

## EXECUTIVE SUMMARY

### CALL FOR A MORATORIUM ON THE BAKU-TBILISI-CEYHAN PIPELINE PROJECT

This report constitutes the findings of an international Fact Finding Mission (FFM) that visited Turkey from 16<sup>th</sup>-24<sup>th</sup> March 2003 to assess the planning and implementation of the proposed Baku-Tbilisi-Ceyhan (BTC) oil pipeline, which BP and other companies (as part of the BTC Consortium) intend to build in order to bring oil from Caspian Sea oilfields to western markets. Funding of the project will be sought from a number of public bodies, notably the International Finance Corporation (IFC) of the World Bank Group, the European Bank for Reconstruction and Development (EBRD) and a number of western Export Credit Agencies.

The FFM is the second international fact-finding mission to have visited the Turkish section of the pipeline. The previous Mission to Turkey in July 2002 found that the project was in violation of a range of international standards relating to consultation and resettlement. It also raised concerns over potential conflicts between the legal agreements for the project and international human rights and environmental law.

#### FINDINGS OF THE MARCH 2003 FFM

##### Systemic and Systematic Abuses

Whilst the current FFM found that the project developers – the BTC Consortium or BTC Co. - have taken steps which partially address a number of the concerns identified by the July 2002 Mission, *continuing violations of international standards on consultation, compensation and resettlement still characterise the project.* The FFM also identified a number of apparent conflicts between the Resettlement Action Plan (RAP) for the project and the Turkish Expropriation Law. Most worrying of all, the FFM found clear-cut evidence of systemic flaws in the project, arising from the political context in which the pipeline has been planned and would operate, that cannot be addressed by piecemeal policy changes.

Systemically, the FFM found:

- A pattern of serious and ongoing human rights abuses in regions through which the pipeline passes, notably in the north-east, where there has been a marked recent rise of detentions, arbitrary arrests, surveillance and harassment by state and military officials;
- A pervasive atmosphere of repression and lack of freedom of speech in the region which precludes dissent about the BTC project;

- The strong likelihood that the human rights situation in the region would 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.

Such abuses were particularly evident in the north-eastern section of the proposed pipeline route, in Kars and Ardahan provinces, a region whose population is approximately 30% Kurdish. *Here the Mission found clear-cut evidence of political repression so systemic as to invalidate the consultation exercises that the project developers have undertaken.* Indeed, the FFM was itself detained by the Gendarmerie on two occasions and, due to police harassment and intimidation, was forced to abandon a number of planned visits to villages affected by the pipeline for fear of exposing local villagers to potential human rights abuses by the state security agencies.

These problems of social context were compounded by an array of specific deficiencies in the BTC project, including:

- Fundamental flaws in both the design and the implementation of crucial project documents like the Environmental Impact Assessment (EIA) and the Resettlement Action Plan (RAP), including widespread inadequacies in consultation of appropriate NGOs and social groups;
- Repeated suggestions that BTC Co. is not carrying out the process of compensation in the manner claimed. These included allegations of systematically paying well below market rates for land; imposing rather than negotiating prices; failing to compensate certain groups of landowners and users; not providing affected people with proper information about their rights; and failing to inform them of the many potential negative impacts of the project. These failures are generating growing anger among affected people. **They are also of particular concern because BTC has recently written to the Government of Turkey insisting that BOTAS complete the land acquisition process as soon as possible - or risk losing the contract;**<sup>1</sup>
- The failure of the project to take sufficient account of the differential impacts of the pipeline on vulnerable groups, including ethnic minorities, women and the poor, or to mitigate those problems appropriately.

The FFM notes that this catalogue of deficiencies puts the BTC project in potential conflict with the Turkish Expropriation Law, and hence also with the Host Government Agreement reached between BTC Co. and the Turkish Government. It also places the project in violation of a number of World Bank group's mandatory standards, including OD 4.30 (Involuntary Resettlement), and guidelines, including the IFC *Good Practice Manual on Consultation and Disclosure* and IFC *Handbook on Preparing a Resettlement Action Plan*. The FFM also finds compelling reasons why OD 4.20 (Indigenous Peoples)

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<sup>1</sup> See Deniz Zeyrek, "Ultimatum to Prime Minister", *Radikal*, 13 April 2003. English translation available on request.

should be applied in order to prevent disproportionately adverse impacts on ethnic minorities in the region.

In the FFM's view, the atmosphere of repression in the north-eastern region of Turkey – as manifested by arbitrary arrests and detentions, the inhibition of dissent through police intimidation, and the constant surveillance of political groups and ordinary people alike by state security personnel – are such that implementation of the project to international standards is currently unattainable. Specifically, such repression renders impossible:

- *Credible consultation with affected communities*, in particular minorities and vulnerable groups, since the pre-condition for credible consultation – freedom of expression and speech – does not exist;
- *Free and open compensation negotiations* by affected landowners and users as to the payment they receive for the loss of their land;
- *Independent monitoring of the project.*

***Given the extent of repression in the north-east, coupled with heightened tensions over the Kurdish issue in the east of Turkey as whole,<sup>2</sup> the FFM is also gravely concerned by the human rights implications of the arrangements for policing the pipeline, should it be built.*** Under the legal agreements reached between the Republic of Turkey and the project developers, the security of the pipeline is the sole responsibility of the Turkish state – a responsibility that has been designated to the Gendarmerie, whose record on human rights has been repeatedly criticised by the Council of Europe.<sup>3</sup> ***In the FFM's view, such arrangements carry high risk of precipitating human rights abuses, particularly in the north-eastern section of the pipeline route.***

***In such circumstances, the FFM considers that it would be irresponsible for BTC Co. to proceed with the project unless and until there is independent confirmation that concerned parties, in particular those directly affected by the pipeline, are in a position and a socio-cultural environment to express their views on the project without fear of reprisal or intimidation and to negotiate freely over compensation for loss of land and other damages. The FFM also deems it essential that security concerns arising from the poor human rights record of Turkey's security forces be addressed prior to work commencing on the project.***

## **A MORATORIUM IS URGENT**

***Given the gravity of the situation, the FFM has called for the project developers and the funding agencies that have been approached for financial support to impose a Moratorium on the project.***

Whilst many of the deficiencies identified by the FFM (for example, with regard to levels of compensation) may be remedied by making more funds available and by taking more

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<sup>2</sup> A number of events lie behind the increased tension in the region. In particular, the decision by the Turkish authorities in 2002 to restrict the access of Abdullah Öcalan, the imprisoned leader of the Kurdistan Workers Party (PKK), to his lawyers recently prompted the Presidential Council of KADEK, the PKK's successor, to issue a statement threatening to end its ceasefire. In addition, tensions between the Turkish authorities and the Kurdish minority have markedly increased due to Turkey's intervention in Northern Iraq and likely reinstatement of the State of Emergency to the Kurdish regions of southeast Turkey.

<sup>3</sup> See for example Council of Europe Committee of Ministers, Interim Resolution ResDH(2002)98, adopted 10 July 2002

time to resolve the outstanding violations of international standards and potential conflicts with domestic law, **the systemic problems arising from repression in the region are not amenable to remedial action by either the project developer or the international financial institutions from which funding for the project is being sought. There are a number of reasons for this:**

*The World Bank has no safeguard policies relating to human rights and therefore no human rights standards that the project must meet if it is to receive funding.* Indeed, the Bank has specifically argued that its Articles of Agreement, which forbid the Bank from intervening in the political affairs of client states, preclude the Bank from adopting any such guidelines since human rights are inherently “political” issues.<sup>4</sup> Nonetheless, as Ibrahim Shihata, the former General Counsel of the Bank notes: “Members’ obligations under the UN Charter prevail over their other treaty obligations, including their obligations under the Bank’s Articles of Agreement, by force of an explicit provision in the UN Charter (Article 103). The Bank itself is bound, by virtue of its Relationship Agreement with the UN, to take note of the above-mentioned Charter obligations assumed by its members....”<sup>5</sup> From this legal experts have concluded that, “the Bank is obliged, as is any other subject of the law, to ensure that it neither undermines the ability of other subjects, including its members, to faithfully fulfil their international obligations nor facilitates or assists violation of those obligations.”<sup>6</sup> **In effect, the Bank’s inability to act to address the human rights concerns identified in this report, coupled with its obligation to ensure that human rights abuses do not flow from the project should it be involved, points to its withdrawal until measures have been taken to remedy the concerns raised as the only viable option open to it.**

The BTC Consortium is a private company and, whilst the Host Government Agreement (HGA) it has signed with Turkey gives it considerable legal powers over those living in the pipeline corridor, it cannot introduce the necessary policy reforms that would ensure that Turkish citizens enjoy the freedom of expression necessary to participate in a proper consultation on the project or to safeguard their property rights.<sup>7</sup>

It is Turkey, not BTC Co, that is responsible for security, as specified in the HGA. The project developers therefore have no powers to control the security provisions

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<sup>4</sup> For a discussion of the Bank’s position vis a vis human rights, see: Roth, K., “Head of Human Rights Watch urges Bank to adopt rights-based approach to development”, World bank, INTRANet, 18 February 2003.

<sup>5</sup> Cited in MacKay, F., “Universal Rights, or A Universe Unto Itself? Indigenous’ Peoples’ Human Rights and World Bank Draft OD 4.10 on Indigenous Peoples”, *American University International Law Review*, Vol. 17., No.3, p.554, AM.U.Int’l I.rev.[17:527 2002]554. It is relevant in this context to note that the Bank’s Operational Policy 4.01 on Environmental Assessment clearly states that, “the Bank takes into account ... the obligations of the country, pertaining to project activities, under relevant international environmental treaties and agreements. The Bank does not finance project activities that would contravene such country obligations, as identified during the EA” World Bank Operational Manual, Operational Policy 4.01, Environmental Assessment, para. 3 (1999)

<sup>6</sup> *Ibid*, p.554. See also: The World Bank, the IMF and Human Rights, at 63; and, D. Bradlow & C. Grossman, Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF. 17 *Human Rights Q.* 411, 428.

<sup>7</sup> As the BTC Consortium notes in its own regional review for the project: “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.” See: BTC/AIOC/Shah Deniz/BP, *Regional Review: Executive Summary*, February 2003, p.5.

and operations for the pipeline without a renegotiation of the HGA, to which all parties would have to agree. Nor does the FFM believe that it is in the interests of project affected people for the project developers to have the capacity to do so.

**In such circumstances, the FFM believes that a Moratorium on appraising, financing or building the BTC project constitutes the only legitimate means available to the International Financial Institutions and the project developers for ensuring that human rights violations do not flow from the project. As such, it represents the most responsible course of action.**

**Indeed, in the absence of significant progress being made to address the repression in the north-east of Turkey, the FFM believes that any decision by officials of European Union governments to support the BTC project financially through the World Bank, the EBRD or official Export Credit Agencies (ECAs) could be open to a legal challenge. Such a challenge might emerge from human rights violations flowing from the region, arising directly from a project for which either funding or insurance had been provided.**