

Human rights on the line

The Baku-Tbilisi-Ceyhan pipeline project

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Executive summary

This is an executive summary of a report that focuses on some human rights implications of the Baku-Tbilisi-Ceyhan (BTC) pipeline project, which are of particular concern to Amnesty International in the light of its work on Turkey for several decades. The report draws attention to features of the legal framework that are similar to those of investment projects in other parts of the world, many of which pose threats to human rights for similar reasons.

A consortium led by BP is planning to build two pipelines (one oil and one gas) from terminals near the Caspian Sea, through Azerbaijan, Georgia and Turkey. The construction of the BTC pipeline is expected to begin in the first half of 2003 and to last around two years. The life of the pipeline is anticipated to be at least 40 years, and could extend to 60 years. Such a project must have wide-ranging consequences, not only for people living close to the route through which the pipeline will pass, but also for everyone in the three countries and possibly beyond them. This project has been long in the planning and concerns have been expressed about its probable environmental, social and economic effects during construction and later.

The project is established under a framework of special agreements between the three states, and between each state and the consortium. The latter is known as a Host Government Agreement (HGA). The HGA between the Turkish Government and the consortium makes clear that the consortium is to be protected from, among other things, the consequences of any changes in national or international legislation that might hamper the construction and subsequent operation of the pipeline. Whatever the terms of the HGA, Turkey remains legally bound by its commitments under international human rights treaties and BP, too, is morally bound by the policy commitments it has made to respect human rights. However, even if these rights cannot be removed, the report shows how the HGA can nevertheless have such an impact that it will become much more difficult for Turkey to respect them.

Turkey has been facing a difficult choice. Anxious for inward investment, it was asked by the consortium to create a special set of regulations within its territory where the project could be carried out according to rules that would in the future isolate those affected from some of the basic rights that others in Turkey enjoy. Alternatively, Turkey could have refused to accept this condition, and risk losing the interest of those foreign investors. The BTC pipeline project poses this dilemma, and the responses by the international community to it will affect not only this project, but also many similar ones in other countries. The question that must be asked is whether these are the only options – investment at this heavy social price, or no investment at all. In this report Amnesty International argues for a third possibility: that an undertaking of this type should only go ahead if it incorporates basic rights as a central operational feature of the project. It should not treat them as items to be negotiated.

Under the present framework of protocols and agreements that circumscribe the project, mechanisms for protecting human rights are being systematically

undermined. Amnesty International's main concerns, set out in detail in the accompanying report, are summarised below.

Human rights operating at a split level

On the surface, the project is undertaken by a consortium led by BP that, in its planning, has taken steps to follow basic international standards for the protection of persons, property, and the environment. Beneath the surface, the project in its day-to-day operation is excluded from certain important regulations by the state, even when these would translate international standards into Turkish law. The consortium aims to manage 'in house' most of the issues arising from the impacts of the project. A crucial gap thereby opens between the good intentions of the consortium and the ability of the outside world to count on these good intentions when commercial pressure bears down on the project over the next 40 to 60 years.

Putting a price tag on human rights

While Turkey remains bound by its international human rights obligations, it has undertaken in the Host Government Agreement (HGA) to pay the consortium substantial compensation for any changes in law or other actions that will disturb the economic equilibrium of the project. It is thus caught between two sets of requirements – to live up to its undertakings to its citizens, and to live up to its undertakings to the consortium. Each step in the former direction will carry the price tag of damages – which can easily amount to many millions of pounds. In this way, the HGA creates disincentives for Turkey to become more integrated into international human rights norms. At the very least, it may have to enter reservations exempting the project from any new international standards it subscribes to. The effect of being faced with punitive costs for protecting the human rights of those affected by the pipeline is likely to have a chilling effect on Turkey's ability to improve its general human rights record.

Restricting effective remedies for people damaged

The legal framework created by the project agreements may leave intact many obligations of the state to respect human rights, but these obligations will be remote from the lives of most of those affected who live near or work on the project. For they have been restricted from having effective remedies in Turkish law to deal with any damage done. The right to an effective domestic remedy is a key element in human rights guarantees. It allows individuals to pursue wrongs done to them in a national court, rather than having to wait on the vagaries of international litigation to produce a result. By shrinking the state's and individuals' room for action at the domestic level, the consortium is able to manage human rights problems through its own voluntary standards, in the knowledge that these are not legally binding. There is a local arbitration process that the company's operational documents provide for, but in its present form, it will necessarily have limited power to shape remedies for people who have suffered damage.

Playing fast and loose with the public interest

In order to meet the requirements of the consortium of oil companies, Turkey has removed the project from the domain of the public interest as this gives it immunity from intervention by the state. At the same time, Turkey counts heavily on the project's being in the public interest in order to be entitled to compulsorily acquire from families the thousands of acres of land the project needs. Amnesty International claims that this is a cynical use, and misuse, of the idea of the public interest – a crucial element in the protection and management of human rights.

Suppressing protest

While the pipeline may be welcomed by some of those whose lives will be positively affected, others who will be adversely affected may want to exercise their right to protest. With regard to such protests, the pipeline project is at risk of contributing indirectly to human rights violations. This is illustrated in the accompanying report

with reference to a number of case examples. Turkey's human rights record, which has been documented by Amnesty International for many decades, is a part of the context of the pipeline project that merits close scrutiny. The HGA transfers all responsibility for maintaining the security of the pipeline to the Turkish authorities. The Turkish security forces have a record of violently suppressing all forms of protest, in many cases detaining peaceful demonstrators, and further subjecting them to torture or ill-treatment, and charging them with offences not directly related to the demonstration. The report describes prosecutions that have arisen out of peaceful protests, for environmental and health reasons, as well as against other operations and proposed projects in Turkey. The intention of such prosecutions, even when they do not result in imprisonment, is clearly to deter legitimate protests and the exercise of the right to freedom of expression.

Compromising health and safety

The restrictions imposed by the HGA in this area are likely to place Turkey in violation of the European Convention on Human Rights. The agreement allows the state to intervene with the project only when there is an 'imminent, material threat to public security, health, safety or the environment'. The European Court of Human Rights has produced standards that are more exacting than this. If the state permits a dangerous environment to come into existence, then it can be held liable for violation of the right to life even if the damage risked is not imminent. The liability arises from a failure to implement reasonable precautionary measures, and such precautions must be taken well before the damage becomes imminent.

Undermining equality

The HGA carves out an area in which those involved with the project will not enjoy rights that others have under Turkish law that applies elsewhere in the country. This is the consequence of freezing the state's ability to apply new laws to the project for its lifetime. Quite apart from issues of ethnic or gender discrimination, this disparate treatment among subjects in a country is itself increasingly seen as a wrong by international standards. For example, the Twelfth Protocol to the European Convention on Human Rights states that 'The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. If one person enjoys legal protection while another does not, and the only reason for this difference is that one works or lives in the pipeline zone and the other does not, then this offends a basic human rights principle of equality and non-discrimination. The report also notes that experience of other projects in Turkey suggests that women are likely to suffer more adverse consequences from the BTC pipeline than are men.

Degrading the environment

For a period of up to 60 years Turkey will be effectively unable to improve environmental standards in the pipeline zone. The HGA freezes the regulatory framework from the effective date of the agreement, and allows no stricter standard to apply unless it can be shown that the threat to the environment is 'imminent and material'. This means that long-term threats from the construction and operation of the pipeline will go unchecked. It is true that EU environmental standards apply by virtue of a provision within the Inter-Governmental Agreement (IGA). But this is another area in which legal theory and actual practice can diverge radically. The only way to force the consortium to live up to EU standards is to take the big step of going to international arbitration. Turkey cannot take the quicker and more effective step of intervening with the operation of the project with its own laws and regulations. Environmental degradation from this project could have effects on climate change, ozone depletion as well as basic health and safety. All that exists to deal with this possibility are the consortium's voluntary standards. There are human rights issues here as well in so far as livelihoods may be threatened. Pollution and other environmental damage can trigger claims under the European Convention

regarding the right to the enjoyment of private and family life for those affected.

Proposals

Amnesty International is aware of the monitoring system and other measures proposed by the oil consortium to ensure the quality of the project and mitigate the negative social and environmental impacts it will create. These measures are explained in the extensive project documentation. However, they provide insufficient assurance that human rights will be protected. Other measures need to be taken by the consortium and the Turkish government to remedy some of these fundamental deficits.

Firstly, clauses should be added to each of the relevant provisions of the HGA to the effect that: 'Nothing in this article shall be interpreted or applied by the parties in a way that would make it more difficult for Turkey to satisfy its international human rights obligations, at present or in future, either as they arise under customary international law or under specific treaties or other instruments to which Turkey is a party.'

Secondly, a supervisory committee should be created with greater powers and stronger independence than present planning by the consortium provides. Its membership would be drawn both from within the consortium and from portions of the potentially affected population, as well as other relevant bodies. This committee would be responsible for ensuring that the consortium partners have in place adequate internal procedures for compliance with relevant minimum standards, both international and domestic. It should also serve as a forum for dealing with grievances from any affected individuals and communities. Where necessary to carry out its functions, the committee would have powers to intervene in and halt the construction and operation of the project.

Thirdly, the consortium should use contractual mechanisms to ensure that arrangements to protect the security of its assets, installations, personnel and sub-contracted workers pose minimal risks to the human rights of local populations. These mechanisms should include penalties for non-compliance.

Planned pipeline route



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The Baku-Tbilisi-Ceyhan pipeline project

1. INTRODUCTION

The governments of Turkey, Georgia and Azerbaijan have been facing a choice. Anxious for inward investment, they wish to host a large pipeline project connecting the Caspian Sea to the Mediterranean. However, the enterprises that wish to build and operate the pipeline have insisted on exemptions from important elements of national law – some of which touch on the basic rights of those who will work on and live near the project. The countries could have rejected this condition, but might have lost the investment as a consequence.

A consortium led by BP is planning to build two pipelines (one oil and one gas) from terminals near the Caspian Sea, through Azerbaijan, Georgia and Turkey. The construction of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline is expected to begin in the first half of 2003 and to last around two years.¹ The 1,750 km pipeline will be one of the world's longest. It will also be one of the most valuable in terms of volume of oil.² According to the BTC consortium's published information, the partners in the project are: SOCAR (the state oil company of Azerbaijan); BP (UK); TPAO (Turkey); Statoil (Norway); Unocal (USA); Itochu (Japan); Amerada Hess (Saudi Arabia); Eni (Italy); TotalFinaElf (France); INPEX (Japan) and ConocoPhillips (USA). BP is the largest stakeholder in the project, and is leading the design and construction phases.³

The life of the pipeline agreement is anticipated to be at least 40 years. Such a project must have wide-ranging consequences, not only for people living close to the route through which the pipeline will pass, but also for everyone in the three countries and possibly beyond them. This project has been long in the planning and concerns have been expressed about its probable environmental, social and economic effects during construction and later. This report focuses on some human rights implications of the BTC project which are of particular concern to Amnesty International in the light of its work on Turkey for several decades.⁴

The Host Government Agreement (HGA) signed by the Turkish government and the consortium in October 2000 transfers all responsibility for maintaining the security of the pipeline to the Turkish authorities. The HGA makes clear that the consortium of oil companies is to be protected from, among other things, the consequences of any changes in national or international legislation, and compensated for delays in the construction of the pipeline. Turkey remains legally bound by its commitments under international human rights treaties and BP, too, is morally bound by the commitments it has made to respect human rights and be 'a positive force for good'⁵. In the document *BP's Business Policies* the corporation states: 'BP supports the belief that human rights are universal. They are enshrined in the UN Universal Declaration of Human Rights (UDHR), which we support.... The promotion and protection of all human rights is a legitimate concern of business.' This report questions whether BP is living up to its pledge on this project.

Amnesty International recognises that the issues raised here reveal a difficult choice facing many countries. Anxious for inward investment, they encounter transnational enterprises that are themselves anxious about risk. When the two sides come together, the countries are often asked to create a special legal regime within

their territory, where enterprises can operate free of the impact of future changes in key laws and policies. The countries in question can refuse to agree to this condition, but run the risk of losing the interest of those foreign investors if they do. If, on the other hand, a country promises to refrain from making changes to its laws that might affect the investment, then there may be victims of this undertaking: those who work on or are affected by the investors' project, and who would have benefited from improvements in the protection of their basic rights. They would be barred from rights that people elsewhere in the country enjoy. They would become second-class citizens in return for an investment that their government believes will produce benefits to the country.

The Baku-Tbilisi-Ceyhan Pipeline Project posed this dilemma for Turkey. The responses by the international community to it will affect not only this project but also many similar ones in other countries. The question that must be asked is whether the only options are investment at this heavy social price or no investment at all. In this report Amnesty International argues for a third possibility: that an undertaking of this type should only go ahead if it incorporates basic rights as a central operational feature of the project. It should not treat them as items to be negotiated.

The issues are considered in three stages. Firstly, there is the legal framework adopted by Turkey and the oil consortium for the construction and operation of the pipeline. Next, there are the particular rights and interests of people that might be affected by these arrangements, as well as the issues of corporate responsibility and governance facing those companies building and operating the project. Finally, Amnesty International proposes some changes to the mode of operation that will help incorporate human rights considerations into the framework of the project.

2. THE LEGAL AND POLITICAL SETTING

This project has been created within a legal framework similar to those that govern relations between the state and private enterprise in various parts of the world. It is a framework that poses a fundamental problem for human rights.⁶ The objective is to create an environment for foreign investment that avoids the risks to companies of changes in national priorities, together with the changes in law that can result. In order to achieve this, the state typically makes an agreement with the investor that contains what are called 'stabilisation' clauses. These demand that there be no changes in the state's policies that would alter the terms for the project initially agreed, without the consent of the other contracting party.⁷ Sometimes the intention is to avoid the risks of nationalisation, or the effects of changes in tax rates. In other cases, such as this one, the intention is much wider because Turkey has undertaken, for at least 40 and possibly 60 years, not to apply any fresh legislation or other measures if these will affect the profitability of the project.⁸ This includes measures having their origin in international treaties to which Turkey is a party and measures aimed at improvements in environmental and social protection, except for certain qualifications.⁹

Instead of referring to internationally recognised human rights standards, the agreement between the state and the consortium says that the project is to be regulated by '... the standards and practices generally prevailing in the international petroleum pipeline industry for comparable projects'.¹⁰ Apart from the fact that on BP's own admission these standards have never been formulated, this is not a substitution of like for like. It jettisons the carefully worked out balances made by the regional and international bodies charged with fixing the dimensions of basic rights, and instead the reference point becomes the consensus among actors in the petroleum industry on how things should be done. The health, safety, and environmental performance of the petroleum pipeline industry in other parts of the

world raises serious concerns. However, the more fundamental point is that common *practice* is in any event no guarantee of adequate *standards* with regard to human rights. As the UK courts have said, the fact that most of those engaged in an activity function in a particular way does not of itself make that way of acting acceptable.¹¹

Those who have drawn up the project's legal framework recognise this fact to some extent. They have added an important phrase in one of the agreements, to say that petroleum industry standards must themselves be no less stringent than those generally applied within member states of the European Union.¹² For individuals working on or living near the project, however, any prospect of giving legal teeth to this undertaking, and to the full range of Turkey's human right obligations, remains out of reach. If BP's and Turkey's commitment to respect international human rights standards is to be taken seriously, it requires some major modification in the way the consortium and Turkey have so far agreed to proceed.

The distance between the spirit of this arrangement and the guarantees provided by international human rights standards is important to establish, as it sets the tone of much of the relationship between the consortium, Turkey, and the people affected by the agreement. The companies making up the consortium would normally get the benefit of international human rights law for the protection of their investment. Under the European Convention on Human Rights, for example, Turkey cannot expropriate their property without paying reasonable compensation.¹³ However, that body of principles draws a line between normal state activities, such as changes in tax policy or increased employee protection requirements, both of which can affect profits from a project, and state policies which involve wholesale destruction of the project's value. Only the latter attracts compensation for violation of the right to the protection of property.¹⁴ The picture is very different in the HGA. Under its arrangement with Turkey, the consortium receives a level of compensation well beyond these human rights principles. If the state disrupts what is referred to as the 'economic equilibrium' of the project, it must either restore it or pay compensation.¹⁵ This equilibrium is defined as the economic benefit that the consortium has enjoyed under laws and regulations existing at the time the HGA came into force. That benefit must not be reduced as a result of burdens imposed by any legislative or other changes.¹⁶ This provision applies to all changes in law and policy, ranging from changes in corporation tax rates to new Turkish law that aims to comply with an international agreement or treaty, even when such treaties concern health, safety and protection of the environment.¹⁷

The result is that the consortium has been given a higher level of legal protection for its investment than human rights standards would normally afford, while employees, villagers, and others affected by the project might well find that they have less protection than human rights standards afford.

The political principles at stake here are important. The consortium and the Turkish government are trying to move selectively between public and private values. They are picking and choosing the basic rights to be dealt with in the name of the public interest, while sidelining other rights by transferring control over them to a private domain. To achieve this, the relationship between the project and the state has been placed under the legal category of a special kind of contract. If this is to work successfully as a contract that holds against changes in government priorities for the next 40 to 60 years, then it has to overcome a feature common to most legal systems (including that of the UK). This is the fundamental principle that the state cannot remove its own freedom of choice – what lawyers call its discretionary powers – when it comes to acting in the public's benefit or in its interest. When this happens, courts declare the contract void.¹⁸ To insulate the agreement between the state and the consortium from this possibility, the government has agreed that the project '... is not intended to operate in the service of the public benefit or interest ...'.¹⁹ Private

interests here push public interests to one side. But they do so in a very selective way, for at other points the project relies heavily on the idea that it serves the public interest. If the state is to be able to demand that those with rights to property give up their land to the project in return for fixed rates of compensation, then it must abide by the requirement that such compulsory purchase is allowed only if it is in the public interest. This is required by Turkey's constitution, as is the case in most other countries.²⁰ It may well be difficult to show that a land purchase is in the public interest when the state has clearly said the opposite in setting up the project. This weakness in the legal framework is no accident. It comes from an attempt to avoid the impact of public law principles at some points and to make use of them at others.

There is no need for the pipeline to create second-class citizenship. An investment so bound up with the future of the country should not carry the cost of tying that country's hands in its attempt to serve the public interest. There is no quarrel with the consortium's desire to protect its investment; but there is a quarrel with the method used to protect it.

3. A CLOSER LOOK AT THE LAW

3.1 The framework of agreements

The building and operation of the pipeline is governed by two major types of agreement. One is between Azerbaijan, Georgia, and Turkey, and is called the Inter-Governmental Agreement (IGA). It aims to coordinate project standards between the states, and broadly to define those standards. A second set of agreements, known as Host Government Agreements (HGAs), was made between each state separately and the consortium of oil companies. Our focus in this report is on the HGA between the consortium and Turkey. The HGA is set to run for 40 years, with an extension available for a further 20 years.²¹ Construction work on the pipeline will be undertaken by a Turkish company, BOTAŞ, according to the terms of a 'turnkey' agreement between itself and the consortium. Thereafter BP will be the operator of the pipeline.

3.2 The Inter-Governmental Agreement among the three states

In the IGA, Turkey warrants to Azerbaijan and to Georgia that it is not subject to any regional or international treaty or domestic law that conflicts with the implementation of or value of the pipeline project.²² The IGA contains the key clause mentioned above, stating that the project '... is not intended to operate in the service of the public benefit or interest ...'.²³ Finally, although the IGA provides that the standards of safety and environmental protection shall conform to international standards in the petroleum pipeline industry, it adds that these standards shall be no less stringent than those generally applied within member states of the EU.²⁴

It has been established that the IGA provides an undertaking that EU standards will be observed over a limited range of issues. Moreover, Turkey warrants that none of its international obligations conflict with its ability to fulfil its obligations under the IGA and HGA.²⁵ The IGA also takes priority over the HGA when the two clash.²⁶ In other words, if when we turn to the detailed terms of the HGA we see that they do in fact violate EU norms on health and safety, or on the environment, then Turkey must be understood to have given its implied undertaking in the IGA that the HGA must be overridden to reflect such EU obligations. Similarly, if fulfilling the requirements of the HGA places Turkey in violation of the European Convention on Human Rights, to which Turkey is a party, then again it can be understood to have given its promise to its partner countries to override the HGA to reflect its international human rights obligations.²⁷

Looking to the future, Turkey will be under pressure to ratify both the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the revised European Social Charter of 1996, and the health and safety conventions of the International Labour Organisation (ILO). The HGA may discourage Turkey from doing so. Moreover, Turkey's warranty in the IGA of 'no conflict' with its international obligations might be understood to require it to do one of two things:

Either

i) it will enter what international lawyers call reservations, exempting the pipeline project from these standards. In this case, the IGA deters Turkey from full implementation of human rights demands.

Or

ii) the parties will be obliged to alter the HGA so as to maintain conformity with Turkey's promise that it is not violating any of its international commitments.

If Turkey does neither of these things, it may well find itself caught between two incompatible demands: to honour the project agreements or to honour its international human rights commitments.

3.3 The Host Government Agreement between the consortium and Turkey

3.3.1 Requirements placed on Turkey

It is in turning to the details of the HGA, which is a large and detailed agreement that will influence the day-to-day conduct of the project's affairs, that the full dangers for basic rights become apparent. The HGA places three types of requirement on Turkey.

i) Obligations to refrain from applying new domestic or international law

The agreement requires Turkey to freeze the application of any legislative changes from the date the HGA comes into force. It provides that '... no Turkish Law now or hereafter existing ...' shall be allowed to affect the rights of the project participants.²⁸ Moreover, if Turkey comes under new international obligations, then the HGA also prevents these from applying to the project.²⁹ These are radical requirements. The freeze they impose also covers any interpretation of existing domestic or international law that could adversely affect the economic equilibrium of the project.³⁰ This prevents the Turkish courts from developing their case law in a way that has negative implications for the project, thereby compromising an important element in the rule of law.

ii) Obligations to refrain from applying existing law

In addition to tying its hands in the application of new law, the HGA provides that the state '... shall not act or fail to act in any manner that could hinder or delay any project activity, or otherwise negatively affect the project.'³¹ This ban extends to regulation for security, health, safety or environmental reasons when such regulation would interfere with the smooth running of the project. The only exception to this is that the state can intervene to protect such interests when they are under an 'imminent, material threat'.³² This standard is, as indicated below, incompatible with some of Turkey's present human rights obligations, as well as with future obligations which it could reasonably be expected to apply.

iii) Obligations to take positive action

There are also measures that Turkey has promised to take under the HGA that pose a threat to basic rights, especially in the light of Turkey's practices in the past. Examples include the obligation to expropriate land and turn its use over to the consortium, as well as the undertaking to provide police protection for the project.

3.3.2 The HGA as an ‘internationalised’ contract

It is important to note that these obligations on Turkey do not arise from a contract made between it and the consortium in Turkish law. They form an agreement following principles of English law, save where it clashes with requirements of the Turkish Constitution. Disputes under this agreement will not be dealt with by the Turkish courts, but instead settled by arbitration in a procedure governed by an international organisation linked to the World Bank, the International Centre for the Settlement of Investment Disputes (ICSID). The effect of lifting the HGA out of Turkey’s jurisdiction is that the state becomes bound to respect the agreement with the consortium as a matter of international, not domestic, law. This can add to the restrictions on any decision at a later date to place new requirements on the project. For international law is less tolerant than domestic law of a state’s claim that it must be left free to change its mind and disregard a contract in order to serve the public interest. This technique is widely used in international investment agreements, and is important in assessing the points to follow.

3.3.3 The commitment to respect EU standards for health and safety and environmental concerns

There is an undertaking, which appears in the IGA and which in principle is part of the HGA, that the health and safety and environmental standards of the project will be at least as good as those prevailing in the EU.³³ It is a commitment relatively remote from the lives of the people potentially affected. The reason is that this undertaking to follow EU standards does not confer rights on individuals or groups to sue the state or the consortium for any damage they suffer because of failure to follow such standards.³⁴ The same is true of the other commitments to respect international standards that are found in the consortium’s operating documents, considered in more detail below. These confer no legal rights on individuals working on or living near the pipeline, when the exercise of such rights would disturb the smooth running of the project.

There is a particular balance being sought here, the aim of which is to reconcile commercial considerations with the guarantee of basic rights. On the one hand, there is an international legal commitment to maintain high standards on the project. On the other hand, the consortium cannot be forced to live up to this commitment by Turkish law, if such legal intervention affects the economic equilibrium of the project (except in circumstances where there is an imminent, material danger). Turkey’s only other route for legal pressure would be through action against the consortium in the offices of the arbitrators sitting in Geneva.³⁵ This is a cumbersome, expensive and time-consuming exercise.

If the consortium or its contractors harm a person during the construction or operation of the pipeline, that individual should be guaranteed an effective remedy in domestic court. The remedy must be strong enough to allow an individual to benefit fully from the international standards that bind Turkey and must be applicable to the project. For example, existing case law under the European Convention on Human rights could require the state to carry out inspections of private facilities and to implement restrictions, even if these interfere with the operation of those facilities, and even when there is no imminent material danger.³⁶ In turn, this could mean that individuals should be able to apply for court orders to ensure that these standards are respected.

Shrinking the state’s and individuals’ room for action at the domestic level, allows the consortium to manage human rights problems ‘in house’. It can rely on its own voluntary standards, with little worry that these will be legally binding. The company’s operational documents provide for a local arbitration process, but in its present form this will necessarily have limited power to shape remedies for people who have suffered damage. Judging by the project documents that BP has published, its aspirations for a safe and environmentally friendly project are high. However, if

they are insulated from the accountability demanded by law, then they are fundamentally fragile, open to breach whenever commercial pressures become sufficiently intense.

This does not bode well for Turkey's possible membership of the EU. It is a fundamental demand in Community law that member states ensure that national remedies are sufficiently effective to protect individuals' rights.³⁷ Future directives or regulations in areas relevant to the pipeline could come up against the obstacle that, if Turkey gave full effect to them in its domestic law, they might amount to changes in the law affecting the project for which the consortium must be compensated.

3.4 Operational documents

An extensive set of documents drawn up by BP provide a further part of the operational framework for the project. These seem at first glance to remove many of the worries mentioned so far. They seem to provide extensive protection for people affected. For example, it is said that the project participants '... aim to comply with ... relevant international guidelines such as international labour standards (eg ILO Conventions), and international standards on ethical conduct (eg OECD Guidelines for Multinationals) ...'.³⁸ In addition, the documents list the specific international conventions with which BP aims to have the project comply (although some crucial ones mentioned in this report have been left out).³⁹ The documents also indicate areas of Turkish labour law that will apply to the project, covering a wide range of matters.⁴⁰ Finally, BP insists that the standards it applies are not static, but will evolve over time. These, along with those of the international financial institutions, '... will be applied to the BTC project as they exist from time to time regardless of [the] stability covenant.'⁴¹

The HGA, however, takes priority over these documents and it undermines the commitment to these standards. The prospect of evolving standards held out by the documents runs up against the agreement's categorical statement that '[I]f any domestic or international agreement or treaty; or any legislation, promulgation, enactment, decree ... or any other form of commitment, policy or pronouncement ... has the effect of ... interfering with the implementation of the Project, or ... adversely affecting the value of the Project ...' then it will be deemed a change in law and Turkey will have to pay compensation for any disruptive effects.⁴² Also, none of the existing Turkish law on health and safety, or for protection of the environment, can be applied without the consent of the project participants, unless for the narrow purpose of preventing an imminent, material threat. There is, finally, the overall provision that the state '... shall not act or fail to act in any manner that could hinder or delay any project activity, or otherwise negatively affect the project.'⁴³

In other words, the operational documents tell the world about the aspirations of those who will build and operate the project, but little about their concrete legal obligations. The aspirations and the legal reality can indeed be quite different. Where the documents say that the requirements for citizens of the state must be *at least* as stringent as the requirements of Turkish labour legislation⁴⁴ the HGA says, on the contrary, that Turkish labour legislation applied to the project must be *no more* stringent than international labour standards customary in petroleum transportation projects.⁴⁵

BP says that it *aims* to satisfy international standards for basic rights.⁴⁶ But the result of this web of agreements and supplementary documents is that this aim stands little chance of becoming an objective for which the consortium can be held to account by law – least of all within Turkey itself.⁴⁷

4. THE EFFECT ON HUMAN RIGHTS

An important consideration for the human rights implications of the project is that it could last as long as 60 years. In this context, it is useful to consider the path that Turkey may follow over time to become more integrated into international human rights norms, and then ask what the project agreements will do to affect that progress. The agreements place a substantial price on signing up fully to international standards. Turkey may well find itself having to enter reservations exempting the pipeline from each new international undertaking it makes – so pushing those affected by the project more deeply into second class status. Alternatively, it may decide to push ahead and apply the new standards, in which case it could face a claim for heavy damages from the consortium. This prospect will have a chilling effect on Turkey's willingness to meet its human rights obligations.

As a matter of international human rights law, the HGA cannot by itself remove any of the basic rights enjoyed by individuals against abuses by the Turkish state. For example, if an individual were to bring a complaint before the European Court of Human Rights as a result of damage sustained from Turkey's failure to protect them as the Convention requires, Turkey could not plead in its defence that it was simply following the terms of the agreement.⁴⁸ However, even if these rights cannot be removed, the HGA could make it much more difficult for Turkey to meet its obligations to respect, protect, fulfil and promote them.⁴⁹

4.1 The rights at stake

4.1.1 Health and safety

The restrictions imposed by the HGA in this area are likely to place Turkey in violation of the European Convention on Human Rights. The agreement allows the state to intervene with the project only when there is an 'imminent, material threat to public security, health, safety or the environment'.⁵⁰ The European Court of Human Rights has produced standards that are more exacting than this. If the state permits a dangerous environment to come into existence, then it can be held liable for violation of the right to life even if the damage risked is not imminent. The liability arises from a failure to implement reasonable precautionary measures, and such precautions must be taken well before the damage becomes imminent.⁵¹

The thrust of this requirement, in common with the standards of the European Social Charter, is to induce the state to be proactive in health and safety, and to constantly seek to improve standards. Turkey has adhered to the Social Charter of 1961, although it has entered reservations relating to health and safety in the workplace.⁵² However, it is bound by the Charter and the Migrant Workers Convention to provide basic social rights to migrant workers⁵³ and to provide adequate control of working hours and access to dangerous work for young persons⁵⁴. Looking towards EU accession, Turkey will be under pressure to drop its reservations for general health and safety applicable to all employees, and indeed it may subscribe to the more demanding standards set by the Revised Charter of 1996.⁵⁵ The Revised Charter calls on states to 'eliminate risks' in inherently dangerous occupations.⁵⁶ It also requires states to promote the 'progressive development' of occupational health services for all workers with essentially preventive and advisory functions.⁵⁷

If Turkey accepted any of these obligations, and applied the resulting requirements to the project, this could easily make the project less profitable. That would trigger the clause in the HGA which says that if the economic equilibrium of the project is negatively affected by any such changes, then the Turkish state must compensate the project for the loss – and the payments will be considerable.⁵⁸ The HGA aims to substitute its own regime for international and national law. It states that none of the participants in the project shall be required to follow any employment practices

or standards ‘... that i) exceed those international labour standards or practices which are customary in international Petroleum transportation projects, or ii) are contrary to the goal of promoting an efficient and motivated workforce’.⁵⁹ The agreement goes on to target bodies such as the Council of Europe, the ILO, and any other ‘regional or intergovernmental authority’ that has jurisdiction to make social regulations or guidelines applicable to areas where the activities of the project take place. The agreement states that ‘[i]n no event shall the Project be subject to any such standards to the extent that they are different from or more stringent than the standards and practices generally prevailing in the international Petroleum pipeline industry for comparable projects’.⁶⁰

The HGA therefore places before present and future Turkish governments the choice of accepting its terms and keeping the project, or applying international standards of health and safety and paying heavy damages for doing so. The chilling effect on basic workers’ rights is manifest.

4.1.2 Land acquisition and resettlement

Land acquisition and resettlement are two features of the project that will have some of the greatest impacts on the people living in the pipeline zone. The Turkish section of the pipeline is by far the longest stretch at 1,076 km, and according to the consortium’s documents, some 30,000 owners or tenant/sharecroppers will be affected by the land acquisition process.⁶¹ The purchase is to be compulsory. A dispute resolution process has been established to address disagreements over the amount of compensation offered, with provision for a final determination by the judiciary.

What are the human rights concerns raised by this process? One of the most fundamental has to do with the right of the Turkish state to purchase this land compulsorily in the first place. Recall that the pipeline project has been declared in the IGA not to be in the public interest, as a way of securing the HGA against the ability of the state to alter its terms unilaterally.⁶² The European Convention on Human Rights, on the other hand, insists that the state can interfere with private property only to further the public interest.⁶³ The same requirement is in the Turkish Constitution.⁶⁴ It would follow that the only way in which the project could legitimately acquire the land it needs is through a process that has to be followed by any private developer: negotiating voluntary sales, with any owner having the right to refuse to part with their property, or give up some use of it. That, of course, would not be a workable solution for Turkey or for the consortium, given the strategic and economic importance attached to the project – in other words, given the manifest fact that it is undertaken in the public interest. As a practical matter, however, at least one change seems necessary. Independent legal aid must be offered to the people affected by land acquisition. Without relevant legal assistance from the first negotiation meeting, fair negotiation may be impossible.⁶⁵

The present arrangement is that court fees will be paid by BOTAŞ, the Turkish state-owned company in charge of land acquisition and constructing the pipeline, but nothing in the IGA, HGA or other project documents guarantees legal aid to landowners.⁶⁶ There are likely to be large numbers of land disputes about legal title and about levels of compensation. This could have grave consequences on the population’s ability to obtain fair compensation. The majority of the people in the pipeline zone are rural and would have practically no experience in a court of law. Some may not speak Turkish as their first language. In these circumstances, the provision of legal aid is fundamental to a fair hearing and may be the only way to enable people in the zone to challenge expropriation by BOTAŞ. Under the European Convention on Human Rights, it is likely that the landowner’s right to effective remedy would call for this assistance.⁶⁷

At this point, the HGA raises an obstacle. Were Turkey to provide the legal aid, and ensure fairness in the process of land acquisition, then any resulting delay could well interfere with the economic equilibrium of the project, triggering the compensation clause in the HGA. Turkey would have to pay a high price to the consortium if it wanted to secure fair compensation for the affected landowners and users.

The same is true of the resettlement process. The people affected by the pipeline are mostly rural, and agriculture and livestock are their main sources of food, income and livelihoods. This means that the land acquisition and displacement (even temporary) arising from the construction project might well have severe consequences for them. Not only do they risk losing crops, arable land, access to grazing land and the like, but also the fencing off of land for construction of the pipeline may create barriers that remove or impede their ability to communicate and be with family, friends and neighbours. Turkey has an obligation to respect private and family life under the European Convention on Human Rights. This may impose on it a duty to step in and demand a less invasive method of carrying out the project to minimise the negative impact on this aspect of peoples' lives and livelihoods.⁶⁸ However, once again, Turkey must pay the consortium for the right to pursue the less disruptive approaches to resettlement.

4.1.3 Equality

The HGA carves out an area in which those involved with the project will not enjoy rights that others have under Turkish law that applies elsewhere in the country. This is the consequence of freezing the state's ability to apply new laws to the project for its lifetime. Quite apart from issues of ethnic or gender discrimination, this disparate treatment among subjects in a country is itself increasingly seen as a wrong by international standards. For example, the Twelfth Protocol to the European Convention on Human Rights states that 'The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.⁶⁹ If one person enjoys legal protection while another does not, and the only reason for the difference is that one works or lives in the pipeline zone and the other does not, then this offends a basic human rights principle of equality and non-discrimination.⁷⁰ The only defence to this might be that there is what discrimination law calls an 'objective justification' for the difference in treatment. This means, *inter alia*, that the state has legitimate objectives for discriminating, and that there is a 'reasonable relationship of proportionality between means employed and the aim sought to be realised'.⁷¹ While Turkey would certainly argue that the pipeline was contributing to the legitimate aim of furthering the prosperity of the country, the European Court has made it clear that '... mere reference to the economic well-being of the country is not sufficient to outweigh the rights ...' guaranteed by the convention.⁷² The proportionality requirement calls for more. It demands that Turkey show that there was no reasonable alternative way of pursuing the project that would have less impact on the right to equal treatment. The HGA makes no effort to safeguard this right.

4.1.4 Discrimination against women

Experience of other projects suggests that women are likely to suffer more adverse consequences from the BTC pipeline than are men. The final report of an international fact-finding mission to examine how the planned Yusufeli Dam in northeast Turkey violated international standards and people's rights stated that there was a failure to consult women on the initial decision to build the dam or on resettlement: 'The needs of women and other vulnerable groups have not been taken into account and women have not been involved in the decision-making process even to the limited degree that men have been.'⁷³ A fact-finding mission to the Ilisu dam project in southeast Turkey found similar problems.

There is reason to believe that the land acquisition process will create a doubly negative impact on women in the pipeline area: they will be excluded from the negotiation of compensation and from the enjoyment of compensation. There are stark contrasts in the way women and men are positioned to benefit or lose from the pipeline project. According to the Land Acquisition Plan⁷⁴, the vast majority of the land is owned by males, or is in the male's name or under customary rules will be considered to belong to the male head of household. In no region along the pipeline in Turkey do women constitute even 40 per cent of landowners. Additionally, the documents note that women rarely participate in consultation meetings and it is expected that they will not be represented equally in negotiations on land compensation.⁷⁵ The result is twofold. Firstly, the only person authorised to engage in dispute resolution for compensation of the land acquisition will be the named owner or user of the land, generally the male in the family. Secondly, the money paid out by BTC will be paid into a bank account in the male's name or directly to the male in cash, as is happening in Georgia.⁷⁶ This excludes women from the process and from enjoying benefit from land on which they have laboured and lived. It leaves the women vulnerable in that they cannot promote their own rights (as unnamed landowners and users), and it gives them no means of controlling the assets gained once land has been acquired.

This raises an important issue of corporate responsibility. The oil consortium is certainly not responsible for the state of local law and practice that has disadvantaged women in this way. However, it is now a clearly accepted part of a transnational's responsibility, which BP acknowledges, that it must contribute to the solution of a local human rights problem where it has the ability to exert its influence. While BP is committed to taking steps to mitigate the negative impacts of the project on women, it has ensured that the state has strong disincentives to do so. If Turkey were to act to remedy discrimination against women in the process of land acquisition, it could once again face a heavy bill in damages for slowing down the progress of the project. The state could well find itself caught between two sets of obligations. On the one hand, it has duties towards these women under the Convention on the Elimination of All Forms of Discrimination Against Women and under Article 5 of Protocol 7 to the European Convention⁷⁷. On the other hand, it has duties under the HGA not to institute land purchase monitoring procedures or substantive guarantees that would upset the economic equilibrium of the project.

4.1.5 Environmental degradation

For a period of up to 60 years Turkey will be effectively unable to improve environmental standards in the pipeline zone. The HGA freezes the applicable environmental regulatory framework from the effective date of the agreement and allows no stricter standard to apply unless it can be shown that the environmental threat is 'imminent and material'.⁷⁸ This means that long-term threats from the construction and operation of the pipeline will go unchecked. It is true that EU environmental standards apply by virtue of the IGA's provision. But this is an area where legal theory and actual practice can diverge radically. The only way to force the consortium to live up to EU standards is to take the big step of going to international arbitration. Turkey cannot take the quicker and more effective step of intervening in the project's operations with its own laws and regulations. Environmental degradation from this project could have effects on climate change, ozone depletion and basic health, safety and livelihoods. All that exists to deal with this possibility are the consortium's voluntary standards. BP's track record on these matters has been seriously questioned in its pipeline projects in Alaska⁷⁹ and Colombia⁸⁰.

There are human rights issues here as well. Pollution and other environmental damage can trigger claims under the European Convention regarding the right to the enjoyment of private and family life for those affected.⁸¹ Here Turkey cannot claim, as a justification for pollution caused, that the project will produce an economic

benefit for the country as a whole. As the European Court put the point, ‘... mere reference to the economic well-being of the country is not sufficient to outweigh the rights of others in the sensitive context of environmental questions’.⁸²

It should be stressed that BP is internally committed to a high level of environmental control, as is manifest in its Environmental Impact Assessment. The link that is missing is between these commendable aspirations and some external way of holding the consortium accountable for a failure to realise them.

4.1.6 Water

Under the HGA Article 4.1 (vi) Turkey has promised to provide, ‘free of charge’, all the water the oil companies need of a ‘sufficient quality and quantity’ to perform hydrostatic and other testing.⁸³ This promise to provide free water, and make the same readily available (despite noted water shortages in rural areas along the planned pipeline route)⁸⁴ may create a tension with Turkey’s human rights obligations to its people.⁸⁵

The project documents go on to delineate a procedure for disruption in water services, including notice and a requirement to provide alternative services if the disruption lasts longer than 12 hours.⁸⁶ The procedures put in place may be designed to eliminate risks to the population’s water supply. However, if the procedures fail, Turkey must be able to intervene in the project on behalf of the people’s right to water.

If the project causes a water shortage leading to a real risk for the people in the pipeline zone, such as threat of disease or lack of clean water for cooking, and the oil consortium’s risk management safeguards fail, the state is obliged to act under the European Convention. In some such cases the state’s duty to act will be triggered before the HGA’s ‘imminent, material threat’ requirement is satisfied. In such circumstances the HGA would create a disincentive for the state to intervene on behalf of people in the pipeline zone.

4.1.7 Electricity

Similar risks relate to energy use. The project documents state that the energy requirements for the construction phase of the pipeline were unknown at the time that the mitigating measures for energy were drafted.⁸⁷ The documents do state that the national grid will be used only providing there is no impact on local settlement needs. As with water use, mitigation measures are key to project planning, but if a problem arises, the Turkish government will face a disincentive to step in on behalf of the people who are being deprived of energy to meet their basic needs and ensure their livelihoods.

4.2 Indirect risks to the safety and welfare of local populations

So far, this report has considered the direct impact of the construction and operation of the pipeline. There are also several ways in which the project might create indirect dangers to the local population, especially in the light of the Turkish state’s continuous record of human rights violations and suppression of peaceful protest. One of the most significant dangers arises from the use of the Turkish security forces to provide security for the project.

4.2.1 Record of continuing human rights violations

Amnesty International has documented violations of human rights in Turkey for many decades. These have included the imprisonment of prisoners of conscience, unfair trials of political prisoners, torture and cruel, inhuman and degrading treatment of detainees, ‘disappearances’, extrajudicial executions and the imposition and application of the death penalty. In August 2002 the death penalty was abolished, except in times of war or imminent threat of war. During 2002 a number

of other legislative reforms were adopted by the Turkish parliament, with the aim of meeting the criteria for accession to the European Union. However, these changes failed to end widespread and routine use of torture and ill-treatment, the imprisonment of prisoners of conscience and the prosecution of people who would be prisoners of conscience if imprisoned.

Following elections in November 2002, the Justice and Development Party (AKP) formed a new government in Turkey. It is still too early to assess the impact of this government's professed political will not to tolerate human rights abuses, but its ability to deliver human rights reforms could be limited at times when the National Security Council invokes concerns about threats to the state's security or integrity.⁸⁸ The destabilising effect of the war against Iraq continues to present a risk to human rights in Turkey.

In March 2003 a fact-finding mission visited the Turkish section of the BTC pipeline from Sivas to Posof.⁸⁹ The mission reported that it was subjected to constant surveillance by up to 15 plainclothes security men and uniformed gendarmes, was detained twice, and was subjected to harassment and intimidation by the security forces. In these circumstances the mission members found it impossible to continue their interviews and reported concerns about the subsequent treatment of interviewees. One member of the mission said: 'What the [mission] has experienced in the course of our visit has given us some small indication of what local people in the Kars and Ardahan regions suffer daily. It makes a mockery of BP's claims that there are no security problems along the Turkish section of the pipeline route. The obvious lack of freedom of expression calls the legitimacy of the whole process of consultation into serious question.' The mission also reported on problems associated with the implementation of the BTC project. These included flaws in both the consultation and compensation policies and failures to implement these policies appropriately.

4.2.2 Human rights abuses by Turkish military and police

The HGA states that: '... the Government, at its sole cost and expense, but in regular consultation with the MEP Participants⁹⁰, shall use the security forces of the State to provide physical security for the Rights to Land, the Facilities and Persons within the Territory involved in Project Activities ... the Government shall be solely liable for the conduct of all operations of the security forces of the State and neither the MEP Participants nor any other Project Participants shall have any liability or obligation to any Person for any acts or activities of the security forces of the State ...'.⁹¹

Threats of a resumption of armed activities by the Freedom and Democracy Congress of Kurdistan (KADEK) – formerly the Kurdistan Workers' Party (PKK) – may have implications for the safety of the pipeline. During their conflict with the Turkish security forces from 1984 until 1999, when their leader, Abdullah Öcalan declared a unilateral cease-fire, the PKK targeted oil installations in southeast Turkey. The BTC pipeline might attract guerrilla attacks similar to those against the OCENSA pipeline in Colombia. There, the measures taken by a private security company, Defence Systems Colombia, under contract to BP to run its security operations in Colombia, were of concern to Amnesty International. In 1998 the organisation made known to BP its concern that security procedures used to protect the pipeline in Colombia could contribute to human rights violations against the civilian population. In the course of the conflict between PKK and the Turkish security forces, there were widespread human rights abuses, including abuses against civilians who took no part in the conflict.

It is important to underline that companies are expected to conform to international standards with regard to their security arrangements.⁹² They must use their influence

to do everything possible to prevent abuses by military and police services acting on their behalf or in their interests.⁹³

4.2.3 Suppression of protest

Demonstrations against the pipeline are highly likely. The project could give rise to many sources of grievance: resettlement, land compensation claims, access to fishing and grazing, trafficking of prostitutes to service the pipeline workers, access to employment during the construction phase, labour rights, lowering of the water table, environmental pollution. Any of these might provoke public protests.

The Turkish security forces have a record of violently suppressing all forms of protest, in many cases detaining peaceful demonstrators and further subjecting them to torture or ill-treatment, and charging them with offences not directly related to the demonstration. In late 2002 and the first months of 2003 there were numerous protests throughout Turkey against the anticipated war with Iraq and about the imprisonment in solitary confinement of Abdullah Öcalan. It was reported that more than a thousand people had been detained in January and February during these demonstrations. Many of those detained alleged that they had been tortured or ill-treated.

The Human Rights Foundation of Turkey (TIHV) collects information about human rights violations in Turkey and publishes this in a regular bulletin. It reported that Ali Avcı, Esat Söylemez and Abdurrahman İnanç were detained in the Ceyhan district of Adana on 15 February 2003 in connection with demonstrations against the imprisonment in isolation of Abdullah Öcalan. Esat Söylemez said that they were stopped by plainclothes police after leaving a coffee shop, were searched and beaten with gun butts and truncheons. Two days later he was taken to Gazioşmanpaşa Police Station where he was held for four days with Abdurrahman İnanç and Mehmet Ergün in a small, cold, dark cell. Throughout this time they were beaten and insulted. After four days they were taken to the Anti-Riot Department in Ceyhan where the beatings and insults continued. Esat Söylemez said that he was taken to Ceyhan State Hospital, but did not receive medical treatment because the doctor refused to examine him in the presence of police officers. Ali Avcı, who was taken to Ceyhan Security Directorate with Selahattin Kaya and Tahir Dünder, also detained in connection with demonstrations, stated that he was beaten and that Selahattin Kaya was so severely tortured that his body was covered in bruises and he could not stand.

Serdar Ekingen, a trade unionist from Mardin gave the following statement to the Human Rights Association (IHD) in March 2003: 'Several trade unions – including my own – wanted to make a public meeting in Iskenderun against the war. With this intention we set off from Diyarbakir on 14 March 2003 for Silopi by bus. Our vehicle was not allowed into Silopi nor were we allowed to stop at Cizre. When we arrived at Nusaybin, a group of people was waiting for us. Our intention was to read a short statement and proceed on our way. But as soon as we got out of the vehicle, we were attacked by a group of 30-35 people and by police officers wearing balaclavas. Many of my friends were injured and detained. During the attack the police made no warning – they attacked us with truncheons and clubs for no apparent reason.'

4.2.4 Forced prostitution and violence against women

Amnesty International is concerned about forced prostitution, child prostitution, trafficking of women and children for the purposes of forced prostitution and violence against women.

This pipeline will bring thousands of transient men to rural areas of Turkey. The potential social implications of this influx are rather predictable, and pose particular risks for women. The pipeline workers will work and live near small villages. They

will be well paid compared to local villagers, and they will be far from home and family, sometimes for months at a time. This is likely to lead to an increase in demand for prostitution. Moreover, the project documentation provides evidence of the rise in prostitution owing to pipeline construction in Turkey specifically: 'Previous pipeline projects in Turkey that have passed through eastern Anatolia, such as the East Anatolian NGP ... [provide] evidence to suggest that sex-workers did move temporarily into nearby semi-urban centres.'⁹⁴

The oil consortium documents greatly understate the risk of increased prostitution, stating only that the chance of such an impact is low owing to the 'conservative nature' of the rural villages in the pipeline zone and the existence of licensed brothels.⁹⁵ Despite Turkey's legalised brothels, trafficking for the purposes of forced prostitution, even of minors, is common in Turkey. In 1999 Turkey was identified as a major destination for trafficked women and girls for the purpose of forced prostitution. The Turkish government estimated in 1999 that 30,000 minors were involved in child prostitution (which is illegal in Turkey). Another estimate for the same year claims that 60,000 girls between the ages of 12-17 were involved in child prostitution. The pipeline project, with large groups of men far from home carrying disposable income, provides an incentive for an increase in trafficking of women and children to 'service' the pipeline workers. Moreover, the influx of transient men increases the potential for violence against women along the pipeline route. This risk is not mentioned in the oil consortium's documents.

In February 2003 Amnesty International published a report about sexual violence against women in custody in Turkey.⁹⁶ The report stated that women from all social and cultural backgrounds are subjected to abuse, assault and rape in detention. It expressed concern that violence against women perpetrated by agents of the state condones and encourages a culture of violence against women, which places all women at risk in the broader society.

Pursuant to its obligations under the European Convention on Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and other human rights treaties, Turkey is under an obligation to investigate, and if warranted prosecute, allegations of violence, rape, trafficking and forced and child prostitution. However, the HGA creates disincentives for state officials to take any action against pipeline workers that might delay the project. Under the terms of the agreement, such delays resulting from the intervention of the Turkish state might make Turkey liable to pay compensation to the oil consortium.

4.3 Case examples

Case example 1 The Bergama case

Protests about projects involving foreign corporations have led to violations of the right to freedom of expression in Turkey. A case of particular interest to those concerned about possible human rights violations in connection with the BTC pipeline is that of local opposition to the gold mine in Ovacik, nine kilometres from Bergama in western Anatolia. The mine is operated by the Australia-based Normandy Mining Company (widely known by its former name, Eurogold). The people of Bergama have been protesting against the mine for about 12 years because of the possible damage to the environment and human health of the cyanide leaching method used in the mine. The *Turkish Daily News* reported on 16 September 2000 that the gendarmerie had taken some protesters into custody and that the gendarmerie command had asked the Public Prosecutor's Office to charge them with membership of illegal Marxist organisations. The gendarmerie was quoted as saying: 'The members of the Environmental Activity Committee and the heads of public committees and their members have organised against the integrity of the state. In order to prevent demonstrations that could cause more problems in the future, those people who are members of illegal organisations should be charged.' Over the years there have been other attempts to imprison protesters for non-violent opposition to the Ovacik mine. The *Turkish Daily News*, 13 September 2002, reported that Oktay Konyar, leader of the Bergama protests, had been sentenced to five months' imprisonment (converted to a fine). He had been charged with insulting a police officer during a disagreement with policemen at Soma police station when he informed them of a press bulletin that would be issued on 12 April 2001.

The most recent prosecution arising from opposition to the Ovacik gold mine was launched in 2002 against five German organisations, the Konrad Adenauer, Heinrich Böll, Friedrich Ebert and Friedrich Naumann foundations and the Orient Institute. Representatives of the organisations were charged under Article 171 of the Turkish Penal Code with 'creating a secret alliance against Turkey's unity and the secular republic's regime'. Among those also indicted were the former head of the Istanbul Bar Association, Yücel Sayman, the former Mayor of Bergama, Sefa Taskin, and the lawyers who led the campaign against the mine. The prosecutor was reported in the *Turkish Daily News* of 27 December 2002 as saying that the German organisations encouraged villagers in Bergama to protest against the mine on ecological grounds as part of a greater German plan to prevent Turkey from exploiting its natural resources. At a hearing on 27 February 2003 the prosecutor was reported to have asked for acquittal. A final decision was expected in May 2003. Even if no one is imprisoned as a result of this and similar prosecutions, the intention is clearly to deter legitimate protests and the exercise of the right to freedom of expression.

Case example 2 The Ilisu dam project

Opposition to the Ilisu dam project in southeast Turkey in recent years has provoked a strong reaction from the authorities. A fact-finding mission, consisting of two members of the Ilisu Dam Campaign and an archaeologist, visited the Ilisu region in June 2001. It found that: 'In the prevailing conditions, any form of dissent is unacceptable to the authorities in the region and therefore there is severe repression of any discussion on the dam, individuals expressing an opinion as to its drawbacks and violations of the rights of campaigners who highlight problems with the project.' The mission's findings concerning the impact the dam would have on women in particular are relevant to the BTC

pipeline project: 'Findings in this Mission report also imply that the State has failed to consult, involve and compensate women adequately for previous dam projects or provide other benefits to them, in particular ignoring their rights as users of and providers from the land.'⁹⁷

On 18 March 2003 Mahmut Vefa, General Secretary of the Diyarbakir Bar Association, went on trial, charged with 'overtly insulting the moral personality of the Government and the military and security forces'. He had stated in a submission to the UK Export Credits Guarantee Department that the Ilisu dam, if built, would deny local people their property rights and exacerbate the problems of resettlement for the thousands of people displaced by the Turkish authorities' destruction of villages during the armed conflict between the security forces and the PKK. This submission was reproduced in an article in the Diyarbakir Bar Association's Journal of January 2002, which led to the prosecution of Mahmut Vefa.

Case example 3 Impact of the BTC pipeline on fishing communities

The final report of the BTC project Resettlement Action Plan states that: 'The main impacts on the fishermen will be from the extended Operating and Security Zones which will be enforced when the jetty and terminal becomes operational in 2005 ... Forty fishermen were identified as being directly impacted by the proposed construction and operation of the jetty ... only registered boat owners at Golovasi Port will be eligible for compensation regardless of whether they are residents of Golovasi village or not ... field surveys confirmed that fishermen from other settlements such as Incirli do not use the fishing grounds where the jetty will be constructed.'⁹⁸ However, an article about the proposed pipeline in the US weekly *Village Voice*, 12-18 February 2003, reported conversations with fishermen and others at Incirli, near Ceyhan, close to the BOTAŞ marine terminal which has served as an outlet for much of Iraq's crude oil. In two years the expanded terminal will become the end of the BTC pipeline. The people interviewed by the *Village Voice* were bitter about the effect of the terminal on their livelihood and some threatened action against the expanded terminal. The village leader or *muhtar* was reported as saying, 'We have no place to farm, no place to graze. They took those things from us too.' The article continues: 'For the people of Incirli, it makes little difference where the oil comes from or goes. Practically no one in the village works at the terminal. Financial compensation for the land it occupies remains locked in lawsuits. Fishing in an extended zone around the pier is forbidden.'

The Environmental Impact Assessment (EIA) carried out by the BTC project of the impact of the pipeline on fisheries acknowledged that: '[T]he findings of the survey and consultation with local fishermen suggest that settlements in the project area are highly dependent on one source of livelihood and if this livelihood opportunity was disrupted there could be severe repercussions ... a loss of fishing as a source of livelihood would leave residents with limited options for securing a livelihood.'⁹⁹ Among the perceived benefits noted by respondents to the EIA's *Marine Terminal Household and Settlement Questionnaire and Consultation 2001* was that they expected 'the marine terminal development to result in new opportunities in the region, and bring about indirect employment.'¹⁰⁰ Among perceived negative impacts was that they were 'concerned that the increased exclusion zone would decrease access to fishing grounds as well as prevent access to, and use of the fishing port at Sahil Sitesi'.¹⁰¹ Statements in two different project documents leave unclear the real prospects for fishermen who have lost their livelihoods.

5. CORPORATE GOVERNANCE AND ACCOUNTABILITY

Amnesty International's main concerns arise from restrictions placed by the project agreements on Turkey's ability to fulfil its human rights mandate, and to the prospect of companies being complicit in Turkey's own human rights abuses. Another important issue is that of corporate governance. Corporate failings have been widely attributed to deficiencies in governance, not only with regard to financial performance, but also with regard to damaging social and environmental impacts.

The recent scandals involving Enron and Worldcom, for example, have produced government interventions in several of the world's leading commercial centres. Many of these interventions, including measures introduced in the UK and the USA, have begun to move away from the tradition of putting faith in a company's internal procedures, managed by those under the company's control. However sound those procedures may be, and however much the company might be acting in good faith, it has been proved that they do not work. In a series of reports in the UK beginning with that of Sir Adrian Cadbury and culminating in the aftermath of recent scandals with the Higgs report, companies are being made to widen the group of independent executives and bodies that will have a decisive voice in how they run their affairs.¹⁰² In the US, the introduction of the Sarbanes-Oxley Act (2002) was a measure towards greater accountability of companies to state authorities for their actions.¹⁰³

Accountability is a crucial element missing from the package of measures that BP is putting into place, on behalf of itself and the other members of the BTC project consortium. The package has scrupulously designed standards developed after due consultation with many relevant stakeholders. However, the operation and revision of those standards is isolated from truly independent representatives of local interests, and from the state. In its place there are community liaison staff representing BOTAS and BP on the ground, and at the top an advisory panel of distinguished individuals nominated by BP and acting under the company's terms of reference. What is lacking is any effective way of ensuring that the companies involved do everything they can to protect human rights when commercial considerations come into conflict with the standards that they have pledged to uphold.

6. PROPOSALS

Amnesty International is aware of the monitoring system and other measures proposed by the oil consortium to ensure the quality of the project and mitigate the negative social and environmental impacts it will create. These measures are explained in the extensive project documentation. However, they provide insufficient assurance that human rights will be protected.

A step towards addressing this would be to modify some key elements of the HGA that clash with the protection of human rights. A starting point would be to restore in full the notion that the project is operating in the public interest and thereby to preserve the discretionary power of the state to respond to human rights demands in future. Turkey has at present contracted out of its freedom, as well as its duty, to act in the interests of its people. On the surface, the project is undertaken by a consortium led by BP that, in its planning, has taken steps to follow basic international standards for the protection of persons, property and the environment. Beneath the surface, the project's day-to-day operations are exempt from certain important regulations, even when these would translate international standards into Turkish law. This anomaly requires that the obstacles in the HGA be removed so that international human rights standards can be given concrete effect in domestic law.

The consortium and the Turkish government need to take many other measures to address the human rights context of the project. The following proposals concern just some of these.

6.1 Overriding clauses

Clauses should be added to each of the relevant provisions of the HGA to the effect that: 'Nothing in this article shall be interpreted or applied by the parties in a way that would make it more difficult for Turkey to satisfy its international human rights obligations, at present or in future, either as they arise under customary international law or under specific treaties or other instruments to which Turkey is a party.'

6.2 Security arrangements

In the same way as the consortium uses project agreements to ensure the financial viability of the project, the consortium is in a position to use contractual mechanisms to ensure that arrangements to protect the security of its assets, installations, personnel and sub-contracted workers pose minimal risks to the human rights of local populations. These mechanisms should include penalties for non-compliance. The key measures to be incorporated into such agreements include the following:

- i) the consortium should ensure, through its contracts with state entities and sub-contractors, that all security forces assigned to protect its assets, installations, personnel and sub-contracted workers comply with all relevant international human rights standards, including those for the use of force in policing, such as the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms;
- ii) the consortium should ensure that all contracts with security forces assigned to protect its assets, installations, personnel and sub-contracted workers be made publicly available (with the exception of operational details that could endanger individuals' lives);
- iii) the consortium should ensure, through its contracts with state entities and sub-contractors, the screening of the military and police assigned to protect any of the consortium's assets, installations, personnel or sub-contracted workers, to ensure that no soldier or police agent credibly implicated in human rights abuses or paramilitary involvement is engaged in their protection;
- iv) the consortium should make it absolutely clear to the police and military protecting their assets, installations, personnel or sub-contracted workers that human rights violations will not be tolerated and that the consortium will press for investigations and prosecutions if any abuses occur. Whenever credible allegations of human rights abuses are raised, the consortium should press strongly for any suspected soldiers and officers to be immediately suspended, and for appropriate internal and criminal investigations to be launched;
- v) any material assistance given by the consortium to security forces must be made public, must be non-lethal and must be subject to external auditing;
- vi) the consortium should engage in a systematic and ongoing dialogue with the authorities at appropriate levels as well as with other stakeholders on issues relating to conflict prevention and the resolution of grievances.

6.3 SUPERVISORY COMMITTEE

A supervisory committee should be created, with greater powers and stronger independence than present planning by the consortium provides. An appropriate structure of accountability would have to be determined for its operation. Its membership would be drawn both from within the consortium and from portions of the potentially affected population, as well as other relevant bodies. This committee could perform the following functions:

i) Monitoring

The committee could ensure that the consortium partners have in place adequate internal procedures for compliance with relevant minimum standards, both international and domestic. The committee could also be responsible for making sure that relevant international materials on these points are brought to the attention of the consortium.

ii) Reporting

The committee could report regularly on the state of compliance with relevant human rights norms. The report would be sent to the parties to the HGA, and (subject to reasonable confidentiality requirements) could also be made a matter of public record.

iii) Dealing with grievances

The committee could serve as a forum for complaints brought by employees, landowners, and other affected persons. The proposal would build on some of the existing mechanisms provided for in the consortium's planning, but would bring in an element of impartiality and a process for settling disputes. It would perform a distinct function from that of the arbitrators already provided for. The latter deal with disputes between the parties to the HGA, whereas the committee would be a forum for any affected individuals or communities to bring up grievances. The committee could apply internationally recognised human rights norms in this part of its function. The committee would have to take steps to ensure that those bringing grievances are not subject to any reprisals for doing so.

iv) Powers of intervention

Where necessary to carry out its functions, the committee would have powers to intervene in and halt the construction and operation of the project.

Endnotes

- 1 See the consortium's website at www.caspiandevlopmentandexport.com
- 2 *Business Week* stated that the capacity of the BTC pipeline will be 1 million barrels per day: www.businessweek.com/magazine/content/01_52/b3763128.htm.
- 3 See the consortium's website at www.caspiandevlopmentandexport.com.
- 4 For information about Amnesty International's concerns in Azerbaijan and Georgia, see Concerns in Europe, January-June 2002 and July-December 2002 (AI Index: EUR 01/007/2002 and EUR 01/002/2003).
- 5 Letter to Amnesty International from BP, 14 January 1999.
- 6 A recent example has arisen over the privatisation of water provision in Bolivia and the subsequent dispute with the private contractor, Bechtel Corporation, after a sharp increase in water rates. See <http://democracyctr.org/index.htm>; BECHTEL'S LEGAL ACTION AGAINST BOLIVIA.
- 7 For a discussion, see F V Garcia-Amador, 'State Responsibility in case of "Stabilization" Clauses', *Journal of Transnational Law and Policy*, Spring, 1993, p23. The stabilisation clauses are similar to the clauses that some countries found objectionable when the Organisation for Economic Co-operation and Development (OECD – an organisation of the world's 29 richest nations) proposed the Multilateral Agreement on Investment (MAI). The proposal was defeated in 1998. The opponents of the MAI argued that the rules limiting sovereign governments' ability to legislate even in the areas of health, labour, safety or the environment imposed on them the huge burden of compensating private actors for loss of expected profits. This was viewed as an unacceptable encroachment on national sovereignty.
- 8 HGA, Article 3.1. The HGA is set to run for 40 years, with an extension available for a further 20 years.
- 9 See 3.3.1 (main text) regarding Turkey's right to intervene only in the case of 'imminent, material threats' to health and safety and environment.
- 10 HGA Appendix 5, Clause 3.3.
- 11 For the principle see *Edward Wong Finance Co Ltd v Johnson Stokes & Master (PC (HK))* Privy Council (Hong Kong) 7 November 1983, 1984 AC 296, and for the point in relation to a discussion of corporate behaviour, see J Gobert and M Punch, *Rethinking Corporate Crime* (Butterworths: 2003) Chapter 3.
- 12 IGA Article IV.
- 13 European Convention on Human Rights, First Protocol, Article 1. 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest...' For the application of this principle to property held by corporations, Jacobs and White, *European Convention on Human Rights*, third edition by C Ovey and R White (OUP: 2002). See also HGA Article 4 and 6.2(ii).
- 14 See for example *Sporrong and Lonnroth v Sweden* (1983) 5 EHRR 35, and the discussion of the issue in the investment context in 'Carlos Calvo, Honorary NAFTA Citizen', by Francisco Orrego Vicuña, 19 *New York University Environmental Law Journal* 2002.
- 15 HGA Article 7.2 (xi). '[T]he 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)....'

- 16 HGA Appendix 1. 'Definitions: "Economic Equilibrium" means the economic value to the Project Participants of the relative balance established under the Project Agreements at the applicable date between the rights, interests, exemptions, privileges, protections and other similar benefits provided or granted to such Person and the concomitant burdens, costs, obligations, restrictions, conditions and limitations agreed to be borne by such Person.'
- 17 HGA Article 7.2 (vi).
- 18 Cane, *Introduction to Administrative Law*, third edition p145. The state retains the equivalent freedom to alter its commitments for what are called special administrative contracts granting a concession, which is a species of contract that would be vulnerable to alteration in the public interest.
- 19 IGA Article II (8).
- 20 Constitution of the Republic of Turkey, Articles 35 and 46.
- 21 HGA Article 3.1.
- 22 IGA Article II (7).
- 23 IGA Article II (8).
- 24 IGA Article IV.
- 25 IGA, Article II paragraph 6.
- 26 EIA Appendix D, Article 2.
- 27 Turkey has ratified the following international human rights treaties: the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the CEDAW Optional Protocol, the Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC) and one of its protocols, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-CH), and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWF).
- 28 HGA Article 21.2. 'The Parties hereby acknowledge that it is their mutual intention that no Turkish Law now or hereafter existing (including the interpretation and application procedures thereof) that is contrary to the terms of this Agreement or any other Project Agreement shall limit, abridge or affect adversely the rights granted to the MEP Participants or any other Project Participants in this or any other Project Agreement or otherwise amend, repeal or take precedence over the whole or any part of this or any other Project Agreement.'
- 29 HGA Article 7.2 (vi). '[I]f 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).' This latter article then provides that any such 'change in law' that affects the economic equilibrium of the project will require Turkey to pay compensation. *See also* HGA Appendix 5, clause 3.3. '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.' Clause 4.2 provides the equivalent formulation for social regulations. *See discussion on this subject below.*
- 30 HGA Article 7.2(vi).

- 31 HGA Article 5.2(iii).
- 32 Ibid.
- 33 IGA Article IV.
- 34 The consortium has stated in the project documents that it will set up some sort of third party arbitration for complaints about the pipeline project from people living in the area. This process is not described in the project documents. However, despite an opportunity for arbitration, pursuant to the HGA any arbitrator's decision would not have the power to disrupt pipeline operations. This complaints system does not satisfy the right to an effective domestic remedy.
- 35 The HGA designates this as the place for arbitration. See Article 18.
- 36 In the case of *Lopez Ostra v Spain*, Judgement of 9 December 1994, Series A, No 303 – C, the European Court of Human Rights found the state responsible under Article 8 for failing to ensure that a private factory did not pollute the surrounding area.
- 37 J Steiner and L Woods, *Textbook on EC Law*, (Blackstone: 2000) p447ff. For the principle at the level of the Union, EU Charter of Fundamental Rights of the European Union, Article 47: 'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised defended and represented. Legal aid shall be made available to those who lack sufficient resources....'
- 38 EIA Appendix D, 2.5.1.
- 39 EIA Appendix D, 2.4. However, the project documents do not refer to any of the international human rights treaties to which Turkey is a party.
- 40 EIA Appendix D, 3.3.2.
- 41 Correspondence from BP to Amnesty International, 18 April 2003.
- 42 HGA Article 7.2 (vi).
- 43 HGA Article 5.2(iii).
- 44 EIA Appendix D, 3.2, summarising Article 19.2 of the HGA, reads '... All employment practices applicable to citizens of the State working on the project in Turkey must be at least as stringent as the requirements provided for in Turkish labour legislation. These requirements include hours of work, leave, remuneration, fringe benefits and occupational health and safety standards'.
- 45 HGA Article 19.2 states that none of the parties shall be required to follow any employment practices or standards that '... (i) exceed those international labor standards or practices which are customary in international Petroleum transportation projects or (ii) are contrary to the goal of promoting an efficient and motivated workforce'.
- 46 EIA Appendix D, 2.5.1.
- 47 Moreover, for environmental standards, the project documents and agreements confuse the standard. One document states that the environmental standards applicable to the project are the international petroleum standards from the date the agreement comes into effect, that is, a static standard. Other documents state that the standards will stay in line with those in use in EU member states. The confusion will certainly do nothing to assist a consistent application of standards.
- 48 Unless it has entered a special reservation.
- 49 It is a generally accepted principle that states have these four duties with respect to human rights.
- 50 HGA, Article 5.2 (iii).
- 51 *Oneryildiz v Turkey* No 48939/99 Judgement of 18 June 2002. Failure of the state to prevent exposure of residents to slow accumulation of dangerous gases on land, leading

- to an explosion, was held to violate the right to life under Article 2 of the Convention.
- 52 European Social Charter, 1961 Article 3.
- 53 European Social Charter, 1961 Article 19 (4).
- 54 Ibid. Article 7 (2) (3).
- 55 European Revised Social Charter, 1996 Article 3.
- 56 Revised Charter, Article 2(4): ‘... to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations.’
Article 3 para 1: ‘... The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment.’
- 57 Revised European Social Charter Article 3(4).
- 58 The HGA specifically targets changes arising from international treaties, and includes here measures covering health and safety and environmental protection. See HGA Article 7.2 (vi) and (xi).
- 59 HGA Article 19(b).
- 60 HGA Appendix 5, Code of Practice, Clause 4.2. See Clause 3.3 for equivalent restriction on environmental standards.
- 61 Project document Chapter 6: Impacts and Mitigation, November 2002, p3.
- 62 IGA Article II (8).
- 63 Protocol 1 to the ECHR provides that ‘[n]o one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law’.
- 64 Constitution of the Republic of Turkey, Article 35.
- 65 Annex 7.1, Land Acquisition and Compensation Guide, November 2002, p10.
- 66 Interestingly, the Land Acquisition Guide for Azerbaijan explains that legal aid will be offered free of charge to those with rights to land. It is unclear why the same is not the case in Turkey.
- 67 The term ‘effective domestic remedy’ under Article 13 in the ECHR requires such things as right to a fair trial in criminal and civil cases, including procedural equality under Article 6(1) ‘equality of arms’. The European Court has found that this term means that the parties must not be placed at a substantial disadvantage to the opponent. As the Court has put it: ‘... [A]s regards litigation involving opposing private interests, “equality of arms” implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent.’
In other words, in opposing BOTAS in the acquisition of land, people must be able to have access to independent legal aid that would allow them a real opportunity to present a case.
- 68 Hatton v UK 2001 34 EHRR 1, paras. 97, 101-2 and Guerra v Italy 1998 26 EHRR 357.
- 69 ECHR, 12th Protocol, Article 1 (1). This protocol will come into force when there are 10 ratifications.
- 70 ‘Other status’ here could include the situation of losing out because one was a pipeline employee. As an analogy, the European Court of Human Rights found that it was not permissible for a state to have discriminated between people on the ground that one was a tenant in a private dwelling and another in government housing. See Larkos v. Cyprus application no. 29515/95.

- 71 ECHR Protocol 4, Article 1, Protection of Property.
- 72 Hatton v UK 2001 34 EHRR 1 and Guerra v Italy 1998 26 EHRR 357.
- 73 *Damning Indictment: How the Yusufeli Dam Violates International Standards and People's Rights* (Friends of the Earth, September 2002), p3.
- 74 Annex 7.1 Land Acquisition and Compensation, Final Report Chapter 6: Impacts and Mitigation, November 2002, p8.
- 75 Ibid, p8-9.
- 76 *Financial Times* 14 February 2003, 'Oil pipeline has the power to change lives': 'Money is already flowing to landowners in Georgia, in fact, the sums are paid in cash to landowners because no one trusts the banks. In one example given a landowner carried \$35,000.00 out of the bank in cash.'
- 77 Article 5 of Protocol 7 adds to the right to marry (Article 12) 'Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of children'.
- 78 HGA Article 5.2 (iii).
- 79 'BP scarred by furore over safety issues' and 'Safety "vital" for survival of BP in Alaska', *Financial Times* 21 January 2003.
- 80 'BP hand "tarred in pipeline dirty war"', *Guardian* 17 October 1998; 'Death, pollution and deforestation', *Guardian* 15 August 1998.
- 81 Hatton v UK 2001 34 EHRR 1 and Guerra v Italy 1998 26 EHRR 357.
- 82 Hatton v UK 2001 34 EHRR 1.
- 83 HGA Article 4.1.
- 84 BTC Pipeline Construction Impacts and Mitigation, June 2002 chapter 6, p64. It notes, under Infrastructure and Services, 6.15.1 Impacts: 'There is a strong interrelationship between quality of infrastructure and standard of living in the settlements along the pipeline route. Infrastructure has been identified as being of poor quality by local settlements (Box 6.7): schools and health care are reported to be over-stretched; local roads require repair; electricity and phone connections are of a low standard and sometimes absent; and water supply and waste management has limited coverage. Government development programmes continue to emphasise the need to improve infrastructure and services (e.g. Department of State Road Programme). Local residents and local authorities are thus sensitive with regard to temporary or permanent reduction in infrastructure or services.'
- 85 Ibid p66: 'Water supplies: the main requirements for water will be for hydrostatic testing of the pipeline. Construction camps will also be large users of water.'
- 86 Ibid p68.
- 87 See ibid p66: 'Energy: information on energy requirements during construction is not available at the time of writing the report.'
- 88 The National Security Council, composed of members of the government in office and senior military personnel, meets monthly to discuss behind closed doors issues pertaining to governmental decision-making of all kinds. It is backed by a secretariat whose secretary general must be of the rank of general or admiral. Article 118 of the Constitution entitles the Council to take decisions 'imperative to safeguard the peace and security of society' and its decisions and 'advice' are to be given 'priority consideration' by the Council of Ministers.
- 89 The fact-finding mission included representatives of the Corner House, the Kurdish Human Rights Project (KHRP), the Bar Human Rights Committee, Campagna per la Riforma della Banca Mondiale and PLATFORM.

- 90 '[O]ne or more, or all, of the Parties to this Agreement ... other than the State Authorities...' HGA, Appendix 1.
- 91 HGA Article 12.3.
- 92 Such as the UN Code of Conduct for Law Enforcement Officials; the UN Basic Principles on the Use of Force and Firearms; and the US and UK Voluntary Principles on Security and Human Rights.
- 93 A Clapham and S Jerbi, *Categories of Corporate Complicity in Human Rights Abuses* 24 Hastings International and Comparative Law Review 339.
- 94 Annex 7.1 Land Acquisition and Compensation, Final Report Chapter 6: Impacts and Mitigation, November 2002, p44.
- 95 See EIA Turkey Draft for Disclosure Table 6.12 Potential Sources of Tension due to Presence of Construction Workers.
- 96 Amnesty International, Turkey: End sexual violence against women in custody!, AI Index: EUR 44/003/2003.
- 97 *The Ilisu Dam: Displacement of Communities and the Destruction of Culture* (London: Kurdish Human Rights Project, October 2002), p126.
- 98 Resettlement Action Plan, Turkey, Final Report: Project Impacts and Mitigation Measures, November 2002, pp24-25.
- 99 Resettlement Action Plan, Turkey, Final Report: Annex 6.2 Summary of EIA Findings on Fisheries, November 2002, p8.
- 100 Ibid, p13.
- 101 Ibid, p14.
- 102 Report on the Committee on the Financial Aspects of Corporate Governance, Sir Adrian Cadbury (London: Gee Led, 1992); Review of the role and effectiveness of non-executive directors, Derek Higgs (<http://www.dti.gov.uk>) 2003/3.
- 103 For the Sarbanes-Oxley Act, 2002 <http://news.findlaw.com>.



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