comparable infrastructure projects 10 or 20 years ago, in practice, the project violates four of the Bank's operational policies (OP 4.01 Environmental Assessment; OP 4.04 Natural Habitats; OP 4.12 Involuntary Resettlement; OP 4.20 Indigenous Peoples). In the most egregious example, one village which the BTC claimed had been consulted by telephone had neither people living in it nor telephones connected to it. The village, Haçibayram, had been abandoned during the recent conflict between the Turkish security forces and the Kurdistan Workers Party.

The NGOs also found that the procedures which the BTC claims to be following on land acquisition were universally violated in the villages which the Fact Finding Mission visited. In particular, despite claims by the BTC to the contrary, those without land title were not deemed eligible for compensation by BOTAS, the construction company which will oversee resettlement. Moreover, the Fact Finding Mission heard evidence that strongly suggested that such violations are common along the entire pipeline route.

Of great concern, given the large number of ethnic minorities along the pipeline route, is the refusal of the IFC and BTC to apply OP 4.20, the Bank's safeguard policy which seeks to ensure that ethnic minorities are not disadvantaged by Bank-funded projects.<sup>17</sup>

We urge that the UK government:

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<sup>17</sup> (OD 4.20 applies to any group, including ethnic minorities, which "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." (para 5). The Kurds and other ethnic minorities along the route conform with all these criteria.

- a) *Undertake a review of the project's compliance with Bank safeguard policies and make it public;*
- b) *Condition any funding for the project on the application of OP 4.20, specifically the drawing up of a development plan in conjunction with the affected minorities; its inclusion in the project EIA; and the publication of the EIA in Kurdish;*
- c) *Ensure that provisions are in place, and practiced on the ground, to secure compensation for all users of affected land, including those who do not hold legal title deeds.*

## **11. Long-term climate change impacts**

Public support for the BTC project, if forthcoming, would inevitably accelerate the exploitation of fossil fuel resources trapped under the Caspian Sea, thus significantly contributing to further emissions of greenhouse gases into the earth's atmosphere and increasing global warming.

*We urge the UK Government to delay any decision on the project pending:*

- a) *An assessment of the direct and indirect greenhouse gas emissions associated with: oil and gas extraction in the Caspian; transportation of oil and gas from the region; fugitive emissions and energy consumption at the refineries and terminals; and the expected consumption of the fossil fuel that the project makes available over its lifetime. Only in this way it will be possible to evaluate the overall impact of the project on climate change in the long term.*
- b) *An assessment of whether support for the project from public funds would be consistent with government policy on reducing greenhouse gas emissions in line with its Kyoto Protocol obligations.*