Review of the Environmental Impact Assessment for the Baku-Tbilisi-Ceyhan oil pipeline (Turkey Section)

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1. Introduction

1.1 The project

The BTC Consortium (BTC Co.), an eleven-member coalition of oil companies led by BP, has applied for public funding (what BP itself has called “free public money”\(^1\)) from the World Bank’s private lending arm, the International Finance Corporation (IFC), the European Bank for Reconstruction and Development (EBRD) and a number of Export Credit Agencies to finance a major new pipeline – known as the Baku-Tbilisi-Ceyhan (BTC) pipeline – from the Caspian Sea to the Mediterranean.

The BTC pipeline would transfer up to 50 million tonnes of crude oil per annum (or one million barrels per day) from Sangachal on the Caspian Sea coast, via Azerbaijan, Georgia and Turkey, to the Mediterranean. Crude oil would be supplied to international markets via tankers loaded at a new marine terminal. Construction costs have been estimated to be at least $3.7 billion, with 70% of that, around $2.5 billion, either coming directly from public sources or being leveraged from private banks with the insurance of public funds.

1.2 Issues raised

Numerous problems have arisen with this controversial project, including allegations of corruption, human rights abuses, environmental damage and the wholesale transfer of political authority from sovereign states to multi-national corporations. There are serious questions over the public utility of this pipeline for the people of the three host countries, as well as the extent to which the BTC project will facilitate rather than impede many of the objectives that are part of the IFC’s and EBRD’s mandates, such as poverty alleviation, regional development and transition to democracy, in the three states.\(^2\)

Many of these issues are examined in this review of the EIA for the Turkish section of the pipeline.

1.3 Financial institutions

As part of the process of BTC Co.’s application for public funds, in June 2003 the IFC and the EBRD approved the project’s fundamental planning and design documents, the Environmental

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2 For example, the framework legal document for the BTC project, the Inter-Governmental Agreement (IGA), specifically notes in Article II (8) that the “Project is not intended or required to operate in the service of the public benefit or interest in its Territory.”
Impact Assessment (EIA) and the Resettlement Action Plan (RAP) and released them for a 120-day period of public consultation. During this time the major funders invite public comment and analysis on the EIA and RAP, and other project documents. That is the function of this review.

The review draws on material that has been compiled over several years by more than 80 NGOs. Much of the original data comes from two fact-finding missions to the region, reports from both of which are attached as appendices. Other sources include contacts and communication with locally affected people, NGOs and groups; and exhaustive analysis of the EIA, RAP and other project documents.

1.1 Structure of this review

The review examines issues relating to the project and its official documents, in seven main chapters:

- Chapter 2: Project legal regime
- Chapter 3: Consultation
- Chapter 4: Resettlement
- Chapter 5: Cultural heritage
- Chapter 6: Environmental assessment
- Chapter 7: Assessment of project alternatives
- Chapter 8: Ethnic minorities

Chapter 2 examines the legal agreements which form the basis of the project, and potential conflicts with Turkey’s international commitments and various other instruments.

The other six chapters examine aspects of the design and implementation of the project. In each case, potential legal breaches are identified, and the project is assessed against international standards – specifically, the safeguard policies of the World Bank, IFC and EBRD, and the European Union Directive on Environmental Impact Assessment. However, the chapters are structured by issue rather than by policy.

Thus some policies and requirements in covered in more than one of these chapters.

Consideration of IFC’s OP 4.01 (Environmental Assessment) is divided between chapters 3 (consultation aspects of OP 4.01), 7 (assessment of alternatives aspects) and 6 (other aspects).

Breaches of consultation requirements specifically relating to resettlement, cultural heritage and ethnic minorities are covered in those respective chapters, rather than under consultation.
2. Issues arising from legal regime for BTC project (Turkey section)

Evaluation of compliance of project agreements with Turkey’s international obligations, and of compliance between project implementation and undertakings in project agreements

2.0 Contents

2.1 Summary
2.2 Introduction
2.3 The HGA and Turkey’s human rights and environmental obligations
2.4 The HGA and Turkey’s Accession Agreements with the European Commission
2.5 The Joint Statement and the OECD Guidelines on Multinational Enterprises
2.1 Summary

The BTC project is subject to a specially negotiated legal regime, set out in an international agreement between Turkey, Azerbaijan and Georgia (the Intergovernmental Agreement) and a private contract between the BTC Consortium and the Government of Turkey (the Host Government Agreement).

A number of concerns have been raised with respect to:

- Conflicts between the IGA/ HGA and Turkey’s international obligations on environment and human rights;
- Conflicts between the HGA and Turkey’s Accession Agreements with the European Commission (EC);
- Incompatibilities between undertakings in the Joint Statement on adherence to the OECD Guidelines on Multinational Enterprises and BP’s record in respect of the project.

This review finds that:

- Although BTC Co. has moved to resolve some of the issues raised through the publication of a ‘Deed Poll’ (the BTC Human Rights Undertaking, 26 September 2003), legal opinion continues to cast serious doubts on its efficacy. In particular, the fact that it is not binding upon host governments; the continuing uncertainty over third party rights and the failure to waive the ‘stabilisation clause’ with regard to third party claims; and continuing concerns over virtually unlimited security powers suggest that the Deed Poll still does not do enough to protect the rights of affected people.

- The conflicts between the HGA and Turkey’s accession agreements remain unresolved. In addition, NGOs have drawn attention to conflicts between the BTC project agreements and a Memorandum of Understanding reached between the EC and IFIs on financing for EU accession countries.

- BP has failed to comply with the OECD guidelines, as required by the project agreements. A complaint by NGOs is in the process of being adjudicated upon by the relevant authorities.
2.2 Introduction

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

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

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

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

In addition, two other agreements have been incorporated into the project agreements for BTC and are thus, according to BTC Co., part of the legal regime for the pipeline. In May 2003, BTC Co and the host governments executed a Joint Statement, which, among other commitments, bound the project sponsors to observing the OECD Guidelines for Multinational Enterprises. And, in September 2003, BTC Co. signed a Human Rights Undertaking, which took the form of a Deed Poll. However, in both of these cases, and especially the Joint Statement, there are major legal questions over their legal status relative to the HGAs. Essentially, without testing them in a Turkish court, one cannot know whether they would achieve the amendments they purport to.

This chapter examines the project agreements’ potential conflicts first with Turkey’s human rights and environmental obligations, then with Turkey’s Accession Agreement with the European Commission, and finally with the OECD Guidelines on Multinational Enterprises.

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3 Joint Statement on BTC project, 16 May 2003
4 BTC Co. Human Rights Undertaking, 22 September 2003
2.3 The HGA and Turkey’s human rights and environmental obligations

Under the HGA, the Turkish Government has exempted the consortium seeking to build the pipeline from any obligations under Turkish law, aside from the Constitution, which conflict with the terms of the HGA/IGA.\(^5\) In doing so, it has effectively abrogated its executive and legislative powers to protect Turkish citizens from potential environmental damage and associated health and safety hazards or to improve the regulatory regime should changes in our understanding of the risks require it.

Under the HGA, the Turkish Government has also effectively granted BP exemption from the financial impacts of any new environmental, social or any other laws affecting the pipeline that Turkey may introduce in the next forty years, the lifetime of the Agreement. In addition, it has undertaken to compensate the BTC consortium if taxes or health or safety or environment laws adversely affect the “economic equilibrium” of the project.\(^6\)

Once the project is underway, only BP and its partners have the power to terminate the HGA, except in extraordinary circumstances. The Turkish Government is thus not in a position to regulate or ensure *de facto* oversight of the operation or construction of the pipeline. Even a future Turkish Government committed to human rights would not have the ability to invoke its executive powers to amend the agreement so as to afford its citizens greater protection.

The HGA gives the security forces controlling the project permission to take action in cases of “civil war, sabotage, vandalism, blockade, revolution, riot, insurrection, civil disturbance, terrorism, kidnapping, commercial extortion, organised crime or other destructive events.”\(^7\)

The extraordinary vagueness of a rubric like “civil disturbance” would be worrying enough in a region with a decent human rights record; in Turkey, where the responsibility for security has been handed to the Gendarmerie, a paramilitary force implicated in the very worst atrocities of the civil war against the region’s Kurds, it is of grave concern.

Concern has been expressed that such undertakings place the project in potential violation of the European Convention on Human Rights, European Union laws and other international law instruments. These concerns were first raised in an international Fact Finding Mission report submitted to the World Bank and other IFIs in August 2002.\(^8\)

Subsequently, a report and legal opinion by Amnesty International\(^9\), arguing in particular that the HGA’s clauses regarding payment of compensation to the BTC consortium, in the event of new laws being introduced that adversely affect the profitability of the project, are likely to have a “chilling effect” on the State’s adherence to human rights standards. In addition, Amnesty expressed grave reservations about the HGA’s stipulation that the pipeline may only be shut down in the event of an “imminent, material threat” (which directly conflicts with Turkey’s undertakings under the European Convention on Human Rights).

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\(^5\) The Agreement has the same legal standing as any domestic law and prevails “over all Turkish law (other than the Constitution)”.
\(^6\) HGA Turkey Article 7.2 (xi): “The State Authorities shall take all actions available to them to restore the Economic Equilibrium established under the Project Agreements if and to the extent the Economic Equilibrium is disrupted or negatively affected, directly or indirectly, as a result of any change . . . in Turkish law . . . occurring after (1) the effective date . . .”
\(^7\) HGA Turkey, Article 12.1
\(^8\) International Fact-Finding Mission Preliminary Report, Baku-Tbilisi-Ceyhan Pipeline Project, Turkey Section, August 2002, section 2.1 pp.15-25
Rights); the restricted remedies available to third parties damaged by the pipeline;\textsuperscript{10} the removal of the project from the domain of the public interest, thus creating immunity from intervention by the state; and the wording of the clauses relating to security along the pipeline route.\textsuperscript{11}

\textbf{Neither the Amnesty report, nor the August 2002 FFM report, are addressed in the EIA approved as “fit for purpose” by IFC and EBRD staff, placing the EIA in possible violation of the World Bank’s requirement that project comply with host country law, which, in this case, would include Turkey’s obligations under the European Convention on Human Rights.}

In September 2003, in an effort to assuage concerns within the legal community, the BTC Co. published a Deed Poll, entitled the BTC Human Rights Undertaking, in which it undertook, \textit{inter alia}, not to invoke the compensation clauses in the HGA in the event of new laws being introduced for human rights or environmental reasons. The Deed Poll argues that such undertakings will help ensure that the rights of third parties to gain redress are not compromised by the HGA.

Legal opinion, however, is divided on the efficacy of the Deed Poll. The following concerns, among others, have been raised:

1. \textbf{Unilateral Instrument}

The Deed poll is only signed by the BTC Co. It is not therefore binding on the Turkish state, which, if it so chose, could still invoke the HGA’s “stabilisation” clauses to override existing environmental and social legislation that conflicts with the commercial imperatives driving BOTAS or which the government simply finds inconvenient. Given the invocation of emergency powers by Turkey to leapfrog resettlement procedures and curtail consultation on the EIA, this is a far from abstract concern (see chapter 4, Resettlement, chapter 3, Consultation, and chapter 6, Environmental Assessment).

2. \textbf{Uncertainty of Third Party Rights:}

The sole beneficiaries of the Deed Poll are the three host governments. It thus confers no direct rights on third parties – indeed, it expressly excludes rights under the Contracts (Rights of Third Parties) Act 1999. Whether the Deed Poll could be relied upon by an individual complainant to enforce his or her rights would depend on how it was interpreted by a Turkish court. In our opinion, it is unacceptable that funding should be provided for the BTC project whilst the third party rights of affected people remain ambiguous. Absolute legal clarity is required. Those who are affected should not be required to wait upon the Deed Poll to be tested in a Turkish court before knowing whether or not their rights to third party redress have been protected.

3. \textbf{Stabilisation Clause not waived for actions brought by third parties}

Whilst the Deed Poll states that BTC Co. will not rely upon its right to compensation from Turkey under the “economic equilibrium” clause, it does not state that it will waive its rights under the clause in action brought by third parties

\textsuperscript{10} Presentation of Philip Moser, barrister, to seminar on BTC and Turkey’s Accession Agreements. Mr. Moser points out that, although Article 11.2 of the HGA grants access to justice for third parties, it does so in a context which limits the BTC Co.’s liability to third parties (indeed the clause appears under the heading “Limitation of Liability”).

\textsuperscript{11} Amnesty International, Human Rights on the Line: The Baku-Tbilisi-Ceyhan Pipeline Project, May 2003, p.5
4. Continuing concerns over security clauses

Finally, the Deed Poll leaves unaddressed the concerns expressed by NGOs over the wording of the security clauses in the HGA, and of the virtual impunity with which it empowers the respective security forces to act to ensure the pipeline’s security. Again, this is of even greater concern given that the huge fines to which both BOTAS and the Turkish state are potentially subject give both bodies strong commercial imperatives not to apply necessary human rights protections.

We recommend that no financing be approved for the project until these issues have been resolved. If, as the Deed Poll suggests, BTC Co. now has no intention of seeking compensation under the HGA’s stabilisation clause in the event of action by Turkey to protect its citizens, and if other parties are agreeable to this as suggested by the acceptance of the Deed Poll by host governments, then we see no reasons why the HGA itself should not be changed to strike out the stabilisation clause. Specifically, we would urge that IFIs insist on the HGA and/or the Deed Poll being revised so that they:

- Contain a clear-cut undertaking to grant rights to third parties;
- Rescind the economic equilibrium clauses;

We also recommend that the security clauses be redrafted in order to protect the rights of those along the pipeline route.
2.4 The HGA and Turkey’s Accession Agreements with the European Commission

A recent legal submission to the European Commission, made by a number of UK Non-Governmental Organisations (NGOs) and project-affected citizens living on the pipeline route in Turkey, argues that the HGA for Turkey violates Turkey’s accession agreements for entry into the European Union. According to the submission, the clauses in the HGA exempting the BTC consortium from all Turkish laws that might affect the project “amount to a clear potential breach of what would be Turkey’s EU law obligations, namely accepting the supremacy of Community law.”

In a letter to the Commission, the NGOs stated: “The Accession Partnership with Turkey is severely undermined by the construction of this pipeline. Turkey has agreed a move towards the Community acquis and the Copenhagen criteria, yet the pipeline project agreements represent a step in entirely the wrong direction. The implementation of this project involves actual and/or potential breaches of EU, Human Rights and International Law.”

The Commission replied to the complaint on 4 August 2003, acknowledging the NGOs’ view of the violations concerned, and promising to investigate further and report in their “regular report” on Turkey’s compliance with the Copenhagen political criteria for accession to the EU.

The issue is of particular relevance to the IFC and EBRD given the Memorandum of Understanding that both institutions have signed with the European Commission on cooperation for accession preparation. That Memorandum is said to cover the Bank’s “respective financial assistance instruments”, in particular to help “fostering the adoption of the EC acquis”. In failing to meet the acquis, the project agreements for BTC could therefore place both the IFC and the EBRD in breach of their undertaking under the Memorandum should a decision be made to fund the BTC project.

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The Black Sea Trade & Development Bank on Cooperation for Accession Preparation of Central and East European Countries, Cyprus, Malta and Turkey.
2.5 The Joint Statement and the OECD Guidelines on Multinational Enterprises

The joint statement executed between BTC Co and the host governments specifically commits the project to complying with the OECD guidelines on Multinational Enterprises:

“We confirm that the principles and policies set out in the OECD guidelines on Multinational Enterprises . . . were fully considered during the negotiation of the BTC Project Agreements and are reflected in the BTC Agreement Structure . . . We confirm all activities undertaken and contemplated to be undertaken with regard to the Intergovernmental Agreement, the Host Government Agreement and other BTC Project Agreements have been and shall be consistent with the Guidelines in all material respects.”

The extent of compliance with the OECD guidelines is, however, contested. In April 2003, NGOs from five countries submitted a complaint arguing that the project broke the guidelines on five major counts. The complaint has been accepted as admissible by the UK national contact point for the OECD guidelines, who is co-ordinating the OECD response. The complaint, however, is not considered in the EIA, despite the joint statement being issued prior to the release of the EIA by the IFIs and compliance with the OECD guidelines therefore being part of the legal regime that the EIA should have considered.

The sections of the complaint that are relevant to Turkey are summarised below:

1. Exerting undue influence on the regulatory framework

“The Applicants contend that the BTC Consortium exerted an undue influence on the drafting of the HGAs, thereby circumscribing the Governments’ right to prescribe the conditions under which multinational enterprises operate. In doing so, BP is not adhering to Chapter I, Paragraph 7 of the Guidelines.”

2. Seeking or accepting exemptions related to social, labor, tax and environmental laws

“The Applicants contend the Consortium has sought exemptions with respect to environmental legislation, labor, health and safety regulations and taxation. In doing so, BP is not adhering to Chapter II, Paragraph 5 of the Guidelines, which calls on multinational enterprises to “refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labor, taxation, financial incentives, or other issues.”

3. Failing to operate in a manner contributing to the wider goals of sustainable development

“The Applicants contend that the Consortium has failed to take due account of the need to protect the environment, public health and safety, and generally conduct

14 Joint statement, para 5, May 2003, p.2
15 Email from Duncan Lawson to N. Hildyard, 29 August 2003: “there is no question of the NCP not accepting this complaint on eligibility grounds”
their activities in a manner contributing the wider goals of sustainable development." In doing so, BP is not adhering to Chapter V, Paragraph 1.

4. Failing to adequately consult with project-affected communities on pertinent matters

Based on the findings of the FFMs, the Applicants contend that the Consortium has failed to provide timely, reliable and relevant information concerning its activities and to make official documents, such as ESIAs, available to all project-affected communities. In doing so, BP is not adhering to Chapter III, Paragraphs 1 and Chapter V, Paragraphs 2a and 2b of the Guidelines.

5. Undermining the host governments’ ability to mitigate serious threats to the environment and human health and safety

“In exerting undue influence through the HGAs, the Applicants contend the Consortium is undermining the Governments’ ability to mitigate serious threats to the environment and human health and safety. In doing so, BP is not adhering to Chapter V, Paragraph 4 of the Guidelines, which states that multinational enterprises “not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimize such damage.”

In order not to undermine due process, we would urge that IFIs postpone any decision on funding the BTC project until a ruling has been reached by the national contact points assessing the complaint submitted by NGOs.

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16 Revised Guidelines, Section V, Environment, para 1.
17 Georgia FFM: Pgs. 13-14 and 18-20; Turkey FFM: Pgs. 26-32; Azerbaijan FFM: Pg. 14
19 Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
20 Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights: a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
3. Consultation on the BTC project  
(Turkey section) 

Evaluation of project documents and performance against World Bank standards, EBRD standards and the EU Directive on Environmental Impact Assessment 

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3.7 EU Directive on EIA 
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   3.7.4 Failure to consult on trans-boundary impacts
3.1 Summary

“Consult: v. Seek information or advice from; take counsel; take into consideration, take advice.”

Pocket Oxford Dictionary

The BTC Consortium has undertaken that the project will comply with World Bank Group standards, European Bank for Reconstruction and Development (EBRD) standards and the European Union (EU) Directive on Environmental Impact Assessment (EIA), all of which contain requirements with regard to consultation. In the case of the EU Directive, compliance is a legal obligation under the Host Government Agreement signed between the BTC Co. and Turkey. Breaches would thus constitute breaches of host country law.

For the Turkish section of the pipeline, this review finds:

• At least 42 violations or partial violations of International Finance Corporation (IFC) operational policies OP 4.01 (Environmental Assessment) and OP 4.04 (Natural Habitats), on consultation on the EIA (a further 41 breaches of 4 other World Bank guidelines relate to consultation on resettlement, on cultural property and on ethnic minorities, and are covered in those respected sections below);

• 6 breaches of the EBRD’s Environmental Policy with regard to consultation;

• 4 breaches of the EU Directive on Environmental Impact Assessment, with which the EIA is bound to comply under the Host Government Agreements; these breaches thereby constitute potential violations of host country law.

Specifically:

• Lack of freedom of speech and human rights abuses along the route fundamentally invalidates consultation procedures;

• Less than 2% of affected people have been consulted face-to-face;

• Consultation of affected people began more than a year after the consultation process started, and lasted only two months in total;

• Analysis of consultation responses is consistently rushed, imprecise and often cursory, frequently amounting to little more than basic demographic information;

• The consultation process was heavily focused on people not directly affected by the project, such as government departments;

• The project failed to apply basic protections to vulnerable minorities;

• There were insurmountable barriers to affected people participating in planning and designing the project;

• Affected people and stakeholder groups did not have access to basic project information;
• Affected people were misinformed about the potential benefits and negative impacts of the project;
• Affected people were misinformed about their rights;
• The project failed to properly consult with listed key stakeholders including NGOs, political parties and women;
• The project failed to implement recommendations of affected people;
• Those unhappy with the project and what it has brought them often found their opinions ignored and their dissent a source of danger.
3.2 Introduction

The importance of the consultation process for the Baku-Tbilisi-Ceyhan (BTC) pipeline, and of the Environmental Impact Assessment’s (EIA’s) role in this, cannot be overstated. The funding policies of the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD), the two main bodies to which the BTC project sponsors have applied for funding, make consultation a central element of their funding criteria.

No fewer than five of the IFC’s core Operational Policies applicable to BTC (OP 4.01 Environmental Assessment, OP 4.04 Natural Habitats, OP 4.12 Involuntary Resettlement, OPN 4.11.03 Management of Cultural Property and OD 4.20 Indigenous Peoples) not only make extensive reference to consultation, but give strong indications as to the functions and purposes of the consultation process in relation to the final EIA document.

OP 4.01 Environmental Assessment, for instance, states that,

“during the EA process, the project sponsor consults project-affected groups and local non-governmental organisations (NGOs) about the project’s environmental aspects, and takes their views into account. The project sponsor initiates such consultations as early as possible. For Category A projects, the project sponsor consults these groups at least twice (a) shortly after environmental screening and before the terms of reference are finalised, and (b) once a draft EA report is prepared. In addition, the project sponsor consults with such groups throughout project implementation.”

Some of the methods by which this should be achieved are further outlined in later paragraphs:

“[T]he project sponsor provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted… [T]he project sponsor makes the draft EA report available at a public place accessible to project-affected groups and local NGOs.”

The intention is to establish not merely a box-ticking process, but what both the IFC and EBRD guidelines call “meaningful public consultation”, that is, a process that produces a two-way flow of information that can substantially and substantively affect the route, methodology and impacts of the project. In doing so, such a process would engage locally affected people, making use of their unique knowledge of the environments in which they live and giving them a stake in the project and its success. IFC OP 4.04 Natural Habitats makes explicit how this process would work:

“Ifc expects the project sponsor to take into account the views, roles and rights of groups, including non-governmental organisations and local communities, affected

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1 International Finance Corporation Operational Policies, OP 4.01 Environmental Assessment, para.12.
2 International Finance Corporation Operational Policies, OP 4.01 Environmental Assessment, paras. 14-15
Funding agency guidelines therefore mandate the active involvement of local communities from very early in the planning and design stages of projects, giving them the chance to design and define fundamental elements of the planned venture.

The EIA concurs with this description of its remit. It puts considerable stress on the need for, “early consultation with affected people and NGOs [and] early disclosure of information,” in order to permit locally-affected people to play a significant role in formulating fundamental aspects of the project like alternative project design and compensation rates. It also outlines the benefits of effective consultation along these lines, which “minimises conflict and delays; increases transparency; empowers people ensuring that their views are taken into account.”

It is not only the efficacy and wide dissemination of project benefits that depend on an effective consultation process along the lines described above. It is also crucial for the legitimacy and credibility of the project itself, both with locally-affected people and with the international community.

The BTC Consortium (BTC Co.), the project sponsor, has made great play out of the supposedly comprehensive and inclusive nature of consultation on the project. BTC Co. has repeatedly claimed that the process has been “unprecedented in scope”, and asserts confidently that, “We believe we have contacted every landowner—more than 35,000—and all the 500 or so communities within two kilometres of the route several times during the preparation of the ESIs.” The EIA itself notes with similar confidence that, “the project meets and indeed exceeds [IFC consultation] requirements.”

### 3.2.1 Key questions

To meet the fairly stringent standards for meaningful consultation described above, and particularly to pass them with such apparent flying colours, we should expect the EIA to satisfy scrutiny in several key areas. These include:

- **Timing, duration and scope**: Was the process begun early enough to produce meaningful dialogue? Were the consultations, individually and collectively, clear and open enough to give people the chance to get their views across? Were an adequate number of people consulted to give really comprehensive results?
3. CONSULTATION

Focus and environment: Who made up most of the respondents? Were people able to make comments freely and without overt or covert pressure? Were locally affected people able to obtain sufficient unbiased information to hold an informed view? Were the political, cultural and gender realities of people’s environments understood and taken into account? Were the questionnaires and telephone inquiries open-ended and fair?

Results: Do we see marked changes, concessions and amendments by the project sponsors, even at their own expense, where locally affected people have consistently expressed concerns? Have many of their demands been met? Do they now consider themselves as “key stakeholders” who have been “empowered”? Ultimately, has their counsel been truly taken into account?

3.2.2 Structure of this chapter

The World Bank’s safeguard policies are intended to ensure a positive response to such concerns. Five standards are relevant to the issue of consultation:

- OP 4.01 Environmental Assessment;
- OP 4.04 Natural Habitats;
- OP 4.12 Involuntary Resettlement;
- Operational Policy Note (OPN) 11.03, Management of Cultural Property; and
- OD 4.20 Indigenous Peoples.

This chapter reviews the Environmental Impact Assessment (Turkey section) for the BTC project against the requirements of those policies, drawing on the raw data presented in the EIA and on the results of interviews conducted with affected communities. It also reviews the consultation procedures against the legally-binding commitment upon the signatories to the Host Government Agreement to ensure that the EIA is “in accordance with the principals of EU Directive 85/337/EEC (as amended by EU Directive 97/11/EC)” 10

This chapter begins by examining the political and social context of consultation. This section reviews the extent of the EIA’s compliance with World Bank requirements to examine the social context in which the project is being implemented. It looks in particular at the failure of the EIA to consider discrimination against ethnic minorities, notably the Kurds, or the implications of conducting consultation in a repressive political environment.

Subsequent sections go on to examine the extent of compliance of the BTC project with consultation aspects of international standards, specifically:

- IFC’s Operational Policy OP 4.01 (Environmental Assessment);
- Other IFC and World Bank standards: OP 4.04 (Natural Habitats), OD 4.30 (Involuntary Resettlement), OPN 4.11.03 (Cultural Property) and OD 4.20 (Indigenous Peoples);
- EBRD’s Environment Policy; and

3. CONSULTATION
3.3 The political and social context of consultation

3.3.1 Background

The World Bank’s Resettlement Handbook, which is cited as one of the guidelines with which the project will comply, requires that project sponsors examine “social, environmental and economic conditions beyond simple physical inventories.” These requirements are further reinforced by specific obligations under the World Bank’s Indigenous Peoples policy (OD 4.20), the only safeguard policy which explicitly covers ethnic minorities. It is therefore of grave concern that IFC staff have exempted BTC Co. from having to comply with OD 4.20, a derogation that has been challenged by NGOs and which is shortly to be the subject of a complaint to the IFC’s Complaints Advisor Ombudsman (CAO). (See chapter 8, Ethnic minorities and vulnerable groups, for further details).

With regard to consultation, it may legitimately be assumed that the Handbook’s requirement for an examination of social conditions would include an assessment of ethnic minority rights and the extent to which those consulted are in a position to voice their views and concerns on the project.

In the case of the BTC project, such an assessment is particularly necessary given the record of the Turkish State on human rights and its known repression of ethnic minority groups who are directly affected by the project. Of these minorities, the Kurds are the most obviously affected. The pipeline skirts the Kurdish region of Turkey throughout its entire length and, in its North-eastern section, passes directly through a region that is over 40% Kurdish.

The repression suffered by the Kurds since the establishment of the Turkish Republic in 1923 – and in particular during the recent eighteen-year conflict between the Kurdistan Workers’ Party (PKK) and the Turkish military - forms a backdrop to the BTC project which cannot be safely ignored.

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11 RAP, Chapter Three: Policy and Legislative Framework, November 2002, p.3-14
12 IFC, Handbook for Preparing a Resettlement Action Plan, Washington DC, undated, p.12. The Handbook states: “The ultimate goal of a RAP is to enable those displaced by a project to improve their standard of living – a goal that requires an examination of social, environmental and economic conditions beyond simple physical conditions” (italics in original).
13 For example, para 15 (a) of OD 4.20 Indigenous Peoples requires that project developers assess “(i) the legal status of the groups covered by the OD, as reflected in the country’s constitution, legislation and subsidiary legislation, regulations, administrative orders etc) and (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights.”
14 Figure supplied by Dr. Mahmut Alinak, former DEP MP and lawyer from the region, in correspondence with KHRP. It was initially suggested by BP and the IFC that since the pipeline route skirted the main Kurdish heartlands, that the Kurdish issue was correspondingly peripheral; in the words of Ted Pollett of the IFC, “This area is a different proposition to the south-east.” (Meeting with KHRP, February 26 2003) That assumption may well have informed significantly the EIA process. Yet as missions to the region have discovered, not only are large numbers of Kurdish people both affected by the project and subject to state harassment, but they also lack the weight of numbers and political experience to organise effectively to obtain their rights. In that context, project-affected Kurds are more rather than less vulnerable.
15 The Kurds have been subject to a gamut of state pressures ranging from discrimination and marginalisation through to displacement, abduction and extra-judicial killing. The Kurdish language was banned outright for decades, and even now broadcasting and teaching in Kurdish are effectively forbidden. Kurdish political parties are systematically closed down: Turkish state prosecutors successfully annuling at least five major Kurdish parties over the last decade, and now the current main party, DEHP, which gained over 2 million votes at the November 2002 elections, is now threatened with closure. See e.g. Amberin Zaman, ‘Turkey Threatens to Ban Largest Pro-Kurdish Party’, Voice of America, 7 Aug 2003
16 The conflict left over 37,000 people dead, the vast majority of them innocent Kurdish civilians. Between 3 and 4 million civilians were displaced from their homes; the majority of them are still refused permission to return. For more on displacement and its social and economic consequences, see e.g. Human Rights Watch, Displaced and Disregarded: Turkey’s Failing Village Return Program, October 2002; Kurdish Human Rights Project, Internally Displaced Persons: The Kurds in Turkey, June 2002
In particular, the continuing tensions in the region and the accompanying repression, harassment and constraints of freedom of expression render it impossible to achieve the levels of “meaningful consultation” that would comply with any reasonable interpretation of the World Bank’s safeguard policies. It is unrealistic, for example, that people would not engage in some form of self-censorship in filling in forms marked “This pipeline is of high economic and strategic importance to Turkey” in the presence of both foreigners and state representatives.

3.3.2 Absence of analysis of Kurdish situation in EIA

Given this context, it is of grave concern that both the EIA and the Resettlement Action Plan (RAP) fail to examine the implications of such repression for the project. Although a number of villages along the route were abandoned as a result of the recent conflict, the conflict is not mentioned at all. Nor is there any consideration given to the very real possibility of renewed conflict as a result of the recent announcement by KADEK (the successor to the PKK) that it has called an end to its unilateral ceasefire and specifically named pipelines as potential targets.

Indeed, the EIA does not even acknowledge that there are Kurds along the route at all. The Social Impact Tables, the raw data of the consultation process, mention Alevi, another much smaller minority group, at least twice, Circassians/Cerkez twice, and Aysar Turks, yet not once in 850 pages of results do they acknowledge the Kurds per se as a social group.

Only once, in fact, is there a reference to “Kurdish” as anything but a language, and the nature of that reference (linked as it is to discrimination) is informative:

“Bozhoyuk, Kahramanmaraş Province: Occasional conflict between families/tension between two different groups is observed. A municipality with quite ‘nationalist’ attitudes. The sub-settlement of Akboyum consists of citizens of Kurdish origin... Political unrest is apparent, ethnic tension between two groups, discrimination in the provision of services.”

The project sponsors have failed adequately to consider how the “chill effect” of ongoing discrimination, state surveillance and repression might impact on consultation procedures. Furthermore, the consultation data is presented in a manner which dangerously misrepresents the very “social conditions” that the World Bank requires BTC Co to examine. This is particularly apparent in the following data from the Kars and Ardahan regions:

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18 ‘Pipeline Household Questionnaire’, BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A-4, Project Questionnaires, p.4
19 The Social Impact Tables do refer to the existence of the Kurdish language along the route, but never to the social group that speaks that language. By contrast, the data does acknowledge the long-standing tension between Turkey and Armenia following the massacres of the 1910’s. “[There is] an old Armenian settlement, however, people are afraid to talk about its history due to allegations surrounding the genocide.” BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume 2 Supplement I, Gulludere Settlement, p.6-297
20 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume 2 Supplement I, Bozhoyuk Settlement, p.6-696-7, emphasis added.
21 The “chill effect” is a widely used analytical term referring to the tendency among people who do not enjoy true freedom of speech to censor themselves rather than to speak out and risk the punishments they know frequently accompany dissent. For more see e.g. Laurence Lustgarten and Ian Leigh, In From the Cold: National Security and Parliamentary Democracy, Oxford University Press, 1994
“Bozkus, Kars Province: There are tensions between cultural groups in the region. The settlement suffered from political unrest in the 1990s. There are now two opposed groups among local residents. They are divided according to their political alliances—Peoples’ [sic] Democracy Party versus mainstream parties, with the latter group more powerful due to close relations with rural security forces and local government agencies. However, it is unlikely that such issues will disrupt the construction or operation of the pipeline.”

To read this analysis without prior knowledge of the events of the last twenty years, one would assume that the “tensions between cultural groups” referred to are simply relatively minor power struggles between one social faction and another. The event referred to, however, is the aforementioned civil war between the PKK and the Turkish army, in which ordinary Kurdish civilians were routinely accused of terrorism or other offences and often displaced, tortured and extra-judicially killed. Those responsible for these gross human rights violations often came from the self-same “rural security forces” referred to above, notably the Gendarmerie, the paramilitary police force cited in the majority of the thousands of cases facing Turkey at the European Court of Human Rights (ECtHR).

In the same vein, there is no mention of the fact that in September 2002 the People’s Democracy Party, or HADEP, became the latest in a long line of Kurdish political parties to be summarily shut down by the authorities; the ECtHR ruled last year that Turkey’s dissolution of one of its predecessors, DEP, violated "the very essence of the right to stand for election and to hold parliamentary office” and "infringed the unfettered discretion of the electorate." In other words, far from being a run-of-the-mill “political alliance”, HADEP, because of its perfectly legal political programme, came under considerable and constant state pressure.

Such misrepresentations reflect a broader failure to take account of human rights concerns in the design of both the consultation procedures and the future operations of the project. For example, when the EIA acknowledges that one “settlement suffered from 1990’s political unrest in Turkey and still has several settlement guards,” it makes reference to one of the thorniest problems of post-conflict Turkey, the attempt to reconcile Kurdish groups who collaborated (voluntarily or under duress) as “village guards” for the Turkish army, with other Kurds whose rights they were often responsible for violating. The EIA takes no
account of how that difficult reconciliation process might affect local political stability, the likelihood of violence or the equal dispensation of compensation or other potential benefits. Indeed, BTC Co.’s failure to acknowledge or deal with the social reality of the region is a crucial and highly damaging lacuna at the core of the EIA, which could exacerbate an already tense situation. In particular, the designation of the Gendarmerie as the force with “overall responsibility” for security for the whole Turkish section of the BTC project is likely to prove highly inflammatory, as are the special powers given to the security forces under the Host Government Agreements.28

The failure to examine this context is a clear breach of World Bank best practice. It is also a deeply flawed foundation on which to base to the BTC project.

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28 For example, the security forces are permitted to enter peoples’ land and houses to “prevent civil disturbance”, a nebulous term that could cover even a peaceful protest. Host Government Agreement for Turkey, Article 12.1, available at www.caspiandevelopmentandexport.com. For more on the implications of the HGAs for Turkey and international law, see Baku-Ceyhan Campaign, Submission to the European Commission, 14 July 2003, especially Counsel’s Opinion of Philip Moser, available at www.baku.org.uk/publications.htm. See also Baku-Ceyhan Campaign: International Fact-Finding Mission Preliminary Report, Baku-Tbilisi-Ceyhan Pipeline Project, Turkey Section, August 2002, section 2.1 pp.15-25
3.4 IFC policy OP 4.01 Environmental Assessment

The IFC safeguard policy most relevant to consultation is Operational Policy OP 4.01 Environmental Assessment, compliance with which is examined in this section. Other IFC and World Bank policies are dealt with in the next section (3.5).

For ease of reference, the policy is broken down into its specific requirements. The BTC project is evaluated against each of these, based on:

- the data presented in the EIA itself;
- findings of two NGO Fact-Finding Missions to the Turkey section of the pipeline route, in August 2002 and March 2003; and
- testimony received from villagers during the public disclosure period.

The conclusions are summarised for each requirement in a table preceding a more detailed discussion on compliance.

### 3.4.1 Consultation with affected communities and NGOs

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</table>
| OP 4.01 Para 12 Consultation with affected people and NGOs | “For all category A projects . . . the sponsors consult project-affected groups and local non-governmental organisations (NGOs) about the project’s environmental aspects and takes their views into account” | 1. Only a tiny fraction (less than 2%) of locally affected people consulted in person.  
2. Evidence of villages being listed as consulted when no such consultation had taken place.  
3. Failure to provide people with clear balanced information on the pros and cons of the project made it impossible for locally affected people to take informed decisions.  
4. “Meaningful” levels of consultation precluded by tele-consulting procedures.  
5. Many NGOs listed as consulted were in practice not consulted or were unable to significantly contribute to the EIA due to timing of consultation.  
6. Inadequate methodology of consultation  
7. Lack of freedom of expression and atmosphere of repression along route invalidates consultation process in those regions.  
8. Consultation not meaningful to local people; project questionnaires and use of responses skewed in favour of state and project sponsors.  
9. Consultation period too short to allow for comprehensive or extensive research: only two | Partial compliance |
3. CONSULTATION

3.4.1.1 Only a tiny fraction (less than 2%) of locally affected people were consulted in person

According to BTC Co., all affected communities have been “contacted” by the consortium’s representatives, a claim that is repeated as fact on the IFC’s website.29 “Contact”, however, does not amount to “consultation”. Indeed, a close analysis of the EIA reveals that a tiny fraction of villagers have in fact been consulted in any meaningful sense of the term.

The nature of village consultations is summarised in Table 1 (below). The majority of villages named in the EIA as having been consulted were contacted by telephone, a survey method that does not equate with consultation (see sec.3.4.1.3, below). Of these 222 settlements, a full 40 have no details and therefore cannot be counted. A further 116 settlements the EIA names as being in the 4km corridor but the BTC Co. declined to survey.30 The EIA thus admits, only “just under 50% of all settlements within the 4km pipeline corridor...were consulted.”31 If consultation is taken to mean face-to-face interaction, then the EIA itself admits to having consulted less than a quarter of affected settlements.

Table 1 – Summary of Village Consultations

| Settlements where face-to-face consultations took place | 102 |
| Settlements contacted by telephone for which details of responses recorded | 182 |
| Settlements contacted by telephone for which no results recorded | 40 |
| Settlements named in EIA but not contacted | 116 |

29 The IFC states in the FAQs section of its own website. “Landowner users and all the 500 or so communities within two kilometers of the route have now been contacted several times during the preparation of the ESIs and RAPs.” International Finance Corporation, ‘BTC Project: Frequently Asked Questions, Consultation’, available at http://ificln1.ifc.org/ifcext/btc.nsf/Content/Consultation
30 Figures collated from Social Impact tables, BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I
It is only the 102 settlements visited in person that the project sponsors can claim to have consulted in any credible way. The EIA claims that these settlements represent 84% of the corridor population, while it has not been possible to verify that claim, it is clear from a scrutinising the consultation data that only a tiny fraction of that group have actually been consulted.

There are at least four references in the Social Impact Tables to the number of households consulted in specific settlements — 11 out of 110 in Turkgozu, or 10%; 55 out of 430 in Posof, or 13%; 11 out of 250 in Burmadere, or 4% (all in Ardahan Province); and 9 out of 50 in Bindal, Erzincan province, or 18%. This small sample suggests that only 10.2% of households in the 102 “consulted” settlements were consulted, or 8.6% of households in the corridor as a whole when we consider that these settlements represent only 84% of the corridor population.

It is likely that this is an overestimate. The EIA also confirms that, “The household questionnaire was administered to 1,328 households (an average of approximately 10 per settlement) along the pipeline.” Calculations reveal that the average number of households per consulted settlement is 335; if only 10 of those on average were consulted, that would mean that only 2.9% of households in each consulted village were actually consulted.

These numbers are unimpressive, yet the reality may be even worse. There are at least five references in the tables to the number of inhabitants consulted (as opposed to households): 11 out of 350 in Yaylakent, or 3%; 10 out of 800 in Baliki, or 1%; 11 out of 500 in Yeslikaya, or 2%; 40 out of 150 in Akdag, or 7%; and 11 out of 2200 in Yurtbasi, or 0.5% (all in Erzincan province). That produces an average of only 1.4% of inhabitants in “consulted” settlements who have actually been consulted, which drops slightly to 1.1% when taking into account the fact that the settlements only represent 84% of the corridor population.

It appears that the project sponsors may have viewed households and individuals as coterminous—that is, having interviewed the head of household, they felt his views represented the views of the entire household. A footnote in the EIA confirms that, “When interviewing people, the ‘household head’, which in Turkey generally means the senior male, was approached.”

In other words, it is fair to say that in the settlements where the tables say households were consulted, consultation was actually focused on individuals, the male household heads. If the figures from the two groups listed above are homogenised as individual consultations, we get a total of 140 individuals consulted face-to-face out of a total population of 7771 people in the nine settlements. That amounts to a grand total of 1.8% of residents. If this figure is representative of all contacted settlements, it would amount to 1.5% of the total corridor population.

33 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-17, 6-25, 6-61 and 6-403
35 Figures collated from BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-357, 6-360, 6-364, 6-403 and 6-442
36 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-357, 6-360, 6-364, 6-403 and 6-442
population (since the settlements contacted in person contained 84% of the population). This is some distance from BTC Co.’s claims of comprehensive consultation.

3.4.1.2 Evidence of villages being listed as consulted when no such consultation had taken place

The true figure for the numbers consulted in person may be even lower than even the EIA’s data suggest. One reason is that the data conflicts with independent research, specifically undertaken to “ground truth” the claims in the EIA.

In August 2002, for example, nearly a year after BTC Co.’s first stage of consultation and during the course of its second stage of disclosure roadshows, an international non-governmental organisation (NGO) Fact Finding Mission (hereafter August 2002 FFM) found that four of the eight settlements (50%) it visited, all of which BTC Co. claimed to have consulted either in person or by telephone, had not been consulted in any way. This included villages in the area of the marine terminal, where BTC Co. claims to have consulted 100% of settlements. Several of the affected settlements only learned of plans for the pipeline when technicians turned up to begin work on it, or even in some cases from the FFM itself.

The story of Hacibayram is illustrative of the unreliability of the consultation data presented in the EIA. The August 2002 FFM found the village, listed in the EIA as consulted by telephone, to be uninhabited, with neither telephones nor residents to answer them. Following subsequent suggestions by BP and the IFC that the community had been contacted in the nearby town of Tercan and all problems resolved, the second (March 2003) FFM made contact with Hacibayam’s Muhtar, Abdurrahman Aksu. Mr. Aksu noted that he had met with representatives of BOTAS, the national pipeline company building the Turkish section of the pipeline, only once, in February 2003 (over six months after it was stated in the draft EIA that he had been consulted), and that he had not been contacted by telephone as stated in the EIA in the summer of 2002, and nor had anyone else in his community.

At least four contradictory explanations have been offered by the project sponsors since the August 2002 FFM uncovered the irregularity. As detailed in the NGO’s March 2003 FFM report, all four explanations were rejected by Mr. Aksu as untrue. Most recently, a further explanation has been offered – namely that the village is only occupied in winter months, hence not during August when the 2002 FFM visited. Given that the houses in the village were destroyed during the recent conflict in the region and are thus uninhabitable during summer or winter, this explanation is entirely lacking credibility.

In March 2003, Mr. Aksu raised other concerns to NGOs. He reported that, earlier in 2003, he had travelled to Erzincan to raise concerns with BOTAS but was denied contact. He also pointed out that far from all complaints being resolved, the leading families of the village

41 Ted Pollett, IFC, meeting with KHRP, 26/2/03
42 Dermot Kirk of BP told a meeting of the Responsible Investor Network on 15th September 2003 that Hacibayram is a winter village that is uninhabited in the summer while residents are engaged in nomadic grazing.
were in dispute with BOTAS over compensation prices, as a result of which BOTAS had suspended payment, leaving many in the village uncompensated.\textsuperscript{43} The fact that major unresolved problems and disputes still existed so late in the day in a settlement which the project sponsors are aware had become something of a touchstone in consultation issues is deeply worrying, and indicative of the scale of the problems elsewhere.

**3.4.1.3 Failure to provide people with clear balanced information on the pros and cons of the project made it impossible for locally affected people to take informed decisions**

Significantly, the Resettlement Action Plan (RAP), published after the EIA was approved, notes:

“As late as May 2002, very few PAPs (project affected people) had detailed information as to the particulars of land acquisition and construction, and few were fully informed of project impacts on their assets and livelihoods.”\textsuperscript{44}

This conclusion is supported by both the August 2002 FFM and by a subsequent FFM undertaken in March 2003.\textsuperscript{45} Even where settlements had been informed about the imminence of the pipeline, the August 2002 FFM found that they frequently remained confused or uninformed about the project and its impacts. Affected people had not been informed about their rights to negotiate compensation, to receive money for communal or orphaned land, or limitations on using land after pipeline construction. Confusion abounded over the likelihood of employment or of getting compensation without title. In particular, they had not been informed of any of the potential negative impacts of the project, such as explosions, accidents, pollution, permanent land damage or the consequences of non-decommissioning the pipeline.

There were suggestions that local people had been consciously misled as to these impacts—villagers reported that professors from the Middle East Technical University, who did not disclose that they were working for BOTAS, had assured them that there would be no risks.\textsuperscript{46} (See sec.3.4.3.2, below)

The second FFM confirmed that, although BP had made more contact with affected settlements and awareness of the project was higher, the standard of consultation was still extremely low.\textsuperscript{47} Many of BP’s promises, for instance that compensation would be generous and employment widely available, had proved untrue—compensation was below market value and prices imposed in violation of Turkish law,\textsuperscript{48} while almost all of the workers, materials and even food for the pipeline were imported from outside, causing much local resentment.\textsuperscript{49}

\textsuperscript{43} Abdurrahman Aksu, Muhtar of Hacibayram, phone conversations with FFM, 2/4/03, 8/4/03. See also Baku-Ceyhan Campaign, International Fact-Finding Mission, Baku-Thlisi-Ceyhan Pipeline, Turkey Section, March 2003 (report pub.June 2003), pp.49-52.
\textsuperscript{44} BTC Project, Resettlement Action Plan – Turkey, Final Report, Chapter 4, Overview of Project Affected Population, November 2002, p.4-3.
\textsuperscript{49} International Fact-Finding Mission, Baku-Thlisi-Ceyhan Pipeline, Turkey Section, March 2003 (report pub.June 2003), pp.60-84.
In one of the most extreme examples of promises not being kept, local people now report that BOTAS is taking over a thousand villagers to court in an effort to recover the small sums of compensation it had previously paid to affected people with customary land ownership.\textsuperscript{50} Those payments were themselves only made after considerable pressure on BP and BOTAS from NGOs keen to ensure that all affected people received compensation. Rather than the promised generous benefits, many affected people have garnered only trouble and pressure.

Even more significantly, people had been denied crucial information regarding their rights. For example, not a single person had heard of, let alone benefited from, the RAP Fund set up to compensate people without formal land title, despite BP representing it as a great advance.\textsuperscript{51} If people are unaware of their rights, by definition they cannot ask for them. This tallies with the findings in the Social Impact tables that very few people expected to be compensated for land—on average, only 17\% of people in consulted settlements expected to receive land compensation.\textsuperscript{52}

Likewise, people were informed that they were not entitled to bargain over the price of their land, in direct violation of Article 8 of the Turkish Expropriation Law, which states that the purchase of land is to be achieved “through bargaining over the estimated cost and through barter”.\textsuperscript{53} (see chapter 4 (Resettlement) for further details). They were also erroneously informed that they were not entitled to take the matter to court, in violation of Article 14 of the Turkish Expropriation Law.\textsuperscript{54}

Affected people were also not informed of the security implications of the BTC project. Not a single respondent even on the March 2003 NGO fact-finding mission was aware of the Host Government Agreements, the contracts for the project. Not only do the HGAs severely circumscribe the role of affected people in project design, in violation of IFC guidelines,\textsuperscript{55} but they also give overriding powers to BTC Co. and its representatives. Chief among these is the right given to designated security forces to intervene along pipeline territory under an extremely wide array of poorly defined circumstances, including ‘civil disturbance’ and ‘terrorism’.\textsuperscript{56} Yet not a single person interviewed by the FFM was aware that the BTC project might involve security personnel coming onto their land after construction.\textsuperscript{57}

There are many other significant elements of the HGAs which pertain to affected people. They include clauses affecting termination of the project, the rights of governments to intervene in cases of accidents or damage, damage to third parties, rights of BTC Co. to unlimited water in a region often affected by drought and the exception of the project from prevailing environmental and social standards. Again, none of the local villagers interviewed by the FFMs had any knowledge or awareness of these clauses or their implications.

\textsuperscript{50} Ferhat Kaya, Deputy Chair of Ardahan branch of DEHAP, meeting with DfID, ECGD, FO, Treasury, 29/5/03
\textsuperscript{52} Figures collated from BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I (17 references in total)
\textsuperscript{54} See also International Fact-Finding Mission, Baku-Tbilisi-Ceyhan Pipeline, Turkey Section, March 2003 (report pub.June 2003), pp.71-77.
\textsuperscript{55} The HGA severely restricts the nature and extent of consultation. Article 3.9(iii) of Appendix 5 provides that key stakeholders shall be notified of the nature of the project during the establishment of the EIA and only invited to comment after its completion.
\textsuperscript{56} HGA Turkey, Article 12.1
3.4.1.4  “Meaningful” levels of consultation precluded by tele-consultation procedures

As noted above, the majority of the villages listed as consulted in the EIA were consulted by telephone. As the EIA itself admits, such telephone consultation amounted to mere “additional data gathering.”58 The use of a single source has been recently criticised in other fields as unreliable, and rightly so.

Time after time the information elicited by phone is little more than basic demographic material. Certain phrases recur over and over, particularly with regard to the project itself. “According to the Muhtar, inhabitants are generally positive and have no major concerns,” is repeated throughout the village profiles.

Reliance on telephone “consultation” is doubly worrying. First, in the context of potential repercussions against critics, it is unlikely that anyone called out of the blue by the project developers would volunteer criticism of the project. Second, it would appear that, at best, only one member of each village was consulted by telephone. By definition the other inhabitants of a settlement cannot have given their opinions or solicited information from the project sponsors when they have never spoken to them.

The choice of which settlements to contact by phone was also frequently esoteric; the town of Haskoy in Ardahan province, for example, is the largest settlement in the area and located on the main road, so there is no reason people living there could not have been consulted in person.59

3.4.1.5  Many NGOs listed as consulted were in practice not consulted or were unable to significantly contribute to the EIA due to timing of consultation

The EIA lists a range of Turkish Non-Governmental Organisations which it claims were consulted. However, interviews conducted by the March 2003 FFM as part of its “ground truthing” exercise revealed that many of these NGOs were dissatisfied with the consultation process and that some were not consulted at all.60

For example, WWF Turkey, one of the most important and best informed environmental groups in the country, which BP claimed to have consulted in crucial environmental meetings in Istanbul in December 2001,61 stated that it had not been notified of the project during the development of the EIA. The group considered this strange given the lack of available information on the environment along the project route.

The first contact WWF Turkey had with the project sponsors was at a public meeting to announce the launch of the EIA after it had been designed and published in draft form. WWF complained in a letter to BTC Co. dated 29.09.02 that this left them no chance to contribute to the EIA, and that they should not be described as supporting the EIA nor listed

59 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-642
as having been consulted. BTC Co.’s response referred them back to the very stakeholder list 
WWF had originally complained about, where they are still listed.  

Likewise, the Chamber of Environmental Engineers (CEE), listed as having been consulted 
in key mitigation meetings, described a similar process of only having received 
information on the project shortly before the public launch of the EIA, giving them no 
chance to contribute to it. The CEE noted that even the Ministry of the Environment was 
merely a guest at BP’s public launch of the EIA, giving them no right to enforce changes, in 
violation of normal practice. Only after the public launch did BTC Co. ask the CEE for 
comments on the project, giving little chance for submissions to be taken seriously. 

The CEE commented that, “the whole process of consultation was all a façade… This sets a 
terrible precedent: what is the use of professional environmental engineers or civil society? 
Everything can be done by private companies.”

Other NGOs and civil society groups which should have been included in any credible 
consultation exercise were found to have been excluded. The August 2002 FFM, for 
example, made contact with three journalists, two mayors, representatives of two political 
parties, two lawyers, an NGO and four Muhtars of settlements near the pipeline but not 
within the 4km corridor. More than a year after the main consultation phase, fewer than one 
quarter of this small, randomly chosen sample had been consulted or even informed about 
the project. None of the interviewees had even basic information such as the pipeline route. 
Even representatives of the state lacked rudimentary knowledge of the project – the mayor of 
Sivas, for example, seemed to believe that residents of the town would have access to the oil 
flowing through the pipeline, all of which of course is for export.  

The second FFM likewise found that significant civic bodies, such as branches on the 
pipeline corridor of DEHAP, the pro-Kurdish party which is the main source of information 
for Kurdish people in the region, had neither been consulted nor informed about the 
project.  

### 3.4.1.6 Inadequate methodology of consultation and failure to provide people with 
clear balanced information on the pros and cons of the project made it 
impossible for locally affected people to take informed decisions 

Two main methods of consultation were employed by BTC Co; the distribution of leaflets 
and public meetings. Both were seriously flawed in their design and implementation. 

**A. Leaflets**

The first (and in many cases only) source of information about the pipeline for many people 
was the project leaflet distributed in August and September 2001. As a means of 
consultation, however, the leaflet fails to meet IFC guideline criteria, since it neither elicits 
local knowledge nor imparts enough knowledge of the project to allow affected people to
make an informed decision about it during later community or consultation meetings.\textsuperscript{67} Other issues are also of concern:

(i) Its success as a means of “consultation” clearly depended critically on the universal literacy of affected people, yet many villagers are unable to read.\textsuperscript{68}

(ii) The failure of the project sponsors to take advantage of recent reforms to publish the leaflet in minority languages, especially Kurdish, further disadvantaged members of minority groups, particularly women and the elderly, who frequently do not speak Turkish (see sec. 3.4.6.4, below, for further details).

(iii) The leaflet is far from neutral\textsuperscript{69} and does not adequately inform villagers about their rights or about what might happen to their land or property during and after the construction process, nor does it ask for any information, advice or input into project design or operation.

(iv) The means of distribution was largely via settlement heads or Muhtars. Quite apart from varying levels of Muhtar competence, that distribution process rests on an assumption: that Muhtars will dispense information about possible employment, compensation, etc., dispassionately and without favouritism across the board. Information supplied in the EIA itself casts doubt on the safety of such an assumption.

The leaflet provides an example of BTC Co.’s failure to supply affected people with adequate information to allow them to make informed decisions. Without even basic knowledge of the pipeline route, function, utility, impacts, legal framework, sponsors or possible accidents, even without the added political pressure, it was clearly not possible for the people whose lives will be changed by this project to make independent decisions about it.

\textbf{B. Disclosure Roadshows}

(See also sec.3.4.3.2, below)

The use of “disclosure roadshow meetings” to meet the criteria for a second post-EIA consultation phase also does not live up the standards of consultation required by the IFIs. The EIA notes that these meetings were held in only 36 out of 326 project affected settlements, barely more than one in ten. Even if, as the EIA claims, “representatives” of 111

\textsuperscript{67} International Finance Corporation, Operational Policies, OP 4.01 Environmental Assessment, para. 15. The IFC requires that, “the project sponsor provides for the initial consultation a summary of the proposed project’s objectives, description and potential impacts”, emphasis added.

\textsuperscript{68} The Social Impact tables in the EIA claim that most, if not all, of the settlements affected have literacy rates of 90% or better.68 This figure, which appears to based, in the majority of cases, on information supplied by telephone by the village muhtar, 68 does not accord with official statistics; Turkish state figures list the literacy rate in Eastern Anatolia at a mere 68\%\textsuperscript{68} and local people themselves estimate a figure considerably lower than that, noting that many women in rural parts of Turkey cannot read, particularly in what the EIA several times calls “conservative” settlements.68 The Resettlement Action Plan for the project also records that most villagers only have primary school level education.68 Even where literate, many may therefore have been unable to absorb the information in the leaflets – a view supported by field interviews conducted by the March 2003 FFM.

\textsuperscript{69} The leaflet encourages the view that the project is being operated for the benefit of the state. Given the climate of repression in the region, this alone would have deterred many recipients from voicing any criticism of the project. The tone of leaflet is also one of inevitability — “Land acquisition and pipeline construction will begin in June 2002, lasting for 32 months. The starting date of operation of the pipeline is 2005”\textsuperscript{69} — discouraged feelings of ownership and engagement on the part of villagers. In addition, the leaflet lists the many supposed benefits of the project (all of which are benefits to the state and the project sponsors) and methods for supposedly ensuring its safety, yet lists none of the numerous possible negative impacts and disadvantages. It states unequivocally that local people will benefit from the pipeline, when the vast majority of locally affected people have yet to see any real benefits.
affected settlements attended the meetings,\textsuperscript{70} that amounts to only a fraction over one in three affected settlements taking some sort of role.

Given the rush in which these meetings were conducted, it is not surprising that the format was mainly presentational in nature, telling affected people what they would face, rather than consultative, seeking their input. The EIA describes the meetings as mainly comprised of “formal presentations”, often on several subjects, with a question and answer session at the end. Affected people who attended the meetings confirmed that they were long, boring, overly technical and promoted the benefits of the project almost exclusively, often drafting in supposedly ‘independent’ experts to substantiate these claims.\textsuperscript{71}

\textbf{3.4.1.7 Lack of freedom of expression and atmosphere of repression along route invalidates consultation process in those regions}

Effective consultation is predicated on the existence of genuine freedom of speech and of expression. If people cannot express their opinions of the project, critical as well as supportive, reservations as well as endorsements, in a free and open manner, consultation processes cannot be valid.

As noted in Section 1, consultation is key to the success or failure of the project, both now and in the future. As such, it is important that consultation is seen to be comprehensive and fair, both by groups involved in the BTC project and particularly by locally affected people themselves. On any view, at a minimum suggests:

- First, that people are consulted in a genuine way prior to any decision being formulated and that their views, adverse as well as accepting, are taken into account;
- Second, that people have the right and opportunity to express their opinions freely and openly on a wide variety of topics related to the project, not simply to respond to queries on a single subject;\textsuperscript{72}
- Third, that people have the capacity to express dissent in the full knowledge that no adverse consequences, direct or indirect, will result from their doing so. Political culture is the key here: it is disingenuous to expect that people used to framing their words with the greatest of care will bring themselves to speak freely to outsiders on any issue, let alone issues in which they perceive the state to have an interest. Analysts of censorship are familiar with the concept of “the chill effect”, the tendency of people living in repressive or constrained environments to censor themselves rather than bring down trouble on their heads by speaking out against authority.\textsuperscript{73} In such societies, much dissent is never even voiced, let alone heard.

As documented in Section 2, such conditions do not exist along much of the pipeline route in Turkey, particularly in the North-East, where there has been a marked recent rise of detentions, arbitrary arrests, surveillance and harassment by state and military officials. The March 2003 FFM also notes a pervasive atmosphere of repression and lack of freedom of

\textsuperscript{70} BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-34
\textsuperscript{72} We agree with the FFM’s view that this not only presupposes a society without systematic inequality, discrimination and repression, but also a political culture in which speaking up and speaking out are normal parts of everyday life.
\textsuperscript{73} For more on the use of the chill effect in academic and legal discourse, see Laurence Lustgarten and Iain Leigh, In From the Cold: National Security and Parliamentary Democracy, Oxford University Press, 1994
speech in the region which precludes dissent about the BTC project and the strong likelihood that the human rights situation in the region will be worsened by the introduction of the pipeline, particularly due to militarisation via the use of the Gendarmerie (Turkey’s military police) as the main security force.

**Nowhere in the EIA is there any indication that this issue has been taken into account in the design of the consultation procedures.** On the contrary, evidence from the EIA suggests a deep-seated lack of social sensitivity, particularly in the Kurdish north-east. For example, it is recorded in both the EIA and the Resettlement Action Plan that the project sponsors often invited the gendarmerie to take part in the same ‘stakeholder’ meetings as Kurdish Muhtars. Even if the intention of such a policy is not to repress dissent and achieve compliance, it is highly likely that that will be its effect.

3.4.1.8 Consultation not meaningful to local people; project questionnaires and use of responses slanted in favour of state and project sponsors

The questionnaires used by BTC Co. to elicit the views of affected people are skewed, and limiting with respect to the responses they invite, in both structure and vocabulary. The wording of the questionnaires further discourages frank expression of concerns about the pipeline's impact.

The written information disseminated by BTC Co. is insufficient for respondents to evolve an informed view on the project. For example, the Non-Technical Summary of the EIA contains little information on the practical implications of the Host Government Agreement (HGA) for Turkish law. It cannot be plausibly argued that this information is not of concern to affected communities, since a number of those interviewed by both the August 2002 and March 2003 FFMs along the pipeline route themselves stated that it is. Examples of HGA clauses of concern to affected communities include those affecting termination and damages to third parties, as well as Appendix 5, 3.3 and 4.2, which state that the BTC project cannot be subject to any environmental or social standards promulgated by regional or intergovernmental authority "to the extent they are different from or more stringent than the standards and practices generally prevailing in the international Petroleum pipeline industry for comparable projects".

In addition, the August 2002 FFM found that even villagers who had already met directly with BTC/BOTAS representatives and had been surveyed at the household level felt themselves lacking in necessary information about, for example, the comparative experience of Georgia and Azerbaijan in employment, the previous record of oil pipelines in various countries with respect to spills and other accidents, and so forth. The questionnaires used by BTC Co. — of which there are nine types — are also skewed, and limiting with respect to the responses they invite, in both structure and vocabulary.

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74 For example, Resettlement Action Plan, Chapter 7: Public Consultation and Disclosure, November 2002, p.7-7. “Box 7.1: Kelkit/Gumushane, August 2001: Participants of the BTC information meeting included the district governor, district Director of Agriculture, Commander of Gendarmerie, district security director, Mayor and 12 villages headmen.” “Box 7.2: Askale/Erzurum, August 2001: Participants of the BTC information meeting consisted of the Commander of the Gendarmerie and 8 village headmen.”


76 There are different questionnaires for communities affected by the pipeline, by the Marine Terminal, by pump stations, and by construction camps. For each of these community types there are, in addition, two questionnaire types: one for surveys of the muhtar alone, and one for surveying various households in the community. In addition, there is a separate form for surveys conducted with muhtars by telephone. There are thus the following questionnaire types: Pipeline Household, Pipeline Settlement, Marine Terminal
Respondents are asked if they would support a pipeline, and if so, why, but are not asked if they would object to a pipeline. They are queried about possible "benefits" of the pipeline, but not about possible "losses" or "costs". Instead, they are merely asked to mention any "concerns" they might have, or possible "disruptions" foreseen from the presence of construction workers in the locality.

In the Marine Terminal Household Questionnaire, no spaces exist for interviewers to record concerns expressed about the effects of BTC works on fisheries. The Marine Terminal Settlement Questionnaire does not request any views on the pipeline at all.

The wording of the questionnaires further discourages frank expression of concerns about the pipeline's impact. The prefatory paragraph for each questionnaire emphasizes not only that the pipeline is a project of the Turkish Government but also (with the sole exception of the Marine Terminal Settlement Questionnaire) that the pipeline is "of high economic and strategic importance for Turkey". In a political climate where criticism of the State is viewed as inimicable to the interests of the State, this phrase sends a strong signal at the outset that expression of concerns about the pipeline could be dangerous.

Such signals are reinforced by official behaviour. For example, while the August 2002 FFM was interviewing a group of fisherfolk along the Gulf of Iskenderun, police officers appeared, demanding to know the purpose of the visit and requesting a list of the names of the FFM team. These limitations on free expression of concern are, of course, as well understood by ordinary citizens along the pipeline route as they are unacknowledged in any BTC/BOTAS consultation documents. As one village interviewee put it: "What can we do? Whatever the state does is fine with us."

There are clear suggestions that the project sponsors have also unfairly raised expectations about the BTC project. Promises of employment, retail opportunities and generous compensation have not subsequently been kept. In one settlement, the EIA records that, "Engineers carrying out detailed engineering works reportedly told local residents, 'After the construction of the pipeline, this place will look like Paris.' This settlement is the poorest settlement of Ardahan and Kars."

It also seems fairly clear from the numerous contradictions listed in the Social Impact tables that the compilers of the EIA did not always report their findings accurately. For example, the EIA records women in Fettahdere settlement in Kayseri province expressing opposition to the project due to impacts on children and animals, then states that, “There were no major concerns.”

Other recorded responses stretch credulity: it seems hardly plausible, for instance, that Goksun, a town of 36,247 people, would have nothing more complicated than a “generally

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77 See, e.g., BTC project EIA, Appendix A4, p. 24. The questionnaire asks: “In general would you support the presence of a pipeline in your area?”. Other questions include: “If yes, why would you support the presence of a pipeline?” and “What do you perceive to be the main benefits that may result from construction and operation of the pipeline?”.

78 Appendix A4 (Example Questionnaires): i.a., Marine Terminal Household Questionnaire, p. 45; Construction Camp Household Questionnaire, pp. 52, 51; Pump Station Household Questionnaire, p. 64.

79 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-62

80 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-667
positive” attitude to the project, and would list no complaints at all.\textsuperscript{81} Likewise, it is hard to see when in Yenigun settlement, Osmaniye province, “the inhabitants do not perceive any benefit from the project,” that they could then be described as having “awareness and general enthusiasm about the project.”\textsuperscript{82}

### 3.4.1.9 Consultation period too short to allow for comprehensive or extensive research: only two months in total

Two consultation exercises were carried out on the EIA: a six week settlement consultation period of August and September 2001,\textsuperscript{83} hardly long enough to properly engage with the tens of thousands of people BP has acknowledged will be affected, and a ‘disclosure roadshow’ of mid July to early August 2002 (a mere two to three weeks). Neither adequately fulfils IFI guidelines and legal requirements.

To begin with, having only two short periods of consultation is fundamentally at odds with the idea of consultation as an “ongoing process”\textsuperscript{84} which BP and the EIA have frequently reiterated. The EIA even emphasises this claim, with a diagram in its “Overview of the BTC EIA Process” section depicting consultation as an ever-present, constant element dynamically interwoven with all the other stages of the process.\textsuperscript{85} The reality is that on the ground consultation of project affected people lasted little more than two months in total, and began far too late to have a major role in project design or operation.

Clearly, both periods are far too short to cover more than 1000 km and meaningfully consult the tens of thousands of people who will be impacted by the project and who have rights regarding it. The requirement is not to get a random sample of those affected, but to meaningfully consult them all. The short time frames allocated to local level consultation effectively preclude that, however, and a look at the methodology used confirms this.

### 3.4.1.10 Inadequate consultation of women

In another village visited by the FFM, for religious and cultural reasons women are not allowed to see men other than their families and husbands. During the months of construction therefore, these women would have to stay indoors with the curtains drawn. They were not consulted. Considering this type of case, surprisingly, the EIA seems to see this state of affairs as an actual advantage: “Many respondents commented that contact between workers and local women would be a particular source of offence. The conservative traditions of many of the settlements will largely prevent this type of interaction, which is more likely in larger population centres used by workers on their days off.”\textsuperscript{86} The EIA seems to use this observation as an excuse for not applying any mitigation measures against this problem.

\textsuperscript{81} BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-715
\textsuperscript{82} BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-809
\textsuperscript{84} E.g. BTC Project EIA, Final EIA, October 2002, Approach and Methodology, p.3-26
\textsuperscript{85} BTC Project EIA, Final EIA, October 2002, Approach and Methodology, Fig. 3.1, Overview of the BTC EIA Process, p.3-2
\textsuperscript{86} EIA Turkey, Draft for Disclosure, Table 6.12, page 6-40, June 2002
The EIA also records a concern raised by local people that “lack of control over the movements of construction workers (during and after working hours) could result in trespassing and damage to local land and property. This lack of control could also result in residents, particularly women, feeling vulnerable to the behaviour of construction personnel as well as creating a sense of their privacy being invaded.”\footnote{EIA Turkey, Draft for Disclosure, Table 6.12, page 6-40, June 2002} Although the EIA states that there will be a Code of Conduct to regulate the behaviour of construction workers, the 11 points listed in the EIA that will be included in it do not include any rules relating to behaviour towards local women.\footnote{EIA Turkey, Draft for Disclosure, section 6.12.2.4, page 6-42, June 2002} Nor are other mitigation measures proposed. In addition, there appear to be no specific means of redress where women feel that their rights have been infringed by construction workers or the construction itself.

In conclusion, the FFM found that efforts outlined in the EIA to specifically consult women appear scarcely to have been applied in practice. The EIA sets a target that 40% of its consultees should be women,\footnote{EIA Turkey, Draft for Disclosure, Appendix 5, page A5-8, June 2002} but did not report on whether it achieved that target. Perhaps as a result, BTC has at best a limited picture of how women will be impacted by the pipeline. On land expropriation and compensation measures in particular, BTC has sketchily noted some of the difficulties it faces, yet has made little effort to overcome them.

### 3.4.1.11 No evidence that affected people were consulted about the project’s environmental aspects

No evidence is supplied in the EIA or in the questionnaires that affected people were specifically consulted in any respect on the project’s environmental impacts. The failure to do so has been to the detriment of both the project and local people.

For example, for political and other reasons, much of the route has not been environmentally or culturally mapped in detail before the project began, making desk research of limited value. The EIA makes clear that the Ministry of Culture was also poorly informed about the region, to the extent that it was forced to come to the region in August 2001 to validate the findings of the EIA.\footnote{BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline- Baseline Conditions, p.5-139. “The Ministry of Culture (MoC) were advised of the newly identified sites and features. MoC survey teams subsequently visited and surveyed these sites during August 2001.”} In such circumstances, the project sponsors should have relied for detailed knowledge of possible impacts on cultural heritage and the environment on those who really know the area: local people.

Yet the EIA also shows that “based on information gathered in desk studies, sites of potential cultural heritage value were identified during a field survey conducted from August to November 2000 in the Basic Engineering Phase.”\footnote{BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline- Baseline Conditions, p.5-138.} At the same time, it claims that, “Cultural assets along the route were initially identified by…initial responses to consultation.”\footnote{BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline- Baseline Conditions, p.5-138.} Yet, as just noted, the main work on identifying potentially important cultural heritage sites was undertaken \textbf{more than a year before} local-level consultation occurred in September and October 2001. In other words, due to the methodology of the project sponsors, it was \textbf{impossible} for locally affected people to have any significant role in influencing cultural heritage impacts, in violation of several IFC guidelines.
The same general point applies to the whole project. Failure to consult with locally affected people early enough or long enough has meant that such groups have been presented with effectively a fait accompli, a pre-designed project over which they can have little significant influence and which (as documented in Section Two) many people feel they have little choice but to accept.

3.4.1.12 No evidence that affected people were given necessary information on project’s environmental aspects to allow them to reach informed decisions or influence the project

The information supplied to local people on the potential environmental impacts of the project was one-sided and frequently misleading. For example, the August 2002 FFM found that in at least two of the villages it visited where water supplies would be crossed by the BTC pipeline, BTC Co. had not explained the risks of pollution or leaks from the pipeline to the villagers (it has simply claimed that there is zero risk), nor what risk reduction or mitigation measures would be put in place. Nor has BTC Co. explained what could be done if there were an accident – in terms of preventing spread of pollution, setting up alternative emergency water supplies, applying for compensation, or resolving disputes.

The same FFM was told by villagers who had attended the BTC public meetings that “university professors” had told them that there would be no negative impacts or risks (these professors were from BOTAS/BTC’s contractor KORA, of the Middle East Technical University – see sec.3.3.3.2, below).93

Both FFMs to Turkey, in August 2002 and March 2003, found that villagers knew nothing about environmental impacts and risks – such as risks of rupture or leak, pollution, safety risks, permanent damage to quality land, and the impacts of decommissioning.94

3.4.1.13 No evidence that views of project affected people, especially complaints or reservations about the project, were taken into account. Specific requests have been ignored

Appendix A8 of the EIA lists some 51 pages of responses from various local and national authorities; by contrast, it lists no results whatsoever for the responses of locally affected people.95 Other consultation results and “responses to comments” are homogenised: problems raised are listed thematically without any indication of who raised them or what kind of a response was given. The responses to these thematic comments are often vague and hortatory, frequently consisting only of “a clear outline of the Project’s commitment to address these concerns.”96

It is impossible to tell from these homogenised results how many of the responses are from locally affected people, but the strong impression is the number is low. Of crucial importance, there is no tabulated indication that any of the complaints, worries or

95 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A8--Consultation Results, pp. A8-19-70
96 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A8--Consultation Results, p. A8-13
uncertainties raised by local people resulted in significant practical changes to the route or the functioning of the BTC project. Rather, five examples, are given of routing changes due to “cultural heritage and social considerations”\(^97\), which appear to be designed to encourage the reader to think that there are many more such examples. Even in these cases, no indication is given as to the process by which these changes came about – such as whether it was because they raised by consultees.

Given the emphasis BTC Co. and BP have placed on the “unprecedented” extent of consultation, and on the “11,000” pages of ESIA, it is surprising that other cases could not be listed or tabulated. One might conclude that BTC Co. has prioritised quantity of effort over effectiveness of consultation; or, on another interpretation, that it has been misleading with its representation of consultation activities carried out.

Affected villagers suggested several times, for example, that as a result of the contractor Alarko’s high-handedness and incompetence on the previous Natural Gas Pipeline, they would not be happy to see them involved in the project.\(^98\) This request was ignored.

### 3.4.2 “The project sponsor initiates . . . consultation as early as possible”

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</table>
| OP 4.01 Para 12                       | “the project sponsor initiates . . . consultation as early as possible” | 1. Consultation with affected people began several years after commencement of project planning and design.  
2. Consultation with affected people began over a year after consultation with national and state bodies. | Non compliance |

### 3.4.2.1 Consultation with affected people begun several years after commencement of project planning and design

Planning for the BTC pipeline began in the mid to late 1990s. Although the EIA stresses the importance of local knowledge (“Consultation is also an important opportunity to obtain local knowledge”\(^99\)) and notes that OP 4.01 Environmental Assessment requires consultation in order “to take local views into account in designing the environmental and social management plans as well as in project design,”\(^100\) it was not until more than a year after the

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\(^97\) BTC project EIA, Turkey, Final EIA, October 2002. Project Development and Evaluation of Alternatives, pp2-23.  
\(^98\) BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-361, p.364. “There is a preference for Alarko not to be involved as reportedly they did not adopt an impartial attitude in the compensation of damage.”  
\(^99\) BTC Project EIA, Turkey, Final EIA, October 2002, Approach and Methodology, p.3-7  
EIA records the preliminary consultation phase beginning that the six weeks of settlement level consultation began, making it impossible to tap into essential local knowledge in the scooping phase of the project.

3.4.2.2 Consultation with affected people began over a year after consultation with national and state bodies

Before undertaking any local-level consultation, the project sponsors spent considerable time with “national authorities” identifying “key constraints” to the pipeline. Elements of the EIA suggest that one of the main “constraints” discussed was that of national security; a large section of the route in the Kurdish region of the north-east, for instance, was moved east “during discussions with the Turkish authorities for reasons of national security.”101 While the government of course retains its right to ensure the security of the project, in the light of the political realities referred to in section 3.3, it is of considerable concern that elements of the Turkish state, which are of course not directly affected by the project, were given so much more of a role in project design than the people who live along it.

Significantly, the EIA, both physically and chronologically (and thus, one might suggest, in level of importance), puts local communities at the bottom of the list of “key stakeholders”. Ahead of the people who will have to live with the direct consequences of the project are listed authorities, which includes the military and police forces, national and local NGOs, interest groups, including the media, and the International Financial Institutions who are being approached for funding for the project.102

While all these groups are entitled to a greater or lesser degree to have input into the project, according to IFI guidelines that contribution should not have taken priority over or been at the expense of locally affected people. In particular, BTC Co.’s failure to take account of local opinion at the planning and design stage of the project not only violates IFC stipulations that, “The project sponsor initiations such consultations as early as possible,”103 but also the EIA’s own insistence on “early consultation with affected people…early disclosure of information.”104

3.4.3 Two consultation periods required

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<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OP 4.01 Para 12</td>
<td>“For Category A projects, the project sponsor consults these groups at least”</td>
<td>1. First consultation process met with less than 2% of people; second consisted of meetings in just one in ten affected communities</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>

101  BTC Project EIA, Turkey, Final EIA, October 2002, The Basic Engineering Phase, p. 2-11
103  International Finance Corporation, Operational Policies, OP 4.01 Environmental Assessment, para.12
2. Format of disclosure meetings inappropriate, presentational not consultative

3. Lack of availability of EIA meant affected people unsure of project impacts

4. The majority of affected people interviewed by FFMs to the region do not feel they have been properly consulted

Non-compliance

3.4.3.1 First consultation process met with less than 2% of people; second consisted of meetings in just one in ten affected communities

(For details, see sec.3.4.1.1, above)

3.4.3.2 Format of disclosure meetings inappropriate, presentational not consultative

The larger community- or district-level consultation meetings arranged by BTC Co. were dominated by a lecture format which has left insufficient space for discussion of the concerns of those attending. For example, according to one group of informants, a meeting held on 26 July 2002 at Osmaniye featured 20-minute speeches from three men from BOTAS and three from the pipeline consortium about aspects of the EIA, a total of two hours of lectures. 105

All of the larger community meetings that were described to the August 2002 FFM included presentations both by BOTAS staff and by "university professors". This gave the presentations credibility, and several interviewees said they believed what was said (for example, that no safety or environmental risks would result from the pipeline) because it came from professors, who are "experts". The muhtar of one village said of one such professor: "We trust his expert opinion. We believe that such an eminent professor would not have got it wrong. We haven’t heard of anyone in a similar position criticising the project." 106

Villager testimony suggested, however, that these professors were in fact from the Black Sea and Central Asian Countries Research Centre, at the Middle East Technical University, Ankara – which is working under contract to BTC and BOTAS. In no case were the communities aware of a possible contractual relationship between the professors and the pipeline companies.

This raises several concerns: (i) that the villagers may have been misled into supposing that the validation of the project being offered by the academic community was entirely...

objective; and (ii) that the academics gave assurances that they were not in a position to give, for example that there would be no risks.

3.4.3.3 Lack of availability of EIA meant affected people unsure of project impacts

The collection of opinions from the public on the draft EIA during the 60-day comment period was hampered by the fact that the full draft EIA was, on BTC Co.'s own account, available only in the governancies in the larger cities and sub-governancies within the four-kilometre corridor and in university and national libraries. To obtain the EIA and participate in the public disclosure period, locally affected people would thus either have had to go online, a practical impossibility for virtually all villagers, or go to “relevant State authority offices”\(^{107}\), often many miles away with limited transport. As detailed in section 3.3, it is naïve to expect that many Kurdish villagers in particular would be inclined to go to state offices to demand their rights to request to see purportedly public documents, particularly when they did not know of their existence.\(^{108}\)

Nor was the Non-Technical Summary of the EIA widely distributed among villagers in the pipeline corridor. Rather, at most, it was sent to muhtars. Whether it was shared further depended on the efficiency or commitment to openness of individual muhtars (qualities which the August 2002 FFM found to be very variable among the muhtars it met).\(^{109}\)

3.4.3.4 The majority of affected people interviewed by FFMs do not feel that they have been properly consulted

Although the level of consultation is undoubtedly higher than in many comparable infrastructure projects in the region, the consultations do not meet international standards and many people do not feel that they have been properly consulted. Sworn testimonies received by the Kurdish Human Rights Project since the beginning of the public disclosure period on the EIA – hence, after the EIA had been approved as “fit for purpose” by IFC staff – provide ongoing evidence of both an outright failure to consult villagers and/or a failure to conduct adequate consultation. As of the time of writing, 29 testimonies have been received, of which 9 are now translated (see Appendix 3). The following extracts highlight the problem:

“*The pipeline goes through the pastures of our village and through my land. I have never had any face to face meetings with the company who is going to build this pipeline... The construction company has not met with me or my family to discuss these issues in detail. I did not receive any information concerning the risks or the damages involved. I do not know whether I will be receiving any compensation for the possible damages.*”

“I did not have any face to face meetings with the construction company which is going to build the pipeline. I found out that my land is also going to be

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\(^{108}\) Despite multiple warnings from the European Union and the passing of several legislative reforms, evidence suggests that instances of state torture of detainees, particularly from minority groups, still continues apace. See e.g. Turkish Daily News, “Amnesty International: Torture Still Widespread in Turkey,” September 3 2003.

expropriated from the list which was sent to our village mukhtar’s office announcing the expropriated lands”

“The construction company did not have a face to face meeting with me concerning the expropriation of the lands. I found out that my lands were going to be expropriated when I received the enclosed documents that they sent me. Apart from this notification there has been no face to face meetings neither with me nor any member of my family or relatives.”

3.4.4 Ongoing consultation

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<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP 4.01 Para 12 Ongoing consultation required</td>
<td>“In addition, the project sponsor consults with such groups throughout project implementation”</td>
<td>1. No systematic consultation of affected communities since disclosure roadshow</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>

3.4.1.1 No systematic consultation of affected communities since disclosure roadshow

BTC Co has not conducted regular consultation exercises since the 2002 roadshows.

3.4.5 Timely disclosure of project documents

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
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<th>Extent of compliance</th>
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</thead>
<tbody>
<tr>
<td>OP 4.01 Para 14 Timely disclosure of project documents</td>
<td>“For meaningful consultations between the project sponsor and project-affected groups and local NGOs on all Category A projects, the sponsor provides relevant material in a timely”</td>
<td>1. Material provided, particularly project leaflet, contained imbalanced, uninformative and sometimes misleading information. 2. Many local NGOs not included in consultation process. 3. Significant omissions in distributed material led to failure to inform affected people of project’s potential negative impacts.</td>
<td>Partial COMPLIANCE</td>
</tr>
</tbody>
</table>
3.4.5.1 Material provided, particularly project leaflet, contained imbalanced, uninformative and sometimes misleading information

(For details, see sections 3.4.1.6 and 3.4.1.8, above)

3.4.5.2 Many local NGOs not included in consultation process

(For details, see sec.3.4.1.5, above)

3.4.5.3 Significant omissions in distributed material led to failure to inform affected people of project’s potential negative impacts

(For details, see sections 3.4.1.3, 3.4.1.6 and 3.4.3.3, above)

3.4.5.4 Methods of distribution of information, especially Muhtars, unreliable

The project leaflets and EIA Non-Technical Summaries were distributed via the settlement heads or Muhtars. An overwhelming majority of settlements listed in the Social Impact Tables agreed that, “the Muhtar is the main source of local information and TV for national information.”\textsuperscript{110} The project sponsors claim to have consulted with 208 Muhtars prior to beginning settlement level consultation (although as noted above, this figure may not be reliable).\textsuperscript{111}

\textsuperscript{110} BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-18
\textsuperscript{111} BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1 Public Consultation and Disclosure Plan, p. A1-18
This places undue responsibility on Muhtars to understand the project, to represent the interests of their villagers effectively and to disseminate the material effectively, particularly given that national television has been unabashedly positive about the project. But quite apart from varying levels of Muhtar competence, that distribution process rests on an assumption: that Muhtars will dispense information about possible employment, compensation, etc., dispassionately and without favouritism across the board. The safety of such an assumption is questionable.

Even without considering the relationship of the Kurds to the state, eastern Turkey is a highly tribal society, one with many long-standing divisions, and the election of Muhtars reflects that. Tribal loyalties mean that often a Muhtar will represent one group in a settlement at the expense of another, and it should not be assumed that everyone will be treated fairly or as equals.

This is acknowledged in the EIA, yet does not appear to have affected the design of the consultation exercise. It is noticeable that of the 102 settlements the EIA surveyed in person, at least eight of them reported tension or divisions relating to the Muhtar within the village. In Beyoglu village in Kars province, for instance, the EIA notes that the “settlement is separated into two groups due to competition in Muhtar elections. Conflict between current and ex-Muhtar and between Muhtar and teachers.”

In at least two locations, villagers distrusted the Muhtar to the extent that they wanted him to have no part in the compensation process. In Caykoy in Erzurum province, for instance, “Local residents have a preference for the land owner, not the Muhtar, to participate in the determination of land prices.”

A further fifteen of the 102 villages surveyed reported some kind of tension or division between groups in the settlement, often to do with politics or local power. Thus in total 23 of the 102 settlements surveyed, or nearly a quarter, reported some kind of internal political division or struggle for power, which would inevitably be reflected in the election of Muhtars. Given that the compilers of the EIA spent very little time in each location and were not specifically looking for problems with Muhtars, it is probable that the true figure for internal divisions is much higher and that tribal schisms are the norm rather than the exception. In that sense, the Muhtar cannot be relied upon as an impartial, egalitarian dispenser of project knowledge, a serious flaw in BTC Co.’s methodology.

### 3.4.5.5 Little or no useful information distributed before beginning of consultation process

(For details, see sec.3.4.1.6, above)

### 3.4.5.6 Unbiased information about project not widely available to local people before or during consultation process

(For details, see sections 3.4.1.3, 3.4.1.6, 3.4.1.8, 3.4.1.11 and 3.4.3.3, above)

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112 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-148

113 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-291

114 eg in Tekneli settlement in Kayseri province, “there is some hostility and inclination towards violence in the settlement among three dominant families.” BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-642
3.4.5.7 No evidence of meaningful consultation of affected people i.e. consultation which has led to major changes in the project or left affected people feeling as though their concerns have been fully addressed

(For details, see especially sec.3.4.1.12, and also sections 3.4.1.4, 3.4.1.7 and 3.4.1.8, above)

3.4.6 Form and language of materials

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</thead>
<tbody>
<tr>
<td>OP 4.01 Para 14 Form and language of materials</td>
<td>“For meaningful consultations between the project sponsor and project-affected groups and local NGOs on all Category A projects, the sponsor provides relevant material . . . in a form and language that are understandable and accessible to the groups being consulted”</td>
<td>1. EIA, even Non-Technical Summary, too technical and convoluted to be useful or comprehensible to ordinary people. Many basic questions not satisfactorily answered. 2. EIA hard to access; ordinary people unable to get online and often unwilling to travel to State offices, which in any case are usually many miles away.</td>
<td>Partial Compliance</td>
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<tr>
<td></td>
<td></td>
<td>3. Failure to provide written or oral material in minority languages, especially Kurdish, discriminates against minority groups. 4. Over-emphasis on written materials discriminates against illiterate affected people, especially women and the elderly. Underestimate of illiteracy rates in region.</td>
<td>Non-Compliance</td>
</tr>
</tbody>
</table>
3.4.6.1 EIA, even Non-Technical Summary, too technical and convoluted to be useful or comprehensible to ordinary people. Many basic questions not satisfactorily answered

The March 2003 FFM reports that the villagers it interviewed expressed serious concerns about the way information on the project had been provided. They said that the information was too technical and that the lecture-format meetings were not helpful; too much was said and shorter, more frequent meetings would have been better. The villagers still had unanswered questions regarding their rights to negotiate a fair price for land, the length of the construction period, the likely damage accruing from the building works and the future use of the land affected by the corridor. Even those who had received written information said that it would be of no use to most of them, as many villagers could not read. Once again, this illustrates that what on paper may seem adequate consultation is sometimes in practice inadequate.

3.4.6.2 EIA hard to access; ordinary people unable to get online and often unwilling to travel to State offices, which in any case are usually many miles away

(For details, see sections 3.4.3.3 and 3.4.5.4, above)

3.4.6.3 Failure to provide written or oral material in minority languages, especially Kurdish, discriminates against minority groups

The failure of the project sponsors to take advantage of recent reforms in Turkey which would have enabled the project documents to be published in minority languages, especially Kurdish, is regrettable. The lack of minority-language documentation has undoubtedly acted to further disadvantage members of minority groups, particularly women and the elderly, who frequently do not speak Turkish. It is notable that in the witness statements from locally affected people submitted to the European Commission on July 14 2003, the inability to understand compensation negotiations conducted in Turkish recurs frequently.

“They spoke to me in Turkish and because of that I was not able to make myself understood very much and I could not understand what they meant a lot of the time either.”

“I do not speak Turkish as a mother tongue since my mother tongue is Kurdish. They spoke to me in Turkish, therefore I did not understand quite a lot of the things they told me.”

The fact that project negotiations and ‘consultation’ were not conducted in their own language is likely to have given affected Kurdish people an even clearer indication that this was a project being operated for the benefit of the state and thus not to be opposed, and a correlating lack of feelings of ownership and engagement on their own part.

116 Witness statements of affected people from Ardahan province, submitted to European Commission by Baku-Ceyhan Campaign July 14th 2003. Full details of the legal submission, which argues that the BTC project breaches Turkish, EU and international law, are available at www.baku.org.uk. Names withheld for respondents’ personal safety.
3.4.6.4 Over-emphasis on written materials discriminates against illiterate affected people, especially women and the elderly. Underestimate of illiteracy rates in region

BTC Co. failed to take adequate steps to ensure the participation of women in the consultation process. In the Kurdish regions of the north-east, for example, it is women who are worst affected by the failure to distribute information on the project, either orally or verbally, in Kurdish. Women in the region are often denied education, and are therefore frequently both illiterate and unable to speak Turkish, rendering them effectively unable to read project materials or to take part in consultation exercises. Thus BTC Co.’s failure to use Kurdish amounts to gender discrimination by language.

While BTC Co. makes considerable play out of its efforts to include women in the consultation process, responses in the Social Impact tables tell a different story. “Women have no freedom of expression.”117 “There is no female participation [in consultation exercises].”118 “Females in the settlement did not participate--‘Do you want us to be beaten by our husbands?’”119 Moreover, in allowing consultation responses by the male ‘household head’ to represent the views of the entire household (see sec.3.4.1.1, above), BTC Co. is actually perpetuating female invisibility, not trying to overcome it. Consultation could, and should have been designed, in such way as to include women.

3.4.7 Inadequate initial consultation on summary of project impacts

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
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<tbody>
<tr>
<td>OP 4.01 Para 15</td>
<td>“the project sponsor provides for the initial consultation a summary of the proposed project’s objectives, description and potential impacts.”</td>
<td>1. No evidence that locally affected people provided with adequate project summaries sufficiently far in advance of initial consultation phase to allow them to reach informed decisions.</td>
<td>Unknown – no details of when project documents were distributed. But villagers complain of not having received documentation.</td>
</tr>
<tr>
<td>Consultation on initial summary of impacts</td>
<td></td>
<td>2. None of project materials, especially leaflet, adequately address potential negative impacts of project.</td>
<td>Non-compliance</td>
</tr>
</tbody>
</table>

117 Caykoy settlement, BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-290
118 Yenikoy settlement, BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-308
119 Kartalpinar settlement, BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-82
3.4.7.1 No evidence that locally affected people provided with adequate project summaries sufficiently far in advance of initial consultation phase to allow them to reach informed decisions

According to BTC Co., initial information on the project was distributed "to all stakeholders." Some 2000 EIA information packs are said to have been distributed to concerned authorities down to village level, 40,000 community pamphlets disseminated widely in affected communities, and 15,000 copies of the Non-Technical Summary distributed along the pipeline route. In addition, 500 press packs are said to have been handed out, with workshops and meetings attended by 260 NGOs and 60 press organizations.

No details are given in the EIA as to how far in advance of initial consultation projects documents were distributed. However, many villages visited by the August 2002 FFM – particularly fishing villages in the area around Ceyhan terminal – had not received packages. Indeed, the FFM reports that in several cases it had to take it upon itself to distribute the BTC Co.’s documents to affected communities who had not received them.

3.4.7.2 None of project materials, especially leaflet, adequately address potential negative impacts of project

(For details, see sections 3.4.1.3 and 3.4.1.11, above)

3.4.8 Making documentation accessible

<table>
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<tr>
<th>Relevant paragraph and key requirement</th>
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<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OP 4.01 Para 15</td>
<td>“the project sponsor makes the draft EA report available at a public place accessible to project-affected groups and local NGOs.”</td>
<td>1. EIA available only from state institutions, not independent bodies with unregulated public access 2. EIA hard to access for rural people, as placed in distant urban areas with unreliable transport links, or online in areas with no computers and unreliable electricity.</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>

120 BTC project EIA, pp. A3-22; A2-1; A2-28.
121 Ibid., A3-22; Non-Technical Summary, p. 13.
123 International Fact Finding Mission on BTC Project – Turkey Section, August 2002, p.33
3.4.8.1 EIA available only from state institutions, not independent bodies with unregulated public access

(For details, see sec.3.4.3.3, above)

3.4.8.2 EIA hard to access for rural people, as placed in distant urban areas with unreliable transport links, or online in areas with no computers and unreliable electricity

(For details, see sec.3.4.3.3, above)
3.5 Other IFC and World Bank standards on consultation

The World Bank has five safeguard policies and a number of other guidelines that deal specifically with consultation:

- OP 4.01 Environmental Assessment
- OP 4.04 Natural Habitats
- OD 4.30 Involuntary Resettlement
- OD 4.20 Indigenous Peoples
- OPN 11.03 Cultural Property.

The previous section has dealt with OP 4.01 (specifically the IFC’s policy, which corresponds to that of the World Bank Group); this section deals with the others.

In its “commitments appendix”, the EIA states variously that the project will comply with “World Bank Operational Directives and Guidelines”, without specifying any exceptions, and elsewhere with “all applicable World Bank ... best practice standards”. Appendix D of the EIA sets out which World Bank standards are deemed applicable to the EIA as a whole – Environmental Assessment, Natural Habitats, Cultural Property, Disclosure of Information, IFC Policy Statement on Child/Forced Labour, Pollution Prevention and Abatement Handbook – and summarises their requirements.

Significantly, the EIA summary fails to make any mention of the consultation requirements under the policies on Environmental Assessment, Natural Habitats and Cultural Property. It is also of significance that the EIA specifically omits to claim compliance with these consultation requirements.

Although, as noted, the IFC has allowed the BTC Consortium to derogate from applying the Indigenous Peoples policy (OD 4.20), this derogation is contested by non-governmental organisations and is likely to be subject to a complaint to the Complaints Advisory Ombudsman (CAO). For that reason, compliance with OD 4.20 is also evaluated.

For ease of reference, the separate safeguard policies are dealt with individually and broken down into their specific requirements, against each of which the BTC project is evaluated, based on:

- the data presented in the EIA itself;
- findings of two NGO Fact-Finding Missions to the Turkey section of the pipeline route, in August 2002 and March 2003; and
- testimony received from villagers during the public disclosure period.

To avoid unnecessary duplication, the bulk of the supporting data are presented in the preceding section (3.4) on OP 4.01 Environmental Assessment, with violation of other policies being presented in this section in tabular form.

124 BTC Project EIA, EIA Appendices – Commitment Appendices, unnumbered, ID No. APC1E16.
125 BTC Project EIA, EIA Appendices – Commitment Appendices, unnumbered, ID No. APC1E32
126 BTC Project EIA, Appendix D, Legal and Administrative Framework, June 2002, D-15
3.5.1 **IFC OP 4.04 Natural Habitats**

### 3.5.1.1 Taking account of views of affected people and NGOs

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
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<th>Extent of compliance</th>
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</table>
| IFC OP 4.04 Para 8                     | “IFC expects the project sponsor to take into account the views, roles and rights of groups, including non-governmental organisations and local communities, affected by IFC-financed projects involving natural habitats, and to involve such people in planning, designing, implementing and monitoring such projects.” | 1. No evidence that views of local communities or NGOs were taken into account regarding impact of project on natural habitats.  
2. No evidence that project sponsors conducted sufficient research into local ecosystems to understand or accommodate local communities’ roles in relation to natural habitats.  
3. No evidence that local communities were made aware of their rights regarding impacts of project on natural habitats.  
4. No evidence that local communities have or will play significant role in planning, designing, implementing or monitoring project in relation to natural habitats.  
5. Consultation process begun too late and construction of pipeline begun too early to permit project sponsors to tap into knowledge of local communities with regard to natural habitats. | Non compliance |

### 3.5.1.2 Consultation and mitigation measures

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</thead>
<tbody>
<tr>
<td>IFC OP 4.04 Para 8</td>
<td>“Involvement may include identifying appropriate consultation measures, managing</td>
<td>1. No evidence that local communities were asked to participate significantly in any of these activities at the project formulation stage, nor that they will be given significant future roles.</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>
3.5.1.3 Provide appropriate information on habitat protection

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</thead>
<tbody>
<tr>
<td>OD 4.04, para 8</td>
<td>“IFC encourages the project sponsor to provide such people with appropriate information on the protection of natural habitats.”</td>
<td>1. No evidence that project sponsors passed on any information to affected people with regard to protection of natural habitats. Evidence suggests rather that project sponsors consistently underreported likely negative impacts of project.</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>

3.5.2 OD 4.30 Involuntary Resettlement

The BTC project violates World Bank policy OD 4.30 (Involuntary Resettlement) on 16 counts relating to consultation on resettlement issues.

(See sections 4.4.4 to 4.4.9 of chapter 4 (Resettlement)).

3.5.3 OD 4.20 Indigenous Peoples

The BTC project violates World Bank policy OD 4.20 (Indigenous Peoples) on 19 counts relating to consultation of ethnic minorities.

(See sections 8.7.5, 8.7.7, 8.7.10 and 8.7.11 of chapter 8 (Ethnic minorities and vulnerable groups)).

3.5.4 IFC Policy on Cultural Property OPN 11.03

The BTC project violates World Bank’s Policy on Cultural Property (OPN 11.03) on 3 counts, and the World Bank’s Draft Policy on Physical Cultural Resources (Draft OP 4.11) on 3 counts, both relating to consultation on cultural heritage issues.

127 Although OD 4.30 was replaced by OP and BP 4.12 in January 2002, the project has used OD 4.30 for its resettlement programme. It is noteworthy that OD 4.30 is less stringent in many respects, particularly with regard to consultation, than OP 4.12.
(See sections 5.4.6 and 5.5.3 of chapter 5 (Cultural heritage)).
### 3.6 EBRD Environment Policy

#### 3.6.1 Meaningful public participation

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
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<th>Extent of compliance</th>
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<tbody>
<tr>
<td>EBRD Environment Policy, p.26</td>
<td>“The EBRD believes meaningful public consultation is a way of improving the quality of projects.”</td>
<td>1. No evidence that meaningful consultation with affected communities i.e. consultation which has led to major changes in the project or left affected people feeling as though their concerns have been fully addressed has taken place during the project.</td>
<td>Non compliance</td>
</tr>
<tr>
<td>Meaningful public consultation</td>
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</table>

#### 3.6.2 Opportunity to express concerns

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<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</thead>
</table>
| EBRD Environment Policy, para 26      | “those people potentially affected will have the opportunity to express their concerns and views about issues such as project design, including location, technological choice and timing.” | 1. Vast majority of affected people have not had the opportunity to express concerns in person.  
2. Lack of clear and unbiased information about project made it difficult for affected people to come to informed opinions.  
3. Social context and lack of freedom of speech made it impossible for people to voice their full opinions.  
4. Project sponsors’ failure to inform affected people of their rights and of potential impacts of project has limited the utility of consultation. | Partial compliance |
| Meaningful public consultation        |                      |                          |                      |
|                                      |                      | 5. No evidence that people have been able to exert influence on location, technological choice or timing of project. | Non compliance |

5. No evidence that people have been able to exert influence on location, technological choice or timing of project.
3.7 EU Directive on Environmental Impact Assessment

The European Commission has made it a requirement of Turkey’s accession to the European Union that Turkey take steps to adopt the EU’s Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended by EU Directive 97/11/EC). The Host Government Agreement signed between the Government of Turkey and the Baku-Tbilisi-Ceyhan (BTC) consortium also stipulates that the EIA for the BTC project should be “in accordance with the principles” of the Directive.

It is thus of grave concern that the EIA for the project, as approved by the Government of Turkey, falls far short of compliance with Directive. As a result, it may be argued that the project not only fails to comply with its own legal regime, as established under the Host Government Agreements, but also places Turkey in potential breach of its accession obligations, by moving Turkey away from its obligation to implement the EIA Directive.

Detailed analysis of the EIA for the project reveals 4 major breaches of the Directive in relation to consultation. These are set out below:

3.7.1 Inadequate and flawed consultation with affected villagers

<table>
<thead>
<tr>
<th>Relevant Paragraph and Key requirement</th>
<th>Specific Obligations</th>
<th>Evaluation of Compliance</th>
<th>Extent of Compliance</th>
</tr>
</thead>
</table>
| Article 6 (2) Disclosure and consultation | “Members shall ensure that any request for development consent and any information gathered pursuant to Article 5 are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted.” | 1. Majority of people not adequately informed or meaningfully consulted.  
2. Information provided was biased and uninformative.  
3. Materials not provided in appropriate language and form.  
4. Lack of freedom of speech preclude frank comment on the project | Partial compliance |

128 Moser, P., In the Matter of the Baku-Tbilisi-Ceyhan Pipeline – Counsel’s Opinion, 2003: “Decision 2001/235/EC expressly provides, under the heading ‘Environment’, that amongst the medium term priorities and interim objectives, Turkey must ‘adopt a detailed directive-specific transposition programme of the acquis; transpose the environmental impact assessment’.”
3.7.1.1 Majority of people not adequately informed or meaningfully consulted.

(See sections 3.4.1 and 3.4.3, above)

3.7.1.2 Information provided was biased and uninformative.

(See sections 3.4.1.3, 3.4.1.6 and 3.4.3.8, above)

3.7.1.3 Materials not provided in appropriate language and form.

(See section 3.4.6, above)

3.7.1.4 Lack of freedom of speech preclude frank comment on the project

(See section 3.4.1.7, above)

3.7.2 Failure to address trans-boundary impacts of tanker traffic and to inform affected Member States

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
</tr>
</thead>
</table>
| Article 7 (1) Transboundary impacts    | “Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the member in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:  
  • a description of the project, together with any available information on its possible trans-boundary impact;  
  • information on the | 1. Member States affected by risk of tanker spill not informed or consulted | Non compliance |
nature of the decision which may be taken, and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the Environmental Impact Assessment procedure, and may include the information referred to in paragraph 2.”

### 3.7.2.1 Member States affected by risk of tanker spill not informed or consulted

At present, there is little supertanker (up to 300,000 tonnes or 2 million barrels capacity) traffic in the Eastern Mediterranean. However, as a direct result of the project, such traffic will increase substantially. At full operation, the terminal at Yumurtalik will receive 1 million barrels of oil a day for transportation: this translates into one of the largest available supertankers (300,000 tonnes) leaving the port every other day or over 7,200 over the lifetime of the pipeline. Should smaller tankers be used, the number of shipments will increase proportionately.

The EIA gives no details of the routes that the tankers will take once they leave Yumurtalik. But it is likely that the oil will be transported to refineries in Northern Europe, thus potentially affecting the coastlines of all the Mediterranean EU members states plus the UK, the Netherlands, Germany and Belgium and Portugal. Greece in particular will have considerably more tanker traffic passing its coasts than it would without BTC. Under the EU Directive on EIA, Turkey should have informed the affected states, but the EIA makes no mention of it having done so.

### 3.7.3 Failure to consult with authorities and public in affected Member States

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</thead>
<tbody>
<tr>
<td>Article 7 (3)</td>
<td>“The Member States concerned, each insofar as it is concerned, shall also: arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6 (1) and the public concerned in the territory of the Member State likely to be significantly affected; and (b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the”</td>
<td>1. Affected Member States not consulted</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>
3. CONSULTATION

3.7.4 Failure to consult on trans-boundary impacts

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>Article 7 (4) Trans-boundary impacts</td>
<td>“The Member States concerned shall enter in consultation regarding, inter alia, the potential trans-boundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.”</td>
<td>1. No consultation on trans-boundary impacts</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>
4. Land expropriation, compensation and resettlement on the BTC project
(Turkey section)

Evaluation of compliance with host country law, IFC guidelines and international best practice

4.0 Contents

4.1 Summary
4.2 Introduction
4.3 Host country law – breaches and over-rides
   4.3.1 Legal framework
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   4.4.7 Vulnerable groups and ethnic minorities
   4.4.8 Failure to pay at full replacement cost
   4.4.9 Unreliable information on numbers economically displaced and settlements affected
   4.4.10 Customary land users
   4.4.11 Approval of RAP prior to its completion
4.1 Summary

BTC Co. has undertaken that the project will comply with Operational Directive *OD 4.30, Involuntary Resettlement, June 1990*, which sets out requirements with regard to resettlement and compensation for land acquisition. BTC Co. is also obliged to comply with Turkish law on land expropriation, according to the Host Government Agreement.

This review finds:

- Emergency powers have been invoked by the Government of Turkey to override key provisions of OD 4.30, flouting commitments under the Host Government Agreements and the Resettlement Action Plan (RAP);
- The RAP is in potential breach of provisions under Turkey’s Expropriation Law, on at least 2 counts;
- The RAP fails to comply with the World Bank Group’s policy on Involuntary Resettlement (OD 4.30) on 28 counts;
- Since the Lump Sum Turnkey Agreement legally requires compliance with OD 4.30, these 28 counts of non-compliance are further potential breaches of Turkish law.

Specifically:

- Displacement took place before compensation was completed;
- In many instances, compensation levels are too low to ensure that livelihoods are restored or improved;
- The project fails to properly restore affected people’s livelihoods;
- Consultation with affected communities of land expropriation and compensation was inadequate;
- Affected communities have not been informed of their rights with respect to land expropriation;
- There has been no consultation on resettlement alternatives;
- The project has not adequately considered specific impacts of land expropriation on vulnerable groups and ethnic minorities;
- Land compensation has not been paid at full replacement cost;
- The RAP has used unreliable information on numbers economically displaced and settlements affected;
- The project fails to treat customary land users equally or fairly;

The RAP was approved by IFC staff as “fit for purpose” prior to its completion – for example, the resettlement plan for fishing communities was not finalised.
4.2 Introduction

The BTC pipeline would affect 3,105 hectares of land in Turkey. Although no-one would be required to physically move from their homes or villages as a result of the project, some 10,117 households, affecting 30,000 people, would lose the use or ownership of land, and suffer “economic displacement”. As a result, a Resettlement Action Plan is required in order to meet IFC and EBRD policies. The resettlement programme is required to ensure that those affected by the project are no worse off than prior to the project and preferably better off.

Under the Host Government Agreement for the BTC project, the Government of Turkey has undertaken to obtain the requisite land rights for the project and to appoint a Designated State Authority (DSA) to undertake the land acquisition process. BOTAS, the state-owned pipeline company that would build the pipeline under a Lump Sum Turnkey Agreement (LSTA) signed in 19 October 2000, has been appointed the DSA. All the expropriation procedures will be carried out by BOTAS’ Land Survey and Expropriation Department “on behalf of BTC Co.”.

This chapter reviews the Resettlement Action Plan against the project developers’ legal obligations under host country law and against the standards required by the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD). The review is based on the findings of two Fact Finding Missions to the region, undertaken in August 2002 and March 2003, and on information contained in signed statements from affected villagers, together with material presented in the RAP itself. The signed statements all date from after IFC and EBRD staff approved the project documents as “fit for purpose”.

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1 RAP, Chapter 2: Project Description, p.2.7, Box 2.1 Land Requirements for the project.
2 RAP summary overview, page 6, November 2002
3 RAP Turkey Final Report, section 1.8, page 1-7, November 2002
4 World Bank, Operational Directive 4.30, Involuntary Resettlement, para 3: “The objective of the Bank’s resettlement policy is to ensure that the population displaced by a project receives benefits from it... [and that] displaced persons should be compensated for their loss at full replacement cost and assisted in improving their former living standards, income earning capacity and production levels or at least restoring them.” These objectives are summarised at RAP, Chapter 3: Policy and Legal Framework, November 2002, p 3.15.
5 RAP, Chapter 3: Policy and Legal Framework, November 2002, p 3.13: “The HGA provides that the Turkish Government will designate and authorise the DSA to acquire land rights and transfer the necessary land rights and privileges to the project.”
6 RAP, Chapter 3: Policy and Legislative Framework, November 2002, p.3-1: “A Declaration to undertake the land acquisition for the project was passed by the Board of Directors of BOTAS in February 2002 and finally approved by the Ministry of Energy and National Resources (MENR) in March 2002.”
7 RAP, Annex 7.1: Land Acquisition and Compensation Guide, November 2002, p.4: “All the expropriation procedures will be carried out by BOTAS Land Survey and Expropriation Department on behalf of BTC Co.”
4.3 Host country law – breaches and over-rides

Both the IFC and EBRD both make it mandatory for the project to comply with host
government law. The OECD Export Credit Agencies have also agreed that support by
OECD ECAs should be conditional on compliance with host government standards.

This section reviews the legal framework for resettlement. It notes that Emergency Powers
available to the Government of Turkey have been invoked to override key provisions of OD
4.30, in breach of both Turkey’s obligations under the Host Government Agreement for the
BTC project and in flagrant violation of the BTC Consortium’s commitments within the
Resettlement Action Plan. It also finds that implementation of the RAP currently directly
breaches local law, as defined by the Host Government Agreement on at least 2 counts (on
top of 28 breaches of OD 4.30, compliance with which, according to the project Lump Sum
Turnkey Agreement, is a requirement of Turkish law – see section 4.4, below).

4.3.1 Legal framework

The Host Government Agreement (HGA) signed between the BTC Consortium and the
Government of Turkey has the status of law in Turkey, and thus compliance with the HGA
is required by the EBRD, IFC and ECA stipulations that projects must comply with local
law. The HGA sets out the legal framework under which the land acquisition process for the
BTC pipeline is to be carried out. Under the HGA, the resettlement programme is legally
obliged to comply with:

A. Turkish law

The HGA requires that land acquisition complies with “Turkish Law”. The relevant laws
cited by the RAP are: The Turkish Constitution, Land Deed and Registration Law, The
Cultural Heritage Protection, The Public Settlement Law, The Law on Transit Passage of
Petroleum by Pipelines (Transit Law: 4586).

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8 IFC OP. 4.01, Environmental Assessment, Consultation Comments, para 6: “IFC’s environmental and social review procedure
(ESRP) requires the project sponsor to ensure compliance with host country requirements. Investment agreements also contain
conventions requiring the project sponsor to comply with IFC and host country requirements.”.

9 The OECD’s recent “Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits:
Revision 6”, which has been adopted by the majority of OECD Export Credit Agencies states: “Projects should comply with the
standards of the host country”. See: OECD, Trade Directorate, Working Party on Export Credits and Credit Guarantees, TD/ECG
(2000)11/Rev6, p.5. In the UK, for example, the Export Credits Guarantee Department (ECGD) states: “At a minimum, ECGD
expects all projects/goods/services to comply with host/destination country legislation, regulations and standards.” See: ECGD,

10 See chapter 2, Legal regime

11 Host Government Agreement between and among the Government of Republic of Turkey and the State Oil Company of Azerbaijan
Republic, BP Exploration (Caspian Sea) Ltd, Statoil BTC Caspian AS, Ramco Hazar Energy Limited, Turkiye Petrolleri A.O.,
Unocal BTC Pipeline Ltd, Iochu Oil Exploration (Azerbaijan) Inc., Delta Hess (BTC) Limited, hereafter HGA. See Article 7.2, 7.2
(vii) (5) and 7.2 (vii) (7): “The Government hereby covenants and agrees (on its behalf and citing on behalf of and committing the
State Authorities) that... the state authorities shall... (5) pay such compensation to Persons in the Territory as may be required by
Turkish Law to authorise the State Authorities to grant to and vest in each of the MEP Participants the rights obtained in accordance
with the foregoing clause (4); (7) ensure that the Rights to Land including, in particular, the rights obtained in accordance with the
foregoing clause (4), and all necessary documents related thereto, are properly and timely registered or recorded in favour of each of
and specifically naming the MEP Participants as property rights-holders in respect of the Permanent Land and owners of the Facilities
in accordance with Turkish Law in order to satisfy any applicable requirements of Turkish Law and to provide public notice of the
rights of each of the MEP Participants to the Rights to Land including, in particular, the rights obtained in accordance with the
foregoing clause (4).”

B. World Bank Group Involuntary Resettlement Policy OD 4.30

The Lump Sum Turnkey Agreement signed between the BTC consortium and BOTAS – an annexe to the Host Governmental Agreement, and hence also part of Turkish law – sets further legally binding requirements with regard to resettlement. The LSTA, which forms part of the HGA, requires that the land acquisition procedures are compliant with OD 4.30, the World Bank Group’s policy on involuntary resettlement.13

4.3.2 Use of emergency powers to override resettlement requirements of the Turnkey Agreement

OD 4.30, which the project is obliged to follow under the HGA, is unequivocal in its requirement that compensation should be negotiated and paid prior to displacement. There are no provisions for derogation from this requirement, which as noted above forms part of the legal regime for the project.

It is a matter of grave disquiet that the Turkish Government has invoked emergency powers available to it under the Expropriation Law – powers that allow land to be expropriated in the public interest “for national defence or in case of emergency” – to override the requirements for prior compensation. The “emergency” cited by BTC Co. in justification for invoking Article 27 was “ensuring the completion of the acquisition process in accordance with the overall project time schedule”.14 It is difficult to see how such commercial considerations can properly be deemed a national emergency.

Para 10 of OD 4.30 states: “For impacts covered in para 3 (a) of this policy, [the necessary measures for resettlement] include provision of compensation and of other assistance required for relocation prior to displacement.” The impacts referred to in Para 3 (a) include “loss of assets or access to assets” and “loss of income sources or means of livelihood, whether or not the affected persons must move to another location”. Both these attributes apply to the BTC project. The requirement for prior compensation is thus a clear-cut obligation if the project is to be in compliance with OD 4.30 and thus the undertakings specified in the HGAs.

The requirement to compensate in advance is not restricted to OD 4.30. It is also a feature of Turkish law, to which the project is also committed under the HGA.

The original RAP is quite clear as to the legal requirements on the project developers under the Constitution and Turkish law. The November 2002 RAP summarises its main provisions as follows:

“The Turkish Constitution as amended in October 2001 includes major elements to protect the public interest and private owners during the expropriation process . . . Even when land is acquired for public interest, expropriation agencies cannot benefit from the expropriation of private lands and assets without paying into a

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13 Section 8.42, Appendix A of the Lump Sum Turnkey Agreement. SeeRAP, Chapter 3: Policy and Legislative Framework, November 2002, p.3-12-3.13: “The LSTK requires compliance with OD 4.30, IFC’s policy on involuntary resettlement and requires that the involuntary settlers and hosts be systematically informed and consulted during the preparation of the plan about their options and rights.”

14 RAP Turkey, Annex Implementation of Article 27, May 2003, p.3
private bank account, \textit{in advance of actual land appropriation and Project construction}, the value of the expropriated assets.”

“\textbf{Expropriation Law - Timing of Expropriation.} Land must be acquired and made available for the Project before construction begins. No construction can take place unless the valuation is completed, certified attempts are made to negotiate the transfer of ownership or use rights from private owners, and full payment in cash is made to the account of the owners. The expropriation agency is required to proceed with expropriation within six months of the Declaration of Public Interest (or the expropriation decision). Should it be delayed, DSA/BOTAS must request official permission to extend its right of expropriation.”

“\textbf{Expropriation Law - Timing of compensation.} The law states: ‘As for the lands expropriated, the portion of amounts belonging to the individuals cultivating land by themselves and carrying out minor agricultural activities shall at all times be paid in advance.’ The value of land includes income loss for land temporarily acquired for which an easement is then granted, which would be the case for much of the land associated with the pipeline.”

The Government of Turkey, however, has invoked clauses under Turkey’s Expropriation law (Article 27), which state that, subject to a Council of Ministers Decree for national defence or in case of emergency, any immovable property may be expropriated by the administration for public interest. Article 46 of the Turkish Constitution allows for confiscation of property by a public agency for the public interest. In its November 2002 RAP, the BTC Consortium was emphatic that this article would only be used “when other avenues have failed.”

The revised May 2003 RAP states that, despite the implementation of Article 27, it is still intended that compensation will be paid prior to land entry by the contractor. However, the clash between the commercial interests of BOTAS, which is subject to substantial penalties if the pipeline is not built on time, and the necessarily slow process of ensuring mutually agreeable compensation terms strongly suggests that this intention cannot be relied upon. The invocation of emergency powers to speed up resettlement thus substantially undermines the whole purpose of the Resettlement Action Plan, whose aim is to ensure that the project works to the mutual benefit of all parties.

Although the expropriation agencies are still required to place the deemed value of the expropriated land into a bank in advance of construction, the extent of ongoing disputes over land valuation strongly suggest that many affected parties are likely to end up disadvantaged. Once the project is underway, their ability to achieve a fair settlement in

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\textsuperscript{15} BTC Project – Resettlement Action Plan Turkey, Final Report, Chapter 3: Policy and Legislative Framework, November 2002, p.3.1

\textsuperscript{16} BTC Project – Resettlement Action Plan Turkey, Final Report, Chapter 3: Policy and Legislative Framework, November 2002, p.3-4

\textsuperscript{17} BTC Project – Resettlement Action Plan Turkey, Final Report, Chapter 3: Policy and Legislative Framework, November 2002, p.3-5.

\textsuperscript{18} Turkish Expropriation Law, No.2942, Official Gazette No 18215, Article 27.


\textsuperscript{20} RAP, Chapter Three: Policy and Legislative Framework, November 2002, p.3-7

\textsuperscript{21} RAP, Annex 3.4, Implementation of Article 27, May 2003, Table, p.10.

\textsuperscript{22} BTC Project – Resettlement Action Plan Turkey, Final Report, Chapter 3: Policy and Legislative Framework, November 2002 p. 3-1. A public interest order was sought in November 2002. The RAP states (p.3-1): “A legal process is in place to obtain a Declaration of Public Interest. In this instance, a declaration to undertake the land acquisition for the Project was passed by the Board of Directors of BOTAS in February 2002 and formally approved by the Ministry of Energy and Natural Resources (MENR) in March 2002.
disputed cases will be substantially undermined. Indeed, signed legal statement from affected villagers in the Northeast state unequivocally that many will have no option but to leave their land (see section 4.4.3.6, below).

It should be further noted that where OD 4.30 requires compensation to take place before resettlement, the Directive includes negotiation, participation in planning and access to mechanisms to recourse as part of the compensation process. By simply paying a pre-determined amount into a bank account, BTC Co cannot in any way be said to have complied with the Directive.

The invocation of emergency powers places those affected by the project in the position of either having to accept the compensation offered to them, even though the compensation levels are widely contested as being well below market price, or of having to go through lengthy court proceedings in the hope of obtaining better rates of compensation. For poorer people, the likely outcome is that they will be worse off than before the project, in violation of OD 4.30’s key premise that livelihoods should be improved or, at the very least, maintained. Some are already talking of having to leave their lands. Significantly, on the BTC Co.’s own figures, less than a third of those initially identified as losing land to the project accepted the first offer of compensation made to them. For the rest, higher levels of compensation may only be achieved by going to court.

Whilst such emergency powers are potentially available to Turkey, a slippage in BTC Co.’s commercial timetable cannot reasonably be viewed as a national emergency. Indeed, the Intergovernmental Agreement for the BTC project specifically denies that the project has a public interest, a key requirement for any invocation of emergency powers under Turkey’s Constitution. Moreover, no justification is given in the RAP as to why the Expropriation Law has been given precedence over OD 4.30, when the latter has equal status as law under the provisions for resettlement agreed under the HGA.

Finally, Turkey’s action, regardless of its legality, places the project in direct and flagrant violation of one of the key World Bank safeguard policies. Approval of the project under these conditions would not only breach the IFIs’ own lending guidelines, but would undermine the credibility of those guidelines, and potentially of the institutions themselves, and thereby reduce the influence that the IFIs might bring to bear on the outcome of future resettlement cases.

4.3.3 Breaches of host country law

A comparison of the provisions of the RAP against the legally binding requirements of Turkey’s Expropriation Law reveals the RAP’s provisions for negotiating land values would appear to be in direct and incontrovertible conflict with Turkish Law on two specific counts:

- negotiation and bargaining, and

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23 RAP Turkey, Annex 3.4 Amendment to the Land Acquisition Strategy for Private Land of the BTC Crude Oil Pipeline Project in Turkey, p.3.

24 BTC Inter-Governmental Agreement, Article II (8) “the MEP Project is not required or intended to operate in the service or benefit of the public interest in its Territory.”

• valuation procedures.

4.3.3.1 Negotiation and bargaining

Article 8 of Turkish Expropriation Law\(^{26}\) states that “the administration [in this case, BOTAS] shall assign one or more than one reconciliation commission … for the purpose of executing and completing the purchasing works through bargaining over the estimated cost and through barter… the bargaining negotiations shall be held on a date designated by the commission.” (Italics added)

By contrast, the RAP explicitly rules out any bargaining or bartering in the negotiation process. In its clearest explanation of the procedure that has been adopted, it states:

“The Negotiations Commission begins discussions with landowners based on the range of land values established by the Valuation Commission. The “negotiation” process does not consist of bargaining. Indeed, as mentioned in Chapter 2, the negotiation commission has no room for bargaining. Rather, this commission explains the basis of valuation to affected communities and each of the affected titled deed owners. It provides detailed information obtained from each source specified under the Law and shows how valuation decisions have been reached.”\(^{27}\)

As documented below (see sections 4.4.2.1 and 4.4.4.4, below), the breach is not only on paper: the practice on the ground is clearly to impose land values rather than negotiate them.

4.3.3.2 Breaches of valuation procedures

Whilst the Expropriation Law requires that the landowner should not be told of the deemed value of their land,\(^{28}\) the RAP stipulates precisely the opposite. Describing the role of the RAP’s “Negotiation Commission”, the RAP assigns the Commission with three responsibilities, two of which would appear to be direct breach of the Expropriation Law’s provision, namely:

- “To inform the landowner about the value of the land as determined by the Valuation Commission”; this suggests the afore-mentioned imposition of prices, as opposed to the fairer negotiation process called for by the Expropriation Law.
- “To demonstrate that the proposed land valuation is fair and detail the appraisal criteria for the individual parcel.”\(^{29}\) This clause notably suggests that there is no requirement to ensure that the land valuation actually is fair, merely for the Expropriation Commission to “demonstrate” that it deems it “fair”.

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\(^{27}\) RAP Turkey Final Report, Chapter 5: Land Acquisition Procedures, 5.2.2, p. 5-12, November 2002


\(^{29}\) RAP Turkey Final Report, Chapter 5: Land Acquisition Procedures, 5.3.3, p. 5-25, November 2002. Emphasis added
Moreover, the Commission is only assigned a responsibility to negotiate the proposed land price “in the interest of averting a court case”. This suggests that “negotiation” is a last resort, where a court case is threatened, rather than being the required means of agreeing a price. In this regard, the RAP’s “negotiation” procedures constitute a direct encouragement to impose prices where possible.

Although these discrepancies were brought to the attention of both the project developers and the IFC and EBRD staff prior to the EIA and RAP being approved as “fit for purpose”, no changes have been made to the RAP’s provisions. We urge Executive Directors to require an explanation from staff and to delay any decision on funding until:

- Independent legal advice as to the legality of the RAP’s provisions has been obtained from Turkish lawyers and made available for public comment; and
- Executive Directors are assured that the RAP conforms to Article 8 of the Expropriation Law, both on paper and in practice.

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30 Ibid. “The responsibilities of the Negotiation Commission are as follows: to inform the landowner about the value of the land as determined by the Valuation Commission; to negotiate the proposed land price in the interest of averting a court case; and to demonstrate that the proposed land valuation is fair and detail the appraisal criteria for the individual parcel”
4.4 Breaches of World Bank guidelines relating to resettlement

Field research undertaken by NGOs after the IFC’s last visit to the region prior to IFC staff approving the RAP as “fit for purpose”, together with signed testimonies from affected villagers received during the consultation period, have revealed 28 breaches of the provisions of OD 4.30. These are documented below.

As noted above (see section 4.3.1), OD 4.30 forms part of the legal regime for the project. Failure to comply with OD 4.30 thus constitutes a breach not only of the IFC’s policy requirements but also potentially of Turkish law as defined by the Host Government Agreement. Unless remedied, the project would, in effect, be illegal.

4.4.1 Major relevant provisions

The BTC Consortium has undertaken to meet World Bank Operational Directives and Guidance. The World Bank has ten environmental and social safeguard policies, intended to ensure that Bank operations “do no harm” to people and the environment. The policies, which are mandatory, have been in place since the early to late 1980s.

When first formulated, the safeguards took the form of Operational Directives which combined mandatory policy, Bank procedures and “good practice” advice. In order to distinguish “policies” from “procedures”, however, the Bank is in the process of converting the old ODs into Operational Policies (OPs) and Bank Procedures (BP). The Bank has stated that that the conversions will not result in any dilution of the safeguards. Most of the ODs have now been converted.

This section examines the BTC project against Operational Directive OD 4.30, Involuntary Resettlement, June 1990. Although this policy has now been replaced by OP 4.12 (Operational Policy 4.12, Involuntary Resettlement, 6 March 2001), along with corresponding BP 4.12 (Bank Procedures BP 4.12, Involuntary Resettlement, 6 March 2001), it is nonetheless the version of the resettlement guidelines that the BTC cites as its standard. It is noted that the older policy is weaker than the new one in a number of important respects – for example, it merely encourages community participation in planning and implementing resettlement, whereas OP 4.12 requires that the views of affected people are taken into account. Indeed, OP 4.12 applies to all World Bank projects involving involuntary resettlement, and arguably compliance with OP 4.12 and BP 4.12 should also be...

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31 EIA, Appendix C – Environmental Management and Monitoring Plan, October 2002. C1-12: “… the guidelines and standards set by the following organisations will also apply to the BTC project – World Bank Operational Directives and Guidance.”
32 www.worldbank.org/whatwedo/policies p.2
33 wbln0018.worldbank.org/essd/essd.nsf/All/
34 wbln0018.worldbank.org/essd/essd.nsf/All/p.2: “Management has instructed that there should be no dilution of the existing standards.”
35 Hereafter OD 4.30 Involuntary Resettlement
36 Hereafter Draft OP 4.12 Involuntary Resettlement
37 Hereafter Draft BP 4.12 Involuntary Resettlement
38 OD 4.30, para 3 c
39 OP 4.12, para 19.
required, under Bank guidelines. No justification has been given for using the older, weaker standard. The new standards were published in March 2001, well before the first draft of the BTC Resettlement Action Plan (November 2002).

The other key relevant Bank standard is **Operational Directive OD 4.20 Indigenous Peoples, September 1991**. This applies to all World Bank projects involving "social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process." This directive covers ethnic minorities, such as the Kurds of SE Turkey. IFC staff have exempted the BTC project from applying the directive, for reasons which have been contested by Non-governmental Organisations (see chapter 8, Ethnic minorities and vulnerable groups). A complaint is being prepared for submission to the IFC’s Compliance Advisor Ombudsman (CAO).

### 4.4.2 Compensation must precede displacement

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<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OD 4.30, para 3 (b) (i)</td>
<td>“Displaced persons should be compensated for their losses at full replacement cost prior to the actual move.”</td>
<td>1. Mutually agreed compensation will not be paid to many groups affected by the project prior to displacement. Exemption has been obtained under emergency powers</td>
<td>Non compliance</td>
</tr>
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</table>

#### 4.4.2.1 Mutually agreed compensation will not be paid to many groups affected by the project prior to displacement. Exemption has been obtained under emergency powers

As detailed above (see section 4.3.2), emergency powers have been invoked to override the Turkish law that compensation be paid prior to the commencement of construction. It is noteworthy that construction began on the pipeline prior to both the RAP being finalised and a Council of Ministers Decree being obtained to allow for the use of emergency powers.

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40 Hereafter OD 4.20 Indigenous Peoples.
41 OD 4.20 Indigenous Peoples, para 3.
42 The Bank's definition of "indigenous peoples" embraces "indigenous ethnic groups". The Bank states (OD 4.20 Indigenous Peoples, para 5): "Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics: a) close attachment to ancestral territories and to the natural resources in these areas; b) self-identification and identification by others as members of a distinct cultural group; c) an indigenous language, often different from the national language; d) presence of customary social and political institutions; e) primarily subsistence-oriented production." The ethnic Kurds of SE Turkey comply fully with this definition.
43 The Decree was obtained in 2003. Construction officially started on 19 June 2002; that is, a full 3 months before the RAP was approved [US Dept of Energy, Energy Information Administration, Azerbaijan: Oil and Natural Gas Export Options, June 2002, http://www.eia.doe.gov/emeu/cabs/azerexpo.html. The Turkish Energy Minister also announced on 3 June 2002 that construction would begin on 19th June]. Although there have been a series of ceremonies to mark the construction, it is significant that construction was first officially inaugurated prior to the Decree. See also section 6.5.1 of chapter 6, Environmental assessment.
4.4.3 Restoring livelihoods

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
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<th>Extent of compliance</th>
</tr>
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</table>
| OD 4.30, para 2b (iii)                | “Displaced persons should be . . . assisted in their efforts to improve their former living standards, income earning capacity and production levels, or at least restore them.” | 1. Concern over levels of compensation inaccurately reflected in RAP  
2. Compensation levels do not adequately reflect local prices  
3. No compensation for loss of ongoing productivity  
4. Loss of income earning capacity not compensated  
5. Failure to compensate for “orphan land”  
6. Compensation levels in many cases are not satisfactory to restore livelihoods.  
7. Failure to ensure that communal land is properly compensated and to make the existence of the RAP Fund widely known | Non compliance |

### 4.4.3.1 Concern over levels of compensation inaccurately reflected in RAP

The May 2003 RAP released as “fit for purpose” by the IFC states:

“less than 6% of the represented parcels and less than 4% of the owners objected to the acquisition of the land. This indicated that there were no major problems in terms of the principle acceptance of the project and the offered indemnification prices by the vast majority of land owners.”

This conclusion is not only unwarranted on the evidence provided (no objection “in principle” to the project cannot be taken to equate with satisfaction with the compensation being paid), it also conflicts with evidence obtained during NGO “ground truthing” missions.

In the majority of villages it surveyed, the March 2003 FFM heard complaints over the fairness of the compensation received and the failure to reflect either sale values or full replacement costs, in contravention of OD 4.30. Of the eight villages whose members were interviewed by the FFM, five said the compensation price was unfair. Only one said it was fair, and even this was on condition that the land be restored to full productivity after construction, an unlikely outcome. The FFM found particular anger over compensation arrangements in the north-east section of the pipeline. In more than one case, it was stated to the FFM that the low level of compensation was a deliberate attempt to force villagers to migrate to the cities.

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44 RAP, May 2003, Annex 3.4, p.3  
45 OD 4.30, clauses 3(b)(i) and 14  
4.4.3.2 Compensation levels do not reflect local prices

The March 2003 FFM found that the compensation offered failed to reflect the true price of land. BTC Co. appears to have taken the officially registered price as the market value of the land. However, local practice is that land is registered at below the real value because of excessive taxation levels. In no case did the FFM find an interviewee who had registered land at more than 50% of its value, and 10-20% was more common. The majority of villagers to whom the FFM spoke made it clear that the price being paid for both the 28-metre corridor and the 8-metre corridor was significantly below what they would obtain if they sold the land to neighbours. In the north-east, the figure given was 5 million lira per square metre in a normal land sale as compared to 1.0-1.5 million lira being paid for the 8-metre corridor.

4.4.3.3 No compensation for loss of ongoing productivity

The RAP admits that however meticulous its restoration of the 28-metre construction corridor, productivity losses will occur, affecting the land well beyond the completion of construction activities – for which it estimates at “a minimum 10% lifetime productivity loss”. Compensation had not been offered for this ongoing loss of productivity in any of the villages it surveyed, only for losses during the period of construction.

4.4.3.4 Lost income not compensated

At times, the RAP makes reference to compensating lost income – for example, “the loss of income to other users of public lands will also be recognised and compensated”; “[agricultural landowners] will be compensated both for land that is permanently and temporarily acquired on the basis of discounted net income.” However, the compensation procedures, as explained in the RAP and as confirmed by the March 2003 FFM, focuses almost entirely on compensating assets rather than income.

BTC Co. has adopted a legalistic approach that fails to take account of the realities of customary land ownership and use. In particular, in the compensation process, property rights take precedence over customary rights. Not only does this approach encourage unfair valuation of assets, it impacts disproportionately on those who use – but do not own – land. The latter are generally the poorest and most disadvantaged groups within communities. For example, the March 2003 Mission was told of one case where a widow who used the land registered in the name of her dead husband was being denied compensation, which was instead being paid to inheritors who do not use the land. In another case, eight inheritors of a portion of land were compensated equally, even though only one of those eight actually used the land – and so stood to suffer far more than the others. In these cases, livelihoods are damaged or lost without compensation.

48 RAP Turkey Final Report, section 5.3.4, page 5-25, November 2002.
49 RAP Turkey Final Report, section 1.8, page 1-8, November 2002.
50 RAP Turkey Final Report, chapter 6, pages 6-4 and 6-11, November 2002
4.4.3.5 Failure to compensate properly for orphan land

BTC Co. has undertaken to compensate for “orphan land”. However, sworn testimonies received by the Kurdish Human Rights Project since the beginning of the public disclosure period on the EIA – hence, after the RAP had been approved as “fit for purpose” by IFC staff – provide ongoing evidence of failure to meet this undertaking. As of the time of writing, 29 testimonies have been received, of which 9 are now translated (see Appendix 3). The following are particularly relevant:

“The pipeline passes right through the middle of my land... dividing it into three parts. They have taken a part measuring 227.72 square metres. I was paid one million lira per square metre, a total of 227,000,000 Turkish lira. This is not the true value of this land. Furthermore, since my land has been split the fertility of the other sections has fallen... My land has been divided, part of it compulsorily purchased and furthermore the remaining part has been occupied. I won’t be able to utilise my land.”

“The pipeline passes right through the middle of my land (see submitted documents), dividing it into three parts. They have taken a part measuring 147.24 square metres. This is not the true value of this land. My land has been split, reducing its fertility. I was paid one million lira per square metre. Subsequently, the land to the right and left of the compulsorily purchased land was occupied and taken away from me temporarily. In return for these occupied sections I was paid a very small amount of compensation.”

“The pipeline passes right through the middle of this land, dividing it into two. They compulsorily purchased a section of 463.53 square metres, paying a very low price of 900,000 lira per square metre. The yield from the land has fallen as a result of it being divided into two. They also occupied sections of my land to the right and left of the compulsorily purchased area. They paid me only 103,000 lira per square metre on account of this occupied land.”

“The pipeline temporarily occupied two pieces of land, photocopies of the title deeds of which I submit in the appendix. This prevented my using this land. I received a written warning telling me I would not be able to use an area of 150 square metres. However when I went to my land I saw that 500-1,000 square metres had been occupied. I was paid a very low amount of compensation for this occupation, which was not a real reflection of the reality that more of my land had been occupied.”

4.4.3.6 Compensation levels are inadequate to restore livelihoods

Compensation levels received by many affected people, particularly in the North East, are insufficient to protect livelihoods. In some instances, the price received per square metre is not even enough to buy a packet of cigarettes. The sworn testimonies received by the Kurdish Human Rights Project (see Appendix 3) highlight the problem:

“If the true value of my land is not paid to me I shall be forced to leave my village and move elsewhere. Such a life would be very difficult as I have no profession and am an old woman.”
“In the event of the true value of my land not being paid I will be forced to leave my village and will incur irreversible losses. As can be seen in the title deeds my land has been split into three parts. I only have a small piece left. It is not possible for me to survive on this.”

“The compensation I received (507,000,000TL) is not even enough for the kitchen expenses of a family like mine with 10 children for 4-5 days in today’s Turkey. We were not given any opportunities to ask for our rights. We were not given a chance to bargain with the construction company involved. The Turkish Government valued the m² of our lands for 800,000TL. They told us that we did not have any other rights to pursue.”

“They paid 803,000TL for the m² of my land which was expropriated. This amount is definitely a lot less than the actual value of my land. With this amount you can buy 8 chewing gums in Turkey. I do not have any qualifications. I earn my living from agriculture and stockbreeding.”

4.4.3.7 Failure to ensure that communal land is properly compensated and to make the existence of the RAP Fund widely known

1,067 hectares of publicly owned or communal land will be consumed by the pipeline, comprising 38% of the total acreage of the project. 52 Turkish law does not require the compensation of users of this land; as not to do so would be a violation of World Bank guidelines, BTC Co. established a “RAP Fund”, supposedly of $2 million for Turkey, intended to ensure that users of communal land do not go without their rights.

The amount of compensation offered by the RAP Fund is extremely low. Even if no compensation is paid out of the fund for the wider 28m corridor of temporarily affected land, it must still cover 319.8 hectares of permanently acquired land in the 8m corridor. 53 That amounts to a mere 1.1 million Turkish lira, or just 63 US cents, per square metre, far below market value, making it impossible to buy replacement land.

In practice, as of March 2003, the Fund remained virtually untouched, possibly because no-one knew about it. During the course of the two FFMs, the Baku-Ceyhan Campaign met no-one who knew about the fund, and residents of all villages with common land believed that there would be no compensation for the common land. Other interviewees, including Muhtars and others in positions of authority, knew nothing about the RAP Fund. Clearly, if people do not know they have rights, it is impossible for them to demand them. 54

This is in violation of the RAP itself, which requires that, “people are aware of the RAP Fund. This will be achieved through providing information to the village administration of directly affected communities.” In practice, that provision of information has completely failed.

52 RAP Turkey Final Report, November 2002, Table 6.3, pp.6-10
53 RAP Turkey Final Report, November 2002, Table 6.3, pp.6-10
4.4.4 Consultation with affected communities

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</table>
| OD 4.30, para 8 Requirement to consult<sup>55</sup> | “To obtain cooperation, participation and feedback, the affected... resettlers need to be systematically informed and consulted during preparation of the resettlement” | 1. Less than 2% of those affected have been consulted face-to-face  
2. Fishing communities not consulted on resettlement until after RAP approved by Turkish government.  
3. Information provided on resettlement too technical and in a form that many were unable to understand. | Partial compliance |
| | | 4. No evidence that people likely to be economically displaced by the project have had any opportunity to participate in planning or resettlement programmes e.g. helping to decide on compensation rates.  
5. Compensation mechanisms only explained when compensation paid - evidence that affected people have been excluded from planning, implementing resettlement.  
6. Failure to make special efforts to inform women | Non compliance |

4.4.4.1 Less than 2% of those affected have been consulted face-to-face

The November 2002 RAP states categorically that BOTAS (the agency responsible for implementing the RAP) “will hold personal meetings with each affected land owner during the visits to the village.”<sup>56</sup> This pledge is reiterated in the EIA approved for disclosure by the IFC: “The land acquisition process will also involve extensive dialogue with directly affected people who will be contacted in person, receive written documentation and consulted about the project’s process for land acquisition and compensation.”<sup>57</sup>

According to the RAP, the main means of consultation were village meetings and questionnaires conducted as part of the EIA.<sup>58</sup> As noted in chapter 3 on consultation (see section 3.4.1.1), less than 2% of those affected by the BTC project have been consulted face-to-face. The EIA admits that “under 50% of all settlements”<sup>59</sup> were consulted – and, of these, the majority were contacted by telephone, a survey method that does not equate with

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<sup>55</sup> OP 4.12 Involuntary Resettlement, which replaced OD 4.30 in December 2001, uses stronger language, requiring “meaningful” consultation.
<sup>57</sup> BTC EIA Turkey, Commitments Annex, no page number, Id No. APA8S16.
<sup>58</sup> BTC project Resettlement Action Plan Turkey, Final Report, November 2002, pp.7-7/7-8.
consultation. It is therefore only the 102 settlements visited in person that the project sponsors can claim to have consulted in any credible way. The EIA claims that these settlements represent 84% of the corridor population, while it has not been possible to verify that claim, it is clear from a scrutinising the consultation data that only a tiny fraction of that group has actually been consulted. Figures in the EIA suggest that only 2.9% of households in each consulted village were actually consulted. Moreover, household consultations generally took place with a single individual – the male head of the household. When this is taken into account, as few as 2% of a total affected population of between 30-35,000 people were consulted in person. By any reasonable standards, this does not amount to adequate consultation.

4.4.4.2 Fishing communities not consulted on resettlement until after RAP approved by Turkish government.

At the time that the RAP was approved by the Government of Turkey, a census of those affected by the Ceyhan Terminal had not been undertaken. Although construction on the Terminal was due to start “at the end of June/early July 2003”, the RAP states that the affected fishing community was not consulted as to compensation arrangements until 13 March 2003, a timeframe that does not permit for “meaningful consultation”.

4.4.4.3 Information provided too technical and in a form that many were unable to understand.

The March 2003 FFM found only one Muhtar who had a good understanding of the compensation and expropriation process, which he explained almost exactly as it is described in the RAP – all other interviewees reported the compensation procedures very differently from the manner in which they are reported in the RAP. Elsewhere, the March 2003 FFM found understanding of the land acquisition and compensation process among landowners and users was disturbingly slight.

While the RAP reports that 30,000 brochures (the Guide to Land Acquisition and Compensation) had been sent out to landowners and users along the pipeline route, the FFM found many examples of villagers who had not received the brochures: others who had, reported the text to be too technical to understand. Since the FFM mainly visited Muhtars, it suspects the receipt and understanding of the GLAC may be even worse for the general population. A resident of another village told the FFM that the only consultation meeting was far too long and technical for him to understand or take in the information. “Some people spoke for hours, and it wasn’t very useful. It would have been better to have more, shorter meetings”.

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61 A footnote in the RAP notes: “The census of Project Affected Populations (PAPs) from the operational activities related to the Ceyhan Terminal and the use restrictions to be imposed on fisheries are not included in the Census. This is because the studies to identify fisheries impacts, if any relevant to livelihoods, are ongoing . . . Also, the adequacy of the ESA studies to meet the RAP requirements will be examined, and a census of PAPs together with socio-economic studies will be prepared.
62 RAP, Annex 6.4, p.4.
4.4.4.4 Economically displaced people not given opportunity to participate in planning of resettlement programmes e.g. helping to decide on compensation rates.

Public participation is a requirement of the World Bank in projects involving resettlement.\textsuperscript{65} The Bank defines participation as follows: "Participation is a voluntary process in which people including marginal groups (poor women, indigenous, ethnic minorities) come together with project authorities to share, negotiate and control the decision-making process in project design and management."\textsuperscript{66}

Although the RAP notes concerns raised by local people, it provides no evidence that affected communities have had a role in sharing, negotiating and controlling the decision-making process of the resettlement programme. On the contrary, the evidence from successive Fact Finding Missions undertaken by non-governmental organisations is that the resettlement planning has been a top-down, non-participatory process in which affected communities have simply been presented with a predetermined resettlement plan on which their comments are sought only in the final stages.

In the case of the Fishing Communities’ RAP, this is made explicit: stages 1-3 of the planning involved internal company discussion, expert group meetings and a review by an economist and officials from the Ministry of Agriculture. Fishermen’s representatives were only consulted in stage 4 and affected fishermen themselves were not consulted until stage 5.\textsuperscript{67}

As noted above (see section 4.3.3.1), the RAP specifically denies affected people their right under the Expropriation Law to bargain and negotiate on prices for compensation. Of the eight villages whose members were interviewed by an NGO Fact Finding Mission in March 2003, only one reported that BTC / BOTAS had actually negotiated on the compensation price to be paid. Six stated that the price had been dictated, and one did not know whether there had been a negotiation. One interviewee commented that ordinarily land values are always determined by negotiation and it was widely felt that negotiation would have resulted in a fairer price being offered. Some villagers were angry that no negotiations had taken place; others were resigned to the fact.\textsuperscript{68}

Many affected communities continue to complain that compensation levels are too low to avoid severe material damage (see sections 4.4.3.2 and 4.4.3.6, above, and 4.4.8, below).

4.4.4.5 Compensation mechanisms only explained when compensation paid - evidence that affected people have been excluded from planning, implementing resettlement.

Many villagers reported that the compensation procedures were only explained to them when they went to receive their compensation. In one village, landowners were only informed of the price they would be paid – and even which parts of their land would be

\textsuperscript{65} World Bank, Environmental Assessment Sourcebook Update, Public Involvement in Environmental Assessment: Requirements, Opportunities and Issues, October 1993, p.1. “Public participation in project preparation, beyond consultation, is not an EA requirement except where a project involves involuntary resettlement or affects indigenous people.”

\textsuperscript{66} Ibid.

\textsuperscript{67} RAP, Annex 6.4, May 2003, pp.2-3.

expropriated – as they attended the payment offices to claim their compensation. A local journalist and political party representatives told the FFM that such cases were widespread. 69

Although the RAP requires “transparency in the valuation of assets”, 70 the FFM found that only one of the eight villages it contacted had a good understanding of how compensation levels were calculated. Elsewhere, some villagers who had specifically asked BOTAS about valuation procedures knew that there had been a commission of some sort, but did not know how it arrived at a value, nor what the process for expropriation was, nor their rights to challenge any offer. 71

### 4.4.4.6 Failure to make special efforts to inform women

The March 2003 FFM found no evidence of special efforts to consult with, or explain arrangements to, women landowners. In one village, this was because BTC / BOTAS staff never asked to talk to the women, and the local men never offered to make suitable arrangements. In two Kurdish villages, BTC / BOTAS did not bring Kurdish speakers, and since many women and elderly people do not speak Turkish, they did not see any point in coming to the meeting. 72

### 4.4.5 Informing affected communities of their rights

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<tr>
<td>OD 4.30, para 8 and 14 (b) Inform about rights Publicise laws and regulations on valuation</td>
<td>“To obtain cooperation, participation and feedback, the affected . . . resettlers need to be systematically informed and consulted . . . about their options and rights.” “ . . . publicis(e) among people to be displaced the laws and regulations on valuation and compensation”</td>
<td>1. Evidence suggests rather that project affected people have been systematically under-informed or misinformed about their rights e.g. the right to bargain over land prices, the right to go to court if not satisfied with land valuations.</td>
<td>Non compliance</td>
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</table>

70 RAP Turkey Final Report, section 3.5, page 3-19, November 2002
4.4.5.1 Evidence suggests rather that project affected people have been systematically under-informed or misinformed about their rights.

The RAP commits BOTAS to ensuring that “people are informed of their rights under the amended [2001] Expropriation Law and informed that their rights will not be jeopardised.” This will be achieved “primarily through preparation and distribution of summaries of the relevant Laws to both resident and absentee owners”. The March 2003 FFM found no-one who was apprised of the amendments to the law, or who understood their own rights.

Although BTC claims to have established two complaint and grievance procedures, none of the villages surveyed by the March 2003 FFM knew anything about them. The FFM also received evidence of major problems faced by villagers seeking to challenge compensation payments in the court and of breaches of both OD 4.30 and the Turkish Expropriation Law in the handling of disputes.

No arbitration mechanisms for challenging compensation payments exist outwith the court system. The IFC Handbook for Preparing a Resettlement Action Plan, which the BTC Co. states it took into account when drawing up the RAP, requires “that the project sponsor ensure that procedures are in place to allow affected people to lodge a complaint or claim (including claims that derive from customary law and usage) without cost and with the assurance of a timely and satisfactory resolution of that complaint or claim.” However, while the RAP acknowledges this, the reality on the ground does not seem to match the plans on paper.

The RAP states that, in the event of dispute, it is up to BOTAS to apply to the court for a judgment, a procedure that accords with the Turkish Expropriation Law. The RAP also states: “Costs of due process are borne by DSA/BOTAS, not by affected people”. Disturbingly however, the FFM heard evidence that suggests a number of misapprehensions have arisen in the minds of those to whom BTC / BOTAS has spoken, often, it would appear, as a direct result of what villagers say BOTAS has told them. These include:

- **Villagers did not have the right to go to court:**
  
  *In fact, Article 14 of the Turkish Expropriation Law Article 14 clearly states that a landowner has the right to challenge the expropriation or the compensation payment.*

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73 RAP Turkey Final Report, section 3.5, page 3-19, November 2002
75 RAP Turkey Final Report, section 7.6.6, page 7-23, November 2002
77 IFC Handbook for Preparing a Resettlement Action Plan, 8/7/2001, p. 48
78 RAP Turkey Final Report, section 5.2.2.2, page 5-13, November 2002; “DSA/BOTAS applies to the court … and the court summons the landowner”
79 Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law, Article 10. “On the condition that expropriation is not performed by means of purchasing [i.e. mutual agreement], the administration [in this case, BOTAS] shall apply to the court of first instance …The court shall summon the owner of the immovable property by notifying the date of hearing.”
80 RAP Turkey Final Report, Chapter 3: Policy and Legislative Framework, para 3.2.4, p.3-7, November 2002.
82 Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law. Article 14: “The owner of the immovable property subject to expropriation shall have the right to file a nullification lawsuit before the administrative jurisdiction and a correction lawsuit against substantial errors before civil courts in accordance with the Article 10 within 30 days as from the date of notification made by the court or the date of announcement in the newspaper made by the court in return for the notification.”
• Whilst the court option was theoretically available, the process would take many years:
  This conflicts with Turkish Expropriation Law, which requires the whole court process to be completed within 100 days.\textsuperscript{83}

• Any court case would have to be paid for by the villagers so would it not be worth their while to take proceedings.

All but one interviewee who discussed the court option told the FFM that landowners would have to pay the legal costs and initiate the proceedings themselves; the exception thought that legal fees would not be charged, but that if the case were successful a large chunk of the compensation payment would go to the lawyers.\textsuperscript{84}

In fact, Article 29 of the Expropriation Law states:

“It shall be the administration executing the expropriation to bear the allowances of the court officials under Article 10, the remuneration of the experts assigned by the court and of the headman as agreed by the court as well as the title deed fees under Article 15 and all other expenses required by this Law.”

Such misapprehensions are clearly a cause for substantial concern, both in their arising and in their currency. The Turkish Resettlement Law clearly sets out the rights of those affected by the project to redress through the courts at the expense of BTC / BOTAS. This would not only be a potential breach of the Expropriation Law but also of OD 4.30, since such a practice would clearly discriminate against the poorer sections of the community.\textsuperscript{85}

The RAP acknowledges many of the local people it surveyed were concerned about having to pay legal costs. “Despite the provision that legal costs will be borne by the expropriating agency, people also feared that the real costs of them going to court would be high.”\textsuperscript{86}

However, the RAP does not answer these fears.

The RAP nowhere addresses the issue of ultimate legal liability for infringements of the RAP. Given the number of apparent divergences discovered by the FFM, between the RAP and on-the-ground reality, it is of great concern that the liability issue remains ambiguous.

These concerns are heightened by sworn testimonies from project affected people, received since the FFM. For example, one villager states (see Appendix 3):

“During my meeting with the officials of Botas, I was told that even if I tried to apply to legal means, I would not be able to receive any results. For they told me that this was the value estimated by the Government and that we did not have any other rights to ask for any more than that.”

\textsuperscript{83} The various stages of the court investigation, hearing and appeal process are set out in various articles of (Expropriation) Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law. The process is presented more clearly in the RAP Turkey Final Report, Figure 5.6, page 5-15, November 2002, which was designed to fit with the time limits of Law 2942. The entire process is to take a maximum of 125 days, the final decision of the third court hearing being made after 100 days, and the last 25 days being used to complete the expropriation process.


\textsuperscript{85} In most cases, legal costs would far exceed any compensation payment that was awarded, so only the wealthiest landowners would consider using this recourse. This situation clearly discriminates against poorer landowners and users and would thus breach OD 4.30, which states (para 3b): “Particular attention should be paid to the needs of the poorest groups to be resettled”

\textsuperscript{86} RAP Turkey Final Report, section 7.3.4, page 7-19, November 2002
4.4.6 Consultation on resettlement alternatives

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<tr>
<td>OD 4.30, para 8</td>
<td>“They [resettlers] should be also able to choose from an number of acceptable resettlement alternatives.”</td>
<td>1. No evidence that people likely to be economically displaced by the project have been provided with any resettlement alternatives.</td>
<td>Non compliance</td>
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</table>

4.4.6.1 No evidence that people likely to be economically displaced by the project have been consulted on resettlement alternatives.

The principles set out in the RAP state that project-affected people should at least be no worse off as a result of the project. Even if the value of compensation awarded were genuinely fair, the project fails to recognise the difference in utility of cash versus land – despite recognising that the majority of livelihood along the route is land-based. Even if the cash payment were high enough to allow replacement purchase of land (which in general it has not been), incomes are not reinstated unless there is land available to buy, of suitable quality, and near the original land that has been lost. It seems that the project has made no effort to ensure that affected people are able to replace their earning resources. Alternatives to cash compensation are not even discussed in the RAP. Nor is any evidence presented that those affected have been consulted on this issue.

4.4.7 Vulnerable groups and ethnic minorities

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<tr>
<td>OD 4.30, para 8 and para 16</td>
<td>“Particular attention must be given to ensure that vulnerable groups such as indigenous people, ethnic minorities, the landless and women are represented adequately in [participatory arrangements for consultation and information sharing].” “Vulnerable groups at particular risk</td>
<td>1. Ethnic minorities not adequately identified 2. Inadequate attention to the problems faced by women 3. RAP fund virtually unknown by majority who would be eligible</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>
4.4.7.1 Ethnic minorities not adequately identified

Neither the RAP nor the EIA make any serious attempt to identify ethnic minority groups which might be affected by the pipeline or to provide additional measures to protect their interests. As documented elsewhere (see chapter 3, Consultation), the EIA does not even discuss the presence of Kurdish communities, even though the pipeline passes through the NE region of Turkey which is 40% Kurdish.

Rather than acknowledging the presence of Kurds, the RAP uses language as a proxy for ethnicity, and purports to examine the impact of the compensation regime on people who speak the Kurdish language. The RAP’s treatment of this is deeply disturbing in its cursoriness, or even disingenuity.

“There is no difference in the potential impacts of land acquisition between Kurdish speaking and non-Kurdish speaking Turkish households… What is important however is that both groups lose a similar percentage of their affected plot to both the 28-metre and the 8-metre corridor.”

Thus the RAP concludes that

“Language/ethnic groups are unlikely to be disadvantaged since there is no difference in the potential impacts of expropriation and construction activities between Kurdish-speaking and non-Kurdish speaking Turkish households.”

The project developers have been granted leave by the IFC to derogate from the one World Bank safeguard policy that is specifically intended to protect ethnic minorities. The most significant factors influencing how ethnic minorities will be impacted are ongoing repression by the state and the military, lack of freedom of speech and political and social marginalisation (see chapter 3, Consultation).

The RAP however takes virtually no account of these factors. The policy adopted by BTC Co. in relation to ethnic minorities, particularly the Kurds, takes no account of the socio-political realities that define vulnerability, and fail to take advantage of Turkey’s legislative liberalisation of its Kurdish policies in recent years.

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87 RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5-7-8, November 2002
88 RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5-7, November 2002
4.4.7.2 Inadequate attention to problems faced by women

While the project EIA assesses the position of women in its social baseline survey, and proposes targets for consultation of women, it does not extensively deal with how the pipeline would impact differentially on women. As with other vulnerable groups, the greatest treatment of specific impacts on women is in the RAP, focusing therefore on land expropriation issues.

In no village did the March 2003 FFM find any evidence of special treatment to ensure that women were not adversely affected by the project, whether in relation to expropriation or more generally.

The RAP complains that, “Unfortunately women do not always come forward for consultation meetings.” However, in the villages that it visited, the FFM gathered evidence that suggested that BTC / BOTAS had not made any effort to contact women, or to make meetings seem relevant or comprehensible to women. In at least three of the eight villages surveyed by the FFM, women had not been consulted at all. The others either did not know whether women had been consulted or did not comment. In both of the Kurdish villages surveyed, the FFM was told that many of the women do not speak Turkish, only Kurdish, and BTC / BOTAS did not come with Kurdish speakers. BTC Co.’s failure to take account of this by providing Kurdish speakers at meetings amounts to a form of gender disenfranchisement through language.

The EIA claims that special meetings for women were held, where it was necessary to do so. However, only one of the 16 villages surveyed by the two FFMs reported having had a separate public meeting just for women.

In the RAP, BTC Co. acknowledges that often only the male ‘head’ of household would respond to surveys investigating customary land rights and usage, thus depriving the women of recognition of their ownership rights. In the villages it surveyed, the FFM also found that BTC / BOTAS has not in reality made concrete efforts to compensate women without titles, even when it is known that they have customary ownership rights. According to one interviewee, ‘There are widows who use the land after their husbands’ deaths. There are lots of problems, because the land is registered in their husbands’ names. BTC / BOTAS told them to go to court to get titles. This costs a lot, so the women are helpless.’

4.4.7.3 RAP fund virtually unknown by majority who would be eligible

Although a ‘RAP Fund’ has been set up to compensate those without land title and to make special provision for vulnerable groups such as women, no one interviewed by the March 2003 FFM had any knowledge of the Fund. As a result, those eligible for compensation

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89 RAP Turkey Final Report, section 6.2.3, page 6-8, November 2002
91 EIA Turkey, Draft for Disclosure, section 6.12.5.4, page 6-48, June 2002, states that: “Particular effort will be made to brief women on safety measures. These meetings will be held in local schools or in other appropriate locations. In settlements identified as traditional or conservative, efforts will be made to ensure that a female CLO will run the meeting. Information will be provided orally with written material only used to back up key messages.” The proposal for separate male and female meetings is repeated several times in Appendix A5 of the EIA, on methodology of social baseline data collection.
through the fund – often the poorest in the community – are not in a position to apply for compensation. The RAP Fund, in practice rather than theory, simply does not exist for people in the region. (See section 4.4.3.7, above).

4.4.8 Failure to pay at full replacement cost

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
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</thead>
<tbody>
<tr>
<td>OD 4.30, para 14</td>
<td>“Valuation of lost assets should be made at their replacement cost”</td>
<td>1. Compensation paid below budgeted levels, and below replacement cost</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Irrigated land not being compensated at higher levels than non-irrigated land</td>
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<tr>
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<td>Non compliance</td>
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</tbody>
</table>

4.4.8.1 Compensation paid below budgeted levels, and below replacement cost

The RAP gives an average budget payment for permanent expropriation (8-metre corridor) of $1.49 per square metre of private land, or 2.5 million Turkish Lira. In no case did the March 2003 Fact-Finding Mission (FFM) find a landowner who had been paid this much. In six of the villages visited by the FFM, the compensation payments reported by villagers were: 1.25m, 1.25m, range 1.1-1.3m, range 1.0-2.36m, 1m and 1.3m lira. Assuming this to be a reasonably representative sample, the FFM is deeply concerned that not a single payment was as high as the budgeted average, and most were about half that level.

Since then, this apparent discrepancy has been repeatedly raised with BP. Unfortunately, BP has refused throughout to answer questions on this issue.

4.4.8.2 Irrigated land not being compensated at higher levels than non-irrigated land

The RAP states that “in assessing the value of the asset... full replacement cost is the principle”, but the March 2003 FFM found that this principle is being routinely flouted. Irrigated land, for example, is not being compensated at higher price than non-irrigated land. Many of those interviewed were aggrieved by this practice, which they found grossly unfair. Indeed, the issue was raised (unprompted) by members of six of the eight villages surveyed. The FFM found BTC / BOTAS’ failure to recognise the difference between irrigated and non-irrigated land in its compensation payments surprising, given that an official distinction is made within Turkish law.

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95 RAP Turkey Final Report, November 2002: Figure 9.1, page 9-3 gives total budget $5,398,400. Table 6.2, page 6-10 indicates that the total area expropriated within this category is 362.5 ha = 3,625,000 sq m.


97 2 emails from Anders Lustgarten of Kurdish Human Rights Project to Barry Halton (BTC Regional Affairs Director, BP), followed by at least 3 phone messages between May and August 2003. No reply given.

98 RAP Turkey Final Report, section 5.3.4, page 5-25, November 2002

99 Law No. 3083 – this is referred to in the RAP, section 3.2.3, page 3-3
4.4.9 Unreliable information on numbers economically displaced and settlements affected

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
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<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</thead>
</table>
| OD 4.30, para 11                       | “Resettlement plans should be placed on recent information about the scale and impact of resettlement on the displaced population . . . ” | 1. The numbers affected by the project are unknown. Figures quoted in the RAP vary from 29,112 to 35,000 – a discrepancy of over 5,000.  
2. As of November 2002, 17 settlements lacked cadastral surveys, others were out of date  
3. No census carried out in fishing communities at time RAP was approved fit for purpose | Non compliance |

4.4.9.1 The numbers affected by the project are unknown. Figures quoted in project documents vary from 29,112 to 35,000 – a discrepancy of over 5,000

The EIA and RAP give figures for the total numbers affected that vary by over 5,000 – the size of a small town. The 2002 RAP gives a figure of 29,112,\(^{100}\) the BTC Co. and the IFC a figure of “over 35,000”,\(^ {101}\) and the revised May 2003 RAP a figure of 33,403.\(^ {102}\) The revised RAP acknowledges that “the need for an additional owner and address identification programme” has been identified. In effect, the true numbers and identity of those affected are still not known. Yet the implications of this for the rights of those affected and the RAP’s budget are not addressed.

4.4.9.2 Identification of landowners still incomplete at time RAP approved “fit for purpose” by IFC staff

The November 2002 RAP notes, perhaps significantly in a footnote, that, “There are 17 communities directly affected by the Project where land consolidation results were not reflected in the land registration system. Rather, these communities still lack a cadastral system.”\(^ {103}\)

The lack of up-to-date cadastral surveys has meant that many landowners who have left their villages have yet to be identified, despite efforts to do so. As the RAP itself acknowledges:

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\(^{100}\) RAP, Chapter 1, Introduction, Box 1.1, p.1-4. Owners 27,982, tenants/sharecroppers 1,130.

\(^{101}\) ‘Baku-Tbilisi-Ceyhan project FAQs’, on BP’s dedicated BTC website, available at http://www.caspiandevelopmentandexport.com/ASP/FAQ.asp#6. The significance which BP attaches to its claims on consultation is indicated by the fact that consultation is the second issue dealt with in a long list. The IFC, for its part, appears so persuaded of the accuracy of BP’s claim that it repeats it even more definitively on the FAQs section of its own website. “Landowner users and all the 500 or so communities within two kilometers of the route have now been contacted several times during the preparation of the ESIAs and RAPs.” International Finance Corporation, ‘BTC Project: Frequently Asked Questions, Consultation’, available at http://ifcin1.ifc.org/ifcext/btc.nsf/Content/Consultation

\(^{102}\) RAP, Additional Annex 3.4, Implementation of Article 27, May 2003, p.2

“a large number of absentee landowners could not be located”\(^{104}\) and “in a substantial number of cases, records of current shareholders addresses had not been properly updated in the cadastral records.”\(^{105}\)

The RAP released as “fit for purpose” by the IFC acknowledges continuing problems with accurately identifying many of those affected by the project: additional landowner identification, notification and negotiations had only been completed for “the first 300 km” of the pipeline.\(^{106}\)

4.4.9.3 No census carried out of fishermen at time RAP was approved for disclosure

(For further details, see section 4.4.4.2, above)

4.4.10 Customary Land Users

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| OD 4.30, para 17                      | “To objective is to treat customary and formal rights as equally as possible in devising compensation rules and procedures” | 1. Customary landowners allege being charged for registering land title.  
2. Discrimination against users of customarily owned land in prices paid  
3. Discrimination against users of communally owned land in prices paid | Partial compliance |

4.4.10.1 Customary landowners allege being charged for registering land title

Although BTC Co. has undertaken in the RAP to compensate all land users, regardless of their ownership of title, as required by the World Bank, on the ground there are continuing reports of land users without official title experiencing difficulties in gaining compensation. The problem is particularly acute in the north-eastern section of the pipeline route where the vast majority of households lack formal title to land – respectively 87% and 68% in Kars and Ardahan provinces, compared to an average of 32% along the whole route.\(^{107}\)

\(^{104}\) RAP Turkey, Final Report, Overview of Project Affected Populations, November 2002, p.4-26

\(^{105}\) RAP Turkey, Annex Implementation of Article 27, May 2003, p.2.

\(^{106}\) RAP Turkey, Annex 3.4 Amendment to the Land Acquisition Strategy for Private Land of the BTC Crude Oil Pipeline Project in Turkey, April 2003, p.9 column 2.

\(^{107}\) RAP Turkey Final Report, Section 4.7, November 2002, p 4-10
Although Turkish law stipulates\(^{108}\) that it is the responsibility of BOTAS to regularise land titles at its own cost\(^{109}\) - and the RAP commits to do so\(^{110}\) - most of the villagers interviewed by the March 2003 FFM in the north-east had been told to obtain their titles themselves, at their own cost, in order to be compensated. The only exceptions were villagers who insisted that BOTAS arrange their compensation without titles. The practice discriminates in particular against poorer people and women. One villager reported that it was worst for widows, whose land is registered in their husbands’ names.\(^{111}\)

Requiring villagers to pay for land registration is a clear violation of the RAP, which stipulates that BTC / BOTAS will pay the legal costs of expropriating land from landholders who do not have legal title. The failure to follow this procedure would also appear to put the project in potential breach of Article 19 of the Turkish Expropriation Law,\(^{112}\) which specifies a process for compensating landowners who lack title without their having to go to court to register their land.

Many villagers, are not in a position to insist on their rights. In the north-east, there is considerable harassment of Kurdish people by the state Gendarmerie (see section 3.3 and chapter 8). The disempowerment of villagers is further compounded by a lack of information as to their rights and how they can protect them.

**4.4.10.2 Discrimination against users of customarily owned land in prices paid**

The average budgeted payment for customarily owned land is $1.13 / sq m, or 1.9m lira, compared to $1.49 = 2.5m lira, for titled land.\(^{113}\) There is, however, no demographic reason why customarily owned land should be less valuable than formally titled land. Compensating at a lower rate will impact disproportionately on the poor, and on the residents of Kars and Ardahan provinces, where there is a larger Kurdish population.

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\(^{109}\) The RAP clarifies: “The new legal framework [The Expropriation Law] protects the affected people in particular by ensuring that...costs of due process are borne by DSA/BOTAS, not affected people.” - RAP Turkey Final Report, Chapter 3: Policy and Legislative Framework, p.3-6/3-7.

\(^{110}\) RAP Turkey Final Report, Chapter 5: Land Acquisition Procedures, November 2002, Section 5.2.2.3 “Procedures for Acquisition of Land that is Customarily Owned”, page 5-16, November 2002. “Lands that are not registered can have, inter alia, the following claims: (a) all users of the land are members of a community, or they are integral and external members of a community; and (b) the land has been used continuously for 20 years. For these cases, DSA/BOTAS obtains ownership information from an expert group that it then submits to a court, after which the normal procedures apply as for privately owned lands with registered deeds.”


\(^{112}\) Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law. The law states that in cases of unregistered “immovable property” (eg land), “the administration [in this instance, BOTAS] shall... make examinations on site, collect evidence and shall affirm the situation through the minutes. These minutes shall specify the surface area of the immovable property, the identity of the owner, the tax information, the initial date and duration of ownership, and whether the conditions for acquisition of ownership has been satisfied or not. All the documents prepared by the administration and collected as per Article 10, shall be submitted to the court of first instance at the location of the immovable property and that court of first instance shall be the authority to decide on the cost of expropriation and the registration of the property in the name of the administration in return for payment of the said amount”.

\(^{113}\) RAP Turkey Final Report, November 2002: Figure 9.1, page 9-3 gives total budget $5,398,400. Table 6.2, page 6-10 indicates that the total area expropriated within this category is 362.5 ha = 3,625,000 sq m.
4.4.10.3 Discrimination against users of communal land in prices paid

The $2 million made available by the RAP Fund for compensating users of communal or public land is only enough to pay 63 US cents per sq m, or 1.1 million TL (less than half of that paid for titled land), and that only applied to the narrow 8m permanent corridor.

4.4.11 Approval of RAP prior to its completion

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<tr>
<td>OD 4.30, para 30</td>
<td>“Submission to the Bank of a time-bound resettlement plan and budget that conforms to Bank policy is a condition of appraisal for projects involving resettlement.”</td>
<td>1. RAP approved by IFC staff as “fit for purpose” despite resettlement plan for fishing communities still not being finalised.</td>
<td>Non compliance</td>
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</tbody>
</table>

4.4.11.1 RAP approved by IFC staff as “fit for purpose” despite resettlement plan for fishing communities still not being finalised.

Despite BTC Co. still not having finalised a RAP for the fishing communities as of June 2003, IFC staff nonetheless approved the RAP as “fit for purpose”, in violation of World Bank procedures which state unequivocally that a completed RAP must be submitted with the project application. ¹¹⁴

¹¹⁴ World Bank OD 4.30 Involuntary Resettlement, para 30; “Submission to the Bank of a time-bound resettlement plan and budget that conforms to Bank policy is a condition of appraisal for projects involving resettlement.”
5. Cultural Heritage and the BTC project (Turkey section)

Evaluation of project Environmental Impact Assessment against World Bank standards and best practice

5.0 Contents

5.1 Summary

5.2 Introduction

5.3 Commercial timetable took precedence over need for adequate study

5.4 World Bank Draft Operational Policy OP 4.11, Physical Cultural Resources
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5.5 IFC Policy on Cultural Property (OPN 11.03)
   5.5.1 Significant damage
   5.5.2 Protection and enhancement of cultural property
   5.5.3 Consultation of NGOs
5.1 Summary

The two main relevant safeguard policies relating to cultural heritage, the World Bank’s Policy on Cultural Property (OPN 11.03) and the World Bank’s Draft Policy on Physical Cultural Resources (Draft OP 4.11), emphasise the necessity for careful and detailed preparation for major projects, in order to prevent disastrous and irreversible cultural damage.

Crucially, the relevant directives show that preservation of cultural heritage is not just to do with keeping intact the physical remnants of past civilisations, but of maintaining the crucial living dynamic link between local people and the heritage that surrounds them.

This review finds:

- At least 29 full or partial violations of IFC guidelines (OPN 11.03 and Draft OP 4.11) on cultural heritage;
- The project contradicts a range of other standards and laws, including the Valetta Convention, which Turkey has ratified and the Charter of the International Council on Monuments and Sites (ICOMOS).

Specifically:

- The EIA fails to acknowledge dynamic link between local people and cultural heritage;
- The project has failed to obtain comprehensive inventory of cultural heritage resources before construction;
- The EIA fails to predict or adequately prevent likely impacts of construction on cultural resources;
- The project has failed to consult local people with regard to cultural heritage and route planning;
- The project has failed to engage local people as stakeholders in preservation of cultural resources;
- Mitigation measures are inadequate;
- The project over-relied on salvage archaeology;
- Survey methods have been cursory and superficial;
- Commercial imperative takes precedence over cultural preservation;
- There is evidence of ongoing destruction of cultural resources.
5.2 Introduction

The two main relevant safeguard policies relating to cultural heritage, the World Bank’s Policy on Cultural Property (OPN 11.03) and the World Bank’s Draft Policy on Physical Cultural Resources (Draft OP 4.11), emphasise the necessity for careful and detailed preparation for major projects, in order to prevent disastrous and irreversible cultural damage. As Draft OP 4.11 notes, “Physical cultural resources are seriously threatened throughout the world, partly as a result of modernisation and development. The loss of these resources is irreversible.”

The nature of these resources is extremely diverse. According to OPN 11.03, “The United Nations term ‘cultural heritage’ includes sites having archaeological (prehistoric), paleontological, historical, religious and unique natural values. Cultural property, therefore, encompasses both remains left by previous human inhabitants (for example, middens, shrines and battlegrounds) and unique natural environmental features such as canyons and waterfalls.”

Crucially, therefore, the relevant directives show that preservation of cultural heritage is not just to do with keeping intact the physical remnants of past civilisations, but of maintaining the crucial living dynamic link between local people and the heritage that surrounds them. It is essential to understand cultural heritage not as the entombment of lost cultural moments in some kind of artificial glass case, but rather as the preservation of living relationships and frameworks through which contemporary communities understand their lives and histories.

In that sense, it is important to realise not only that cultural heritage consists of fragile relationships easily damaged through disruption or dislocation, but also that such damage has consequences that last, permanently affecting local communities’ sense of self and means of identity. Cultural heritage cannot therefore simply be excavated and displayed elsewhere; it requires comprehensive and well-researched protection according to “the principle of ‘preservation in situ wherever possible’, which is upheld in all relevant legislation,” as the EIA’s Cultural Heritage Management Plan freely admits.

The EIA is quite explicit about the major potential for damage to cultural heritage that the project presents, whether mitigation measures are employed or not:

“Direct physical impacts on the archaeological resource may arise wherever ground disturbance takes place. This has the potential to either partially or totally remove sites or remains. Topsoil stripping to create running tracks and the subsequent passage of vehicles within the working width may cause significant damage to fragile archaeological deposits… The removal of topsoil in...areas such as construction compounds, access tracks and quarries may have similar effects. These impacts will cause permanent (irreversible) changes to the archaeological resource.”

1 World Bank Draft Operational Policy OP 4.11, Physical Cultural Resources, para.2. Although OP 4.11 remains a draft policy, the project sponsors have clearly chosen to operate under it, since they specifically invoke clause 15 OP 4.11 in the EIA’s Cultural Heritage Management Plan as a rationale for refusing to publish the supposed gazetteer of “known archaeological sites” along the route. It is therefore only to be expected that the project would adhere equally closely to the other requirements of OP 4.11. The EIA also confirms that Draft OP 4.11 was used in its preparation.

2 World Bank Safeguard Policy OPN 11.03, Policy on Cultural Property, para. 1

3 BTC Project EIA, Turkey, Final EIA, Appendix C7—Cultural Heritage Management Plan, October 2002, C7-18

4 BTC Project EIA, Turkey, Final EIA, BTC Project –Construction Impacts and Mitigation, October 2002, 6-30
In other words, there is no doubt that the construction of the Baku-Tbilisi-Ceyhan pipeline will destroy some elements of cultural heritage along the route. Thus to pass best practice guidelines under these circumstances, the project sponsors must make stringent efforts to ensure that such damage is absolutely minimised.

The project also contradicts a range of other standards and laws, many of which it claims in the CHMP to be adhering to. These include the Valetta Convention, which Turkey has ratified and which requires the state to preserve cultural heritage even when it is not protected by specific legal provision; the Charter of the International Council on Monuments and Sites (ICOMOS), which stipulates that, “active participation by the general public must form part of policies for the protection of the archaeological heritage…Participation must be based upon access to the knowledge necessary for decision-making”.

Listed below are specific tabulated violations of the main relevant guidelines, with descriptions and further information where necessary.

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5. ICOMOS (1990), Charter for the Protection and Management of the Archaeological Heritage
5.3 Commercial timetable took precedence over need for adequate study

The primary motivation behind the BTC pipeline and its whole approach to cultural heritage is explained by the Protocol to the Cultural Heritage Management Plan, which notes,

“This Protocol is prepared on account of the importance of Baku-Tbilisi-Ceyhan Crude Oil Pipeline (BTC Pipeline) Project, aiming not to cause any delay in project activities and to secure and rescue the archaeological entities that may be encountered throughout the pipeline route, appropriately and as soon as possible.”

Clearly, on its own admission the EIA was focused on getting the project finished as soon as possible. Thus, rather than find out the extent of cultural resources along the route before the project began, the emphasis has been on avoiding (to some extent) the few known sites and excavating elements of whatever is found during project construction.

This approach effectively relies entirely for mitigation and ‘preservation’ on salvage archaeology. Salvage archaeology has been heavily criticised in recent years, particularly in Turkey, as being destructive, insensitive to the needs of local communities and driven primarily by commercial rather than cultural imperatives. In the plans for the contentious Ilisu Dam, for example, archaeologists were given just seven years to save cultural resources so extensive that the head of the team involved estimated they would need at least 50 years. The commercial imperative behind that plan caused a local archaeologist to tell a fact-finding team, “We don’t call this salvage archaeology but treasure hunting.”

If anything, the situation is worse along the BTC route, where unlike at Ilisu there is almost no data on what is to be impacted. Already, there are reports from Kurdish contacts that during the course of construction, near the city of Damal in north-east Turkey, BOTAS has stumbled across relics and cultural items, possibly gold, dating from the Urartus civilisation, which the EIA notes ruled Eastern Anatolia from 1000-500 BC. Due the political situation in the region (see chapter 3, Consultation), the contacts were unable to gain further information from either BOTAS or the local political party; they did, however, report that BOTAS had pledged “not to move the pipeline a centimetre from the original plan.”

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6 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix C7—Cultural Heritage Management Plan, Annex A, C7-21, emphasis added
7 Ilisu Dam Campaign, Review of the Environmental Impact Assessment Report for the Ilisu Dam and HEPP, Cultural Heritage section, September 2001, p.8
8 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline—Baseline Conditions, 5-140
9 Ferhat Kaya, contact with Kurdish Human Rights Project, July 21 2003 and August 18 2003
5.4 World Bank Draft Operational Policy OP 4.11, Physical Cultural Resources

Although OP 4.11 remains a draft policy, the project sponsors have clearly chosen to operate under it, since they specifically invoke clause 15 OP 4.11 in the EIA’s Cultural Heritage Management Plan as a rationale for refusing to publish the supposed gazetteer of “known archaeological sites” along the route. One might be entitled to expect that the project would adhere equally closely to the other requirements of OP 4.11. The EIA also confirms that Draft OP 4.11 was used in its preparation.

5.4.1 Early consideration of cultural resources

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</table>
| OP 4.11 Para 5 Early consideration of cultural resources | “Given that cultural resources may not be known or visible, it is important that a project’s potential impacts on cultural resources are considered at the earliest possible stages of project processing.” | 1. No evidence that the project sponsors have gathered sufficient information about potential cultural heritage resources, known or unknown, along the pipeline route.  
2. No evidence that a comprehensive analysis of potential project impacts was undertaken before main decisions taken on route.  
3. Analysis of impacts of project on cultural heritage was not begun at the earliest possible stage; too late to contribute to route definition. | Non compliance |

5.4.1.1 No evidence that the project sponsors have gathered sufficient information about potential cultural heritage resources, known or unknown, along the pipeline route

The limited extent of the Ministry of Culture’s knowledge of the region is shown by the admission in the Social Impact tables of the EIA that of the 147 sites they refer to, 144 sites are still not registered by the MoC and are still awaiting classification. So scanty is the MoC’s knowledge of the region that it was forced to come to the region in the wake of BTC Co.’s (very) preliminary research to add its findings to its inventory. Yet the EIA still admits that,

10 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix C7—Cultural Heritage Management Plan, C7-4
11 BTC Project EIA, Turkey, Final EIA, September 2002, Approach and Methodology, 3-57
12 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline—Baseline Conditions, 5-139
“The assessment of impacts to cultural heritage has been based, to date, upon identified, aboveground features and known sites of archaeological interest.”

One of the very few sources of archaeological information on the regions through the pipeline passes is the TAY Project, an independent non-governmental project conducted by Turkish archaeologists intended, in its own words, “to build a chronological inventory of findings about the cultural heritage of Turkey.”

The TAY Project is quite clear about existing levels of knowledge of cultural heritage in eastern Turkey:

“A cultural and settlement inventory covering Anatolia and Thrace throughout the history of human occupation does not exist. There are no systematic document archives that will permit comprehensive studies of cultural evolution in the region.”

In other words, the only way to find out about the cultural heritage of the region is to investigate and excavate personally. TAY Project has begun this process, chronicling several regions of Turkey including the southeast and central Anatolia, through which the pipeline passes. There is, however, no evidence that BTC Co. has ever used the work of the TAY Project. Moreover, only now is the project undertaking its investigations in Eastern Anatolia, perhaps the region most relevant to the pipeline.

In other words, BTC Co.’s methodology of establishing the route by means of desktop research of “known cultural resources” is based on a fundamental misconception. There were and are no comprehensive databases of known cultural resources for the pipeline route. Although it makes vague reference to “previous studies” and “official records”, the EIA cites virtually no existing database of information on the cultural resources of the pipeline route. As “available information”, it refers only to the “MoC’s [Ministry of Culture’s] archaeological inventory [and] UNESCO World Heritage Convention.”

5.4.1.2 No evidence that a comprehensive analysis of potential project impacts was undertaken before main decisions taken on route

In that context, it is clearly impossible for BTC Co. to have carried out a comprehensive analysis of potential cultural impacts when the consortium did not possess basic prior knowledge of existing cultural resources. Indeed, the EIA confirms that much of the route and the sites for pumping stations along it were decided upon before any real research into the potential cultural resources on those sites had been carried out. For example:

“No known archaeological sites have been identified in the vicinity of the PT2, PT3 or IPT1 sites; however, as these sites have only recently been selected as the preferred location for

13 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, 6-30
14 The TAY Project describes itself as “an entirely independent effort with no institutional affiliation, powered by the personal commitment of its team.” For more see www.tayproject.org/enghome.html
15 www.tayproject.org/enghome.html
16 BTC Project EIA, Turkey, Final EIA, Appendix C7—Cultural Heritage Management Plan, October 2002, C7-3
17 BTC Project EIA, Turkey, Final EIA, September 2002, Approach and Methodology, 3-58
5. CULTURAL HERITAGE

It is therefore no surprise that the whole process of cultural heritage ‘preservation’ has come to focus on what the EIA calls, “the implications for the archaeological resource…[of] the uncertainty associated with the discovery of, as yet, unrecorded deposits.”¹⁹ In practice, this refers to salvage archaeology, or what BTC Co. calls “rescue excavation”²⁰ (sic), a mode of ‘preservation’ widely criticised in recent years.

5.4.1.3 Analysis of impacts of project on cultural heritage was not begun at the earliest possible stage; too late to contribute to route definition

(See section 5.3, above).

5.4.2 Preliminary investigation

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP 4.11 Para 7 Preliminary investigation</td>
<td>“As part of the initial scoping phase of the EA, the borrower, in consultation with the Bank and project-affected groups, identifies the likely major impacts, if any, of the project on cultural resources. This phase should normally include a preliminary on-site inspection of physical cultural resources.”</td>
<td>1. Project affected people were prevented from making any contribution to mitigating cultural heritage impacts of project during initial phase.</td>
<td>Non compliance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Preliminary on-site inspection little more than a cursory glance over the surface of potential sites.</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>

18 BTC Project EIA, Turkey, Final EIA, September 2002, BTC Pipeline—Routine Operational Impacts and Mitigation, 7-50
19 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix C7—Cultural Heritage Management Plan, C7-2
20 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix C7—Cultural Heritage Management Plan, C7-7
5.4.2.1  Project affected people were prevented from making any contribution to mitigating cultural heritage impacts of project during initial phase

The limited prior available information on cultural heritage imposes a duty on BTC Co. to make a detailed and extensive effort to uncover elements of cultural heritage unknown to outsiders. It is widely acknowledged that the best practice method for finding out about unknown local resources is to consult with local communities, as prescribed by draft OP 4.11. Here, however, BTC Co. has completely failed to make use of the greatest single body of knowledge on local cultural heritage available to them.

Although the EIA claims that, “cultural assets along the pipeline route were initially identified during the Basic Engineering phase by a review of…[among others] initial responses to consultation,” this is contradicted by details given elsewhere in the EIA. For one, elsewhere in this report (see chapter 3, Consultation) it is shown that BTC Co. consulted fewer than 2% of locally affected people face-to-face. Even that was often under conditions of state intrusion and repression that often effectively precluded the ability to dissent.

Simply in terms of timing, however, the EIA also makes it clear that while the main fieldwork and research on cultural heritage was undertaken from August to November 2000, local-level consultation did not occur until September and October 2001—more than a year later. In other words, it was impossible for local people, the only real source of knowledge about local cultural resources, to play any significant role in the preservation of cultural heritage along the BTC pipeline route.

5.4.2.2  Preliminary on-site inspection little more than a cursory glance over the surface of potential sites

Table 5.22 of the EIA lists 147 cultural heritage sites along the pipeline route, of which it notes that 24 are recognised as “First Degree” or important sites, 3 as “Third Degree” or minor sites, 1 as “First-Third Degree” and a full 119, or 81%, of the sites have not yet been registered – ie of unknown cultural significance.

Disturbingly, according to the tables of Volume II Supplement I, not a single one of the 24 First Degree sites has been officially registered with the Ministry of Culture. Of all the 147 sites the EIA refers to, only the three Third Degree Sites have been registered by the state, giving some indication of the paucity of real knowledge about the region.

Even worse, of those 24 First Degree sites the EIA mentions, it describes or give information about only 7. A full 17 of the 24 major First Degree sites the EIA lists in Table 5.22 are simply names. No information is given about them; in many cases they cannot be found on the accompanying maps.

21  World Bank Draft Operational Policy OP 4.11, Physical Cultural Resources, para.14
Of the 147 sites in Table 5.22, the EIA describes or provides information about a mere 62. By contrast, 78 of the 147 sites are referred to only as having been “proposed for registration by the regional preservation council”. Again, they are merely names, usually missing from the maps, with no information given about them. There is no information that BTC Co. knows anything about them or has taken any efforts to mitigate the impacts of the project on them. A further 7 of the 147 sites are not mentioned at all in the Volume II Supplement I tables, even by name.

In other words, BTC Co. has failed to take into account a full 58% of the cultural heritage sites it acknowledges exist along the pipeline route, sites that the EIA freely admits have not been evaluated for their cultural significance. No assessments have been made, no mitigation measures have been prepared. It is therefore impossible to predict what kind of damage will be done to irreplaceable cultural heritage in the region, for the simple reason that BTC Co. has ignored more than half of the sites it admits exist, to say nothing of those as yet uncovered.

Even where information is provided about a specific site, it is invariably cursory and superficial. The tables refer repeatedly to “ceramic shards”, “traces”, “stones” and “architectural remains” being found “on the surface”, or to “surface remains of various buildings”. In not a single site, according to the notes in Volume II Supplement I of the EIA, did BTC Co. undertake any excavation work before determining the route. No indication is ever given that the project sponsors undertook any excavations to establish the existence of cultural resources not visible to the naked eye.

This applies not only to the preliminary phase, but also to the so-called “detailed cultural heritage investigations”, which lists “all possible sources of information” as “visible ruins, potsherds, objects, landscape anomalies.” These are not only all on the surface, but are fairly obvious signs of potential cultural phenomena. Excavation, the EIA makes clear, is not to be used for proper and necessary initial research into non-visible cultural resources to prevent their being damaged, but only during construction, for “full-scale excavation of threatened sites…where re-routing is not an option.”

Official documentation reveals the impact of time pressure on the cultural heritage study.

"The studies to be conducted on the area that BTC Pipeline shall extend should be commenced as soon as possible since such studies shall be running against a schedule and the excavation season has begun." The project sponsors also admit that even this cursory investigative work was hampered by bad weather.

22 One good reason for not fully identifying the sites, including their exact location, might have been to avoid revealing the presence of potentially valuable artefacts to ‘treasure hunters’. (See section 5.4.7.1, below.) However, BTC does not give any reason here for not giving information; furthermore, it would have been quite possible to list the sites without giving exact locations – for example by listing the numbers and types by province or district. Thus the paucity of information presented in the EIA is not justified.

23 E.g. BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation—Volume II Supplement I, 6-123

24 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline—Baseline Conditions, 5-139

25 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, 6-31

26 Letter from Ministry of Culture, 12 June 2002, in BTC EIA, Final EIA, October 2002, Appendix 8 – Consultation Results, A8-3
"As it is understood that sole a work [sic] along the route was realized because of the unsuitability of the weather conditions, detailed research studies of the route and at the areas in the vicinity of the route will be carried out at the periods when the weather conditions are suitable in order to determine the Archaeological and Cultural Heritage of the crude oil pipeline route and to minimize the adverse impacts of the pipeline route on this heritage, and obtained data will be brought to our committee to be assessed."\footnote{Letter from Prof. Dr. Tamer Gok et al, Ministry of Culture, General Directorate of Preservation of Cultural and Natural Assets of Adana, 28 January 2002, in BTC EIA, Final EIA, October 2002, Appendix 8 - Consultation Results, A8-23. Grammar as in original.}

Yet despite this admission that the necessary work had not been finished, no delay in implementing the project was permitted to ensure that it was done right. In fact, the opposite is true; the project was actually sped up all the more. According to senior officials involved in the design and implementation of the EIA, the normal 60 days for the Ministry of the Environment to review the EIA was squeezed down to just 30 days.\footnote{Dr. Coskun Yurteri of ENVY Environmental Engineers, interview with Baku-Ceyhan Campaign, Ankara, 18 March 2003. See also Baku-Ceyhan Campaign, International Fact-Finding Mission, Baku-Tbilisi-Ceyhan Pipeline, Turkey Section, June 2003, p.51}

### 5.4.3 Identification of impacts

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<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
</tr>
</thead>
</table>
| OP 4.11 Para 10 Identification of impacts | “The borrower identifies physical cultural resources likely to be affected by the project, and assesses the project’s potential impacts on these resources as an integral component of the EA process, in accordance with the Bank’s EA requirements.” | 1. Analysis of potential impacts is peripheral to EA process, not an integral component.  
2. Project shows little awareness of state of resources in region. | Non compliance |
| | | 3. Identification of resources likely to be affected is incomplete and poorly researched. | Partial compliance |

#### 5.4.3.1 Analysis of potential impacts is peripheral to EA process, not an integral component

(See sections 5.4.1.2, 5.4.1.3 and 5.4.2.2, above).

The lack of space dedicated to cultural heritage in the EIA (barely twenty pages out of the entire Turkish EIA deal with the topic; and the Cultural Heritage Management Plan (CHMP) is largely
just a reiteration of standards which are then not applied), the consistent failure of the project sponsors to undertake proper research to fill in the enormous gaps in existing knowledge before construction began, and the weakness of mitigation measures (see section 5.4.4.3, below) indicate that preservation of cultural heritage has not been a priority for the project sponsors. The CHMP confirms this in noting that its purpose is “aiming not to cause any delay in project activities.”

5.4.3.2 Project shows little awareness of state of resources in region

BTC Co.’s lack of research in the region means that they are unaware not only of what is out there, but also of the damage that existing resources are suffering. One of the main intentions of the afore-mentioned TAY Project is “to document the current condition and level of degradation/destruction of the sites,” which it records. It has chronicled extremely widespread damage to cultural heritage sites all over Turkey, concluding,

“ It is important to note that the unfortunate situation of the archaeological sites, which constitute an important part of the cultural heritage, shows how pervasive the destruction of what remains from these early stages of human culture is.”

TAY Project ascribes much of the damage to agricultural activities, rapid urbanisation, including the development of roads and infrastructure, and illicit digging. Importantly, the Project is extremely critical of local and national government and their commitment to the preservation of cultural resources. It notes,

“Most official government institutions and local administrations naturally aim to promote economic development. Because of this, protecting cultural heritage is traditionally relegated only to sites with potential touristic activities. The importance of preserving the cultural heritage, even in places with little or no touristic value, should clearly be articulated at all levels of government and non-governmental organisations.”

As a result of “misinformation”, TAY Project suggests, “public and governmental organisations…cause destruction through their careless activities.” The Project also notes that even after registering cultural heritage sites, government bodies seem unwilling or unable to protect sites, resulting in an epidemic of illicit digging and ongoing damage. Perhaps this is because, as it points out, “There is no co-ordination between the governmental units of culture, local administrations, rural affairs administrations and the agricultural community about protection of cultural heritage.”

The implications of this are significant: if national and local governments do not have the resources or the will to safeguard cultural heritage, then one might argue that there is a special duty on any would-be developer to take responsibility for protecting such heritage. On that view, the consortium’s efforts to date all the more inadequate.

29 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix C7—Cultural Heritage Management Plan, Annex A, C7-21
30 Tay Project, www.tayproject.org/raporeng.html
5.4.3.3 Identification of resources likely to be affected is incomplete and poorly researched

(See sections 5.4.1.1 and 5.4.2.2 above).

5.4.4 Mitigation

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</table>
| OP 4.11 Para 11 Mitigation             | “Where the project is likely to have adverse impacts on physical cultural resources, the borrower consults with project-affected groups to identify appropriate measures for mitigating these impacts as part of the EA process.” | 1. No evidence that project affected people have been properly consulted as to the impacts of the project on local cultural heritage.  
2. No evidence that advice has been taken from project affected people on mitigation of impacts.  
3. Many of the mitigation measures introduced are neither appropriate nor likely to be effective. | Non compliance |
|                                       |                      | 4. Imperatives of construction and weakness of archaeological teams make it unlikely that cultural heritage preservation will be a priority for sponsors. | Partial compliance |

5.4.4.1 No evidence that project affected people have been properly consulted as to the impacts of the project on local cultural heritage

Nothing suggests that local people were asked anything about the impact of the project on cultural heritage. BTC Co.’s failure to effectively consult affected people is important not only for the eliciting of relevant information on cultural resources, but to ensure their preservation. The TAY Project is emphatic that cultural heritage can only be effectively preserved by working to “increase awareness and promote grassroots protection and preservation efforts among the local population.” The Project cites the example of the Gullucek mound in Corum province,

“More than half a century later, we could not find any sign of damage beyond natural erosion at the site. This remarkable pristine site was protected thanks to locals who were involved in the initial excavations. They in turn had passed the understanding that the site is part of their
By contrast, BTC Co.’s failures at stakeholder creation, running from superficial and inadequate consultation through low levels of compensation to the failure to incorporate local knowledge into project design, mean that local people have no such incentives, particularly if the BTC pipeline destroys existing heritage resources.

5.4.4.2 No evidence that advice has been taken from project affected people on mitigation of impacts

Nothing in the EIA suggests that such advice as project-affected people were able to proffer about the impacts of the project on cultural heritage was adopted or taken seriously. For example, the Social Impact tables note that affected villagers in several places suggested that as a result of the contractor Alarko’s high-handedness and incompetence on the previous Natural Gas Pipeline, they would not be happy to see them involved in the project. This request was ignored.

5.4.4.3 Many of the mitigation measures introduced are neither appropriate nor likely to be effective

There is a complex web of conflicting of interests in many of the mitigation measures proposed for the project. They are the responsibility of BOTAS, the pipeline turnkey contractor, which is according to the contracts for the project is liable for massive fines if the project is not completed on time. It was also widely reported earlier this year that BP wrote a formal letter of complaint to the Turkish Prime Minister outlining BOTAS’s alleged failings (primarily that it was working too slowly) and threatening to withdraw the contact and award it elsewhere.

Thus the overwhelming commercial and political imperative for BOTAS is to finish the project with as little distraction or deviation from the plans as possible. That imperative makes it much more likely that such mitigation measures as it has responsibility for will be overridden.

For instance, the “archaeological monitoring teams” promised by the EIA turn out to be just one person; it is hard to envisage that individual having the authority to call the entire project to a halt and risk huge fines for BOTAS. There is no training in cultural heritage for the other workers and managers, merely “archaeological briefings…for all construction personnel working in or close to archeologically sensitive areas.”

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31 Tay Project, www.tayproject.org/raporeng.html, emphasis added
32 e.g. BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, p.6-361, p.364. “There is a preference for Alarko not to be involved as reportedly they did not adopt an impartial attitude in the compensation of damage.”
33 See e.g. Deniz Zeyrek, “Ultimatum to Prime Minister”, Radikal, 13 April 2003, English translation available on request.
34 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, 6-31
35 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, 6-31
Moreover, although the EIA claims the monitoring archaeologist will have the power to stop the project, in practice for both ‘minor’ and ‘moderate’ finds that means a “limited disruption to construction activity” of 24 to 72 hours for the archaeologist to work out what the find is, during which “mainline activities should continue.”

Even for finds of ‘major significance’, there is no guarantee that work will be stopped. The only imperative is time; the CHMP will only re-route the project if “excavation and recording [cannot] be completed within a finite period of time.” All it promises is that “construction activities may need to find an alternative right of way in the vicinity of the site.”

Even this is not guaranteed, however; if the finds are too complex or valuable to be “recorded within the normal programme” and extend under the vehicle trackway, they will allegedly be ‘protected’ “by provision of ‘bog mats’ or stone tracks” for the heavy trucks to drive over. That flagrantly contradicts the EIA’s earlier admission that, “Topsoil stripping to create running tracks and the subsequent passage of vehicles within the working width may cause significant damage to fragile archaeological deposits.”

As had already been shown by BOTAS’s alleged reaction to the finds in Damal, the desire to save time and money and avoid incurring fines appears to dominate the construction companies’ agenda.

BOTAS’s desire to finish the job quickly is also indicated by the nature of the ‘protective’ measures it has already taken. The EIA claims to have implemented many re-routes of the pipeline to avoid sensitive sites. Yet while in some instances the pipeline has been moved at least a little distance away from the cultural resource, in many cases the relevant maps show that it still passes either right next to the site (e.g. Hilmiye graveyard, Map 41; Cukurpinar Area, Map 46) or in some cases even appears to cut across its periphery (e.g. Oren Dosu, Map 54; Salderesi Area, Map 44). This still leaves these sites highly vulnerable to the impacts of excavation, such as vibration or percussion caused by explosives or excavation and installation equipment.

The inadequacy of this approach is most obvious in places where the EIA admits that the pipeline will cross sites of significant cultural heritage. In many of these, the EIA claims that the sites will be “delineated”, or that “a safe route” through them will inevitably be found. The likelihood that damage will be caused in the process is high, especially when the EIA appears to justify further intrusion into one area by noting that it has already been damaged.

5.4.4.4 Imperatives of construction and weakness of archaeological teams make it unlikely that cultural heritage preservation will be a priority for sponsors

(See section 5.3, above).

36 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix C7—Cultural Heritage Management Plan, Annex A, C7-16
37 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix C7—Cultural Heritage Management Plan, Annex A, C7-16
38 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, 6-31
39 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, 6-30
40 BTC Project EIA, Turkey, Final EIA, October 2002, BTC Pipeline Construction Impacts and Mitigation, Volume II Supplement I, Tamasor Area, 6-256

5. CULTURAL HERITAGE
5.4.5 Management plan

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OP 4.11 Para 13 Management plan</td>
<td>“The borrower develops a management plan which includes measures for mitigating any adverse impacts, provision for the management of chance finds, any necessary measures for strengthening institutional capacity and a monitoring system to track progress of these activities.”</td>
<td>1. Mitigation of adverse impacts inadequate. 2. Management of chance finds inadequate. 3. Institutional capacity not adequately strengthened. 4. Monitoring system inadequate.</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>

5.4.5.1 Mitigation of adverse impacts inadequate

(See section 5.4.4, above).

5.4.5.2 Management of chance finds inadequate

(See sections 5.3 and 5.4.4.3, above).

5.4.5.3 Institutional capacity not adequately strengthened

(See section 5.4.1.1, above).

There is no evidence that the policies or practices of BTC Co. have rectified the failures of local and national governments to take the necessary measures to ensure the preservation of cultural heritage either now or after project construction, nor that affected people have been made to feel like they have an investment in cultural heritage preservation.

5.4.5.4 Monitoring system inadequate

(See section 5.4.4.3, above).
5.4.6 Consultation with key groups

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OP 4.11 Para 14 Consultation with key groups</td>
<td>“As part of the EA process, the borrower consults with competent authorities, project-affected groups and, where appropriate, relevant experts, in documenting the presence and significance of physical cultural resources, assessing potential impacts and exploring mitigation options.”</td>
<td>1. Project sponsors only consulted with project-affected groups after route had been determined, and even then only partially. 2. Failure of project sponsors to properly consult credible NGOs and sources of relevant information.</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>

5.4.6.1 Project sponsors only consulted with project-affected groups after route had been determined, and even then only partially

(See sections 5.4.1.2 and 5.4.2.1, above).

5.4.6.2 Failure of project sponsors to properly consult credible NGOs and sources of relevant information

There is no evidence that BTC Co. consulted TAY Project or other independent sources of accurate information on regional cultural resources. Additionally, NGOs listed as ‘consulted’ in the EIA have expressed dissatisfaction and anger at the methods and nature of the consultation process.\(^{41}\)

5.4.7 Disclosure

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\(^{41}\) See International Fact-Finding Mission, Baku-Tbilisi-Ceyhan Pipeline, Turkey Section, June 2003, pp.47-9, 59
5.4.7.1 Failure to disclose findings on vast majority of cultural resources

(See also section 5.4.2.2, above)

The credibility of the EIA’s claims to have undertaken comprehensive research on cultural heritage is severely undermined by the decision to omit the bulk of its findings, in the form of the purported “gazetteer of known archaeological heritage sites” meant to make up Annex L of the CHMP. Without this list, there is very little evidence that BTC Co. has done even basic research. The rationale given for the gazetteer’s omission from the EIA is that “it is not necessarily good practice to disclose the locations of archaeological sites, especially those that are not already in the public domain.” The EIA then invokes Draft OP 4.11 to justify its decision.

Although it is not explained, this might be intended to prevent a phenomenon the TAY Project describes as widespread, “treasure hunting” or “illicit digging”, which is legal under Article 50 of the Law on Preservation of Cultural and Natural Resources and leads to the rapid degradation of sites. That is also presumably why the EIA stipulates that, “No unauthorised use of metal detectors will be tolerated.”

However, if there are indeed concerns about treasure hunting, it is rather disturbing that the EIA does not explicitly identify these impacts on cultural heritage, nor propose any measures to mitigate them. The problem is only referred to – and even then rather obliquely – to justify the non-disclosure of information. While it is appropriate to take precautionary measures to prevent such treasure-hunting, it is nonetheless profoundly disingenuous for BTC Co. to make use of treasure hunting to justify not revealing useful information, yet to take no measures to actively combat it or to encourage a change in the law or in attitudes to cultural phenomena. It is also not encouraging as far as the prospects for preservation of cultural heritage after pipeline construction are concerned.

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42 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix C7—Cultural Heritage Management Plan, C7-4
43 BTC Project EIA, Turkey, Final EIA, October 2002, Marine Terminal—Onshore Impacts and Mitigation, 12-34
5.4.8 Capacity building

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OP 4.11 Para 16</td>
<td>“When the borrower’s capacity is inadequate to manage physical cultural resources that are affected by a Bank-financed project, the project normally includes components to strengthen that capacity.”</td>
<td>1. No evidence that the project has adequately strengthened Turkey’s capacity to manage cultural resources.</td>
<td>Non compliance</td>
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<tr>
<td>Capacity building</td>
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</table>

5.4.8.1 No evidence that the project has adequately strengthened Turkey’s capacity to manage cultural resources

(See section 5.4.5.3, above).
5.5 World Bank Policy on Cultural Property (OPN 11.03)

5.5.1 Significant damage

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OPN 11.03 Para 2(a) Significant damage</td>
<td>“The Bank normally declines to finance projects that will significantly damage non-replicable cultural property, and will assist only those projects that are sited or designed so as to prevent such damage.”</td>
<td>1. Without a comprehensive prior knowledge of existing cultural resources along the pipeline route, it is impossible to ensure both the nature of the cultural property that is affected and that the project is sited to prevent such damage.</td>
<td>Non compliance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Project not adequately designed to best prevent damage to cultural heritage.</td>
<td>Partial compliance</td>
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</table>

5.5.1.1 Without a comprehensive prior knowledge of existing cultural resources along the pipeline route, it is impossible to ensure both the nature of the cultural property that is affected and that the project is sited to prevent such damage

(See sections 5.4.1 and 5.4.2, above)

5.5.1.2 Project not adequately designed to best prevent damage to cultural heritage

(See sections 5.4.3 and 5.4.4, above)

5.5.2 Protection and enhancement of cultural property

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</thead>
<tbody>
<tr>
<td>OPN 11.03 Para 2(b)</td>
<td>“The Bank will assist in the protection and</td>
<td>1. No evidence that project has trained or strengthened Turkey’s capacity to preserve</td>
<td>Non compliance</td>
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</table>

### Protection and enhancement of cultural property

<table>
<thead>
<tr>
<th>Enhancement of cultural properties encountered in Bank-financed projects, rather than leaving that protection to chance. In some cases, the project is best relocated in order that sites and structures can be preserved, studied and restored intact in situ...Often, scientific study, selective salvage and museum preservation before destruction is all that is necessary. Most such projects should include the training and strengthening of institutions entrusted with safeguarding a nation's cultural patrimony.</th>
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<tr>
<td>Partial compliance</td>
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<tr>
<th>Protection of cultural resources largely comprised of rapid extraction and ‘rescue’, not preservation in situ.</th>
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<td>Partial compliance</td>
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<tr>
<th>Relocation of project very limited, inadequate and only undertaken after main route decided.</th>
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<tr>
<td>Partial compliance</td>
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<tr>
<th>Not enough time allocated for “scientific” study of finds due to commercial pressures behind project.</th>
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</table>

### 5.5.2.1 No evidence that project has trained or strengthened Turkey’s capacity to preserve its cultural resources

(See section 5.4.5.3, above)

### 5.5.2.2 “Protection” of cultural resources largely comprised of rapid extraction and ‘rescue’, not preservation in situ

(See sections 5.4.3 and 5.4.4.3, above)

### 5.5.2.3 Relocation of project very limited, inadequate and only undertaken after main route decided

(See sections 5.4.1.2 and 5.4.4.3, above)
5.5.2.4 Not enough time allocated for “scientific” study of finds due to commercial pressures behind project

(See sections 5.4.3 and 5.4.4.3, above)

5.5.3 Consultation of NGOs

<table>
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<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</table>
| OPN 11.03, para 3 \ Consult appropriate NGOs | “Before proceeding with a project...Bank staff must determine what is known about the cultural property aspects of the proposed project site. [A]ppropriate agencies, NGOs or university departments should be consulted.” | 1. Local, national and international NGOs with relevant archaeological experience were not consulted over likely cultural heritage impacts.  
2. Local people and communities with the greatest level of in-depth knowledge were not fully consulted on likely cultural heritage impacts. | Partial compliance |
|                                                                                      | 3. No evidence that the project sponsors have taken local knowledge of cultural heritage impacts into account. |                                                                                       | Non compliance      |
6. Environmental assessment and the BTC project (Turkey section)

Evaluation of project documents and performance against World Bank standards, EBRD standards and the EU Directive on Environmental Impact Assessment

6.0 Contents

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6.1 Summary

The Environmental Impact Assessment (EIA) for the BTC project was reviewed against the standards required under the legal regime laid down in the Host Government Agreement and the BOTAS/BTC Co. Turnkey Agreement, namely the EU Directive on EIA and the IFIs’ safeguard policies on environmental assessment (in particular IFC OP 4.01 Environmental Assessment).

This review found:

- The HGA has already been used to short-circuit best practice on site investigation and consultation procedures during the scoping phase of the EIA in order not to compromise the construction schedule, contrary to BTC Co.’s assurances that the agreement would not be used to undermine environmental best practice;
- The EIA partially or fully breaches the EU Directive on Environmental Impact Assessment on 14 counts (on top of the 4 related to consultation – making 18 in total), in potential violation of host country law as defined by the HGA;
- The EIA partially or fully breaches the World Bank’s environmental assessment policy (OP 4.01) on 10 further counts, again in potential violation of host country law as defined by the HGA – on top of the breaches relating to consultation (see chapter 3) and assessment of alternatives (see chapter 7);
- The EIA is unclear as to which IFI standards are applicable and thus as to the specifics of the legal regime that prevails for the project;
- There is controversy over the order of precedence of the relevant standards in the event of any conflict between them;
- The EIA fails to specify which EU Directives, apart from the Directive on EIA, are applicable to the project.

Specifically:

- Construction of the BTC pipeline began before an EIA was approved;
- The HGA has been used to override normal procedures for scoping study;
- Assessment of impacts on flora and fauna is inadequate;
- The project has failed to complete an adequate baseline study;
- The EIA fails to assess the sustainability of the project;
- The EIA’s treatment of seismic risks is inadequate and flawed;
- The project has failed to reduce or remedy risk of oil spills at Ceyhan and of decommissioning;
- There has been insufficient analysis of species;
- The EIA fails to present original data;
- Accuracy, reliability, methodology and gaps are not indicated in the EIA;
• Consultation with affected villagers has been inadequate and flawed;
• The independence of EA experts is questioned;
• There has been inadequate assessment of alternatives;
• The project has failed to address trans-boundary impacts of tanker traffic and to inform affected Member States;
• The project has failed to consult with authorities and public in affected Member States;
• The project has failed to consult on trans-boundary impacts;
• The project has failed to address indirect impacts on climate.
6.2 Introduction
6.3 Legal regime for environmental assessment – Controversies over applicable standards

Three agreements set the legal framework for environmental assessment of the BTC pipeline in Turkey:

- The **Intergovernmental Agreement (IGA)** signed between Turkey, Azerbaijan and Georgia;
- The **Host Government Agreement (HGA)** signed between the Government of Turkey and BTC Co; and
- Appendix A of the **Lump Sum Turnkey Agreement (LSTA)** agreed between BTC Co. and BOTAS, the Turkish contractor which will build the pipeline.

Under these agreements, which are now enacted into national law, the project developers are legally obliged to ensure that the EIA for the project meets the following standards:

1. **IGA requirements**
   - “...international standards and practices within the Petroleum pipeline industry (which shall in no event be less stringent than those generally applied within member states of the European Union) . . .”

2. **HGA requirements:**
   - The “Environmental Strategy Products and implementation of the environmental strategy reflected therein shall be in accordance with the standards and practices generally prevailing in the international Petroleum pipeline industry.”
   - “Creation of the EIA shall also be in accordance with the principles of EU Directive 85/337/EEC (as amended by EU Directive 97/11/EC).”

3. **LSTA requirements**
   - The standards set by International Financial Institutions, notably the World Bank

The agreements further require compliance with:

- National legislation and international conventions in force in Turkey – to the extent such legislation does not conflict with the undertakings in the IGA, HGA and Turnkey Agreement.

### 6.3.1 Controversy over hierarchy of standards

There is controversy over the above standards’ order of precedence in the event of a conflict. BTC Co. sets the World Bank / IFI standards lower in the hierarchy than the HGA and

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1 IGA, Art. IV.
2 HGA, Appendix 5, Section 3.10, Turnkey Agreement, Appendix A, Section 4.3.7
3 HGA, Appendix 5, Section 3.10. The EIA also quotes “Turnkey Agreement, Appendix A, Section 4.3.7” (see EIA BTC project, Appendix D “Legislative and Policy Framework”, October 2002, p.D-12). This latter reference conflicts with references in the LSTA’s Appendix B
national legislation\textsuperscript{5}: thus, the application of the World Bank’s resettlement policy (OD 4.30), which requires negotiated agreements on compensation prior to construction, could be overruled by national legislation which does not.

However, this is contestable. For instance, the Lump Sum Turnkey Agreement (LTSA), which forms part of the HGA, obliges the project to meet World Bank/IFI standards, including OD 4.30.

The World Bank/IFI standards should thus have equal status with other project standards specified in the HGA, since they are part of the HGA: moreover, under the HGA, they would take precedence over existing environmental and social laws to the extent that such local laws conflict with the standards in the HGA: in effect, the national “get out” clause allowing for construction to begin before compensation has been negotiated would be overridden by the LTSA.

6.3.2 Which IFI standards?

There is also considerable confusion within the EIA and other documents as to which international finance institution (IFI) standards apply to the project under the Turnkey Agreement, an issue of considerable importance given that the standards in the Turnkey Agreement constitute local law.

For example, the EIA states:

"With regard to environmental, social, health and safety (ESHS) protection standards and safeguards, the Turnkey Agreement identifies certain requirements including: . . . The EIA is required to fulfill World Bank requirements and (by implication) International Financial Corporation (IFC) and other international financial institution (IFI) guidelines…”\textsuperscript{6}

Elsewhere, however, the same document limits the commitment to World Bank standards alone,\textsuperscript{7} a position that is reiterated in the EIA commitments register\textsuperscript{8} and the Joint Statement by BTC Co and the Host Governments.\textsuperscript{9} Meanwhile, in a briefing note prepared in June 2003 to clarify the legal framework for the project, BTC Co. refers on one page only to World Bank standards\textsuperscript{10} and on another to IFI standards.\textsuperscript{11}

Without access to the text of the relevant Appendix in the Lump Sum Turnkey Agreement, however, it is not possible to resolve these discrepancies. However, due to a lack of transparency over the Turnkey Agreement, the Appendix is not available to the public. Although the main body of the LSTA and a number of its appendices are posted on the BTC Co. website, Appendix A,\textsuperscript{12} which sets out the international standards to which the

\textsuperscript{5} Ibid.
\textsuperscript{8} EIA BTC project, EIA Appendices, Commitments, unpaginated. “The guidelines and standards set by the following organisations will also apply to the BTC Project: World Bank Operational Directives and Guidance” [ID APC1E16], May 2003.
\textsuperscript{9} Joint Statement, 16 May 2003: “The ESIs approved by each state . . . reflect the . . . commitment to the environmental and social policies and guidelines of the World Bank Group.”
\textsuperscript{10} Supplementary lenders information pack, Briefing Note on Environmental Standards, “Introduction”, June 2003, unpaginated
\textsuperscript{11} Supplementary lenders information pack, Briefing Note on Environmental Standards, “Introduction”, June 2003, B-7.
\textsuperscript{12} Some BTC Co. documents refer to this Appendix as Appendix A, others as Appendix 4. The LSTA itself refers to Appendix A and specifically names it as the Appendix where the standards are set out. There is further confusion, however, as to which paragraphs in
environmental assessment must comply, has been excised from the document. Other websites which we have accessed and where the LTSA is posted similarly lack any version that contains the Appendix. Given that the LTSA now forms part of the legal regime governing the pipeline project, this lack of transparency is of grave concern: in the absence of easy access to the Appendix, stakeholders have effectively been deprived of a document that is key to assessing the extent to which the project promoters are complying with their legal obligations.

Nonetheless, for the purposes of this review, it is assumed that IFI standards are the legal benchmark for environmental assessment for the project. These would include the EBRD’s environmental policy, even though the EBRD has not been asked to fund the Turkey section of the project.

6.3.3 Applicability of EU Directives

The EIA’s Commitments Appendix states “All aspects of the Project will be undertaken in accordance with . . . EC Directives.”\(^13\) Since this commitment is made in one of the documents that constitutes the “Environmental Strategy Product”, it is, on the face of it, legally binding.\(^14\)

However, the commitment would appear to be at odds with the undertakings in the Intergovernmental Agreement, which limits the applicability of EU standards. Article IV of the Intergovernmental Agreement states:

> “Each State shall cooperate and coordinate with the others and the applicable Project Investors in the formulation and establishment of uniform technical, safety and environmental standards for the construction, operation, repair, replacement, capacity expansion or extension (such as laterals) and maintenance of the Facilities in accordance with international standards and practices within the Petroleum pipeline industry (which shall in no event be less stringent than those generally applied within member states of the European Union) and the requirements as set forth in the relevant Host Government Agreement, which shall apply notwithstanding any standards and practices set forth in the domestic law of the respective State.”

It is clear from the above that the IGA is not intended to incorporate the full body of EC law into the project agreement. Its commitments on EU standards and practices extend only to those (unspecified) “standards” that relate to “technical, safety and environmental” practices within the petroleum industry. For example, it is apparent from the Environmental the Appendix set out the standards for the EIA. The EIA itself refers to para 4.3.7 (EIA. Appendix B of the LSTA refers to Article 5.1.13 (Appendix B, p.B-8).

\(^{13}\) EIA Commitments Register, unpaginated, ID APC1E17. See also: ID APC1E16: “The guidelines and standards set by the following organisations will also apply to the BTC project . . . European Union Directives and Guidance.”

\(^{14}\) As BTC Co. acknowledges: “The ESIsas and other documents and studies required under the HGAs are referred to in the HGAs as the ‘Environmental Strategy Product’ and the standards referenced therein are part of the prevailing legal regime governing the BTC Project in each of the host countries.” See: BTC Project Supplementary Lenders Information Pack, Briefing Note on Environmental Standards, June 2003, B-3.
Commitments Register in the EIA that EC law is not extended to labour rights for workers on the project or to health standards.  

The conflict between the wording of the Article IV and the Commitments Register is not resolved in the EIA. On the contrary, the Environmental Management and Monitoring Plan (EMMP) only serves to confuse the issue still further by applying non-EC environmental standards where EC standards exist. For example, on emissions from pump drivers, the EMMP specifies World Bank standards and Turkish regulations as the benchmark standard: no mention is made of relevant EU Directives, despite the commitment to observe “all EC Directives”. Key EC environmental Directives – such as SEA Directive (2001/42/EC) are not even mentioned in the Commitments Register.

This lack of clarity over the EU Directives that apply to the project constitutes a clear breach of the IFC’s Environmental Assessment policy (OP 4.01), which stipulates:

“The EA process, as laid out in IFC’s OP 4.01 therefore requires a clear identification of national legal requirements related to the environment.”

As a result of this omission, Executive Directors are denied the basis on which to judge whether or not the project meets – or is in a position to meet – the IFC’s requirement that the project complies with host country law. This should be remedied before any decision is made to finance the project.

In the absence of a clear-cut list of applicable Directives and guidelines, this review examines only the Directive on Environmental Impact Assessment. However, were other Directives to be applicable, then a significant number of further breaches of the relevant directives would be likely to be found, in both the design and implementation of the project.

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15 EIA for BTC Project, Commitments Appendices, unpaginated, ID No. APA8S2. The commitment states: “Both Turkish regulations and international standards for workers will be adhered to by the project”. Appendix A8 of the PCDP, to which the ID No. refers for more documentation, makes no mention of specific EC legislation. The only named set of standards is the BTC Project’s HSE policy.

16 EIA Commitments Appendix, unpaginated, ID No. APB2E1.

17 IFC OP 4.01, Consultation Comments.

18 IFC OP 4.01, Consultation Comments: “IFC requires that investments comply with host country environmental, health and safety requirements”; and “IFC’s environmental and social review procedure (ESRP) requires the project sponsor to ensure compliance with host country requirements.”
6.4 Use of the HGA to override international best practice on environmental assessment

As noted above (see section 6.3), the BTC project is required under the Turnkey Agreement to meet international financial institution (IFI)/World Bank standards with regard to environmental assessment, although there is confusion as to which IFI standards apply (see section 6.3.2).

Given that this is a legal requirement, it is of grave concern to learn that the HGA has been invoked to override the implementation of such IFI standards. Both the IFC\textsuperscript{19} and the EBRD\textsuperscript{20}, for example, require that a scoping exercise is undertaken to identify the issues that require addressing in the EIA. Although BTC Co. insists that it was never its intention that the clauses of the HGA should be invoked to override existing and future protections of the environment, human rights or workers’ rights,\textsuperscript{21} the HGA has already been used to short-circuit best practice on site investigation and consultation procedures during the scoping phase of the EIA in order not to compromise the construction schedule:

- In a letter to the BTC consortium, the Ministry of Agriculture and Rural Affairs waives the requirement for site investigations before granting approval for the pipeline route “in accordance with the Host Government Agreement”.\textsuperscript{22}

- The normal requirement, under Turkey’s environmental regulations, for a 60 day period for the Ministry of the Environment to review and approve the final draft of the EIA, in order to give a development consent, was reduced to 30 days for BTC, in order to ensure that BOTAS could complete the project in the period specified under the Turnkey agreement.

In a letter to BOTAS dated 30 November 2001, the Prime Ministry’s Undersecretariat of Maritime Affairs states:

“... our country undertook some commitments by means of the completion of the project on time according to the statements of the project agreement, accordingly, in order to assure that the project activities would be carried out as determined in the agreements and within the designated period, we are under the obligation of taking the required permission, licence and documents within 30 days beginning from the presentation date of the project stipulations, in that content the EIA Report studies

\textsuperscript{19} IFC OP 4.01, Environmental Assessment, para 12: For all Category A projects and as appropriate for Category B projects during the EA process, the project sponsor consults project-affected groups and local nongovernmental organizations (NGOs) about the project’s environmental aspects and takes their views into account. The project sponsor initiates such consultations as early as possible. For Category A projects, the project sponsor consults these groups at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized ... 

\textsuperscript{20} EBRD Environmental Policy, Annex 2, Consultation with the Public, p.19: “By means of a scoping process, the project sponsor must ensure identification of all key issues, in particular, by consulting the affected public on the project and taking their comments into account. This scoping process will involve contact by the project sponsor with representatives of the affected public, government agencies, local authorities and other organisations.”

\textsuperscript{21} See for example, BTC Human Rights Undertaking, 22 September 2003.

\textsuperscript{22} Letter from Dr. Huseyin Sungur, Ministry of Agriculture and Rural Affairs (General Directorate of Protection and Control) to General Directorate of Petroleum Pipeline Corporation, “BTC Crude Oil Pipeline Project EIA Activities”, 29 November 2001, in EIA, Appendix A8 – Consultation Results, October 2002: “It is stated that regarding the Baku-Tbilisi-Ceyhan crude oil pipeline project, site investigation is not required by the Ministry of Environment, General Directorate of Environmental Impact Assessment and Planning, in accordance with the Host Government Agreements ...”
was started, the EIA Procedure was carried out different than the EIA Regulations . . .” (italics added).  

This change to the normal process was also confirmed to NGOs in an interview with a representative of the BTC’s environmental baseline contractor, which played one of the main roles in compiling the EIA.  

- The Protocol to the Cultural Heritage Management Plan also stresses speed as a priority: “This Protocol is prepared on account of the importance of Baku-Tbilisi-Ceyhan Crude Oil Pipeline (BTC Pipeline) Project, aiming not to cause any delay in project activities and to secure and rescue the archaeological entities that may be encountered throughout the pipeline route, appropriately and as soon as possible.”

There is evidence to suggest that this speed undermined effectiveness of the cultural heritage survey (see chapter 5), a key part of the EIA process.

It is questionable whether such truncation of the EIA procedures accords with the IGA’s requirement that project standards “shall in no event be less stringent than those generally applied within member states of the European Union”. As such, the use of the IGAs to override Turkey’s EIA procedures – which are intended to comply with EU practice – constitutes a possible breach of the IGA. We would recommend that the circumstances and legality of this are investigated further by the IFC Board before any decision to commit funding is contemplated.

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25 BTC Project EIA, Turkey, Final EIA, October 2002, Appendix C7—Cultural Heritage Management Plan, Annex A, C7-21, emphasis added
6.5 EU Directive on EIA

The Host Government Agreement (HGA) signed between the Government of Turkey and the Baku-Tbilisi-Ceyhan (BTC) consortium stipulates that the EIA for the BTC project should be “in accordance with the principles” of the Directive.  

It is thus of grave concern that the EIA for the project, as approved fit for purpose by IFC and EBRD staff, falls far short of compliance with the Directive. As a result, it may be argued that the project not only fails to comply with its own legal regime, as established under the Host Government Agreements, but also places Turkey in potential breach of its accession obligations, by moving Turkey away from its undertaking to the European Commission to implement the EIA Directive (see chapter 2 – Legal Framework).

Detailed analysis of the EIA for the project reveals 9 major breaches of the Directive – all of which would constitute potential violation of host country law as defined by the project agreements. They are set out below:

### 6.5.1 Construction of the BTC pipeline began before an EIA was approved

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>Article 2(1)</td>
<td>“Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.”</td>
<td>1. Construction began prior to approval of EIA by Turkish Government</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>

26 HGA, Appendix 5, Section 3.10.
6.5.1.1 Construction began prior to approval of EIA by Turkish Government

The Directive requires that an EIA is approved by the competent environmental authority prior to a consent being granted. In the case of the BTC pipeline, the EIA was made available in June 2002, with a 60-day comment period. The EIA was approved by the Ministry of the Environment in October 2002. However, construction officially started on the Turkish section of the project on 19 June 2002 – that is, four months before approval and before the comment period was over. Indeed, at the time, the EIA had only just been disclosed to the public for the 60-day consultation period. A ceremony to mark the start of construction, attended by deputy prime minister Mesut Yılmaz, also took place on 26th September, again before official approval of the EIA.

6.5.2 Inadequate Assessment of impacts on Flora and Fauna

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<thead>
<tr>
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<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>Article 3, bullet 1 Identify direct and indirect impacts on flora and fauna</td>
<td>“The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of the project on the following factors... human beings, flora and fauna”</td>
<td>1. EIA was undertaken over less than a year and fieldwork was limited. 2. Major sites were not surveyed. 3. Time spent in individual sites was inadequate to obtain necessary baseline information</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>

There is little or no baseline data already published for many of the areas through which the pipeline would pass. Detailed field work, over the full range of seasons, is thus required to identify and assess the full range of impacts on flora and fauna. Yet the EIA was undertaken over less than a year and fieldwork was limited: indeed, the environmental baseline contractor for the project has admitted that all sites were only surveyed once for species present, in the summer, and therefore have not been examined for species present in other seasons, and that that some bird species and plant species have not yet been examined, but

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29. Agence France Presse, 26/9/02, ‘Turkey starts work on east-west oil pipeline’
will be surveyed during construction. The bird survey, for example, was undertaken during one season and over just a couple of weeks. In the case of the Ulas and Alacorak lakes area – currently being considered for listing as an Internationally Important Wetland under the Ramsar Convention - the survey team spent just one day on site. The EIA acknowledges its lack of knowledge on the impacts of the pipeline on birdlife: “The degree to which the lakes are used as a staging point by migratory waders and waterfowl is as yet unknown”. Similarly, baseline data are lacking for a range of other species, including on the nesting patterns of the Green Turtle, which are potentially affected by the oil terminal at Yumurtalik.

(For further details, see sections 6.6.3 and 6.6.4, below)

6.5.3 Inadequate and flawed consultation with affected villagers

(See section 3.7.1 of chapter 3, Consultation, for details)

6.5.4 Failure to address trans-boundary impacts of tanker traffic and to inform affected Member States

(See section 3.7.2 of chapter 2, Consultation, for details)

6.5.5 Failure to consult with authorities and public in affected Member States

(See section 3.7.3 of chapter 2, Consultation, for details)

6.5.6 Failure to consult on trans-boundary impacts

(See section 3.7.4 of chapter 2, Consultation, for details)

6.5.7 Failure to address indirect impacts on climate

<table>
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<tr>
<th>Relevant paragraph and</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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6. ENVIRONMENTAL ASSESSMENT

The EIA assesses the climate impacts of greenhouse gas emissions as a result of the day-to-day operations of the pipeline. However, it contains no study of the indirect impact of the project on climate, through the consumption of the oil it carries. This is a major omission, since the project is specifically intended to bring oil from the Caspian for consumption in Europe and the US. It has been calculated that the oil exported by BTC will add 160 million tonnes of CO2 to the atmosphere over the 40 year life-span of the project. The failure to assess the climatic impacts of these emissions is a clear breach of Article 3 of the Directive. It is also a failure to comply with recommendations in the World Bank’s Handbook on Environmental Assessment.

6.5.8 Failure to Reduce or Remedy Risk of Oil Spills at Ceyhan and of Decommissioning

33 See Greg Muttitt and James Marriott, Some Common Concerns (pub. PLATFORM et al, 2002), p.159
34 The World Bank acknowledges that projects such as BTC are relevant to climate change: “Numerous development activities, such as the following, may influence climate change and ozone depletion: energy projects involving increased production, transportation, and consumption of fossil fuels;…” [World Bank, Environmental Assessment Sourcebook, Chapter 2, paragraph 18] The World Bank makes some recommendations on how to address the climate change issue: “Actions that can reduce the risk associated with global change, include: scaling down and/or delaying long-lived projects in favor of shorter-lived ones until future regional climatic change can be more accurately predicted.” [World Bank, Environmental Assessment Sourcebook, Chapter 2, paragraph 24] Or another suggestion: “Options to reduce a project’s contribution to global change without adversely affecting the cost or success of the project should be evaluated.” [World Bank, Environmental Assessment Sourcebook, Chapter 2, paragraph 26] “The Bank will not finance projects that contravene any international environmental agreement to which the member country concerned is a party.” [World Bank, Environmental Assessment Sourcebook, Update no. 10, March 1996, ‘International agreements on environment and natural resources: relevance and application in environmental assessment’, p.2]
### 6. ENVIRONMENTAL ASSESSMENT

<table>
<thead>
<tr>
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<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</thead>
</table>
| Article 5 (3), bullet 2               | “The information to be provided by the developer in accordance with paragraph 1 shall include at least . . . a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects . . .” | 1. Inadequate measures to mitigate oil spills  
2. Inadequate measures to mitigate impacts of decommissioning | Partial compliance |

### A. Oil Spills

The oil spill response plans outlined in the EIA, as approved by the Government of Turkey, are predicated on a maximum spillage of 70,000 barrels or 10,000 tonnes, far below the potential spillage if a supertanker (load: 300,000 tonnes) was involved in a serious accident. The EIA does not consider the risks of spillage outside the immediate area of the terminal. For reference, 10,000 tonnes is approximately the size of the Erika spill off-France. Exxon Valdez (approx 40,000 tones), Braer (70,000 plus) and Sea Empress (84,000) were all much larger and each of these vessels was much smaller (except the Sea Empress) than this terminal will be accommodating.

### B. Decommissioning

The pipeline is envisaged to be operational for 40 years, by which time it will be heavily contaminated with a range of toxic residues. However, no decommissioning plan is set out in the EIA, and the general impression conveyed by both the EIA and its compilers is that decommissioning is not likely to proceed. There is therefore no mitigation plan in operation to prevent the gradual leakage of highly toxic residues into the local ecosystem.

### 6.5.9 Inadequate Assessment of Alternatives

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<tr>
<td>Article 5 (3), bullet 4</td>
<td>“The information to be provided by the developer in accordance with . . .”</td>
<td>…</td>
<td>Non compliance</td>
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35 Dr. Coskun Yurteri, head of ENVY environmental contractors, interview with Baku-Ceyhan Campaign, Ankara, 18 March 2003
| Project Alternatives | Paragraph 1 shall include at least . . . an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.” |

(See chapter 7, Assessment of project alternatives).
6.6 IFC policy OP 4.01 Environmental assessment

6.6.1 Independence of EA experts questioned

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<thead>
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</thead>
<tbody>
<tr>
<td>Article 4 Independence of EA experts</td>
<td>“For Category A projects the project sponsor retains independent EA experts not affiliated with the project to carry out the EA.”</td>
<td>1. EA contractors not independent (by World Bank definition) 2. No independent advisers appointed</td>
<td>Possible Non compliance</td>
</tr>
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</table>

6.6.1.1 EA contractors not independent (by World Bank definition)

The International Finance Corporation (IFC) requires that for it to finance a Category A project (which BTC is):

“The project sponsor retains independent EA experts not affiliated with the project to carry out the EA.”36

This point is clarified in a footnote:

“The project sponsor ensures that when individuals or entities are engaged to carry out EA activities, any conflict of interest is avoided. For example, when an independent EA is required, it is not carried out by the consultants hired to prepare the engineering design.”37

It is thus of concern that ERM, the consultancy that carried out the EIA for Turkey, is part of the same commercial group that has subsequently bid for contracts that arise from the recommendations in the EIA or from other work undertaken in relation to the BTC project. For example, ERM India has a monitoring contract on the Turkish section and ERM bid for the community investment programme contract in Georgia. It is also of concern that, in Azerbaijan, where ERM also undertook the EIA, BP accounts for more than 50% of ERM’s income.38

36 International Finance Corporation, OP 4.01, Environmental Assessment, paragraph 4
37 International Finance Corporation, OP 4.01, Environmental Assessment, paragraph 4, footnote 6
38 Interview with ERM, Baku, December 2001.
6.6.1.2 No independent advisers appointed

The IFC further requires that:

“For Category A projects that are highly risky or contentious or that involve serious and multidimensional environmental concerns, the project sponsor should normally also engage an advisory panel of independent, internationally recognized environmental specialists to advise on all aspects of the project relevant to the EA.” 39

Again, this is explained in a footnote:

“The panel … advises the project sponsor specifically on the following aspects: (a) the terms of reference for the EA, (b) key issues and methods for preparing the EA, (c) recommendations and findings of the EA, (d) implementation of the EA’s recommendations, and (e) development of environmental management capacity.” 40

No specialists were employed during the EIA process. (The Caspian Development Advisory Panel was only employed after completion of the EIA, and assessment of the EIA was not one of its remits).

6.6.2 HGA used to override normal procedures for Scoping study

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Para 12 “For Category A projects, the project sponsor consults these groups at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized, and (b) once a draft EA report is prepared. In addition, the project sponsor consults with such groups throughout”</td>
<td>1. HGA invoked to curtail consultation period on scoping study from 60 days to 30 days.</td>
<td>Partial compliance</td>
<td></td>
</tr>
</tbody>
</table>

39 International Finance Corporation, OP 4.01, Environmental Assessment, paragraph 4
40 International Finance Corporation, OP 4.01, Environmental Assessment, paragraph 4, footnote 7
6. ENVIRONMENTAL ASSESSMENT

6.6.2.1 HGA invoked to curtail consultation period on scoping study from 60 days to 30 days

BTC Co. undertook the two required consultation processes. However, as documented above (see section 6.4), the Host Government Agreement was invoked to curtail the timing of the first scoping consultation from 60 days to 30 days in order that the project remained on schedule.

Other violations of the consultation process are documented in chapter 3, Consultation.

6.6.3 Failure to complete adequate baseline study

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP 4.01, Annex B</td>
<td>“describe relevant physical, biological, and socioeconomic conditions”</td>
<td>1. Data collection is incomplete 2. Insufficient data for accurate representation of species 3. Failure to examine species during different seasons</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>

The International Finance Corporation (IFC) requires that for IFC to finance a project, the project Environmental Assessment:

“describes relevant physical, biological, and socioeconomic conditions”[41]

The details of this requirement are explained more in the World Bank’s Environmental Assessment Sourcebook, which is referenced in OP 4.01 as providing more relevant information and guidance on the IFC requirements:

“(a) Physical environment: geology; topography; soils; climate and meteorology; ambient air quality; surface and ground-water hydrology; coastal and oceanic parameters; existing sources of air emissions; existing water pollution discharges; and receiving water quality.

(b) Biological environment: flora; fauna; rare or endangered species; sensitive habitats, including parks or preserves, significant natural sites, etc.; species of commercial importance; and species with potential to become nuisances, vectors or dangerous.

(c) Socio-cultural environment (include both present and projected where appropriate): population; land use; planned development activities; community structure; employment; distribution of income, goods and services; recreation; public health; cultural properties; tribal peoples; and customs, aspirations and attitudes.

Baseline conditions and data are considered in Chapter 5 of the Environmental Impact Assessment (EIA) for the Turkey section of the Baku-Tbilisi-Ceyhan (BTC) pipeline.

6.6.3.1 Incomplete data collection

BTC’s biological baseline data is entirely insufficient and thus fails comprehensively to meet the requirements of the World Bank. The vast majority of the route was not studied; instead BTC just focussed on a few sites (see table below), and assumed that ‘similar’ habitats contained the same ecology – a very dubious assumption. All data was only acquired during one season, making it necessarily incomplete, and directly in breach of World Bank recommendations.

6.6.3.2 Insufficient data for accurate representation

The World Bank Sourcebook cautions that borrowers / project sponsors should avoid pitfalls in the baseline data collection, including:

“sampling the correct parameters but timing the observations incorrectly or making an insufficient number of observations for an acceptable representation of the phenomena being studied”

BTC admits that “Turkey is relatively under-surveyed”. It is thus subject to the World Bank guidance that:

“Where there is a lack of information, EA reports should provide baseline data on the biodiversity in the project area and its area of influence”

According to the BTC EIA, biological baseline studies were undertaken in three stages:

<table>
<thead>
<tr>
<th>Stage</th>
<th>When undertaken</th>
<th>Output</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1 Habitat</td>
<td>June and</td>
<td>“The Phase 1 Habitat Survey provided a basic record of the extent and</td>
</tr>
<tr>
<td>Survey</td>
<td>September 2000</td>
<td>distribution of habitats along the route and generated baseline data</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(including the types of habitat present, their extent, their key</td>
</tr>
<tr>
<td></td>
<td></td>
<td>components)</td>
</tr>
</tbody>
</table>

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42 World Bank, Environmental Assessment Sourcebook, Chapter 1, Annex 1-3, paragraph 8
43 World Bank, Environmental Assessment Sourcebook, Chapter 1, paragraph 22 (b)
44 BTC EIA, Turkey, October 2002, section 5.7.1.2 – ‘Phase 2 Habitat Survey’
45 World Bank, Environmental Assessment Sourcebook, Update no. 20, October 1997, ‘Biodiversity and environmental assessment’, p.5
and lists of associated flora and fauna species)"

| Phase 2 Habitat Survey | July 2001 | “23 localities were identified as being representative of the major habitats and their regional variation” of:
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>“…detailed ecological descriptions of the main habitats along the route and regional variations in these habitats;”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“…any significant differences between these habitats and similar ones found elsewhere in Turkey;”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“…their biological diversity;”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“…whether these habitats are inviolate.”</td>
</tr>
</tbody>
</table>

Further Phase 2 Habitat Surveys | Summer 2002 | Surveys of areas affected by re-routes (ie not examined in previous studies) |

**The majority of the route was thus not surveyed by BTC.** Instead, the survey teams selected out of the vastness and diversity of Turkey’s “unsurveyed” ecosystem a mere 23 sites supposedly “representative” of the whole region. Thus the project adopted an approach of quick approximation: noting the general types of habitats, then looking at some examples of these, assuming those to be representative.

It is very difficult to see how, for a country as biodiverse yet under-surveyed as Turkey, this approach can give an adequate picture. Local experts report that it is still possible to Turkey to discover new species – thus it is almost certain that by reducing the whole 1,000 kilometres to 23 small areas of study, important species will be missed.

On some animals, extra studies were undertaken. However, for mammals (including the endangered Brown Bear), these were done without any field observations, simply by desk study. For birds, a number of observation dates are listed in the impacts tables, but each habitat is recorded as surveyed only on a single day – ignoring any possible movements of the birds:

- In the Posof Wildlife Protection Area, birds were surveyed on 29/06/01, at Cotsuyu River, Ardahan, on 28/06/01, at Kuru Lake, Sivas (a potential RAMSAR site), on 26/5/01, and at the Zamanti River Plateau, Kayseri, on 16/5/01.

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46 BTC EIA, Turkey, October 2002, section 5.7.1.1 – ‘Phase 1 Habitat Survey’
47 BTC EIA, Turkey, October 2002, section 5.7.1.2 – ‘Phase 2 Habitat Survey’
48 BTC EIA, Turkey, October 2002, section 5.7.1.2 – ‘Phase 2 Habitat Survey’
49 BTC EIA, Turkey, October 2002, section 5.7.1.3 – ‘Other Surveys’
50 BTC EIA, Turkey, October 2002, volume II, supplement I – ‘Environmental and social impact tables’, p.6-9
51 BTC EIA, Turkey, October 2002, volume II, supplement I – ‘Environmental and social impact tables’, p.6-72
52 BTC EIA, Turkey, October 2002, volume II, supplement I – ‘Environmental and social impact tables’, p.6-518
53 BTC EIA, Turkey, October 2002, volume II, supplement I – ‘Environmental and social impact tables’, p.6-608
- It appears the Alacorak and Ulas Lakes, Sivas (a potential RAMSAR site) was only surveyed at all on one day, as the EIA somewhat vaguely states that “The three small lakes appear to be permanently wet, while the largest lake is at best seasonal having been dry for a long time at the point of survey on 22.05.2001”.

BP has refused to make these studies available outside of BOTAS’ office in Ankara: for those who are unable to travel to BOTAS’s office, it is impossible to assess them fully.

The EIA admits that:

“it is acknowledged that additional data collection (through site-specific surveys, analysis of monitoring records, etc) will be required as an ongoing activity throughout the project life cycle”.

although it claims that

“the collection and evaluation of baseline data is sufficiently robust to enable significant environment and social impacts to be predicted”

This latter claim is not substantiated.

6.6.3.3 Failure to examine species during different seasons

The importance of examining habitats in more than one season is emphasised by the World Bank:

“The Task Manager and implementing agency should allocate sufficient time to account for seasonal variations or longer-term trends. ... Many projects have long lead times, and if ecological impacts are judged important (from screening), then in “data-poor” situations work can begin early enough to collect information for the main seasons. Likewise, detailed sampling may be required to assess the variability of inherently diverse and patchy habitats such as coral reefs. This variability may be critical for the overall sustainability of the affected area, especially for rare or endangered species.”

Yet not only was the flora and fauna survey completely inadequate to capture the whole route, even those areas it looked at were covered only once, in the summer, in the month of July (see table above). Again, it is very difficult to see how this could give any degree of realistic picture of the flora and fauna present.

6.6.4 Insufficient Analysis of Species

<table>
<thead>
<tr>
<th>Relevant paragraph and</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
</tr>
</thead>
</table>

54 BTC EIA, Turkey, October 2002, volume II, supplement I – ‘Environmental and social impact tables’, p.6-555
55 BTC EIA, Turkey, October 2002, section 5.1.1.1 – ‘The baseline - Objectives’
56 World Bank, Environmental Assessment Sourcebook, Update no. 20, October 1997, ‘Biodiversity and environmental assessment’, p.5
### 6. ENVIRONMENTAL ASSESSMENT

#### 6.6.4.1 No assessment beyond mere presence of species

Various aspects of habitats and ecosystems are required by the World Bank to be assessed. The BTC EIA looks at nothing beyond the mere presence of a species – even for endangered species where data is acknowledged to be deficient, there has not been a study of population levels.

The World Bank Sourcebook states that:

> “The functions and services of natural habitats and ecosystems should be systematically assessed and evaluated, and the ecological, social, and economic value of such functions quantified as part of the cost/benefit analysis of programs and projects.”

The World Bank Sourcebook also requires that:

> “Relevant data should be generated on:

- The status of biodiversity and natural resources, uses and threats…
- Ecosystem functions and values, including extent to which environmental thresholds or critical levels are being approached”

The World Bank lists the following as necessary biological aspects of a baseline study:

> “Ecosystem/habitat level

- Distribution, richness and diversity of habitats and ecosystems
- Patchiness, connectivity/fragmentation of habitat(s)/ecosystem(s); corridors; fragile habitats and ecosystems
- Carrying capacity and community dynamics

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57 World Bank, Environmental Assessment Sourcebook, Update no. 20, October 1997, ‘Biodiversity and environmental assessment’, p.1
Population/species level

- Population structure and dynamics, including harvesting pressure(s), abundance/composition of key species
- Existence of endemic, rare, vulnerable, and/or endangered species

None of these aspects are covered in the EIA, beyond the simple presence or not of a species. Although BP has refused to make its data available for inspection, the EIA itself notes in several cases that it does not have any population data on certain species - even where it has identified them as rare species. For example, the EIA notes that the Eurasian Brown Bear, Wild Goat, Chamois and Roe Deer are endangered, but simply states “Population estimates are unknown”. For an endangered species, one would have expected a first priority to be to assess the population levels; indeed “abundance / rarity” is listed as the primary criterion in determining their importance – yet this information is in several cases unknown to BTC. Similarly, for the Caucasian Black Grouse, a globally-threatened species, the EIA states that “Reliable population estimates are lacking”.

The attempt to assess the impact of the pipeline on rare species whose rarity is not known is a clear illustration of the inadequacy of the process.

### 6.6.5 Failure to present original data

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP 4.01, Annex B clause d)</td>
<td>“Unpublished documents used in the assessment may not be readily available and should also be assembled in an appendix”</td>
<td>1. Original data not presented in EIA, and withheld when inspection requested</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>

#### 6.6.5.1 Original data not presented in EIA, and withheld when inspection requested

BTC directly breaches World Bank recommendations by not publishing original data in the EIA, and has actually refused to supply it when requested.

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60 BTC EIA, Turkey, October 2002, section 5.7.2.4 – ‘Erzincan region’

61 BTC EIA, Turkey, October 2002, section 5.7.1.2 – ‘Phase 2 Habitat Survey’

62 BTC EIA, Turkey, October 2002, section 5.7.3 – ‘Other important conservation sites’

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24 6. ENVIRONMENTAL ASSESSMENT
However, the EIA does not include detailed or original data. The character of the biological baseline in the EIA rather just picks out certain species considered important. BP has twice refused to make available documents referred to in the EIA.

### 6.6.6 Accuracy, reliability, methodology and gaps not indicated

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP 4.01, Annex B</td>
<td>“indicate the accuracy, reliability, and sources of the data.”</td>
<td>1. No assessment of accuracy and reliability of sources in data</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>

#### 6.6.6.1 No assessment of accuracy and reliability of sources in data

IFC standards require that the Environmental Assessment:

“indicates the accuracy, reliability, and sources of the data.”  

There is no assessment of accuracy or reliability, and sources are mostly not declared (data are simply marked as acquired by “desk study”).

The World Bank Sourcebook specifies that:

“Sources of information should be included and, where primary data have been collected, methods of sampling, measurement, and analyses should be briefly outlined.”

The BTC EIA mostly does not give details of methodology. Two mentions of it cross-refer to each other for further details, neither in fact giving them.

Only for one part of the biological baseline study (the Phase 2 Habitats Survey) is any methodological information given, and even then it is partial and incomplete – it does not specify, for example, the size of quadrats, nor the range of experts employed to assess different types of flora and fauna.

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63 International Finance Corporation, OP 4.01, Environmental Assessment, Annex B – ‘Content of an Environmental Assessment Report for a Category A Project’, clause d)

64 World Bank, Environmental Assessment Sourcebook, Update no. 20, October 1997, ‘Biodiversity and environmental assessment’, p.6

65 In the introduction of the baseline chapter, under the heading ‘Methodology’, the EIA states: A detailed outline of the methodology and assessment methods adopted for environmental and socio-economic baseline data collection is provided in Section 3 [BTC EIA, Turkey, October 2002, section 5.1.1.2 – ‘The baseline – Methodology’]. Section 3, the chapter on methodology generally, states under the heading ‘Baseline data collection’ that: *The methods used for baseline data collection for each environmental aspect are described in the respective ‘baseline’ sections (Sections 5, 10 and 11)* [BTC EIA, Turkey, October 2002, section 3.6 – ‘Approach and methodology - Baseline data collection’]
6. ENVIRONMENTAL ASSESSMENT

6.6.7 Failure to Assess Sustainability of Project

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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</thead>
<tbody>
<tr>
<td>OP 4.01, para 1</td>
<td><em>IFC requires environmental assessment (EA) of projects proposed for IFC financing to help ensure that they are environmentally sound and sustainable</em></td>
<td>1. No assessment of sustainability of project or its contribution to sustainable development</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>

6.6.7.1 No assessment of sustainability of project or its contribution to sustainable development

IFC Operational Policy OP 4.01 states that:

“IFC requires environmental assessment (EA) of projects proposed for IFC financing to help ensure that they are environmentally sound and sustainable” 66

The meaning of this is explained in relation to a similar wording of the corresponding World Bank policy:

“The World Bank’s OD on environmental assessment states that sustainability is a requirement that Bank projects must meet. ‘The purpose of EA is to ensure that the development options under consideration are environmentally sound and sustainable’ … Note that this language does not treat sustainability as one value to be traded off against others in an economic analysis. Rather it states that the "development options under consideration", i.e., all the options to be compared must be sustainable, so whatever is not sustainable is not even to be included among the options to be ranked economically.” 67

The World Bank’s Environmental Assessment Sourcebook goes on to define what is meant by sustainability, as required in the Operational Policy, in the case of non-renewable inputs (oil, in the case of BTC):

“The rule is to deplete at a rate equal to the rate of development of renewable substitutes. Thus extractive projects based on non-renewable must be paired with a project that develops the renewable substitute. Net receipts of nonrenewable exploitation are divided into two components (income and a capital set-aside) such that the capital set-aside, when invested in a renewable substitute each year will, by the time the nonrenewable is depleted, have grown to a stock size whose

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66 International Finance Corporation, OP 4.01, Environmental Assessment, paragraph 1
67 World Bank, Environmental Assessment Sourcebook, Chapter 1, Annex1-5, paragraph 1
sustainable yield is equal to the income component that was being consumed all along.\(^6\)

No consideration is given to this in the EIA.

\(^6\) World Bank, Environmental Assessment Sourcebook, Chapter 1, Annex1-5, paragraph 8 (b)
6.7 **International best practice with regard to pipeline projects in seismic areas**

As part of the current compliance review, a comment on the EIA’s treatment of seismic risks was commissioned from geological consultant TH Fairs, who works as a consultant within the petroleum industry.

His assessment is reproduced below:

**Assessment of BTC EIA Report with specific regard to Earthquakes**

T H Fairs (Independent Geological Consultant, Fellow Geol. Soc. of London and Petroleum Exploration Soc. of GB)

20 August 2003

The following assessment was carried out at the request of Greg Muttitt on behalf of PLATFORM, for an independent review of the BTC EIA report, with specific regard to the issue of environmental risks associated with earthquakes across the Turkish section of the BTC pipeline.

To give some background of my qualifications and previous experience, I am an independent consultant geologist with over 22 years working in the international petroleum industry. Although I have spent most of my time in the upstream part of the oil business, nevertheless I have had many years experience working closely with teams that were planning production and pipeline facilities in different parts of the world. This, I believe, places me in a very good position to comment on geological issues and their impact on oil industry activity, such as the routing of an oil pipeline. I have attempted throughout to keep to my remit of giving an impartial opinion of the BTC EIA report, and offering my professional advice in terms of recommendations for further investigation.

I have also as part of this assessment made requests and recommendations for further information or data, as the aforementioned report does not furnish all the information/data that I needed to make a well-informed judgement of the issues surrounding the BTC pipeline.

The following assessment is broken up into four (4) sections based on issues that I identified with respect to the seismic monitoring, geohazard work, fault investigation programme and environmental risk assessment.

1) **Seismic Monitoring**: From a detailed examination of relevant sections of the BTC EIA report, with respect to monitoring of seismic activity along the Turkish section of the pipeline route, I was unable to find any information about current seismic monitoring, or for the planned provision of such for the future. I would have expected it a minimum requirement (and to comply with the standards in the World Bank Environmental Assessment Sourcebook) for the building of this pipeline through a seismically active region that monitoring stations were established along its route. I am aware that the Turkish government authorities have established a minimal amount of seismic monitoring stations through the country, but the risks involved with this pipeline should necessitate the establishment of further facilities along the route.
I recommend that details of the current and future facilities should be supplied in the EIA, along with an explanation of how these relate to earthquake risk and the capability to predict seismic activity.

2) Geohazard Work: In Volume 2 Section 5.1.1.1. And 5.1.1.2 (Baseline Objectives) of the EIA, it is acknowledged that further work has to be carried out with specific respect to data collection (pp.5-49), but there are no details given as to what is planned for the future. These conclusions are (presumably) based on the findings of an investigation of geohazards that was carried out in May 2001 by an independent audit team, who were not identified in this part of the report. As neither the data from this report are given, nor the conclusions made, it is impossible to verify or validate the comments made as to the need for further work. Nevertheless, the fact that the report admits that further work is required is suggestive that the initial work was not detailed enough for meaningful conclusions.

I recommend that the report(s) of the independent geohazard audit team be made available, so that their data and findings can be scrutinised, along with details of future geohazard work (such as its nature, timing, location etc.). In addition, it would be very useful to know how this future planned work impacts the current understanding of geohazards with respect to the EIA.

3) Fault Investigation Programme: In Volume 2 Section 5.5.1.2 (pp.5-55) from the findings of a fault investigation programme (Oct.2001), it is stated that for relatively large movements occurring at depth along the faults responsible for the recent earthquakes (Erzincan 1992, Adana-Ceyhan 1998), no ruptures are observed at the surface. This statement raises an important question regarding the methodology of investigation and measurement of fault presence, relative displacement and activity carried out for this EIA. As no precise information is clearly apparent in the EIA as to the techniques of investigation of this programme, then one must assume that the presence of faults are based on more than surface expression, such as deep seismic surveys. Having said this, the report only shows aerial/ satellite images indicating surface expression of the major faults. But if these conclusions are made from surface expression alone, then one can deduce that there are more faults at depth, which can only be detected by seismic surveying?

This (somewhat confusing) situation clearly highlights the need for more information to be supplied in the EIA regarding the methodology of the fault investigation programme, as it is unclear what type of investigative work was carried out. In addition, this situation adds strength to the argument in 1) above, that the need for seismic monitoring and surveying is vital in this region, as to the prediction of potential earthquake locations.

4) Environmental Risk Assessment: In Volume 2 Section 8 (pp.8-6 to 8-9) there is a discussion of the determination of probable frequencies of spill events with regard to environmental risk assessment. The question is raised of where in the world is there another pipeline of this magnitude crossing a seismically active region, and what steps were taken to mitigate risks of spill events. It is argued that quantitative historical data is required to develop a spill frequency benchmark, and that for this EIA, direct reference is made to pipeline failure leakage data compiled for 30 years performance statistics by CONCAWE (report 1/02). This would seem reasonable as CONCAWE are an oil industry body
researching and assembling data on natural hazards affecting oil and gas pipelines, except that their database is confined to Western Europe, where firstly there are no active seismic regions where pipelines traverse, and secondly this report lacks any data from Turkey. These two facts alone raise an important question about how relevant these data are as a benchmark for the BTC pipeline, and why no other alternative data source was consulted. In the BTC EIA Table 8.1 shows that natural hazards (earthquakes) represent a small percentage (4%) of total spill events, but this is clearly not relevant to the situation in Turkey. It is even stated “As the CONCAWE data is derived from Western European experience, some of it is not fully representative of the hazards and experience in other geographical settings…and requires judicious adjustments of the data.”

For an environment risk assessment of a project of this magnitude with its enormous consequential repercussions, I find this approach inadequate.

In conclusion, I find the BTC EIA lacking in data to substantiate the conclusions made therein, and as a first step, I would recommend and request that the original data be made available so that I (and others) can make a more well informed judgement. Having said this, it would appear that there are significant omissions in the approach of this assessment that I would consider fundamental to industry convention and practice. Here I am referring to the seismic surveying of the pipeline route, along with the establishment of seismic monitoring facilities. The database used for the environmental risk assessment is clearly not relevant to the project, and should be readdressed.”
7. Lack of assessment of alternatives to the BTC project

Evaluation of Environmental Impact Assessment against World Bank standards

7.0 Contents

7.1 Summary
7.2 Introduction
7.3 IFC policy OP 4.01 Environmental Assessment
   7.3.1.1 ‘Without project’ situation inadequately considered
   7.3.1.2 Alternative strategic routes not seriously considered
   7.3.1.3 Failure to properly consult on project alternatives
   7.3.1.4 Lack of systematic approach to alternatives
7.1 Summary

Both the IFC and EBRD require that the EIA assess alternatives to the project, including the “without project” option.

This review finds:

• At least 8 partial or total violations of IFC Operational Policy OP 4.01 (Environmental Assessment) on assessment of alternatives.

Specifically:

• The “Without project” option was not seriously considered, with many alternatives not considered at all, and those that were, only in an unbalanced way and with very limited scope;
• Alternative strategic routes were not seriously considered;
• There was a clear failure to properly consult on project alternatives;
• A systematic approach to assessment of alternatives was lacking.
7.2 Introduction

The International Finance Corporation (IFC) states in Operational Policy OP 4.01 (Environmental Assessment) that for it to finance a project, IFC requires that the project:

“systematically compares feasible alternatives to the proposed project site technology, design, and operation – including the ‘without project’ situation – in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs their suitability under local conditions; and their institutional, training and monitoring requirements”.1

OP 4.01 references the World Bank’s Environmental Assessment Sourcebook and its updates as providing more relevant information and guidance, which further explains these IFC requirements. One particular update to the sourcebook, published in December 1996, specifically focuses on the subject of analysis of alternatives.2

The World Bank emphasises the importance of this exercise:

“A thorough, unbiased and transparent assessment of investment alternatives from an environmental and social perspective (as well as a technical and economic standpoint) is one of the most important contributions EA can make to improving decision-making. without disrupting project preparation in a manner that is so time-consuming and expensive as to be impractical.”3

The Environmental Impact Assessment (EIA) for the Turkey section of the Baku-Tbilisi-Ceyhan pipeline (BTC) deals with project alternatives in its Chapter 2. This chapter examines the compliance of this treatment with IFC policy OP 4.01, and details as set out in the World Bank Environmental Assessment Sourcebook. It looks at the EIA’s assessment first of the ‘without project alternative’, then of alternatives at the strategic level (such as pipelines to alternative destinations). It goes on to examine consultation on alternatives by BTC Co., and finally assesses whether the EIA’s treatment of alternatives was systematic, as required by IFC – on this last point, it assesses the approach against recommendations in the World Bank Sourcebook.

It should be noted that this chapter should not be taken as advocating any of the particular project alternatives it refers to. Indeed it is not the role of this review to so. Where alternatives are considered, including their apparent benefits against BTC, this is merely to assess the extent to which the EIA considered options that were prima facie feasible or beneficial, or whether the EIA sought rather just to justify a pre-judged conclusion that BTC was the preferred option.

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1 International Finance Corporation, OP 4.01, Environmental Assessment, Annex B – ‘Content of an Environmental Assessment Report for a Category A Project’, clause f)
7.3 IFC policy OP 4.01 Environmental Assessment

IFC policy OP 4.01 requires the assessment of project alternatives in an EIA. The details of how this should be achieved effectively, and on what is meant by the requirement, are set out in the World Bank’s Environmental Assessment Sourcebook, and updates to it. These are considered below.

7.3.1 ‘Without project’ situation inadequately considered

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
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<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OP 4.01, Annex B, clause f</td>
<td>“[requires that the project] systematically compares feasible alternatives to the proposed project site technology, design, and operation – including the ‘without project’ situation”</td>
<td>1. Only considers ‘without ACG oilfields’ scenario, not ‘with ACG, without BTC’</td>
<td>Partial compliance</td>
</tr>
<tr>
<td>Compare with ‘without project’ situation</td>
<td></td>
<td>2. Considers only economic impacts of not developing ACG, not environmental or social, and considers only negative impacts of the no-development option, and no positive ones</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>3. Does not consider the alternative of not building BTC and instead refining in Azerbaijan</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>

7.3.1.1 Only considers ‘without ACG oilfields’ scenario, not ‘with ACG, without BTC’

The EIA states that BTC “is part of the wider development” of the ACG fields. It then asserts, without justification or analysis, that “If the BTC Project were not to be realised … the development of the ACG oil fields in the Caspian Sea would not be viable”.4

The option of refining the ACG oil in Azerbaijan, for both domestic use and export of the refined products, is nowhere considered – even as part of the solution to the question of how to use ACG oil (perhaps combined with some export). (See section 7.3.1.3, below).

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4 BTC EIA, Turkey, October 2002, section 2.2.2 – ‘The no-development option’
7.3.1.2 Considers only economic impacts of not developing ACG

The BTC EIA rejects immediately the scenario of not developing the ACG fields, due to negative economic impacts on Azerbaijan. There is no consideration of non-economic impacts (such as environmental or social), nor even substantive examination of economic impacts. Nor is there consideration of how or when it would be best for Azerbaijan to develop ACG. There might, for example, be political advantages to a later development, once institutional capacity is more developed, or economic advantages to a slower or more phased developed, to bring more sustained revenues.

Furthermore, there would be obvious environmental advantages to not developing ACG. The 5.3 billion barrels of oil extracted from ACG would, once burnt, contribute about 3 billion tonnes of carbon dioxide to the Earth’s atmosphere. Meanwhile, the biggest political backer of the BTC pipeline, and one of its major beneficiaries, is the USA. It is expected that US carbon dioxide emissions will be 30 per cent above 1990 levels by 2012, instead of 7 per cent below as agreed in the Kyoto Protocol. US per capita emissions are twice those of the EU. Development of ACG and BTC would effectively be supporting the energy profligacy of the US while it remains outside the Kyoto Protocol. While the external costs and benefits of oil developments are many and complex, their very significant impact on climate change, the greatest environmental threat facing the planet, must at least be considered in relation to the economics benefits – something the EIA for BTC has failed to do. (See also section 6.4.7 of chapter 6, Environmental Assessment).

The question of alternatives is addressed only in slightly more detail in the ESIA for the ACG field development itself – although this is not referenced in the BTC EIA as helping justify the rejection of the no-development option.

In that document, it is stated that “The primary objective of Phase 1 of the ACG Full Field Development (FFD) project is to produce and deliver to the market the recoverable reserves in the central part of the Azeri Field”. This however is less an ‘objective’ than a proposed answer to achieve an objective, in the sense of the World Bank / IFC’s requirement that “Alternatives that will meet the objective should be identified with as much freedom from limiting conditions as possible”. A more open objective might have allowed a number of possible solutions; this as objective presupposes the solution.
The ACG EIA’s consideration of the no-development option\textsuperscript{10} dwells almost exclusively on economic aspects: less than 10\% of the text – a mere 46 words – considers non-economic impacts of development or non-development of the fields.

One of these non-economic issues seems spurious – “specific environmental benefits accruing from the project such as the opportunity to provide ‘cleaner’ fuels to the market (replacing ‘dirtier’ fuels, e.g., wood)”\textsuperscript{11} – as it seems to suggest that the ACG oil is destined for the Azerbaijan market rather than export [Note that the alternative of refining within Azerbaijan would, in contrast, have delivered this objective]. The others all relate to “additionality” – ie voluntary add-on social investment which is not integral to the project.

Furthermore, the ACG EIA only lists negative impacts of the no-development option. A balanced and more objective assessment would consider both positive and negative aspects of the various alternatives; instead, this reads much more as a justification of a pre-judged conclusion.

In no way can the project be judged to have considered the ‘without project situation’ \textit{systematically}, as would be required by the IFC.

The World Bank warns:

\begin{quote}
“\textit{Conducting a truly objective evaluation of the no-action alternative requires extra care, since various interest groups have historically used it to support positions for and against projects. Environmental groups that favor preservation over development have used it to highlight the negative impacts while downplaying project benefits. At the other extreme, advocates of development within the sector concerned tend to emphasize the economic benefits that will be foregone, using the no-action option as a vehicle for providing support for a project proposal.}”\textsuperscript{12}
\end{quote}

BTC seems to have fallen into the latter trap.

\textbf{7.3.1.3 Does not consider the alternative of not building BTC and instead refining in Azerbaijan}

The option of refining the ACG oil in Azerbaijan, for both domestic use and export of the refined products, is nowhere considered. It is not the role of this submission to analyse such alternatives in depth, nor to advocate them; however, it is noted that there is at least a \textit{prima facie} case that such a solution may have favourable economic, social and environmental impacts, compared to the BTC option.

Azerbaijan was the birthplace of the oil refining industry, and the centre of Soviet refining. Now, however, Azerbaijan’s refining industry is operating at only 40\% of its capacity, largely

\textsuperscript{10} Azeri, Chirag & Gunashli Full Field Development Phase 1 ESIA, February 2002, section 4.2 – ‘No-development option’

\textsuperscript{11} Azeri, Chirag & Gunashli Full Field Development Phase 1 ESIA, February 2002, section 4.2 – ‘No-development option’

due to lack of crude supply. NGOs and opposition parties in Azerbaijan claim that by focusing entirely on export of crude, Azerbaijan is losing an opportunity to benefit from adding value to the products. Meanwhile, there is very poor availability of oil products in Azerbaijan, and there has been a skills exodus from the country as the refining sector has collapsed.

As a result of limited crude deliveries to the refineries, Azerbaijan suffered a fuel crisis in the spring of 2000 and was forced to import crude from Iran in order to produce enough fuel oil to keep the country's thermal power plants working.

Also as a result of the focus on export of crude, Azerbaijan has been forced to import both crude for its own refineries, and oil products from neighbouring countries. Use of Azeri crude in Azeri refineries would have an obvious environmental advantage over the reliance on trade, as it would involve less transport of oil and products, and hence less risk of leakage and spills, as well as less energy used in the transport itself.

Thus, directing ACG crude toward processing in Azerbaijan’s refineries, would appear to, compared to export through BTC:

- provide more employment;
- provide more investment (in modernising the refineries);
- provide more government revenue and better balance of payments;
- build on Azerbaijan’s strong capacity and skill base in refining;
- have less environmental risk, due to less reliance on transport;
- provide Azerbaijan’s population with a more steady and reliable energy supply.

Given all these apparent advantages over crude export, it is odd that this alternative is considered nowhere in the EIA.

7.3.2 Alternative strategic routes not seriously considered

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<tr>
<td>OP 4.01, Annex B, clause f</td>
<td>“[requires that the project] systematically”</td>
<td>1. Fails to consider possible export routes to ports in Iran, Pakistan or</td>
<td>Non compliance</td>
</tr>
</tbody>
</table>

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15 NewsBase, 2006/00, ‘FSU refineries: Azerbaijan’s refineries’, By Heiko Pleines
Compare with alternative feasible routes | compares feasible alternatives to the proposed project site | China | 2. Rejects routes to Supsa (Georgia) or Novorossiysk (Russia), including combined with Bosphorus bypass, without giving justification | Partial compliance

| 7.3.2.1 Fails to consider possible export routes to ports in Iran, Pakistan or China |

Throughout the 1990s, there was extensive political and economic debate about the best route to export Azerbaijan’s oil. Six alternatives were discussed:

1) to Ceyhan in Turkey, via either Georgia, Armenia or Iran;
2) to the Iranian Persian Gulf port of Kharg Island via Iran, with the possibility of an oil swap in the initial phase to decrease costs;
3) to the Pakistani Indian Ocean port of Gwadar, via an undersea pipeline across the Caspian, then via Turkmenistan, Afghanistan and Pakistan;
4) to the Chinese market along the ‘Silk Road’ eastwards via a Caspian undersea pipeline, Turkmenistan, Uzbekistan and Tajikistan; and
5) substantially upgrading
   a) the Baku-Supsa, and / or
   b) the Baku-Novorossiysk pipelines and port terminals to enable them to carry larger volumes of oil. If this option were pursued, there could be a secondary (‘Bosphorus bypass’) pipeline on the other side of the Black Sea, involving some of the Ukraine, Romania, Bulgaria, Greece, Serbia, Montenegro or Croatia.

The BTC EIA’s consideration of routes at the macro level begins by saying,

“A pipeline option would enable Caspian ACG crude volumes to be exported from the land-locked Caspian Sea, to open market, without an incremental increase in volumes shipped through the Turkish Straits. Turkey was selected as the most suitable export destination, as it is the nearest country to Azerbaijan with access to the Mediterranean Sea, which provides the nearest open market point of delivery.”

Thus it immediately discounts, without serious consideration, the other options listed above.

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16 See Some Common Concerns, by Greg Muttitt and James Marriott, pub October 2002 by PLATFORM et al, chapter 3
17 BTC EIA, Turkey, October 2002, section 2.2.4 – ‘Regional routing options’
The route south through Iran (option 2) is generally agreed to be the cheapest and most economically attractive route. Although there are obvious political difficulties, the economic advantages should at least have justified serious consideration of this option. Furthermore, the World Bank Sourcebook is clear that alternatives assessment should consider all aspects of the various options, including environmental and social, as well as economic, political and technical feasibility.

That the Iran route was strongly argued for in the *Oil & Gas Journal*, which is published in the USA, suggests the political problems may not be as insurmountable as the BTC EIA suggests. Indeed, the Iranian national oil company is a partner in the Shah Deniz / South Caucasus Pipeline gas project, which is closely associated with BTC.

Furthermore, six of the 10 foreign investors participating in BTC have investments in Iran: BP, Statoil, Total, ENI, Itochu, Inpex. 54.7% of BTC Co is owned by companies with investments in Iran; a further 31.5% is owned by the two state oil companies of Azerbaijan and Turkey, neither of which have overseas investments at all, but both of which have other deals with Iran. Just 13.8% of BTC Co is owned by US companies which do not invest in Iran.

18 MR Farzanegan, ‘Iranian options most economically viable for exporting Caspian oil’, *Oil & Gas Journal*, 17 March 2003
19 BTC does consider the political difficulties of routing through Iran, but only in the context of a transit country en route to Ceyhan, not as a route to the Persian Gulf ports
21 BP opened an office in Tehran in early 1998, identifying Iran as particularly important for refined product and petrochemical operations. BP is bidding for a stake in the major South Pars gasfield, and is a 25% shareholder in the consortium building an LNG plant to process the South Pars gas. It is also shortlisted as a possible operator of the Ahwaz oil field. [Energy24, 5/12/00, ‘BP joins quest to secure interest in Iran field’; Ananova, 5/8/02, ‘BP and Reliance complete feasibility study for LNG project in Iran’; Asia Times, 27/2/03, ‘BP marches back into Iran’; AFP, 5/3/03, ‘Iran seeks investment for South Pars gas field’; Europe Intelligence Wire, 16/5/03, ‘BP and Total to manage Iranian oil field’]  
22 In 2000, Statoil entered four deals with Iran, concerning exploration rights in the Straits of Hormuz and the Iranian portion of the Oman Sea, the development of a gas-to-liquids technology program, the provision of aid in managing four crude-producing fields, and the possibility of being involved in the development of the Salman field. It is also the operator of phases 6, 7 and 8 of the South Pars gas field [WorldNews.com, 23/11/00, ‘NIOC and Statoil to explore and develop Iran's Gulf waters’; the Norway Post, 29/10/02]  
23 Total was the first the first Western oil company to begin operations in Iran in the 1990s, when it signed a contract to develop Sirri A and E offshore fields in 1995, and now the country is a key strategic priority for the company. In 1997, it joined a consortium with Petrobas of Malaysia and Russia's Gazprom to handle the second and third phase development of South Pars gas field, worth $ 2 bn. Shares in Dorood and Balal oil fields were also acquired in 1999 when taking over Elf. [IRNA, 15/11/00, ‘TotalFinaElf seeks to help Iran develop its hydrocarbon reserves’]  
24 ENI is the operator (with a 60% stake) of phases 4 and 5 (the largest foreign investment to date in Iran) of the South Pars gas field. It has a 38% stake in the Balal field, is operator of the Darkhuiwain and Darquain oil fields, and is carrying out a feasibility for a major gas pipeline from Iran to India, through Pakistan [IRNA, 24/11/00, ‘Iran to develop seven phases of South Pars gas field’; IRNA, 12/2/01, ‘ENI extends cooperation with TotalFinaElf for Iran's Balal field’; Dow Jones, 26/4/01, ‘ENI works on feasibility study for Iran-Pakistan-India gas pipeline’; Xinhua, 13/7/01, ‘Iran delighted about energy deals despite Iran-Libya Sanctions Act’; OGI, 8/11/02, ‘ENI achieves record flow rates at Iran's Darquain well’]  
25 The trading house arm of Itochu in 2001 co-signed an investment / trade deal involving advance payment for oil exports from Iran to Japan. A Japanese government official referred to the deal as "a de facto promotion measure" aimed at winning the right to develop and operate the Azadegan oil field in Iran, one of the largest in the world [Daily Yomiuri On-Line, 13/3/01, ‘Japan-Iran finance deal is part of a multisector agreement’]  
26 Inpex leads a consortium developing the major Azadegan oil field. It has a 5% stake in the Sorosh/Nowrooz oil field, and also participates in the South Pars gas project [The Yomuii Shimban, 20/9/02, ‘Japan makes deal with Iran and Qatar on natural gas fields’; Middle East Economic Digest, 21/1/03, ‘Japanese consortium takes stake in Iranian oil development’; AFP, 5/3/03, ‘Iran seeks investment for South Pars gas field’  
27 Turkey receives natural gas from Iran. Azerbaijan granted the National Iranian Oil Company a stake in the Shah Deniz gas field
although US companies have been lobbying hard for the US government to change its policy, ConocoPhillips being one of the most vociferous.  

The Pakistan and China alternatives are not considered either by the BTC EIA.

7.3.2.2 Rejects routes to Supsa (Georgia) or Novorossiyisk (Russia), including combined with Bosphorus bypass, without giving justification

The EIA does return to the Baku-Supsa and Baku-Novorossiyisk options, considering each either with or without a bypass of the Bosphorus. However, having listed the five options, it states baldly,

“The study concluded that Baku-Tbilisi-Ceyhan route represented the lowest environmental risk option”  

No information is given as to the methodology used to reach this conclusion, nor the issues examined.

The EIA refers to study of these five options in an Environmental Risk Assessment. However, BP has refused to disclose this study, so it is impossible to assess how they were considered, or their various benefits and impacts. However, at the very least, BP is thus in direct breach of the requirements specified in the World Bank Sourcebook, that:

“In all cases, the basis for selection of the preferred alternative(s) should be transparent and clearly described”  

The two options involving a Bosphorus bypass would seem to deserve careful consideration, as:

- be cheaper than BTC;  
- have environmental advantages of avoiding the Borjomi National Park in Georgia, the extensive biodiversity of Turkey, and the risks due to severe fault lines crossed in Turkey – meanwhile, like BTC they would also avoid the environmental risks of the Bosphorus;  
- have social advantages over BTC of avoiding the Kurdish areas of northeast Turkey, where there are major human rights issues, and necessary social difficulties associated with consultation and compensation;  

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28 Alexander’s Gas and Oil Connections, 11/2/97, ‘President Conoco at CERA urges US Government to reconsider sanctions’; Business Wire, 2/1/99, ‘Recent discovery in Iran offers US opportunity to revisit its policy of unilateral sanctions’; AFP, 19/9/00, ‘Coalition asks Clinton administration to end sanctions against Iran’  

29 BTC EIA, Turkey, October 2002, section 2.2.4 – ‘Regional routing options’  

30 email correspondence between Nicholas Hildyard (the Corner House) and Barry Halton (Regional Affairs Director, BTC), July 2003  


- have security advantages over BTC, by avoiding the risk of sabotage by KADEK (formerly PKK – the Kurdistan Workers’ Party) in Turkey.34

The BTC EIA mentions a contingency study into options to export just Phase 1 of ACG oil. Oddly, it only considers options which involve shipping through the Bosphorus, and so rejects these immediately. It does not explain why only these options passed the screening process. It does not consider Bosphorus bypasses here. Nor does it consider a smaller capacity for BTC, for example only to export Phase 1 oil.

### 7.3.3 Failure to properly consult on project alternatives

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>OP 4.01, clause 12 Consultation</td>
<td>“For all Category A projects … during the EA process, the project sponsor consults project-affected groups and local nongovernmental organizations (NGOs) about the project’s environmental aspects and takes their views into account. The project sponsor initiates such consultations as early as possible”</td>
<td>1. Local community groups not involved in assessment of alternatives; NGOs and government agencies only involved when both the nature of the project and the ‘corridor of interest’ were already decided.</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>

34 During the height of their armed conflict with Turkish security forces in the 1990s, the PKK identified Turkish pipelines and oil refineries in the Kurdish regions as legitimate military targets. In July 1991, PKK guerrillas raided Turkish Petroleum’s (TPAO) research camp in Kurtalan and blew up 15 vehicles. Five months later in December 1991, the PKK destroyed TPAO’s Selmo oil wells near Batman with rocket fires. Then, in less than five weeks between 31 August and 5 October 1992, the PKK attacked three different pipeline sites in the Kurdish regions. First, on 31 August, Shell Oil’s depots near the Kurdish stronghold of Diyarbakir, were attacked and oil tanks were once again set on fire. Less than two weeks later, on 12 September, the PKK raided the Selmo oilfields a second time, setting fires and killing three engineers. Then, at the beginning of October, the TPAO pumping stations and factories near Sason were attacked and set on fire. In one of its most serious pipeline attacks on 10 July 1996, the PKK set fire to part of the Kirkuk-Yumurtalik pipeline (Turkey-Iraq) in Silopi, Iraq. These fires could not be controlled for days. Six months later, in January 1997, the PKK attacked Kirkuk-Yumurtalik again, this time in the town of Mardin in south-eastern Turkey.

In July 2003, KADEK leader Abdullah Ocalan (currently imprisoned in Turkey) issued a statement that he gave KADEK’s unilateral ceasefire two months, after which without concessions by the Turkish government, hostilities may resume [The Kurdish Observer - “Ocalan: My historical mission for peace ceases”, MHA / July 6, 2003]
7.3.3.1 Local community groups not involved in assessment of alternatives; NGOs and government agencies only involved when both the nature of the project and the ‘corridor of interest’ were already decided

The World Bank Sourcebook stresses the importance of involving stakeholders in the evaluation of project alternatives:

“[It] sends a message to affected communities and other interest groups that decisions still remain open in the areas usually of most concern to them—location, size and technology—in contrast to cases in which the nature of the project and its location have already been decided”. \(^{35}\)

Specifically, the Sourcebook recommends that projects include consultation in each of the following stages:

- development of analytical methodology and TORs;
- selection of alternatives to be analyzed;
- determination of weights or importance values for evaluation parameters;
- comparison of alternatives; and
- formulation of recommendations.\(^{36}\)

The Sourcebook identifies key stakeholders to be consulted as:

- relevant government institutions,
- agencies,
- non-governmental organizations (NGOs),
- local community groups\(^{37}\)

However, the EIA only mentions only two late stages of alternatives evaluation at which consultation took place:

(a) consultation with government authorities (Ministries, General Directorates and Governorships), at the stage of reviewing the ‘Corridor of Interest’\(^{38}\), and

(b) meetings with government agencies and local NGOs, to identify possible impacts, at the stage of Environmental Baseline Study, during Basic Engineering.\(^{39}\)

Thus there was no opportunity for consultees to influence the important areas of “location, size and technology”, as required by the World Bank Sourcebook.


\(^{38}\) BTC EIA, Turkey, October 2002, section 2.3.5.1 – ‘Review of the corridor of interest’

\(^{39}\) BTC EIA, Turkey, October 2002, box 2.1 – ‘Summary of BE Phase Environmental baseline studies’
There is no record of any consultation on project alternatives with affected community groups. More detail is given in the Bank Sourcebook on how consultation should take place:

“During evaluation, the process of public consultation should be continued to ensure that decision makers and stakeholders (including those at the individual sites) have confidence in the process.... Consultation should entail clearly presenting alternatives to all parties, in the local language(s), in a forum that encourages discussion”.

Evidence from International Fact-Finding Missions to Turkey shows that BTC is in breach of this guideline. The general attitude of people along the route in Turkey was that they had no ability to influence how the project takes place. Furthermore, Kurdish people in the northeast of Turkey reported that consultations mostly did not include Kurdish language presentations or translation, and that a large proportion of the population does not speak Turkish.

### 7.3.4 Lack of systematic approach to alternatives

<table>
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<th>Relevant paragraph and key requirement</th>
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<tbody>
<tr>
<td>OP 4.01, Annex B, clause f</td>
<td>“[requires that the project] systematically compares feasible alternatives to the proposed project”</td>
<td>1. Alternatives not considered at early enough stage 2. Failure to consider key impacts or compare systematically. Of 50 recommendations in the World Bank Sourcebook, only 1 was fully carried out.</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>

#### 7.3.4.1 Alternatives not considered at early enough stage

The World Bank Sourcebook states that

“Alternatives analysis in EA is designed to bring environmental and social considerations into the “upstream” stages of development planning—project identification and earlier—as well as the later stages of site selection, design and implementation. In the absence of such consideration, those steps in the project cycle are taken solely on the basis of technical feasibility, economics, and political preferences, and the EA for such a project tends to be

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41 International Fact-Finding Mission Preliminary Report, Baku-Tbilisi-Ceyhan Pipeline Project, Turkey Section, August 2002  
43 10 recommendations are listed, each for 5 stages of project development, making a total of 50 – see table below
directed to supporting or affirming a project proposal. At best, EA becomes a damage limitation exercise, with the benefits restricted to identification of mitigation measures.”

The EIA was carried out between 2000 and 2002. BP’s earliest consideration of routing issues was a desktop study on environmental issues in 1997, and a subsequent (undated) environmental risk assessment. While BP has declined to make either of these documents available, so it is impossible to assess whether they comply with World Bank or other standards, we can note that they both come later than most of the routing and feasibility studies.

As early as November 1992, Socar, Botas, BP, Pennzoil and Amoco signed an agreement to finance studies of three pipeline options from Baku: to Supsa, to Novorossiysk and to Ceyhan. The Ceyhan route could pass through either Iran or Georgia. A protocol was signed between Azerbaijan and Turkey in March 1993 to develop the Ceyhan route, which agreed to examine both 500,000 and 800,000 barrels per day capacity. Much of the detail of the routing was decided by 1995 (for example, the decision to route through the Borjomi National Park, rather than along a route previously suggested by the World Bank.

The requirement for early consideration of alternatives is re-emphasised by the World Bank Sourcebook:

“It is essential to integrate the identification of alternatives into the project identification process (prior to production of concept paper) to ensure a comprehensive analysis of alternatives... This is usually the pre-feasibility stage of a project, which may involve reconnaissance visits and preliminary investigations.”

Thus the project is in breach of World Bank guidelines on evaluating alternatives at an early stage of the project.

7.4.2 Failure to consider key impacts or compare systematically

It is not only on timing, but also on approach, that the project is in breach. International Finance Corporation requirements in Operation Policy OP 4.01 state clearly that necessary content of an EIA includes that it “systematically compares feasible alternatives” (emphasis added). The way to approach the comparison systematically is explained in an update to the World Bank’s Environmental Assessment Sourcebook.

The table below summarises whether each of five phases of project design carried out the actions listed by the World Bank as necessary to an effective evaluation of alternatives. The five phases examined here are:

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45 BTC EIA, Turkey, October 2002, section 2.2.4, ‘Regional routing options’
46 email correspondence between Nicholas Hildyard (the Corner House) and Barry Halton (Regional Affairs Director, BTC), July 2003
47 Petroleum Economist, June ’93, ‘Financing world energy - finding investors for the indispensable link
48 pers comm, Greg Muttitt (PLATFORM), with Gill Cousins (Environmental and Social Manager, BTC), 18/7/03
8. ASSESSMENT OF PROJECT ALTERNATIVES

- Strategic alternatives – including the without-project option, Azerbaijan refining and alternative pipeline routes to different terminal destinations (see section 7.3.2, above);
- Routing – including both major routing from Horasan to Ceyhan (NR1T, ALT1, SR1T, ALT2) and intermediate routing options from Posof to Horasan;
- Basic and detailed engineering – these two phases considered together;
- Above-ground installations – including pump stations, pressure reduction stations and block valve stations;
- Marine terminal – all aspects of the terminal.

For each of these, 10 recommendations made in the Sourcebook are evaluated in the table. Of 50 recommendations\(^{50}\) in the World Bank Sourcebook, only 1 was fully carried out, 15 partially and inadequately carried out, and 28 neglected completely (6 were unknown or not applicable).

Most of the studies\(^{51}\) used to compile routing decisions are not even referenced in the EIA; nor are the consultants named. It is thus impossible to get more detail on any of the considerations. This is especially problematic, as mostly claims are unsubstantiated, or unclear. For example, specific environmental and social concerns are not outlined during the route selection, nor are alternative routings described. The majority of changes to the route are not described. Furthermore, it constitutes a breach of guidance in the World Bank Sourcebook, which states that:

"Detailed or uninterpreted data are not appropriate for the main text and should be presented in appendices or a separate volume"\(^{52}\) (emphasis added)

Important wildlife sites, such as the Posof Wildlife Protection Area (designed to protect the globally threatened Caucasian Black Grouse) and the Alacorak / Ulas Lakes (a potential Ramsar site, important for globally near-threatened bird species), alternative routing was only considered in the Basic Engineering phase, leaving limited options for re-routing. Even so, these options were not seriously considered, but rejected in a single sentence, with no substantiation. But for impacts as significant as these, they should have been incorporated into the intermediate-level routing decisions on the corridor of interest, which they were not. This is in violation of IFC requirements that

"For each of the alternatives, [the assessment] quantifies the environmental impacts to the extent possible"\(^{53}\)

These are the only significant impacts even mentioned in the consideration of alternative routing.

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\(^{50}\) 10 recommendations are listed, each for 5 stages of project development, making a total of 50 – see table below

\(^{51}\) eg pre-work programme of routing investigations (p.2-10); Basic Engineering Environmental Baseline Studies (p.2-14); end of Basic Engineering geohazards review (p. 2-16), route change file (p.2-24)

\(^{52}\) World Bank, Environmental Assessment Sourcebook, chapter 1, annex 1-3, clause 16

\(^{53}\) International Finance Corporation, OP 4.01, Environmental Assessment, Annex B – ‘Content of an Environmental Assessment Report for a Category A Project’, clause f)
The routing parallel to the East Anatolian Natural Gas Pipeline (NGP) considers only advantages, not disadvantages.\textsuperscript{54} For example:

- The risk of rupture of NGP due to BTC construction activities is not considered.
- The compound and cumulative risks of a major accident is not considered (a leak in NGP could lead to spontaneous ignition of the pressurised gas, which could then damage BTC and ignite its crude oil).

Options for siting Above-Ground Installations are not discussed, let alone their impacts and advantages and disadvantages.

Even in the few cases in the EIA where alternatives are considered, either an incomplete set of impacts is examined (most often technical or economic, not environmental or social - eg the wildlife sites), or only the advantages of BTC’s preferred option are stated, and never the more complex pros and cons (eg the Marine Terminal\textsuperscript{55}). In this latter case, it is very unlikely that one option would be better on all counts – it seems as if BTC has only added these considerations at a later stage, to justify a decision it had already made, rather than genuinely incorporating them into the decision-making process.

That BTC Co.’s consideration of alternatives is almost entirely cursory rather than systematic suggests that it may have been added on as a procedural requirement rather than applied genuinely to the project thinking.

The table below shows that BTC has not complied with the World Bank’s recommendations on how to carry out a systematic evaluation of alternatives. The considerations above and below show clearly that BTC cannot be claimed to have complied with the IFC’s / World Bank’s requirements that alternatives be evaluated

\textit{“in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs their suitability under local conditions; and their institutional, training and monitoring requirements”,}

nor that the assessment

\textit{“states the basis for selecting the particular project design proposed”}.\textsuperscript{56}

\textsuperscript{54} BTC EIA, Turkey, October 2002, section 2.3.9 – ‘Parallel routing with the East Anatolian Natural Gas Pipeline’

\textsuperscript{55} In considering the site, 6 advantages and no disadvantages are claimed for site 1, while each of the other suggested sites has between 2 and 4 further disadvantages listed [BTC EIA, Turkey, October 2002, section 2.4.1.1 – ‘Alternative sites considered’]. In considering whether to build a jetty or a single-point mooring, the jetty has 11 advantages and no disadvantages listed [BTC EIA, Turkey, October 2002, section 2.42.1 – ‘Choice of loading concept’].

\textsuperscript{56} International Finance Corporation, OP 4.01, Environmental Assessment, Annex B – ‘Content of an Environmental Assessment Report for a Category A Project’, clause f)
<table>
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<td></td>
<td>Strategic alternatives</td>
</tr>
<tr>
<td></td>
<td>“The starting point is the overall project objective”</td>
<td>Inadequately – objective was set in closed, self-justifying manner</td>
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<tr>
<td></td>
<td>“Alternatives that will meet the objective should be identified with as much freedom from limiting conditions as possible, consistent with maintaining reasonableness and practicality.”</td>
<td>Inadequately – v. limited range of alternatives considered</td>
</tr>
</tbody>
</table>

58 BTC EIA, Turkey, October 2002, section 2.2 – ‘Strategic alternatives’
59 BTC EIA, Turkey, October 2002, sections 2.3.3 – ‘The feasibility study’ and 2.3.4 – ‘Intermediate routing studies’
60 BTC EIA, Turkey, October 2002, sections 2.3.5 – ‘The Basic Engineering phase’ and 2.3.6 – ‘Detailed Engineering phase’
61 BTC EIA, Turkey, October 2002, section 2.3.10 – ‘Above ground installations’
62 BTC EIA, Turkey, October 2002, section 2.4 – ‘Options for the Marine Terminal’
63 Initial list – consult – resource requirements – screening should be applied both to choice of technology and choice of location: we consider both together here
64 On the Posof Wildlife Protection Area (designed to protect the globally threatened Caucasian Black Grouse), the EIA states: “The point of entry is fixed… the area cannot be avoided”. This statement is not justified. On the Sankamis Forest (a designated Natural Site for its important Scot’s Pine communities), a route further west is rejected for constructability and geohazard reasons (no details given). On the Alacorak / Ulas Lakes (a potential Ramsar site), alternative routes are rejected due to the presence of karst. All three of these cases were considered only in the Basic Engineering phase, not in the selection of the corridor of interest. If addressed earlier, they would have avoided such a constrained look at alternative routing. In all three cases, the detailed advantages and disadvantages of the nearby alternative routes are not considered. Other wildlife sites are not considered at all.
| Alternative routes for envt + social reasons not given - subsequent changes to corridor of interest only for non-environmental reasons. 65 |
|---|---|---|---|---|---|
| Consult on completeness of list | “Consult with key stakeholders, including relevant government institutions, agencies and non-governmental organizations (NGOs), on whether the range of technologies being considered is complete.” | No | No | No | No | No |
| Determine resource requirements of alternatives | “resource requirements should be determined for each alternative. This includes energy types and quantities, water, land areas, associated infrastructure, staffing, raw materials/fuel, solid waste and effluent disposal and other requirements plus associated costs.” | No | No | No | No | Inadequately – only considers energy use and land areas |

65 3 cases mentioned, 1 moved for national security reasons, one for constructability and accessibility, and one for geo-technical reasons
<table>
<thead>
<tr>
<th>Screening</th>
<th>“Screening should be based on factors such as ability of the technology to meet the project objectives, availability of resource requirements (at a macro level), suitability in a particular situation, and the broad environmental and economic acceptability”</th>
<th>No justific’n given, so not clear – suspect only economic, technical and political factors</th>
<th>No justific’n given, so not clear – suspect only economic and technical factors</th>
<th>No</th>
<th>Unknown – list not given in EIA</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Examine impacts of alternatives</td>
<td>“Environmental, social and health impacts of the shortlisted alternatives should be determined in sufficient detail to facilitate their comparative assessment.”</td>
<td>Impacts not considered at all for some alternatives.</td>
<td>Posof-Horasan: No. Horasan-Ceyhan: Inadequately</td>
<td>Inadequately – most cases not considered; at best, very vague and incomplete information in some cases</td>
<td>Inadequately – some types of impacts mentioned, but sites not identified and no detail given</td>
<td>Inadequately – only gives advantages of site + jetty, not disadvantages</td>
</tr>
<tr>
<td>Ongoing consultation</td>
<td>“During evaluation, the process of public consultation should be continued to ensure that decision makers and stakeholders (including those at the individual sites) have confidence in the process.”</td>
<td>No</td>
<td>No – only with govt authorities</td>
<td>Inadequately – consultation only for the purpose of identifying impacts, not public participation</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

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66 eg Azerbaijan refining, Bosphorus bypass
67 eg Black Sea / Bosphorus export
68 EIA claims list of environmental features plotted on GIS, but no info given on this. Choice of route made primarily on technical issues; only secondarily on environmental constraints. Social and health impacts not considered at all.
<table>
<thead>
<tr>
<th></th>
<th>in the assessment process</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Comparative matrix</strong></td>
<td>No</td>
<td>Claims a comparative scoring model used – but no details given, not even the scores for the options</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inadequately – sites matrix does not consider all impacts. Jetty vs SPM gives list of advantages, not a matrix</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Transparent selection</strong></td>
<td>No (see section 7.3.2, above)</td>
<td>No – no reasons given(^{69})</td>
<td>No – very little information given</td>
<td>No (options not even listed)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inadequately – only gives advantages of site + jetty</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Balance</strong></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

\(^{69}\) eg on Intermediate routing, the EIA states ‘The route investigation was undertaken in July 2000 and the results of the investigation led to the selection of alternative III as the new ‘Corridor of Interest’’. No further information at all is given as to why this option was chosen [BTC EIA, Turkey, October 2002, section 2.3.4 – ‘Intermediate routing studies’]
8. Ethnic minorities and disadvantaged groups along the BTC pipeline
(Turkey section)

Evaluation of project against World Bank standards, and appraisal of decision not to apply OD 4.20

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  8.7.1 Ensure ethnic minorities benefit
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  8.7.3 Foster respect for ethnic minority rights
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  8.7.5 Ensure informed participation of ethnic minorities
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  8.7.9 Assess relationship of ethnic minority to mainstream society
  8.7.10 Ensure participation throughout project cycle
  8.7.11 Independent appraisal of extent of participation by ethnic minorities
8. ETHNIC MINORITIES AND VULNERABLE GROUPS

8.1 Summary

The BTC pipeline passes through a number of areas with significant ethnic and religious minorities. In Turkey, these minorities include Alevis, Çerkez and Kurds. The BTC Consortium has committed itself to ensuring that the BTC project conforms to some relevant World Bank group/IFC standards, yet it has declined to apply the World Bank’s Operational Directive 4.20, Indigenous Peoples, the only directive specifically aimed at safeguarding the interests of minority groups. In this, BTC Co has been supported by staff of the International Finance Corporation.\(^1\)

Closer investigation, however, reveals that the Kurds in particular meet every one of the criteria for applying OD 4.20, and that the rationale for not doing so is fatally flawed. BTC Co. and IFC staff’s decision not to apply the policy leaves ethnic minority groups unnecessarily and unjustifiably vulnerable to socio-political difficulties connected to the BTC project.

A complaint challenging the IFC’s decision is now being prepared by NGOs for submission to the IFC’s Complaints Advisor Ombudsman.

As a result of the decision not to apply OD 4.20, this review finds widespread failures in the project’s treatment of indigenous peoples, including:

- At least 30 partial or total violations of IFC project requirements under OD 4.20

Specifically:

- BTC Co. has failed to ensure ethnic minorities benefit from the project;
- The project fails to mitigate adverse impacts on ethnic minorities;
- The project has failed to foster respect for ethnic minority rights;
- The project has failed to ensure ethnic minorities do not suffer adverse effects;
- The project has failed to ensure informed participation of ethnic minorities;
- The project has failed to draw up an ethnic minorities’ development plan;
- There has been no participatory assessment of development plan options;
- The project has failed to take account of local social organisation in drawing up development plans;
- The project has failed to assess the relationship of ethnic minorities to mainstream society;

\(^1\) The IFC argues that OD 4.20 is not applicable, and that a “vulnerable groups” approach (currently being developed by the World Bank) is more appropriate. In line with this position, the Resettlement Action Plan (RAP) sets out the project’s approach to ethnic minority issues in an Appendix entitled “Vulnerable Groups in the Context of BTC Project”.
• The project has failed to ensure minority group participation throughout the project cycle;
• There has been no independent appraisal of the extent of participation by ethnic minorities.
8.2 Introduction

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In this, BTC Co has been supported by the International Finance Corporation, which argues that OD 4.20 is not applicable, and that a “vulnerable groups” approach (currently being developed by the World Bank) is more appropriate. In line with this position, the Resettlement Action Plan (RAP) sets out the project’s approach to ethnic minority issues in an Appendix entitled “Vulnerable Groups in the Context of BTC Project”. A complaint challenging the IFC’s decision is now being prepared by NGOs for submission to the IFC’s Complaints Advisor Ombudsman.

This chapter reviews the controversy over the applicability of OD 4.20 to the BTC project. It sets out the provisions of OD 4.20 with regard to ethnic minorities and details the IFC’s grounds for arguing that OD 4.20 is inapplicable to Turkey’s Kurdish minority and hence to the BTC project. It then reviews the vulnerable groups approach adopted by the project developers. To support the analysis, it presents the findings of two FFMs to the region with regard to ethnic minorities and disadvantaged groups. Finally, it sets out concretely how the project is in breach of the specific guidelines of OD 4.20 – it is our argument that the project should comply with these and other provisions of OD 4.20.

This review finds indefensible the decision not to apply OD 4.20 to the BTC project. It finds that Turkey’s Kurdish minority meets every one of the criteria that OD 4.20 uses to identify the groups it is intended to safeguard. Moreover, the “vulnerable groups” approach adopted by the project developers fails to protect the interests of ethnic and religious minorities in the region and, more serious still, could exacerbate the problems they face.

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8.3 The applicability of OD 4.20 to Turkey’s Kurdish minority

8.3.1 OD 4.20 and ethnic minorities

The World Bank (and hence IFC) has a safeguard measure for the protection of indigenous ethnic minorities: Operational Directive OD 4.20 (Indigenous Peoples). This Directive aims to “(a) ensure that indigenous people benefit from development projects, and (b) avoid or mitigate potentially adverse effects on indigenous people caused by Bank-assisted activities”.

Although it notes that no rigid single definition of groups to which it should apply would be appropriate, the Directive states that these groups can be identified “by the presence in varying degrees of the following characteristics:

(a) a close attachment to ancestral territories and to the natural resources in these areas;
(b) self-identification and identification by others as members of a distinct cultural group;
(c) an indigenous language, often different from the national language;
(d) presence of customary social and political institutions; and
(e) primarily subsistence-oriented production.”

8.3.2 The Kurds and OD 4.20

IFC staff have argued that OD 4.20 does not apply in the case of BTC. They argue that certain of these characteristics do not apply in the case of project-affected Kurds. In particular, they argue that Kurdish communities are not:

“i) primarily involved with subsistence orientated production;
ii) reliant/dependent on local natural resources.”

In listing these specific objections, the IFC seems therefore implicitly to acknowledge that the Kurds are indeed identified by themselves and others as members of a distinct cultural group; do have an indigenous language that is different from the national

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3 OD 4.20 states that it applies, among others, to “indigenous ethnic groups” and refers to all of the groups it applies to as “indigenous peoples”.
4 World Bank OD 4.20 (Indigenous Peoples), Clause 2, September 1991
5 World Bank OD 4.20 (Indigenous Peoples), Clause 5, September 1991
6 IFC, “IFC’s Approach to Vulnerable Groups in the ACG Phase 1 and BTC Pipeline Projects. Azerbaijan, Georgia and Turkey”, attached to letter to Nicholas Hildyard et al, 2/12/02. This letter claimed a third condition which is not satisfied, namely that Kurds are not “isolated or disconnected from larger socio-economic structures of the area.” Since this does not fall within the main, explicit definition of OD 4.20, this claim is dealt with separately below (see section 8.3.3).
language; and also possess customary social and political institutions. Likewise, the IFC also appears to accept that Kurdish groups have an attachment to ancestral territories.

This in itself is powerful evidence that OD 4.20 should be applied to the Kurds. Given that the Directive itself says that these characteristics should not all be applied rigidly, but judged by their presence in varying degrees, the clear satisfaction of three and a half out of five conditions is itself a strong argument for applying the Directive in this case.

However, it is not the case that the Kurds are neither primarily involved with subsistence-orientated production nor reliant on local natural resources. As already noted, because of state policy towards the Kurds there is a dearth of sociological research on eastern Turkey, particularly the north-east due to its isolation, difficult weather conditions and relative lack of political organisation. Nonetheless, there is plenty of evidence available to dispute these claims.

The two claims are fairly similar, in that they claim that the Kurds are no longer an agricultural society and so are no longer reliant on crop and animal production. This simply is not true: the Kurdish regions of Turkey are still almost entirely reliant on agriculture for employment. They generate approximately 15% of total cereal production in Turkey, as well as animal meat and products (although these amounts are considerably down from previous level due to the village clearances of the 1990’s).7

The Turkish government’s GAP Authority recently surveyed five provinces in the southeast, which although not on the pipeline route are predominantly Kurdish areas socio-economically similar to the areas on the pipeline route with substantial Kurdish populations. It acknowledges:

“According to the findings of the field survey, 48% of all households interviewed in the area make their subsistence primarily on crop farming. This is followed by paid agricultural labour and non-agricultural seasonal employment for wage. Livestock farming comes to the fore as the secondary or tertiary source of income… The labour required in agricultural production is provided solely by household members in 73% of households. Those who hire additional labour have a share of 18%.”8

There has been a considerable move from a land-based peasantry to a landless proletariat in the Kurdish regions over the last few decades, largely for political rather than economic reasons: disruption due to war twinned with failure to reform the large landholdings still held by major landlords and tribal leaders have forced many people to go to the cities or work as day labourers. Since there are few major industries or employers in the villages along the pipeline route, those villages that remain would by

8 GAP Authority, ‘Status of Women in the GAP Region and their Integration to the Process of Development’, 15 October 1999, p.2. See also GAP: “Economic Dialogue Turkey-Southeast Anatolia Project”, September 1998, p.4: “The economy of the region is dominated by the agricultural sector, and agriculture is done typically under rain-fed conditions. Industry in the Region has not developed in notable proportions except in the province of Gaziantep, which is one of the larger industrial centres in Turkey. The Region rates lower in other socio-economic indicators when compared to national averages.” GAP: “Social Policy Objectives”, October 1998, p.10: “The uneven distribution of land continues to be a problem. About 40% of farmers don’t have their own land. The majority of farmers have small pieces of land, not enough for a subsistence livelihood. Most of the arable land belongs to a few big landlords who exercise control over the land. This leads to poor productivity. The ratio of usage to modern agricultural inputs is very low.”
default be subsistence farmers, also reliant on remittances from relatives in the big cities or in Europe.

In terms of relationship to the land, David McDowall, the acknowledged UK expert on Kurdish affairs, says in *A Modern History of the Kurds* that, “Almost every tribe or tribal section [the fundamental community unit in the Kurdish regions] also possesses a strong sense of territorial identity alongside ideas of ancestry. This is primarily to do with any settled villages and recognised pasturages a tribe uses.” Many Kurdish communities also have pantheistic belief systems that recognise specific sites, mountains and streams as holy, and thus conduct a spiritual as well as socio-economic relationship with the land.

On top of these considerations, there are a number of other criteria in OD 4.20 which clearly apply to the Kurds, including:

- **Clause 2** - which prescribes “special action…where Bank investment affects indigenous peoples, tribes, ethnic minorities or other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources.” As shown above, the Kurds qualify under every one of these definitions.

- **Clause 3** - which states that the Directive applies to “social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process”. This clearly includes the Kurds.

- **Clause 5** - which states that “indigenous people are commonly among the poorest segments of a population. They engage in economic activities that range from shifting agriculture in or near forests to wage labour or even small-scale market-oriented activities.” This perfectly describes Kurdish rural economics.

### 8.3.3 Isolation and marginalisation

IFC staff have also argued that the Kurds are not covered by OD 4.20 because they are not “isolated or disconnected from larger socio-economic structures of the area.” It stresses the importance of achieving the right balance between “insulating” and “acculturating” minority groups, and of not risking further marginalising them by denying them the benefits of the pipeline.

This preoccupation with striking a balance between “insulating” and “acculturating” minority groups reflects a limited view of ethnic minorities and indigenous peoples that

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9 McDowall, op. cit., p.6
10 World Bank OD 4.20 (Indigenous Peoples), September 1991
11 IFC, ‘IFC’s Approach to Vulnerable Groups in the ACG Phase 1 and BTC Pipeline Projects. Azerbaijan, Georgia and Turkey’, attached to letter to Nicholas Hildyard et al, 2/12/02.
12 Meeting of Shawn Miller and Ted Pollett of IFC with Kurdish Human Rights Project, 17/10/02
appears to be rooted in the reductive archetype of the rainforest tribe completely cut off from all communication with the outside world. This is an unjustifiably limited application of OD 4.20, which would preclude its application from a wide array of situations where it is essential. In some senses, the situation for the Kurds is worse than a simplistic polarity of being “in” or “out” of mainstream society: they have regular interaction with the Turkish majority, but are isolated and cut off from the benefits and rewards of that wider society. Some of the ways in which they are sociologically isolated include:

- **Political discrimination**: the repeated violation of the rights of Kurdish political parties and their members and representatives. The Turkish political system is weighted so that even though over 2 million people voted for the pro-Kurdish party DEHAP, it has not a single Member of Parliament, effectively disenfranchising the Kurds.

- **Human rights violations**: instances of torture, heavily concentrated on the Kurdish population, have actually increased for the past several years, despite EU scrutiny of Turkey’s human rights record. Every year, many Kurdish people disappear without explanation and are later discovered to have been killed extrajudicially.

- **Displacement**: during the course of the 1990s, at least three million Kurds were displaced from their heartlands in southeast Turkey as a result of a systematic campaign of village destructions undertaken by the Turkish military, supposedly in order to eliminate the support base of the Kurdistan Workers’ Party (PKK). The Turkish government has acknowledged that up to 4,000 settlements were destroyed, and wide swathes of rural areas remain virtually empty due to the state’s reluctance to allow displaced people to return home.

Many Kurds have alleged that village destructions were part of a long-standing central policy of forcing Kurdish migration from the southeast to facilitate the assimilation of the Kurds into mainstream Turkish society, a policy that also includes the siting of major dam and infrastructure projects in the region.

- **Cultural discrimination**: the Kurdish language was banned outright in Turkey until 1991. The Harmonisation Laws of August 2002, supposedly liberalising the use of Kurdish in teaching and broadcasting, have proved hollow: Kurdish broadcasting is allowed on state TV for a mere two hours per week, while permission to open Kurdish language schools must be sought from the National Security Council. Prosecutions and long jail sentences still regularly occur for

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13 The human rights and isolation problems outlined here are well documented; for example, see the reports issued by Kurdish Human Rights Project. These problems exist across Turkey, including the southeast; see section 8.6, below, for findings on the pipeline route itself.

14 For instance, figures compiled by the Human Rights Association of Turkey (IHD) show rather a progressive and disturbing increase in recorded torture cases, from 346 in 1996 to 762 for the months of January to September 2001 alone, while Amnesty International found in its 2002 Annual Report that, “all the factors that contribute to the persistence of systematic torture and impunity for perpetrators, and which we documented in October 2001, are unfortunately still in place.”

15 See KHRP, “This is the Only Valley Where we Live”, op. cit.

16 See KHRP, “This is the Only Valley Where we Live”, op. cit.
giving children Kurdish names, singing or playing tapes of Kurdish songs and using Kurdish spelling on posters.

- **Economic neglect**: Mayors of towns in eastern Turkey, particularly in the Kurdish regions, regularly report that their budgets are cut to 1 or 2% of what is required to pay salaries and make local investments, as part of a co-ordinated central policy to impoverish the regions and force further economic migration to the big cities. Many public officials have not been paid for months or even years. Per capita income in the Kurdish regions is less than a quarter of that in some of the wealthier western parts of Turkey.

Within this context, it is inevitable that the pipeline will become a factor, and likely that it will exacerbate rather than ameliorate the problems. In particular, an NGO Fact-Finding Mission to the Turkey section of the pipeline route found that people in the Kurdish regions were getting a consistently worse deal on land compensation. Furthermore, the Turkish state has a well-documented history of using the protection of infrastructure projects to displace Kurdish villages and harass their residents.

This constitutes overwhelming evidence of both the need for and the applicability of OD 4.20 to the Kurds in the BTC project.

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18 See for example various KHRP reports on the GAP Project dams
8.4 “Vulnerable groups” – a flawed approach?

In refusing to apply OD 4.20, the IFC has argued that the World Bank’s Indigenous policy is out of date, and that “the World Bank is looking at reworking the Indigenous Peoples policy as a vulnerable groups policy”. Yet this vulnerable groups policy is not yet written, leading to great concern that as construction on the BTC project begins, the failure of BP, BTC Co and the IFC to apply OD 4.20 effectively leaves no protection mechanism for vulnerable people affected by the pipeline.

This is entirely unacceptable, and in violation of both the spirit and the form of the IFC’s own safeguards. In effect, the Bank’s current, official policy is being jettisoned in favour of one that does not exist.

IFC also argues that in the context of BTC, it makes more sense to apply a vulnerable groups type of approach rather than ethnic minorities or indigenous people, as there are many vulnerable groups, not just ethnic minorities like the Kurds (for example seasonal herders and local fishermen). While it is true that there are other groups that need to be protected, this is not an argument for not applying existing available protections to the Kurds.

Moreover, in the case of involuntary resettlement, BTC Co. was entirely prepared to apply the old World Bank Operational Directive 4.30, rather than the newer Operational Policy 4.12 on Involuntary Resettlement. The RAP argues that, “The project will apply 4.30 for the life of the project, since project discussions started while OD 4.30 was the guiding document for the World Bank Group”.  

Given that the IFC has begun to move away from OD 4.20 much more recently than OD 4.30, and therefore OD 4.20 was the “guiding document” for BTC on vulnerable groups for considerably longer than OD 4.30 applied to involuntary resettlement, there seems no justification for BTC and the IFC’s refusal to apply OD 4.20 to fulfil its responsibilities for the protection of vulnerable groups.

8.4.1 Need for a safeguard measure

BTC claims in its RAP that,

“Kurdish-speaking Turkish households and other ethnic and religious groups are no more vulnerable than any other group in the context of the BTC project. As such, the Project has adopted the approach that all groups should be treated equally.”

The FFM’s findings show that BTC’s conclusion that there is no distinctive vulnerability is demonstrably false, and therefore the FFM believes that the approach of treating all groups in a “non-discriminatory manner” fails to understand the nature of discrimination and is thus itself discriminatory. It ignores the contextual background of repression of minorities, especially Kurds, by the state. In the absence of any specific measure to

19 RAP Turkey Final Report, section 1.8, page 1-6, November 2002
militate against this, this situation will cause minorities and disadvantaged groups to be disproportionately impacted by BTC.

Similarly, IFC’s argument that the Kurds should not be isolated from project benefits is misplaced. As this report has shown, the impacts of the project on Kurdish people are overwhelmingly (and disproportionately, compared to other project-affected people) negative, especially in that there seems from the FFM’s findings to be a systematic pattern of Kurds being substantially underpaid for land and resources they lose to the project. There are also significant doubts that any major benefits will accrue from the BTC project to local people, or indeed to the Turkish state.
8.5 Deficiencies in Project Policy

The Environmental Impact Assessment (EIA) does not address the particular impacts of the BTC pipeline on vulnerable groups. BTC has often said that many of the broader ‘contextual’ issues would be dealt with in the project’s Regional Review. Yet the remit of the Regional Review summary specifically notes that, “The issues covered in this Review are complex and controversial, and in many respects outside the control of the projects. Many cannot be addressed directly by investors undertaking a commercial project. Many are predominantly, if not exclusively, the domain of sovereign governments.”

The only significant analysis of the impact of the project on vulnerable groups in the project documents is in an appendix to the Resettlement Action Plan (RAP), “Annex 4.6: Vulnerable Groups in the Context of BTC Project”.

8.5.1 Social background not considered

The treatment of vulnerable groups in the RAP appears to be fundamentally flawed in both methodological and conceptual terms. The methodological brief of the Annex is clear.

“The BTC Project identified vulnerable groups as well as other project-affected peoples (PAPs) through the socio-economic surveys undertaken separately for the EIA and the RAP. Furthermore, the project engaged those groups through a series of comprehensive consultation and disclosure processes developed for the Project with the support of international and local SIA experts.”

As documented in chapter 3 (Consultation), those consultation processes were inevitably inadequate due to the BTC consortium’s failure to acknowledge or take account of the political climate of north-east Turkey, which as FFMs to the region both saw and experienced is one in which freedom of speech and opportunities for dissent are severely repressed, particularly for minority groups such as the Kurds.

The most significant factors influencing how ethnic minorities will be impacted are ongoing repression by the state and the military, lack of freedom of speech and political and social marginalisation. The RAP however takes virtually no account of these factors, relying entirely on linguistic as well as economic indicators.

The socio-economic surveys of the project consider the impact of the pipeline on vulnerable groups only in relation to land expropriation, without taking into account the social context in which these groups live. Even within land expropriation issues, the RAP ignores basic social realities regarding the position of women, ethnic inter-relations, religious tensions etc. For example, there is no mention of the difficulties of genuine

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21 BTC / AIOC / Shah Deniz / BP, Regional Review, Executive Summary, page 5, February 2003
22 Annex 4.6: Vulnerable Groups in the Context of BTC Project, p.2
consultation or negotiation, given the marginalised and often silenced position of minority groups.

As such, the project is completely at odds with World Bank guidelines on how to deal with vulnerable groups: “Vulnerability is always contextual, and must be assessed in the context of a specific situation and time” 23

In other words, despite BTC Co.’s pledge “to understand power dynamics between various groups when mapping the local population,” 24 the implementation of the BTC project clearly fails to take into account the nature of the power dynamics under which minority populations labour, and the social and political adjustments such groups must make to accommodate those dynamics.

8.5.2 Scope too narrow to consider real impacts – false picture created

The RAP adopts a simplistic, bureaucratic procedure of carrying out a demographic survey, analysing the income, land ownership and access to infrastructure such as roads. Finding no substantial statistical differences between the groups so analysed, the RAP concludes that there will be no difference in the impact on those groups. It is difficult to overstate the naivety – or perhaps disingenuousness – of this approach.

The analysis of the impact on vulnerable groups in the RAP observes that,

“‘There is no difference in the potential impacts of land acquisition between Kurdish speaking and non-Kurdish speaking Turkish households… What is important however is that both groups lose a similar percentage of their affected plot to both the 28-metre and the 8-metre corridor,’” 25

and hence concludes that,

“‘Language/ethnic groups are unlikely to be disadvantaged since there is no difference in the potential impacts of expropriation and construction activities between Kurdish-speaking and non-Kurdish speaking Turkish households.’” 26

The fundamental methodological flaw in the RAP is that it relies on narrow, tautological premises derived almost solely from economic indicators. It is no surprise that, having chosen to ignore the social and political realities that are the real indicators of group and individual vulnerability in Turkey, in favour of cherry-picking a constricted range of economic indicators, that the RAP then concludes that there is little to worry about. BTC Co.’s much-vaunted “non-discriminatory” policy precisely fails those who are being discriminated against.

The basic premise of any attempt to work out what “specific vulnerabilities”, as the Annex calls them, certain groups might face is first and foremost to understand what

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23 World Bank, Glossary of Key Terms in Social Analysis, on World Bank website, accessed 8/4/03
24 Annex 4.6: Vulnerable Groups in the Context of BTC Project, p.4
25 RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5-8, November 2002
26 RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5-7, November 2002
makes them vulnerable in the first place. In the case of the Kurds, their vulnerability comes from a socio-political environment, and more specifically a long-lasting Turkish state policy, which leaves them systematically discriminated against. BTC’s reliance on economic methodology has left it unable to scrutinise those vulnerabilities that would have become apparent had social and political indicators also been employed.

As far as the impact of BTC on vulnerable groups such as ethnic and religious minorities is concerned, the project documents are a classic instance of “the dog that didn’t bark”. 27

8.5.3 Language as proxy for ethnicity

It was with some shock that the FFM read in the RAP that, “Since 1965, no official data has been collected on ethnicity in Turkey. It was advised that the baseline survey should use language as a proxy for ethnicity”. 28 This approach is quite simply wrong. In general ethnographic terms, it is fundamentally at odds with any common definition of ethnicity, which is usually based on self-identification or identification by others as an ethnic community. Such use of language as proxy ignores systematic efforts by states to eradicate or suppress languages, as well as the political realities of survival and self-preservation that require minority groups to take on certain facets of the dominant society, of which language is one of the most obvious.

Furthermore, although it is the case that almost all Kurds speak Kurdish, the empirical method of using language as a proxy is unlikely to be accurate in other cases where minority groups are smaller or more assimilated into the Turkish mainstream – such as Cerkez, Georgians and Armenians.

The RAP’s stated reasons for using language as a proxy are flawed. They can only be rooted either in a complete lack of understanding of the socio-political realities of the region or a degree of disingenuousness unacceptable in such a major document. The idea that, “villagers themselves ‘tend not to want to be identified as inhabiting a ‘Kurdish’ village’”29 when addressed by foreign delegations or representatives of the state can only be a surprise to those unaware of the intensity of state repression that any form of self-identification as Kurdish has attracted in Turkey for decades. It does not, however, have any bearing on whether people think of themselves as or are Kurds. Likewise, people will be just as reluctant to inform such delegations that they speak Kurdish as that they are Kurdish. Thus the BTC policy of using language as proxy of ethnicity produces no gain.

Similarly, if, as BTC posits, 30 it is “insensitive” to discuss ethnicity in Turkey (and none of the members of the FFM have ever found it to be so), it is because the vulnerabilities

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27 In one of Sir Arthur Conan Doyle’s most astute Sherlock Holmes stories, “The Adventures of Silver Blaze”, the detective notes that the interesting feature of the case is “the dog that did not bark in the night”—indicating that it knew the perpetrator of the crime and therefore made no protest. Similarly, since the project documents acknowledge nothing of the political context which makes certain groups ‘vulnerable’, it is no surprise that the ‘vulnerable groups’ policy has produced barely a whimper of concern over the project’s impacts.

28 RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5-9, November 2002

29 Annex 4.6: Vulnerable Groups in the Context of BTC Project, p.5

30 Annex 4.6: Vulnerable Groups in the Context of BTC Project, p.5
attached to ethnicity in Turkey are by definition, and because of state policy, socio-
political rather than economic in nature.

8.5.4 Wider impacts of project

In Turkey, however, the failures of this approach go well beyond ineffectiveness. The
Turkish polity is unusual in the intensity and systematic nature of its persecution of its
minority communities, especially the Kurds. For ideological reasons stemming largely
from its history, the Turkish state’s self-perception revolves around the crux of its
“indivisible integrity”, and even insignificant sources of Kurdish cultural expression are
reviled as “separatism”. It is precisely because the Turkish state refused for decades to
acknowledge even the existence of the Kurds, insisting that they be referred to by
euphemisms like “mountain Turks”, that no data has been collected on ethnicity in
Turkey. 31

If a genuine attempt is to be made by the BTC planners to take account of the Kurds’ and
other minorities’ “specific vulnerabilities”, therefore, the historical context must be
acknowledged and taken into consideration when drawing up provisions for their
protection. Instead, BTC Co, as it has done with security and many other project
provisions, appears to insulate itself from contentious issues by passing responsibility
firmly onto the Turkish state—as epitomised by the disclaimer that begins the Regional
Review.

If the BTC planners genuinely wish to make provision for a group marginalised and
repressed by the state, they cannot judge their circumstances by the same criteria as other
citizens, nor can they leave that group’s welfare in the hands of the self-same state. BTC
Co.’s oft-repeated “non-discriminatory approach” inherently fails all those social groups,
like the Kurds, that are systematically discriminated against.

It is worth noting that BP and BTC Co have fallen behind even the Turkish state in its
reluctance to acknowledge the Kurds. In its attempt to facilitate its accession to the EU,
Turkey has undertaken something of a liberalisation of policy towards the Kurds in recent
years. The Harmonisation Laws of August 2002, while amounting to very little in
practice, permit some rights of Kurdish language teaching and broadcasting, and senior
Turkish politicians now refer to the Kurds by name. BP / BTC Co, in contrast, resort
frequently to the formulation “Kurdish-speaking Turkish people” throughout the
vulnerable groups annex of the RAP, a euphemism that denies the existence of Kurdish
ethnicity.

31 For more details, see David McDowall, A Modern History of the Kurds, (London: I.B. Tauris), 2000; Kurdish Human Rights
Project, “This is the Only Valley Where We Live: Turkish Dams, Displacement and the Fate of the Munzur Valley”, (London:
April 2003), Part 1

8. ETHNIC MINORITIES AND VULNERABLE GROUPS
8.6 Findings on ethnic minorities of Fact-Finding Mission

This section considers the projects impacts on the Kurds. Although the pipeline route avoids the majority Kurdish south-east of Turkey, it passes through areas in the north-east where Kurds make up about 40% of the population, and through a number of Kurdish villages. Kurds were the only ethnic minority members interviewed by the FFM of March 2003; it remains to be researched in detail how the project would impact on other ethnic groups.

The Mission’s findings are summarised below:\(^\text{32}\)

- Repression and lack of freedom of speech in the Kars and Ardahan regions are such that affected people would not be able to frankly express their views about the project, as any criticism of the project would be likely to lead to serious repercussions. This particularly applies to the minority Kurdish population, which is subjected to much of the same repression as the communities of the south-east, but lacks the social solidarity and political cohesion used in majority Kurdish regions to mitigate the impositions of the state and military.

- A political culture in which it is considered normal or even acceptable to express reservations about state-backed projects is conspicuously lacking in the north-east. The FFM notes that objections to state decisions, particularly by Kurds, are often construed by the state as a “separatist” challenge to its authority.

- Specific consultation measures fell well short of what would be required to communicate adequately with the local population. In particular, in the villages visited by the FFM, public meetings were held with no project officials present who spoke Kurdish. A significant proportion of Kurds, especially women and the elderly, do not speak Turkish. This amounts to systematic discrimination through language, particularly against women.

### 8.7 Concrete breaches of OD 4.20

#### 8.7.1 Ensure ethnic minorities benefit

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OD 4.20, para 2(a)</td>
<td>“The directive provides policy guidance to ensure that indigenous people benefit from development projects.”</td>
<td>1. Evidence suggests indigenous people receive fewer benefits, such as lower than average compensation and a greater likelihood of economic displacement.</td>
<td>Non compliance</td>
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</table>

#### 8.7.2 Mitigate adverse impacts on ethnic minorities

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
<th>Evaluation of compliance</th>
<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OD 4.20, para 2(b)</td>
<td>“The directive provides policy guidance to avoid or mitigate potentially adverse effects on indigenous people caused by Bank assisted activities.”</td>
<td>1. Evidence suggests indigenous people bearing more than average burden of negative impacts of project.</td>
<td>Non compliance</td>
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#### 8.7.3 Foster respect for ethnic minority rights

<table>
<thead>
<tr>
<th>Relevant paragraph and key requirement</th>
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<th>Extent of compliance</th>
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<tbody>
<tr>
<td>OD 4.20, para 6</td>
<td>“The Bank’s broad objective”</td>
<td>1. Process has resulted in an increase in state pressure and intrusion, and the</td>
<td>Non compliance</td>
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</table>
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<table>
<thead>
<tr>
<th>Foster respect for human rights of ethnic minorities</th>
<th>towards indigenous people...is to ensure that the development process fosters full respect for their dignity, human rights and cultural uniqueness.</th>
<th>increased likelihood of displacement and added vulnerability.</th>
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8.7.4 Ensure ethnic minority do not suffer adverse effects

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<tr>
<th>Relevant paragraph and key requirement</th>
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<tr>
<td>OD 4.20, para 6</td>
<td>“More specifically, the objective at the centre of this directive is to ensure that indigenous peoples do not suffer adverse effects during the development process.”</td>
<td>1. Process has resulted in an increase in state pressure and intrusion, and the increased likelihood of displacement and added vulnerability.</td>
<td>Non compliance</td>
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8.7.5 Ensure informed participation of ethnic minorities

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<tr>
<th>Relevant paragraph and key requirement</th>
<th>Specific obligations</th>
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<tr>
<td>OD 4.20, para 8</td>
<td>“The Bank’s policy is that the strategy for addressing the issues pertaining to indigenous peoples must be based on the informed participation of”</td>
<td>1. Failure to distribute sufficiently informative material on the project before the consultation process began meant that participation of indigenous people could not be properly described as ‘informed’. 2. Inadequate length and comprehensiveness of consultation</td>
<td>Partial compliance</td>
</tr>
</tbody>
</table>
**8.7.6 Draw up ethnic minorities’ development plan**

| The indigenous people themselves. Thus, identifying local preferences through direct consultation, incorporation of indigenous knowledge into project approaches and appropriate early use of experienced specialists are core activities for any project that affects indigenous peoples and their rights to natural and economic resources.” | process meant that process failed to identify or act on local preferences.  
3. Less than 2% of population directly consulted; majority of consultation indirect, through local or national authorities. |
|---|---|
| 1. OD 4.20 not applied to project.  
2. Failure to take account of indigenous people’s social environment, including lack of freedom of expression and military/state surveillance.  
3. No evidence that participation in consultation process was voluntary.  
4. No evidence of incorporation of indigenous knowledge into project approaches or results.  
5. No evidence of early or appropriate use of independent experienced specialists.  
6. No evidence of respect for or acknowledgement of indigenous people’s rights to natural or economic resources. | Non compliance |

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<th>Extent of compliance</th>
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</table>
| OD 4.20, para 13                     | “For an investment project that affects indigenous peoples, the investor should prepare an indigenous peoples development plan.” | 1. OD 4.20 not applied to the project.  
2. No evidence of the preparation of an indigenous peoples development plan. | Non compliance |

### 8.7.7 Participatory assessment of development plan options

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<tr>
<th>Relevant paragraph and key requirement</th>
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</table>
| OD 4.20, para 14a                    | “The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project.” | 1. OD 4.20 not applied to the project.  
2. No evidence of the preparation of a culturally appropriate development plan.  
3. No evidence of indigenous people being presented with different options with regard to the main elements of the project.  
4. No evidence of the project sponsors taking the wishes of indigenous people into full consideration. | Non compliance |

### 8.7.8 Take account of local social organisation in drawing up development plan

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<tr>
<td>OD 4.20, para 14d</td>
<td>“Local patterns of”</td>
<td>1. OD 4.20 not applied to the project.</td>
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### 8.7.9 Assess relationship of ethnic minority to mainstream society

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| OD 4.20, para 15(b)                    | “Baseline data should include…(iv) the relationship of indigenous peoples to other local and national groups.” | 1. OD 4.20 not applied to the project.  
2. EIA strenuously avoids mentioning largest ethnic minority group, the Kurds, and their relationship to other social groups. | Non compliance           |

### 8.7.10 Ensure participation throughout project cycle

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<tr>
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</table>
| OD 4.20, para 15(d)                    | “Mechanisms should be devised and maintained for participation by indigenous people in decision making throughout project planning.” | 1. OD 4.20 not applied to project.  
2. No evidence that mechanisms for indigenous peoples' participating in decision-making processes have been established.  
3. No evidence that project sponsors have taken account of political | Non compliance           |
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and evaluation implementation and evaluation."

limitations on indigenous peoples’ capacity to be involved in decision-making, nor that they have created an environment where this is feasible.

8.7.11 Independent appraisal of extent of participation by ethnic minorities

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</table>
| OD 4.20, para 18                      | “Appraisal teams should be satisfied that indigenous people have participated meaningfully in the development of the plan.” | 1. OD 4.20 not applied to the project.  
2. No evidence that indigenous people have participated meaningfully in the project i.e. i.e. participation which has led to major changes in the project or left affected people feeling as though their concerns have been fully addressed.  
3. No evidence that appraisal teams have looked for this level of participation from indigenous people. | Non compliance |