

APPENDIX 1

International Fact-Finding Mission report – BTC pipeline, Turkey section, March 2003

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Baku Ceyhan Campaign
Campagna per la Riforma della Banca Mondiale
The Corner House
Kurdish Human Rights Project
PLATFORM

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Foreword

This report represents the findings of an international Fact-Finding Mission (FFM) of NGOs which travelled to Turkey from March 16-24 2003 to conduct research into the proposed Baku-Tbilisi-Ceyhan (BTC) oil pipeline project. The FFM, consisting of representatives of the Kurdish Human Rights Project, Corner House, Platform and Campaign to Reform the World Bank and a UK barrister, conducted interviews in Ankara, travelled the length of the pipeline route from Sivas to Posof on the Georgian border and finished its inquiries in Istanbul. This is the second international FFM to visit the Turkish section of the route; in addition to meeting with NGOs and parliamentary bodies, it returned to several villages and towns visited during the first FFM in July 2002, as well as visiting the north-east of Turkey for the first time.

It was in this region that the FFM discovered issues of greatest concern. The north-east is not a predominantly Kurdish area, but it has a large minority Kurdish population of over 40%. In a sense, this is the worst of both worlds: the Kurds of the north-east are exposed to the same systematic repressions and human rights violations by the Turkish state as their counterparts in the south-east, but are neither numerically dominant or politically experienced enough to organise effectively against them. The region feels isolated and the people largely cowed by the omnipresence of the state security forces. It is telling that the FFM itself was detained twice during the course of its stay without explanation.

The local people the FFM managed to interview before the intrusion of the gendarmerie confirmed that this kind of constant state pressure was entirely the norm in the region. In this context, the whole practice and idea of ‘consultation’ is fundamentally invalidated—there can be no such thing as a legitimate request for consent (or even opinion) when it is effectively impossible to say no without the likelihood of serious consequences. In an environment where the penalties for dissent are well-known, it is highly unlikely that objections will be aired. In that context, by using their consultation procedures to legitimise the project, the BTC consortium (BTC Co.) is adding a veneer of collective participation to what is essentially another state-led imposition on local people.

The FFM also found that although some improvements in compensation and consultation had taken place in areas highlighted by the first FFM report, a wide array of serious problems remains in both the project documents themselves and in their implementation, particularly in the north-east. Evidence suggests that many of the solutions claimed by BTC Co. simply do not exist in practice; the RAP Fund, for example, ostensibly set up to compensate customary land users without formal title, is entirely unknown in the region, and as a result those without title are going unpaid. Indeed, subsequent to the writing of this report, we have received evidence that BOTAS, the state pipeline company undertaking the Turkish section of BTC, is taking those customary users it has paid to court to try and recover the compensation they were awarded. This is truly extraordinary, and fundamentally contrary in both spirit and form to BTC Co.’s promise that no-one would be worse off as a result of the project.

The amounts of compensation themselves are paltry sums: around 25p a square metre by local accounts. Not one payment we came across reached even the average level provided for in the compensation budget. There are also very serious suggestions that the BTC project is in breach of Turkish law, which provides for bargaining between contractor and landowner; the Resettlement Action Plan, by contrast, specifically forbids bargaining on price, and all interviewees confirmed that the price paid for their land was imposed upon them. Nor is this the only project document with fundamental flaws; both NGOs and even those who have worked on the project confirmed that the Environmental Impact Assessment is patchy and incomplete. Unsurprisingly, anger and resentment is growing among people affected by the project, who have found the benefits far fewer and the burdens of the project much higher than they were told.

It seems apparent that the state's intention to push through the BTC project (exemplified by the use of the gendarmerie as the main security force for the pipeline despite its internationally criticised human rights record in the Kurdish regions) will not only worsen the human rights situation in the region, but that it has already done so. At the very least, the evidence accumulated by this FFM and others suggests that on the ground there are fundamental flaws in and unconsidered serious consequences of the BTC project which cannot be resolved simply by making project documents "fit for purpose" on paper only. It is clear that further "ground-truthing"--verifying the claims of BTC Co. against the realities on the ground--is required.

It is essential to address these systemic failures now, before the project goes into the funding pipeline and only minor amendments are possible. Moreover, these intrinsic issues cannot be immediately remedied either by the project sponsors, which have no standing to introduce the reforms necessary to make freedom of expression a reality in the Kurdish regions of Turkey, or by international funding institutions. Yet BTC Co. seems constantly to try to push the project through with unseemly haste, without taking the time to consider the potential reputational impacts these deep-seated problems may have. In this light, the FFM feels there is no alternative but to call for an immediate Moratorium on the Baku-Ceyhan project, at least until such time as these issues are properly and independently addressed.

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Chairman, Baku-Ceyhan Campaign

İDARİ ÖZET

BAKÜ-TİFLİS-CEYHAN BORU HATTI PROJESİ'NİN RESMİ OLARAK ERTELENMESİ (MORATORYUM) İÇİN ÇAĞRI

Bu rapor, Hazar Denizi petrol alanlarındaki petrolü Batı pazarlarına taşımak niyetiyle BP ile diğer bazı şirketlerin (BTC Konsorsiyumu'na dahil) inşa etmeyi önerdikleri Bakü-Tiflis-Ceyhan (BTC) petrol boru hattı ile ilgili planlama ve yürütme süreçleri konusundaki gerçekleri yerinde saptamak üzere 16-24 Mart 2003 tarihleri arasında Türkiye'yi ziyaret etmiş olan uluslararası bir heyetin bulgularından oluşmaktadır. Söz konusu proje, Dünya Bankası Grubu'nun Uluslararası Finans Korporasyonu (*International Finance Corporation/IFC*), Yenileme İnşaatları ve Kalkınma İçin Avrupa Bankası (*European Bank for Reconstruction and Development/EBRD*) ve bir dizi Batılı İhracat Kredisi Kuruluşu başta olmak üzere kamu kurumlarının desteğiyle finanse edilecektir.

Yukarda sözü edilen görevli heyet, boru hattının Türkiye bölümünü ziyaret eden ikinci heyettir. Türkiye'yi 2002 yılının Temmuz ayında ziyaret etmiş olan daha önceki heyet, söz konusu projenin istişare ve yeniden yerleşim konularında bir dizi uluslararası standartı ihlal etmekte olduğunu saptamıştır. Bu heyet ayrıca, Proje'yle ilgili yasal anlaşmalar ile uluslararası insan hakları ile çevre yasası arasındaki olası ihtilaflara ilişkin endişeleri de gündeme getirmiştir.

MART 2003 HEYETİNİN BULGULARI

Sistemik ve Sistemik İhlaller

Son heyet, Proje'yi geliştirenlerin, yani BTC Konsorsiyumu veya BTC Co.'nun, Temmuz 2002 Heyeti tarafından tanımlanmış olan bir dizi endişeyi kısmen gideren adımlar atmış olmakla birlikte, Proje'yi halen daha, istişare, tazminat ve yeniden yerleşim konularında uluslararası standartların ihlalinin sürmekte olduğunu belirlemiştir. Görevli Heyet ayrıca, Yeniden Yerleşim Eylem Planı (YYEP) ile Türk İstimlak Mevzuatı arasında bir dizi görünür ihtilaf saptamıştır. Herşeyden endise vericisi, Heyet tarafından, Proje'nin sistemik kusurlarının açık kanıtları bulunmuştur ki bunlar, boru hattının planlanmış olduğu ve işletileceği siyasi bağlamından kaynaklanmaktadır ve parça parça siyaset değişiklikleriyle düzeltilemeyecek şeylerdir.

Heyet, sistemik olarak şunları saptamıştır:

- Boru hattının içinden geçtiği bölgelerde, özellikle de, sivil ve askeri yetkililerce göz altına almaların, keyfi tutuklamaların, gözetlemelerin ve tacizlerin son zamanlarda arttığı Kuzeydoğu'da sürüp giden ciddi bir insan hakları ihlali şablonu.

- Bölgede BTC Projesi'ne muhalefeti imkansız hale getiren yıpratıcı bir baskı atmosferi ve ifade özgürlüğü yoksunluğu.
- Boru hattının açılışından sonra, özellikle de, esas güvenlik gücü olarak Jandarma'nın (Türkiye'nin askeri polisi) kullanılması suretiyle ortaya çıkacak militarizasyon yüzünden bölgede insan hakları durumunun daha da kötüye gideceği benziyor olması.

Bu türden ihlaller, özellikle önerilen boru hattının kuzeydoğu kesiminde, nüfuslarının yaklaşık yüzde 40'i Kürt olan Kars ile Ardahan'da gözle görünür haldedir. Bu bölgede heyetimiz, projeyi geliştirenlerin gerçekleştirmiş olduğu istişare edimlerini geçersiz kılacak ölçüde açık seçik siyasi baskı kanıtı bulmuştur. Nitekim bizatihi heyetimiz de, Jandarma tarafından iki kere gözaltına alınmıştır ve polisin tacizi ve yıldırması sonucu, köylüleri devlet güvenlik kuvvetleri tarafından gerçekleştirilebilecek olası insan hakları ihlallerine maruz bırakma korkusuyla, boru hattının etkilediği köylere yapılması planlanmış olan bazı gezilerden vazgeçmek zorunda kalmıştır.

Sosyal içerikli bu sorunlar, aşağıdakiler de dahil BTC Projesi'ne özgü bir dizi kusurla ağırlaşmaktadır:

- Çevre Etkisi Değerlendirme (ÇED) ve Yeniden Yerleşim Eylem Planı (YYEP) gibisinden hayati öneme haiz proje dokümanlarının gerek tasarımında ve gerekse yürürlüğe sokulmasında, uygun sivil toplum kuruluşlarıyla istişarede yaygın bir yetersizlik de dahil olmak üzere temel hatalar.
- BTC Co.'nun tazminat sürecini, yapıldığını iddia ettiği biçimde yürütmediğine dair tekrarlanan ifadeler. Bunların arasında, arazi için sistematik olarak piyasa rayicinin epeyce altında ödeme yapıldığına dair suçlamalar; fiyatların pazarlık edilmekten ziyade empoze ediliyor olması; bazı toprak sahiplerine ve kullanıcılara tazminat ödenmiyor olması; Proje'den etkilenecek kişilere, haklarına ilişkin doğru düzgün bilgi verilmemesi ve bu kişilerin Proje'nin bir yığın olası olumsuz etkisi hakkında bilgilendirilmemiş olmaları bulunmaktadır. Bu kusurlar, Proje'den etkilenecek kişiler arasında giderek büyüyen bir kızgınlık yaratmaktadır. **BTC, geçtiğimiz günlerde Türk Hükümeti'ne yazılı olarak başvurup, BOTAS'ın toprak edinimi sürecini mümkün olduğunca çabuk tamamlaması, aksi takdirde sözleşmenin hükümsüz kalacağı konusunda ısrarcı olduğu için ayrıca özel bir endişe de duymaktadırlar.**¹
- Proje'de, boru hattının etnik azınlıklar, kadınlar ve yoksullar da dahil olmak üzere zarar görmeye açık olan gruplara yönelik diğerlerinden farklı etkilerinin yeterince hesaba katılmamış olması.

Heyetimiz, bu yetersizlikler dizgesinin, BTC Projesi'ni Türk İstimlak Mevzuatı ve dolayısıyla BTC. Co. ile Türk Hükümeti arasında imzalanmış olan Evsahibi Hükümet Anlaşması ile potansiyel olarak ihtilafli hale getirdiğine dikkati çekmektedir. Söz konusu dizge ayrıca Proje'nin, OD 4.30 (Gönülsüz Yeniden Yerleşim) de dahil olmak üzere Dünya Bankası'nın bir dizi zorlayıcı standartını ve IFC'nin *İstişare ve Saydamlık Konusunda İyi (Örnek) Uygulama Talimatnamesi (Good Practice*

¹ Bkz. Deniz Zeyrek, "Başbakan'a Ultimatom," Radikal, 13 Nisan 2003.

Manual on Consultation and Disclosure) ile yine IFC'nin *Yeniden Yerleşim Eylem Planının Hazırlanması için Elkitabı (IFC Handbook on Preparing a Resettlement Action Plan)* da dahil bazı yönetmeliklerini ihlal eder hale getirmektedir. Bunun yanı sıra heyetimiz, bölgede yaşayan etnik azınlıkların geri dönüşü olmayan, orantısız etkilere maruz kalmalarının önlenmesi için OD 4.20'nin (*indigenous peoples/ zor durumdaki yerleşik yerli halklar*) uygulanmasının neden gerekli olduğuna ilişkin zorlayıcı gerekçeler saptamıştır.

Heyetimizin bakış açısına göre, Türkiye'nin Kuzeydoğu bölgesinde, keyfi tutuklamalarla ve gözaltına almalarla, polis yıldırması sonucu muhalefetin engellenmesiyle ve hem siyasi grupların ve hem de halkın aynı biçimde, devlet güvenlik görevlilerinin sıkı gözetimi altında yaşamalarıyla açığa vuran baskı atmosferi öyledir ki, şimdiki halde, sözkonusu projenin uluslararası standartlara uygun olarak yürütülmesi mümkün olamaz. Bu tür bir baskı bilhassa aşağıdakileri imkansızlaştırmaktadır:

- *İnanılır bir istişare sürecinin ön şartı olan ifade ve konuşma özgürlüğü mevcut olmadığından, Proje'den etkilenecek topluluklar, özellikle azınlıklar ve zarar görmeye açık gruplar ile inanılır bir istişare süreci.*
- *Proje'den etkilenecek toprak sahipleri ve kullanıcılar ile, kaybedecekleri toprak karşılığında alacakları paraya ilişkin olarak, özgür ve açık tazminat müzakereleri.*
- *Proje'nin bağımsız olarak denetlenmesi.*

Kuzeydoğu'daki baskının, Türkiye'nin doğusunun tamamında² Kürt meselesine ilişkin olarak artan gerilimle ikiye katlanan sınırları gözönüne alındığında, heyetimiz, inşa edilmesi halinde boru hattının korunması ile ilgili düzenlemelerin, insan haklarına yönelik olarak ortaya çıkabilecek etkilerinden de çok ciddi bir endişe duymaktadır. Türkiye Cumhuriyeti ile Proje'yi geliştirenler arasında yapılmış yasal anlaşmalara göre, boru hattının güvenliğinden yalnızca Türk Devleti sorumlu olacaktır ve bu sorumluluk, insan haklarına ilişkin karnesi Avrupa Konseyi tarafından durmadan eleştirilmekte olan Jandarma'ya verilecek olan bir sorumluluktur.³ Heyetimizin görüşüne göre, bu tür düzenlemeler, özellikle boru hattının kuzeydoğu kesiminde insan hakları ihlallerini büyük ölçüde hızlandırma tehlikesi içermektedirler.

Bu koşullar çerçevesinde ***heyetimiz, ilgili taraflar, özellikle de boru hattından doğrudan doğruya etkilenecek olan kişiler, misillemeye ya da yıldırmaya maruz kalma korkusu taşımaksızın Proje ile ilgili görüşlerini ifade edecek ve toprak kayıpları ile diğer zararları ile ilgili tazminatlar konusunu özgürce müzakere edecek konumda olmaz ve böyle bir sosyokültürel çevrede yaşamazlar iken, BTC Co.'nun Proje'yi sürdürmesinin sorumsuzluk olacağını düşünmektedir. Heyetimiz ayrıca, Türkiye'deki güvenlik***

² Bölgede gerilimin artmasının ardında bir dizi gerekçe bulunmaktadır. Bilhassa 2002 yılında Türk yetkililer tarafından, Kürdistan Emek Partisi'nin (PKK) hapisteki lideri Abdullah Öcalan'ın avukatlarıyla görüşmesinin kısıtlanması, yakın zamanlarda PKK'nın ardılı olan KADEK Başkanlık Konseyi'nin tek taraflı olarak ilan etmiş olduğu ateşkese sona erdirmeye tehdidinde bulunmasına yol açmıştır. Buna ilaveten Türk yetkililer ile Kürt azınlık arasındaki gerilimler, Türkiye'nin Kuzey Irak'a müdahalesiyle ve Türkiye'nin güneydoğusundaki Kürt bölgelerinde tekrar olağanüstü hal ilan edilmesi ihtimaliyle de dikkate değer ölçüde artmıştır.

³ Bkz. Mesela, Avrupa Konseyi Bakanlar Komitesi, Dahili Karar ResDH (2002) 98; benimsendiği tarih 10 Temmuz 2002.

kuvvetlerinin insan hakları notunun düşük olmasının kaynaklanan güvenlikle ilgili endişelerin, Proje'yle ilgili çalışmalar başlamazdan önce ele alınmasının temel bir zorunluluk olduğunu inanmaktadır.

RESMİ OLARAK ERTELEME (MORATORYUM) KONUSU ACİLDİR

Heyetimiz, durumun ciddiyetinden hareketle, Proje'yi geliştirenleri ve Proje'ye mali destek aramak için başvurulmuş olan finans kuruluşlarını bu projeye yönelik bir moratoryum uygulamaya çağırmıştır.

Heyetimiz tarafından tanımlanmış olan kusurların (örneğin tazminat düzeyleri bağlamında) birçoğu, daha fazla mali kaynak kullanımı ve önemli uluslararası standart ihlalleri ile yerel mevzuatla ilgili olarak ortaya çıkabilecek olası ihtilafların çözülmesi için daha fazla zaman sarfı ile giderilebilir olmakla birlikte, **bölgedeki baskıdan kaynaklanan sistemik sorunlar, Proje'yi geliştirenlerin ya da Proje'ye mali kaynak sağlayacak olan uluslararası finans kurumlarının iyileştirici etkinlikleriyle ıslah edilecek gibi değildir. Bunun için bir dizi gerekece vardır:**

Dünya Bankası'nın insan haklarına ilişkin ihtiyati politikaları yoktur ve dolayısıyla, finansman verilecek projenin tutturmak zorunda olduğu insan hakları standartları bulunmamaktadır. Gerçekten de Dünya Bankası, müşterisi olan devletlerin siyasal sorunlarına karışmasını yasaklayan Ana Sözleşmesi'nin, insan hakları, özü itibariyle "siyasal" bir sorun⁴ olduğundan Banka'nın bu tür yönetmelikler benimsemesini konu dışı bıraktığını savunmaktadır. Ne var ki Dünya Bankası eski Genel Müşaviri İbrahim Shihata'nın değindiği gibi: "Üyelerin, BM Şartı çerçevesindeki yükümlülükleri, BM Şartı'daki açık bir hükmün (103. Madde) zorlamasıyla, Dünya Bankası Ana Sözleşmesi de dahil olmak üzere diğer antlaşmalarındaki yükümlülüklerin önüne geçmektedir. BM ile yaptığı İlişki Anlaşması dolayısıyla bizzat Dünya Bankası da yukarıda sözü edilen BM Şartı'nın üyelerine koştugu yükümlülükleri dikkate almak zorundadır..."⁵ Hukuk uzmanları buradan yola çıkarak, "Herhangi bir başka yasa öznesi gibi Dünya Bankası da, üyeleri de dahil olmak üzere diğer öznelerin uluslararası yükümlülüklerini tam bir sadakatle yerine getirme yeteneklerine ket vuramayacağı gibi, sözkonusu yükümlülüklerin ihlal edilmesine de yol açamaz veya yardım edemez," hükmüne

⁴ Dünya Bankası'nın insan haklarıyla bire bir ilgili konumuna ilişkin bir tartışma için bkz. Roth, K., "Head of Human Rights Watch urges Bank to adopt rights-based approach to development (Human Right Watch'ın başkanı, Banka'yı kalkınmayla ilgili olarak haklar temelinde bir yaklaşım benimsemesi konusunda uyardı ", World bank, INTRANet, 18 Şubat 2003.

⁵ MacKay, F.'den alıntı; "Universal Rights, or A Universe Onto Itself? Indigenous Peoples' Human Rights and World Bank Draft OD 4.10 on Indigenous Peoples," American University Law Review, 17 cilt, 3. sayı, s. 554, AM.U. Int'l 1. rev [17:527 2002]554. Bu bağlamda Banka'nın Çevresel Değerlendirme'ye ilişkin Operasyon Politikaları 4.01'in açıkça şunu beyan ettiğine değenmek de uygun olacaktır: "Banka, proje etkinlikleriyle alakalı olarak, ülkenin, ilgili uluslararası çevre antlaşmaları ve anlaşmaları çerçevesindeki yükümlülüklerini... hesaba katar. Banka, EA "Dünya Bankası Operasyonel Elkitabı, Operasyonel Politikalar 4.01, Çevre Değerlendirmesi, parag. 3 (1999) çerçevesinde tanımlanmış olan türden, ülkeye özgü yükümlülüklerle çelişki yaratacak proje etkinliklerini finanse etmeyecektir."

⁶ Age. S. 554. Ayrıca bkz. The World Bank, the IMF and Human Rights (Dünya Bankası, IMF ve İnsan Hakları), s. 63 ile D. Bradlow & C. Grossman, Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF (Sınırlı Manda ve Birbirine Dolanmış Sorunlar: Dünya Bankası ve IMF'ye Yönelik Yeni bir Meydan Okuma). 17 Human Rights Q. 411, 428.

varmışlardır.⁶ Fiiliyatta, Dünya Bankası'nın bu raporda tanımlanan insan haklarına ilişkin endişelere değinmek için harekete geçmedeki yetersizliği, katılması halinde sözkonusu projenin insan hakkı ihlallerine yol açmayacağını güvence altına alma yükümlüğüyle birlikte ele alındığında, gündeme gelen endişeleri giderecek önlemler alınana kadar bu projeden çekilmesi, önündeki tek seçenek gibi görünmektedir.

BTC Konsorsiyumu özel bir şirkettir ve Türkiye ile imzalamış olduğu Evsahibi Hükümet Anlaşması kendisine, boru hattı koridoru üstünde yaşayan insanlarla ilgili olarak dikkate değer ölçüde yasal güç sağlamış olsa bile, Türk vatandaşlarının projeye ilgili olarak doğru düzgün bir istişare sürecine katılmaları veya mülkiyet haklarını koruyabilmeleri için gerekli ifade özgürlüğünden yararlanmalarını güvence altına alacak gerekli politik reformları gerçekleştirilmesi sözkonusu değildir.⁷

Evsahibi Hükümet Anlaşması'nda belirlendiği gibi güvenlikten sorumlu olan BTC Co. Değil, Türkiye'dir. Dolayısıyla projeyi geliştirenlerin, Evsahibi Hükümet Anlaşması, tekrar müzakere edilerek bütün taraflarca kabullenilmediği sürece, boru hattıyla ilgili güvenlik mevzuatını ve operasyonları denetleme güçleri olmayacaktır. Ayrıca heyetimiz, projeyi geliştirenlerin böyle bir kapasiteye sahip olmalarının, projeden etkilenen insanların yararına olduğuna da inanmamaktadır.

Bu koşullar altında heyetimiz, BTC Projesi'nin insan hakları ihlallerine yol açmaması için, kıymet takdirinin yapılmasına, finanse edilmesine veya inşaatına başlanmasına yönelik bir moratoryumun, uluslararası finans kuruluşları ile projeyi geliştirenlerin önündeki tek meşru yol olduğuna inanmaktadır. Zira moratoryum, en sorumlu eylem biçimini temsil etmektedir.

Esasen heyetimiz, Türkiye'nin kuzeydoğusundaki baskı konusunda önemli bir gelişme kaydedilmemiş olmasından hareketle, Avrupa Birliği hükümet görevlileri tarafından, Dünya Bankası, EBRD veya resmi ihracat kredisi kuruluşları vasıtasıyla BTC Projesi'ni mali açıdan destekleme yönünde alınacak herhangi bir kararın yasal açıdan itiraza açık olacağına inanmaktadır. İtiraz, finansmanı yapılan ya da kredi garantisi sağlanan bir projenin, bölgede, doğrudan doğruya insan hakları ihlallerine yol açmasından ötürü yapılacaktır.

⁷ BTC Konsorsiyumu'nun projeye ilgili kendi değerlendirme raporunda değindiği gibi: "Bu incelemede ele anılan meseleler karmaşık ve tartışmalıdır ve birçok açıdan da projecilerin denetimi dışındadır. Birçoğu, ticari bir projeyi üstlenmiş olan yatırımcıların doğrudan giderebileceği türden değildir. Bir kısmı, münhasıran denemese bile fazlasıyla egemen hükümetlerin etki alanı içinde kalmaktadır." Bkz. BTC/AIOC/Shah Deniz/BP, *Regional Review: Executive Summary*, Şubat 2003, s.5.

ÖZET VE TAVSİYELER

6.0 BULGULARIN ÖZETİ

6.1 İSTİŞARE SÜRECİNİN MEŞRUIYETİNİ ZEDELEYEN SİSTEMİK SORUNLAR

Mart 2003 heyeti, BTC Konsorsiyumu'nun, Temmuz 2002 heyeti tarafından tanımlanmış olan bir dizi endişe ile kısmen ilişkili bir dizi adım atmış olduğunu farketmekle birlikte, aşağıda sıralanan gerçekleri de saptamıştır:

- **Proje'yi hala istişare, tazminat ve yeniden yerleşim konularındaki uluslararası standartlara ilişkin olarak sürüp giden ihlaller karakterize etmektedir.**
- **Bölgede yıpratıcı bir baskı atmosferi ile konuşma özgürlüğünden yoksunluk, BTC Projesi'ne ilişkin muhalefeti imkansız kılmaktadır.**
- **Boru hattının açılışından sonra, özellikle de, esas güvenlik gücü olarak Jandarma'nın (Türkiye'nin askeri polisi) kullanılması suretiyle ortaya çıkacak militarizasyon yüzünden, bölgede insan hakları durumunun daha da kötüye gideceğe benzemektedir.**

Heyetimiz hassaten şunları saptamıştır:

- **Kars ve Ardahan bölgesinde ifade özgürlüğünün bulunmayışı, BTC Co.'nun yürütmüş olduğu istişare çalışmalarını bütünüyle gayrimeşru kılmaktadır.** Heyetimiz, tanık olduğu ve bizzat yaşadığı zorlamalar altında bulunan insanların, devlet açısından büyük önem taşıyan ve devletin boru hattı şirketince sürdürülen bir projeye açıkça karşı çıkacak konumda olduklarını iddia etmenin imkansız olduğunu düşünmektedir.
- **BTC Co. tarafından yürütülmüş olan kusurlu ve uygunsuz istişare süreçleri de bizatihi, gerçekte yerel halka devletin empoze ettiği bir karara bir toplu katılım görüntüsü giydirmek suretiyle Kuzeydoğu'da baskı altında tutulan insan hakları atmosferini güçlendirmişlerdir.**
- **Belli başlı insan hakları reformları yapılmaksızın meşru bir istişare sürecinin yürütülmesi imkanı bulunmamaktadır.**
- **BTC Konsorsiyumu'nun kendisini güvenlik meselesinden soyutlama arzusu, güvenlik gücünün Jandarma'ya ihale edilmiş olması ile boru hattı koridorunun büyük bölümünü karakterize eden baskı ve yoğun gözetim atmosferiyle biraraya geldiğinde, hem kısa ve hem de uzun vadede insan hakları ihlallerinde gözle görünür bir artış olmasını çok olası hale getirmektedir. BTC Projesi'nin şimdiden, devletin fuzuli müdahalelerinin derecesini artıran ve muhalefetin bastırılmasına yolaçan bir tehdit oluşturduğu yönünde iddialar vardır.**

6.2 İSTİŞARE VE TAZMİNAT İŞLEMLERİNE ÖZGÜ HATALAR

Sosyal içerikli bu sorunlar, aşağıdakiler de dahil BTC Projesi'ne özgü bir dizi kusurla birleşmişlerdir:

- **Proje için yapılmış YYEP (Yeniden Yerleşim Eylem Planı) ile Türk istimlak mevzuatı arasındaki bir dizi gözle görünür ihtilaf.**
- Çevre Etkisi Değerlendirme (EIA) ve Yeniden Yerleşim Eylem Planı (YYEP) gibisinden **hayati öneme haiz proje dokümanlarının gerek tasarımı ve gerekse yürürlüğe sokulmasında, uygun sivil toplum kuruluşlarıyla istişarede yaygın bir yetersizlik de dahil olmak üzere temel hatalar.**
- **BTC Co.'nun tazminat sürecini, yapıldığı iddia edilen biçimde yürütmediğine dair tekrarlanan ifadeler.** Bu kusurlar, Proje'den etkilenecek kişiler arasında giderek büyüyen bir kızgınlık yaratmaktadır.
- **Proje'de, boru hattının etnik azınlıklar, kadınlar ve yoksullar da dahil olmak üzere zarar görmeye açık olan gruplara yönelik diğerlerinden farklı etkilerin yeterince hesaba katılmamış veya bu sorunların uygun bir biçimde tazmin edilmesi yoluna gidilmemiş olması.**

Heyetimiz, bu hatalar dizgesinin BTC Projesi'ni, Türk Hükümeti ile BTC Co. arasında varılmış olan Evsahibi Hükümet Anlaşması ile ihtilafı duruma getirdiğine dikkati çekmektedir. Bu dizge ayrıca, projeyi, OD 4.30 (Gönülsüz Yeniden Yerleşim) ve yönetmelikleri de dahil olmak üzere Dünya Bankası'nın bir dizi zorunlu standartını da ihlal eder duruma sokmaktadır.

Heyetimiz hassaten aşağıdakileri saptamıştır:

a. İstişare ile Bilgilendirme Konusundaki Hatalar

- **Çevre Etkisi Değerlendirme (ÇED) safhasında yapılmış olması gereken istişare sürecinde ciddi hatalar vardır.**
- **ÇED'in gözden geçirilmesi ve onaylanması işlemi, onayından önce Çevre Bakanlığı'nda yetersiz bir zaman verildiğinden güdük kalmıştır.**
- **Doğrudan etkilenen kişilere yönelik istişare yetersizdir: Köylülere Proje'nin olumsuz çevre etkilerine ilişkin bilgi verilmemiştir; Proje'nin potansiyel yararları ısrarla abartılmıştır; verilen yetersiz bilgi fazlasıyla teknik olmuştur ve şikayetlerin tazminiyle ilgili olarak verilen bilgiler akıl karıştırıcı ve tek yanlıdır.**
- **Kadınlara yeterince danışılmamış, kadınlar istişare sürecinde dil tercihleri bağlamında ayırma tabi tutulmuş ve bazı durumlarda hiç hesaba katılmamışlardır.**
- **Heyetimizin ziyaret ettiği kurumlardan, kuruluşlardan veya köylerden hiçbirine, Proje'nin yasal çerçevesini oluşturan Evsahibi Hükümet Anlaşması'nın ve Hükümetlerarası Anlaşma'nın varlığıyla ve içeriğiyle ilgili bilgi, bu anlaşmaların Türkiye, Türk vatandaşları ve Proje'nin kendisi için hayati önemine rağmen verilmemiştir.**

Heyetimiz, ÇED, YYEP ve EHA ile ilgili olarak doğru düzgün bir istişare sürecinin güvence altına alınmasındaki genel başarısızlığa, Proje'den etkilenenlerin de, projeyi geliştirenlerin de yararına olmadığına dikkati çekmektedir. Tam tersine bu başarısızlık, BTC Konsorsiyumu'nu oluşturan şirketlerin adına leke sürme riskini doğurmasına ek olarak, Proje'ye yönelik bir gücenklik husule getirecek ve hem olaysızca yürürlüğe sokulmasına hem de gelecekte işletilmesine karşı ters bir tutum oluşturacaktır.

b. Toprağın İstimlakı ve Tazminat- Yasayla ve İnsan Haklarıyla İlgili Endişeler

Heyetimiz, yeniden yerleşimle ilgili olarak bir önceki heyet tarafından tanımlanmış olan birçok meselede, özellikle de topraktan tapusu olmaksızın yararlananlara tazminat ödenmesi konusunda önemli gelişmeler kaydedildiğini saptamıştır. **Ne var ki, bu gelişmeler, boru hattı koridorunun kuzeydoğusu için sözkonusu değildir (Posof'tan Kars'a kadar). Üstelik heyetimiz, boru hattı koridoru boyunca, YYEP'nin tasarımı ve icrasıyla ilgili temel bazı açmazlara ilişkin yaygın kanıtlar saptamıştır:**

- ÇED'in toprak fiyatlarının müzakere edilmesine ilişkin hükümlerinin Türk İstimlak Mevzuatı'yla ihtilafı olduğu anlaşılmaktadır ki bu, Proje'yi potansiyel olarak EHA'yı ihlal etme durumunda bırakmaktadır.
- BTC, aksine iddialara rağmen toprak için ısrarla düşük ödeme yapmakta ve hakça bir fiyat biçmekte başarısız olmaktadır. Heyetimiz ile görüşen köylülere göre, ÇED'de gösterilen *ortalama* fiyattan yapılan tek bir ödeme bile bulunmamaktadır; hatta ödemelerin çoğu bu düzeyin ancak yarısı kadardır. Bu kısmen, toprağın tapuda gösterilen fiyatının değil de gerçek piyasa fiyatının baz alınmamasından kaynaklanmaktadır.
- Dünya Bankası Grubu'nun talepleriyle uyumlu olarak, tapu sahibi olmayanların uğrayacakları zararların tazmini için bir 'YYEP Fonu' oluşturulmuş olduğu halde, heyetimizle görüşen kişilerden hiçbirinin bu fondan haberi yoktur. Bunun sonucunda, sözkonusu fon vasıtasıyla tazminat alabilecek kişiler ki bunlar, genellikle topluluğun en yoksullarıdır, tazminat için başvuru yapacak konumda değildirler. Kısacası, bölge insanı için ÇED Fonu, teoriden ziyade pratikte mevcut değildir.
- Bunun gibi, kiracıların büyük çoğunluğunun da pratik ve kültürel nedenlerle herhangi bir tazminat alması olanak dışı görünmektedir. Her halükarda, kiracılar gelir kaybı için değil ve fakat, yalnızca, tanımları itibarıyla pek de sahip olmadıkları menkuller için tazminat alabileceklerinden, bunu almayı başarsalar dahi, sözkonusu olabilecek paranın miktarı sosyoekonomik konumlarını yeniden kazanmalarına yetecek gibi değildir.
- Bu, BTC'nin daha geniş planda, anlık mülk kaybından ziyade gelir kaybını tazmin etmede gösterdiği sistematik başarısızlık fenomeninin bir parçasıdır. Bunun içinde, halihazırdaki üretkenlik kaybının tazmin edilmemesi, toprağın tamamen eski haline getirilmesi için yapılacak harcamanın tamamının ödenmemesi ve güme giden

ekonomik fırsatlar ile boru hattı ve inşaat süreçleri dolayısıyla yapılamayan yatırımların tazmin edilmemesi vardır.

- Heyetimizle görüşen köylüler, tazminat miktarı veya süreci konusunda bir anlaşmazlık vuku bulduğunda bunun nasıl giderilebileceğiyle ilişkili olarak ısrarla yanlış bilgilendirildiklerini ileri sürmüşlerdir. Bunlardan kimisi kendilerine mahkemeye başvurma haklarının bulunmadığının söylendiğini bildirmiş; diğerleri ise mahkemeye gidebileceklerini fakat bunun pahalı olacağını ve zaman kaybına yol açacağını söylemişlerdir. Türk mevzuatına göre, mahkeme açmak için gerekli masraf, istisnaki yapan yetkililer tarafından karşılanmaktadır.
- BTC'nin, Proje'den etkilenen kişilerden hiçbirinin herhangi bir olumsuzlukla karşılaşmamasını güvence altına alacağını iddia ettiği koruma mekanizmalarının büyük çoğunluğu ya yerel halk tarafından bilinmemektedir ya yürürlüğe sokulması olanaksızdır, etkisizdir veya BTC görevlileri tarafından uygulanmamaktadır. BP'nin, uluslararası finans kurumlarından veya diğer olası proje finansörlerinden pratikte mevcut olmayan politikalar karşılığında kredi talep etmiş olması da özel bir endişe konusudur.

c. Azınlık Grupları ve Dezavantajlı Gruplar Konularında Sürüp Giden Hazırlıksızlık

Dünya Bankası Grubu'nun etnik azınlıkların korunmasına yönelik bir koruma politikası olduğu halde (OD 4.20 olarak bilinen), hem BTC Co. hem de Dünya Bankası Uluslararası Finans Korporasyonu, bunun BTC Projesi'ne uygulanmayacağını tartışmasını yapmaktadırlar. Heyetimiz bu görüşü reddetmektedir. Heyetimiz, Türkiye'nin Kürt azınlığının, OD 4.20 ile, “yerleşik yerli halklar (*indigenous peoples*)” veya özel koruma önlemleri gerektirme tanımları çerçevesinde kayda bağlanmış olan bütün ölçütlere uyduğunu kabul etmektedir. Bunun da ötesinde heyetimiz, projeyi geliştirenlerin benimsediği “zarar görmeye açık gruplar” yaklaşımının, bölgedeki etnik azınlıkların çıkarlarını korumadığından ve daha da önemlisi, karşı karşıya buldukları sorunları kızıştıracağından endişe etmektedir.

Heyetimiz ayrıca şunları saptamıştır:

- Etnik azınlıkların nasıl etkileneceğini belirleyen en önemli öğeler, devletin ve silahlı kuvvetlerin sürüp giden baskısı, konuşma özgürlüğünün bulunmaması, siyasal ve sosyal marjinalleştirmedir. Buna rağmen YYEP, bu öğeleri zımnen hiç hesaba katmamıştır. BTC Co.'nun etnik azınlıklarla, özellikle de Kürt'lerle ilgili olarak benimsemiş olduğu politika, zarar görmeye açık olma durumunu ortaya çıkartan sosyopolitik gerçekleri hiç hesaba katmamakta ve Türkiye'nin son yıllarda “uygulamaya girmemiş olsa bile” yasalar açısından liberalleşmiş Kürt politikasından yararlanmakta da başarısız olmaktadır.
- Proje ÇED'i, sosyal araştırma anketinde kadınların konumunu değerlendirmekte ve kadınlarla istişare konusunda bir takım hedefler önermekte ise de, boru hattının kadınlar üstünde nasıl bir farklı etkisinin olabileceği konusunu derinlemesine irdelememektedir.

- Heyetimizin, BTC Projesi'nin dinsel gruplar üstündeki etkilerini gözden geçirmek için fazla bir şansı olmamıştır. Buna rağmen, Alevi ve Sünni gruplar arasındaki şiddet olaylarına; özellikle Sivas bölgesinde Aleviler'e yönelik baskıya yönelik çok ciddi meselelerin gündemde olduğuna büyük bir endişeyle değinmekte yarar görmektedir.

6.3 MORATORYUMUN GEREKÇESİ

Heyetimiz tarafından tanımlanmış olan eksikliklerin (örneğin tazminat düzeyleri bağlamında) birçoğu, daha fazla mali kaynak kullanılması ve önemli uluslararası standart ihlalleri ile yerel mevzuatla ilgili olarak ortaya çıkabilecek olası ihlaller daha fazla zaman sarfedilmesi ile giderilebilir olmakla birlikte, **bölgedeki baskıdan kaynaklanan sistemik sorunlar Proje'yi geliştirenlerin ya da Proje'ye mali kaynak sağlayacak olan uluslararası finans kurumlarının iyileştirici etkinlikleriyle ıslah edilecek gibi değildir:**

1. Dünya Bankası'nın insan haklarına ilişkin ihtiyati politikaları ve dolayısıyla, finansman verilecek projenin karşılamakla zorunlu olduğu insan hakları standartları bulunmamaktadır. **Gerçekten de Dünya Bankası, müşterisi olan devletlerin siyasal sorunlarına karışmasını yasaklayan Ana Sözleşmesi'nin, insan hakları, özü itibarıyla "siyasal" bir sorun olduğundan Banka'nın bu tür yönetmelikler benimsemesini konu dışı bıraktığını savunmaktadır.** Ne var ki Dünya Bankası eski Genel Müşaviri İbrahim Shihata'nın değindiği gibi: "Üyelerin, BM Şartı çerçevesindeki yükümlülükleri, BM Şartı'daki açık bir hükmün (103. Madde) zorlamasıyla, Dünya Bankası Ana Sözleşmesi de dahil olmak üzere diğer antlaşmalarındaki yükümlülüklerin önüne geçmektedir. BM ile yaptığı İlişki Anlaşması dolayısıyla bizzat Dünya Bankası da yukarıda sözü edilen BM Şartı'nın üyelerine koştığı yükümlülükleri dikkate almak zorundadır..." Hukuk uzmanları buradan yola çıkarak "Herhangi bir başka yasa öznesi gibi Dünya Bankası da, üyeleri de dahil olmak üzere diğer öznelerin uluslararası yükümlülüklerini tam bir sadakatle yerine getirme yeteneklerine ket vuramayacağı gibi, sözkonusu yükümlülüklerin ihlal edilmesine yol açamaz veya yardım edemez," hükmüne varmışlardır. **Filiyatta, Dünya Bankası'nın bu raporda tanımlanan insan haklarına ilişkin endişelere değinmek için harekete geçmedeki yetersizliği, katılması halinde sözkonusu projenin insan hakkı ihlallerine yol açmayacağını güvence altına alma yükümlülüğüyle birlikte ele alındığında, gündeme gelen endişeleri giderecek önlemler alınana kadar bu projeden çekilmesi, önündeki tek seçenek gibi görünmektedir.**
2. BTC Konsorsiyumu özel bir şirkettir ve Türkiye ile imzalamış olduğu Evsahibi Hükümet Anlaşması kendisine, boru hattı koridoru üstünde yaşayan insanlarla ilgili olarak dikkate değer ölçüde yasal güç sağlamış olsa bile, Türk vatandaşlarının projeye ilgili olarak doğru düzgün bir istişare sürecine katılmaları veya mülkiyet haklarını koruyabilmeleri için gerekli ifade özgürlüğünden yararlanmalarını güvence altına alacak gerekli politika reformlarını yapması sözkonusu değildir. BTC Konsorsiyumu'nun Proje'yle ilgili olarak kendi bölgesel değerlendirmesinde değinmiş olduğu gibi; "Bu değerlendirmede ele alınan meseleler karmaşık ve çelişkilidir ve birçok açıdan

Proje'nin denetimi dışında kalmaktadır. Birçoğu, ticari bir projeyi üstlenen yatırımcılar tarafından denetlenemeyecek meselelerdir. Birçoğu da, münhasıran denemese bile fazlasıyla egemen hükümetlerin nüfuz bölgesi içinde kalmaktadır.

3. **Evsahibi Hükümet Anlaşması'nda belirlendiği gibi güvenlikten sorumlu olan BTC Co. Değil, Türkiye'dir. Dolayısıyla projeyi geliştirenler, hayati önemi bulunan bir operasyon arenasını kendi denetimleri dışında bırakmışlardır.** Evsahibi Hükümet Anlaşması tekrar müzakere edilerek bütün taraflarca kabul edilmediği sürece boru hattıyla ilgili güvenlik mevzuatını ve operasyonları denetleme gücü hiç olmayacaktır.

Bu koşullar altında heyetimiz, BTC Projesi'nin kıymet takdirinin yapılmasına, finanse edilmesine veya inşaatına başlanmasına yönelik bir moratoryumun, Proje'nin insan hakları ihlallerine yol açmaması için uluslararası finans kuruluşları ile Proje'yi geliştirenlerin önündeki tek meşru yol olduğuna inanmaktadır. Zira, moratoryum en sorumlu eylem biçimini temsil etmektedir.

6.3 TAVSİYELER

A. Derhal Moratoryum

BTC Co. ile uluslararası finans kurumları, Proje'nin icraatı BTC Co.'nun uygulamayı taahhüt ettikleri de dahil olmak üzere, yalnızca uygulanabilir uluslararası yasa ve standartlarla değil, ayrıca Proje'den etkilenen bölgelerde temel insan hakları uygulamasıyla da uyumlu hale gelinceye kadar sözkonusu projeyi resmen ertelemelidirler.

Heyetimiz ayrıca, BTC Projesi'nin yeniden başlamasının aşağıdaki koşullara bağlı olmasını tavsiye etmektedir:

1. BTC Co.'nun Proje'den etkilenen bölgelerde ifade özgürlüğünün geçerli ve gerçek bir norm olmasını güvence altına alan uygun önlemlerin Türk yetkililerce alındığına dair bağımsız denetçilerden onay alması. Bu, bölgede güvenlik uygulamaları ve insan haklarına saygı alanlarında, ancak belli bir süre içinde kurumsatırılabilir sistemik bir değişiklik gerektirmektedir.
2. Türkiye'nin, AB üyeliği başvurusu çerçevesinde AB standartlarını benimsediğini göstermek üzere, bütün Avrupa Birliği üye ülkelerinde geçerli olan yükümlülüklerle açıkça göstererek uymaya teşvik edilmesi.
3. Türkiye'nin Avrupa İnsan Hakları Sözleşmesi altındaki yükümlülüklerini benimsediğini göstermesi.
4. Proje'ye katılan bütün devletlerin ve şirketlerin, OECD, IFC ve Dünya Bankası yönetmeliklerinde belirlenmiş en iyi (örnek) uygulamaya bağlılıklarını ve böyle bir uygulama çerçevesinde hareket edeceklerini onaylamaları.
5. BTC'den etkilenen kişilerin, Proje'nin bütün aşamalarına, tasarımın veya işletmenin tatmin olmadıkları veya fazlasıyla zararlı ya da haksız buldukları yönlerini mantık çerçevesinde değiştirme fırsatına sahip olmaları da dahil olmak üzere somut olarak katılmaları. Yerel halkın katılımını güvence altına alacak

bütünlenmiş ve sürdürülebilir stratejiler, bölgedeki aşırı koşulların ışığı altında, Proje'nin yeniden başlamasından evvel belirlenmelidir.

6. BTC Co.'nun, toprak için ödenecek tazminatların, bağımsız bir değerlendirme ve etkilenen kişiler ile ilgili şirketler arasında gerçek bir müzakere ve bir pazarlık sonucu ödenmesini garanti etmesi.
7. BTC Co.'nun, Proje'nin inşaatından sökülmesine kadar bütün aşamalarını, dışardan bir kurum (yani finansmanı Proje Konsorsiyumu ya da finansörleri tarafından yapılmamış) tarafından görevlendirilmiş bağımsız bir grup tarafından denetleneceğini ve bu grubun tavsiyelerinin yürürlüğe sokulacağını taahhüt etmesi.
8. BTC Co. ile uluslararası finans kurumlarının, bu raporda belirlenmiş olan bütün düzensizlikler ve başarısızlıklarla ilgili olarak Proje'nin yeniden başlatılmasından evvel uygun bir çalışmanın yapılmasını garanti altına alması.

b. Yasal Yollar

Mevcut önerilerin birçokyonu gerek yerel ve gerekse uluslararası mevzuatı ihlal eder durumdadır. Bu raporda dile getirilen endişeleri giderecek yolların bulunmaması halinde heyetimiz, Proje'den etkilenen tarafların kendileri için uygun yasal yolları araştırmalarını tavsiye etmektedir. Yasal yolların zorlanması için izlenecek yöntemlerden bazıları aşağıda kısaca belirtilmiştir:

1. Yerel Türk Mahkemeleri

- Toprak için fiyat belirlenirken müzakere edilmemesi Türk İstimlak Mevzuatı'nın açık bir ihlalidir.
- Bölgede geçerli koşullar, istimlak ve tazminat ile ilgili Türk mevzuatının gereklerine uyulmasını imkansız hale getirmektedir. Bununla birlikte bu durumdan etkilenenler Türk mahkemelerine başvurabilirler.
- Devam konusunda alınacak herhangi bir nihai kararın değerlendirilmesine ilişkin edimler, Türk idari mahkemelerinde ele alınabilecektir.

2. Diğer Yerel Mahkemeler

- Hükümetin bir kanadı tarafından Proje'nin, mali olarak desteklenmesi yönünde alınacak herhangi bir karar, idare hukuku açısından inceleme konusu haline gelebilecektir. Bu incelemenin zemininde, karar alma sürecinin meşruiyeti de bulunacaktır ve inceleme, sosyal ve siyasal meseleler ile çevre ile ilgili endişeler de dahil olmak üzere Proje'den kaynaklanacak potansiyel insan hakları ihlallerine ilişkin meseleleri de kapsayabilecektir. Bunun gibi geniş ölçekli projelere ilişkin uluslararası mevzuat, yönetmelikler ve standartlar, bu tür davalarda temel alınacaktır.
- Proje'ye destek öneren şirketler, şirket yönetmeliklerini ihlal temelinde veya bunun gibi bir projede açılan davaların şirkete yönelik sonuçları itibariyle, hissedarlarının eylemlerine açık hale geleceklerdir.

3. Avrupa İnsan Hakları Mahkemesi

İç hukuk yollarının tükenmesi halinde, Proje'den aşırı ölçüde etkilenmiş bireyler, Avrupa İnsan Hakları Mahkemesi'ne gidebileceklerdir. Türkiye açısından, 6. Madde'nin (adil bir duruşma hakkı), 8. Madde'nin (ev ve aile yaşantısı hakkı), 10. Madde'nin (ifade özgürlüğü), 13. Madde'nin (fiili bir yasal çözüm hakkı), 14. Madde'nin (ayırımıcılığa maruz kalmama hakkı) ve 1. Numaralı Protokol'ün 1. Maddesi'nin (mülkünden barışçı bir biçimde yararlanma hakkı) ihlalleri, eğer Proje devam eder ise gündemde olacak ve dolayısıyla 2003 yılının Şubat ayı itibariyle Avrupa İnsan Hakları Mahkemesi'nin Türkiye aleyhinde hükme varmış olduğu 403 adet davaya ilave olacak yeni bireysel başvurular için birer temel teşkil edeceklerdir.

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 16th-24th 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;**⁸
- 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*

⁸ See Deniz Zeyrek, "Ultimatum to Prime Minister", *Radikal*, 13 April 2003. English translation available on request.

Action Plan. The FFM also finds compelling reasons why OD 4.20 (Indigenous Peoples) 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,⁹ 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.¹⁰ ***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

⁹ 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.

¹⁰ See for example Council of Europe Committee of Ministers, Interim Resolution ResDH(2002)98, adopted 10 July 2002

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 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:**

1. *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.¹¹ 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....”¹² 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.”¹³ **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.**
2. 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

¹¹ 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.

¹² 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.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)

¹³Ibid, 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.

necessary to participate in a proper consultation on the project or to safeguard their property rights.¹⁴

3. 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 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.

¹⁴ 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.

BACKGROUND AND REMIT OF MISSION

Within the coming months, major international funders such as the World Bank and the European Bank for Reconstruction and Development (EBRD) will decide whether to provide up to \$1.5 billion of public money to finance a major new pipeline – known as the Baku-Tbilisi-Ceyhan (BTC) pipeline - from the Caspian Sea to the Mediterranean. The pipeline is intended to export oil to Western markets.

BP is the lead company in the BTC Consortium (BTC Co.)¹⁵ which intends to build the pipeline and is also the operator and lead shareholder in the offshore oil fields in Azerbaijan which would supply it. The route chosen is more expensive than many other possible options for Caspian oil exports, and BP has said that the pipeline cannot be built without “free public money”.¹⁶ The pipeline consortium is seeking public funds via the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD). At least six export credit agencies, including the UK’s Export Credit Guarantee Department (ECGD), SACE (Italy) and the US Ex-Im bank, have also been approached for support by BTC. Formal applications for funding have been made to SACE¹⁷ and Ex-Im¹⁸ but, as yet, none has been made by a UK exporter to the ECGD. The project has not yet been accepted into the project pipelines of IFC and EBRD. However, BP has signalled that it hopes to submit an application at the end of April or beginning of May.

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

In Turkey, the BTC pipeline would stretch over 1000 kilometres, running from the Georgian border in the north-east of the country to Yumurtalik, south of Ceyhan, on the Mediterranean coast. An existing oil terminal at Yumurtalik would also be expanded. Construction work is to be carried out by BOTAS, the nationalised Turkish pipeline company, under a \$1.4 billion Lump-Sum Turnkey Agreement, whereby BOTAS has agreed to construct the pipeline for an agreed price, thereby relieving the BTC Consortium of the financial risks of any cost overruns.

In June 2002, over 60 regional and international Non-Governmental Organisations (NGOs) wrote to the IFC, the EBRD and other financial institutions raising a range of environmental, human rights, developmental and environmental concerns. The groups

¹⁵ The BTC Company is led by BP, which, with a 30.1 per cent share, would be also the operator of the project as a whole. Other shareholders in the BTC Company are the State Oil Company of the Azerbaijan Republic (SOCAR), Unocal, Statoil, Turkish Petroleum (TPAO), ENI, TotalFinaElf, Itochu, Inpex, ConocoPhillips and Delta Hess.

¹⁶ Corzine, R., “Wisdom of Baku pipeline queried”, *Financial Times*, 4 November 1998, p.4.

¹⁷ SACE, *Environmental News*, 26 March 2003, www.isce.it

¹⁸ See: List of Major Pending Transactions requiring an Environmental Assessment, Project No AP078161XX, posted 13 June 2002, www.exim.gov

urged that the IFC and other potential funders “impose a number of conditions on loan approval at the earliest possible stage of project appraisal” and that no funding be provided “unless the project is able to clearly demonstrate positive local and regional development impacts associated with the project over the next 30 years.”¹⁹

Since then, three international NGO Fact Finding Missions (FFMs) have travelled the route of the proposed pipeline and revealed major discrepancies between claims made by the BTC Consortium and the realities on the ground. The discrepancies span a wide range of issues, notably consultation and compensation arrangements, human rights issues, and the projects’ benefits for the people of the three host countries. Major violations of World Bank and EBRD standards were identified – in Turkey alone, the project was found to break four IFC safeguard policies on consultation and two on resettlement. Concerns were also raised that the legal agreements signed between the BTC and the governments of Turkey, Georgia and Azerbaijan are in potential violation of the European Convention on Human Rights, European Union laws and other international law instruments.²⁰

The BTC Consortium has since made some improvements to rectify the deficiencies identified by the FFMs and other NGOs, in particular on resettlement and consultation. In November 2002, a Resettlement Action Plan was made public, which was predicated on ensuring that all those whose land would be affected by the pipeline will receive compensation at a fair market price.

WHO BENEFITS FROM BTC?

BP and other sponsors of the BTC pipeline argue that the BTC pipeline will bring great benefits to the three host countries, in the form of government revenues from transit fees.

The countries would receive annual revenues from BTC as follows²¹:

	2005-2009	2010-2020	from 2021
Azerbaijan	0	0	0

¹⁹ Available from www.bankwatch.org

²⁰ *Preliminary Analysis of the Implications of the Host Government Agreement between Turkey and the BTC Consortium*, October 2002, available from www.baku.org.uk. 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.

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.

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"). 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.

²¹ Tariffs from: Oil & Capital, 27/5/02, 'Baku-Ceyhan pipeline is on the verge of starting'. For simplicity, assume average flow of 700kbd 2005-9; 1m bpd 2010-20; 700kbd 2021-

Georgia	\$31m	\$51m	\$45m
Turkey	\$51m	\$110m	\$97m

However, these revenues sound less impressive when placed alongside some of the potential and actual costs – especially in Turkey. The Turkish state pipeline company BOTAŞ has signed a Turnkey Agreement with the BTC partners, which commits BOTAŞ to building the Turkish section of the pipeline for a fixed price of \$1.4 billion. However, analysts have commented that the real cost – even assuming no over-runs – is more likely to be around \$2 billion. Thus it seems likely that the Turkish state has taken on a liability of at least \$600 million²², in addition to any and all of the cost over-runs which almost inevitably accompany any major pipeline project, which could bring its bill into the billions. For comparison,

Even BP has said that it thinks it is unlikely BOTAŞ will complete its contract within budget and on schedule²³, and the Turnkey Agreement states that in this eventuality the Turkish government will have to pay a further penalty to the consortium, potentially of several hundred million dollars. In all three countries, the governments carry the costs of security, plus any legal liabilities for human rights abuses caused by the security operation – costs which have not yet been estimated. In Georgia, there is considerable risk to the Borjomi mineral water facility, whose springs BTC would pass close to, and which accounts for 10% of Georgia’s exports²⁴. Borjomi is the largest mineral water brand in the former Soviet Union. While Azerbaijan will gain revenue from the oil extracted from its territory, it will get nothing from the pipeline itself. In other words, while BP is therefore insulated against the many sources of financial discomfort associated with pipeline projects, the likely costs of BTC to the host countries, Turkey in particular, would seem to cancel out many of the potential benefits.

In any case, the development benefits of the BTC project itself are in serious doubt. Firstly, extensive corruption in all three countries means that benefits are very likely to be restricted to the elites. Secondly, there are strong signs that Azerbaijan may be suffering from ‘Dutch Disease’²⁵, the condition where an economy actually contracts due to over-concentration on oil development at the expense of other sectors of the economy. The IMF’s insistence that Azerbaijan set up an Oil Fund specifically to combat this has been traduced by the use of hundreds of millions of dollars from the Fund to pay for the construction of BTC, a decision which led to the IMF suspending further loans to Azerbaijan. Thirdly, given Baku’s history as the oil refining capital of the former Soviet Union, the country would arguably be better served by refining oil than by exporting crude. Indeed, the refining sector has shrunk to a fraction of its former capacity, causing a major skills exodus, and even requiring the country to import petroleum products, with significant impact on balance of payments.

²² see eg Sunday Business, 1/7/01, ‘Lazard win puts Caspian oil deal firmly on line’

²³ BP presentation to selected NGOs and investors, London, 24/3/03

²⁴ Email from Badri Japaridze (managing director, Georgia Glass and Mineral Water Company) to Green Alternative, 13/1/03

²⁵ see eg Hoffman, D., “Oil and Development in Post-Soviet Azerbaijan”, NBR Review, vol. 10 No. 3, August 1999, National Bureau of Asian Research, www.nbr.org; Kaldor, M. and Said, Y., “Oil and Human Rights in Azerbaijan” in Edie, A., Bergesen, H., Goyer, P., (eds), Human Rights and the Oil Industry, Intersentia, Oxford, 2000, p. 96

REMIT OF THE FFM

On 16th-24th March 2003, a second Fact Finding Mission (FFM) to Turkey, consisting of representatives from four Non-Governmental Organisations, visited the region travelling along the route from Sivas to Posof.

The remit of the mission was to assess the compatibility of the BTC project with World Bank/International Finance Corporation guidelines on resettlement and consultation. This incorporated efforts to:

- Assess the extent to which the prevailing human rights situation, especially the level of freedom of speech, has impacted on the possibility of legitimate consultation;
- Assess the adequacy of the consultation process conducted as part of the Environmental Impact Assessment (EIA) and the Resettlement Action Plan (RAP) for the project;
- Assess the proposed arrangements for compensating those affected by the BTC project against the standards specified in the Host Government Agreement for the Turkish section of the pipeline, namely the Turkish Expropriation Law and the World Bank Group's Operational Directive OD 4.30 on Involuntary Resettlement;
- Assess the extent to which affected communities have been informed about the social and environmental impacts of the project and of their legal rights with respect to damages and compensation, and chronicle expressed concerns;
- Review the impacts of the project on ethnic minorities, women and other vulnerable groups living in the country and affected by the project;
- Learn the views of politicians and relevant Parliamentary authorities as to the implications for Turkey of the Host Government Agreement (HGA) which Turkey has signed with the BTC Consortium and which provides the legal framework for the project;
- Conduct preliminary investigations into allegations made in the Turkish press of corruption in the award of sub-contracts for work on the BTC pipeline.

Further Fact Finding Missions are to take place later in the year, covering the Azerbaijan and Georgian sections of the pipeline.

MEETINGS CONDUCTED AND METHODOLOGY

The FFM met with Parliamentarians, relevant Parliamentary bodies, affected villages along the route, local leaders and individuals, political parties, environmental and development NGOs, journalists, and experts in engineering, environment, human rights and law.

Attempts were made to meet with BOTAŞ in Ankara and subsequently in Erzurum. Although the FFM made contact with BOTAŞ on three separate occasions with requests (two verbal and one written) to meet, the company failed to fulfil a tentative arrangement for a meeting and refused to meet the FFM in the field. The FFM did, however, meet Envy, the environmental engineering company which carried out the environmental baseline survey for the EIA study under contract to BOTAŞ.

The FFM met representatives of seven villages, including four muhtars (community leaders) and one deputy muhtar, and spoke to one other muhtar on the phone. The villages were chosen at random along the route. The FFM interviewed two of the communities it had met in July 2002. Further visits to other communities were planned but the FFM was prevented from carrying them out due to police harassment and intimidation in Ardahan and Kars provinces (*see* Section 1).

Of these eight communities surveyed, three are in Sivas province, two in Erzincan, one in Erzurum and two in Ardahan.

The interviewing process was qualitative, beginning with open-ended questions about people's experiences of the project and the consultation and compensation processes. They were thus able to raise concerns and express opinions and feelings without being influenced by the questions asked. The FFM followed this 'open' session with specific questions about issues such as consultation and the compensation procedures as a 'spot check' of BTC Co.'s claims in the EIA and RAP.

All five members of the FFM team took notes during meetings. These minutes were typed and printed either the same day or the following day, and checked by all members of the team. The minutes were an accurate and full record of what was said.

For reasons of protecting the security of interviewees from possible harassment or other repercussions, the settlements visited and the individuals interviewed are not named in this report. These names are confidentially available from the authors. In most cases, interviewees in urban centres were happy for their names to be given: where this is the case, their names appear.

Section 1

BTC, SECURITY AND HUMAN RIGHTS

A great deal has been made by the BTC consortium of the extent and sophistication of the consultation and compensation processes for the BTC pipeline. The previous FFM to Turkey, carried out in July 2002, found that the consultation process was flawed both in design and in practice. Since then, some improvements have been made, but the flaws that have been addressed are primarily those arising from poor implementation.

However, what has not been dealt with — and in the FFM’s view cannot currently be addressed, given the political context in which the project is taking place — is the systemic inadequacy of the consultation process in an environment where serious human rights abuses are institutionalised. This is of serious concern: the reliance of the BTC project on consultation goes much deeper than simply eliciting information — it is the mechanism by which the BTC project is supposed to be made a participative process, not merely one imposed from above on people in the region. Consultation is thus integral to the legitimacy of the entire project, before, during and after its implementation.

1.0 THE PREMISE OF CONSULTATION

By BTC Co.’s own reckoning, during the period before construction, consultation is the mechanism by which to “maximise [affected people’s] understanding”²⁶ of the implications and impacts of the BTC project, in order that potential problems and grievances are highlighted and resolved, and the project can gain local acceptance. Indeed, the premise of creating regional “stakeholders”, on which BP / BTC Co have put much emphasis, depends entirely on the existence of legitimate consultation.

Likewise, during and after implementation, ongoing consultation, as part of the process of monitoring, is the means by which inevitable mistakes can be rectified and necessary improvements made. As the Resettlement Action Plan (RAP) puts it,

“An important part of the RAP is the establishment of a transparent monitoring and evaluation process so that the RAP may be implemented as planned and/or with appropriate modifications following the timely and systematic input of affected groups. To further the process of consultations with affected people that have already begun, community feedback will be sought during implementation.”²⁷

²⁶ *RAP Turkey Final Report*, chapter 1, page 1-7, November 2002

²⁷ *RAP summary overview*, page 17, November 2002

Moreover, the monitoring framework of the RAP is structured such that “outcome” and “impact” indicators, which reflect the damage done by the pipeline and whether its benefits have percolated down to local people, are predicated on “process” indicators, which themselves depend almost entirely on effective consultation and liaison with local communities. Examples of such process indicators in the RAP include:

- (i) the creation of grievance mechanisms
- (ii) the establishment of stakeholder channels so they can participate in RAP implementation
- (iii) information dissemination activities
- (iv) establishment of the BTC community investment programme.²⁸

Moreover, many of the international financial institutions and other funding bodies which are considering contributing to the BTC project have put great store by the premise that consultation with affected people will ensure the fairness and effectiveness of the pipeline for all concerned. Therefore, effective consultation schemes are critical to the BTC project gaining legitimacy not just at the local level, but also internationally and with prospective funders.

1.1 HUMAN RIGHTS VIOLATIONS AND THE LEGITIMACY OF CONSULTATION

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.

In assessing the extent to which such conditions pertain on the route of the BTC project, the FFM cautions against the use of a narrowly-drawn, legalistic view of “freedom of expression”. As noted above, 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 subject²⁹;

²⁸ *RAP Turkey Final Report*, Chapter 8: Monitoring and Evaluation, p.8-2, November 2002

²⁹ The FFM is of the 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.

- 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.³⁰ In such societies, much dissent is never even voiced, let alone heard.

1.2 TURKEY’S HUMAN RIGHTS RECORD

Given the above, Turkey’s human rights record is of critical concern when evaluating the prospects for a just outcome to the BTC project. That the reservations over repression and dissent listed above clearly apply to Turkey can be seen in its record at the European Court of Human Rights (ECtHR). As of 10 February 2003, the ECtHR had ruled against Turkey in 403 cases concerning torture, disappearance, extra-judicial killing, the destruction and evacuation of villages, violations of freedom of expression and other violations, with a further backlog of 5, 236 cases pending.³¹

With regard to the BTC project, the violations to which Turkey has subjected its Kurdish population³² are particularly relevant, since the Kurds constitute one of the minority groups most impacted by the BTC pipeline.³³ The Turkish state’s doctrine of “indivisible integrity” has meant that even insignificant Kurdish cultural expressions have been treated as acts of “separatism” and thus repressed.³⁴ Much credit has been given to Turkey for its “Harmonisation Law” reforms of August 2002, which were introduced to address European Union concerns over human rights abuses, yet investigations have shown that little or nothing has changed in practice.³⁵ Prison sentences are still being handed out to people for giving children Kurdish names³⁶ and for singing Kurdish songs

³⁰ 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

³¹ These numbers are rising all the time: of the 1390 judgments giving rise to the finding of a violation of the Convention in the last two years, 227 – nearly one in six of all judgments - concerned Turkey. For details of the specifics of these rulings, please see Kurdish Human Rights Project Information Sheet 1, available from the KHRP website www.khrp.org

³² See for example numerous reports of the Kurdish Human Rights Project, one of the participants in the FFM, including *Internally Displaced People: The Kurds in Turkey* (London: June 2002); *“This is the Only Valley Where We Live”: the Impact of the Munzur Dams Turkish Dams*, (London, April 2003); KHRP et al, *If the River Were a Pen...*(London, October 2000). Also the many reports of Human Rights Watch, e.g. *Displaced and Disregarded: Turkey’s Failing Village Return Program*, (London: October 2002). It is not only NGOs who have monitored these abuses: the recent Accession Partnership of the EU Directorate-General for Enlargement mentions them prominently, as does the 2002 EU Progress Report on Turkey.

³³ For a discussion of the possible impacts of the project on other minorities, see Section 4 of this report.

³⁴ For the Kurds in Turkey, their language has been repressed to the extent that trials still occur in the state security court for spelling Newroz, the Kurdish New Year celebration, on posters using a ‘W’ rather than the preferred Turkish ‘V’. See: See Kurdish Human Rights Project, *‘W’ and Torture: Two Trial Observations*, (London: September 2002).

³⁵ See for example Kurdish Human Rights Project, *The Lifting of State of Emergency Rule: A Democratic Future for the Kurds* (London: November 2002), which concluded that despite the recent lifting of OHAL, the State of Emergency legislation which had been in place in most of the Kurdish regions since 1987, little or nothing had changed on the ground due to the persistence of personnel and especially mentalities among Turkish military officials. What progress has been made has been eradicated by the current war in Iraq and the imminent reinstatement of OHAL in six Kurdish provinces.

³⁶ See “Thanks to the EU, Turkey overcomes mother-tongue taboo”, *AP*, September 7, 2002. Also see, “Mother tongue still prosecuted”, *Kurdish Observer*, September 4 2002

at concerts. Likewise, for Turks as well as Kurds, publishing critiques of Turkish state policy leads - as a matter of course - to trials in military courts.³⁷

1.3 BTC AND STATE REPRESSION IN THE NORTH-EAST

BP acknowledges that Turkey's human rights record is of concern, and in particular that the record of the Gendarmerie, the military police being used to provide security for the pipeline, is "not good".³⁸ Yet BP — and some IFIs — have taken considerable pains to assure concerned parties that the situation along the pipeline does not resemble that in the south-east, where human rights abuses have been particularly prevalent due to the intensity of the recent 18-year conflict between the former Kurdistan Workers' Party (PKK), now known as KADEK, and Turkish security forces.³⁹

The FFM agrees: for much of the pipeline route, villagers – though reluctant to criticise the state itself or what they considered to be a project of the state – were in a position to speak to the FFM without overt intimidation by state security personnel. From Kars to the Georgian border, however, the FFM found conditions to be entirely different. *Here the Mission found clear-cut evidence of political repression so systemic as to fundamentally 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.

In the FFM's view, repression in the north-east region of Turkey – as manifested by arbitrary arrests and detentions, the inhibition of dissent through police intimidation, and the constant surveillance of critics by state security personnel – is such that implementation of the project to international standards is currently unattainable.⁴⁰ Although the repression is largely directed at the local Kurdish minority, which constitute approximately 30% of the population,⁴¹ it is by no means restricted to the Kurds: the FFM found an atmosphere of repression which weighs heavily on everybody in the region, regardless of background or ethnicity.

³⁷ This applies even when the critique has been requested publicly by state bodies. When Mahmut Vefa, General Secretary of the Diyarbakir Bar Association, responded to the public comment period in the EIA for the Ilisu Dam with a legal analysis critical of the project, he was charged with "overtly insulting the moral personality of the Government and the military and security forces" and put on trial on March 18 of this year. The trial was attended by a member of the FFM.

³⁸ Barry Halton, BP Regional Affairs Director for BTC, Meeting with NGOs, November 8 2002. Contemporary notes of the meeting were taken by NGOs present and sent to BP for approval. BP rejected the notes.

³⁹ For example, Ted Pollett of the IFC stated in a meeting with KHRP, February 26, 2003: "This area is a different proposition to the south-east."

⁴⁰ The FFM notes that the European Commission has taken a similar view with regard to Turkey's accession to the European Union. Romano Prodi, President of the European Commission, was quoted in December 2002 as noting that it is incumbent upon the European Union to ensure that its standards for accession are not traduced by a piecemeal and superficial adherence to the Copenhagen criteria on the part of applicant states such as Turkey, one which precludes rather than produces real change in respect for democracy and human rights (*Frankfurter Allgemeine Zeitung*, December 11, 2002).

⁴¹ The Kurds of this region are not the majority population, and consequently lack the political experience and organisation used by the Kurds of the south-east to mitigate state repression. Yet they are substantial enough in number to be the focus of state allegations of separatism and to bear the brunt of many of the human rights violations which the FFM witnessed in the region.

Three incidents, as detailed below, illustrate the extent and depth of the problem.

1.3.1 The Detention of the FFM

On the evening of 21st March, the FFM was confronted - on two occasions - by the deputy chief of state security in Ardahan and questioned about its itinerary and identity.

Subsequently, the FFM was followed by undercover police and, en route to a meeting in a local village, was stopped by the Gendarmerie. The FFM, together with its translator and three local people who were escorting the mission to the village, was then detained in the Çamliçatak Gendarmerie station for over an hour. Their passports and identity cards were retained, and repeated requests for an explanation for their detention went unanswered. Upon release, the FFM was followed for a further half an hour, after which it was pulled over and obliged to return to the Gendarmerie station for a second time.

On this occasion, an explanation was proffered: namely, that the FFM interpreter's Turkish identity card needed to be verified because her maiden name was not the same as her married name. No explanation was forthcoming as to why this alleged problem was not resolved during the previous detention. The FFM also made contact with the UK and Italian embassies and the UK Foreign Office, to whom several British parliamentarians made formal expressions of concern. Contact was also made with the Turkish government, which denied all knowledge. However, the Gendarmerie refused to talk directly to an official from the Italian Embassy in Ankara. (*For a full account of the detentions and harassment, see Box: Account of Detention of BTC Fact Finding Mission by Security Services in Ardahan*).

The FFM was eventually released after a further half an hour. On returning to its hotel, the FFM found that the luggage of all bar one of the FFM members had been searched. It was further suggested, though not directly by official sources, that arrest was possible if the FFM did not stop interviewing local groups. A formal complaint against the Gendarmerie has been lodged with the British and Italian Foreign Ministries by all members of the FFM.

Although the FFM was treated with relative politeness (which does not excuse the detentions and surveillance), the local people detained along with the FFM made it clear that their own safety was only assured by the FFM's presence. When previously detained, they had not been held upstairs in the waiting room of the Gendarmerie station but downstairs in a freezing cell. As one noted, "The taxes we pay don't come back to us as tea or food in Gendarmerie stations, but as truncheons. Believe me, we are not exaggerating. You can only imagine 10% of what happens here."⁴²

The FFM notes that the detentions, harassment, intimidation and constant surveillance which it experienced during its visit are routine for many of those who live in the region. It would therefore like to record its gratitude to those who were willing to be interviewed,

⁴² Interview, Ardahan, 22 March 2003. Interviewee's name withheld for reasons of personal safety.

in spite of the risks that were clearly involved. Indeed, given the repression that it witnessed, the FFM deems it a significant measure of the extent of local disquiet that so many interviewees were prepared to spend time with the FFM detailing their concerns.

The effect of the harassment experienced by the FFM was to render its task of interviewing local villagers impossible, forcing it to abort planned meetings with villagers anxious to discuss their concerns over compensation. The constant and highly visible tailing by several cars containing military and secret police had the clear effect of intimidating not just the FFM from conducting interviews but – perhaps more to the point – local people from talking to the Mission. Yet, from the interviews it was able to carry out, the FFM concludes that such a crushing weight of control is entirely the norm in the Kars and Ardahan regions. Indeed, the FFM has serious concerns about the welfare of several of its interviewees and will be monitoring their treatment over the next few months as carefully as possible.

Account of Detention of BTC FFM by Security Services in Ardahan, 21-22/3/03

March 21, 17.00 hours. The Mission met a local journalist who publishes an independent paper for the Ardahan region. As part of his critique of lack of free expression in the area, he noted that we were being followed by at least 4 cars. Earlier we had seen plainclothes officers in the street, some of whom had questioned our driver.

Suddenly two men entered uninvited, with a further colleague waiting in the street. They were wearing plainclothes and bore no identification badges. Despite the journalist's angry insistence that they leave, the two men, without giving their names, explained that they were security officials who had come to "assist us" with any potential "security problems" We made it clear that this was unnecessary, but were forced to cut short our meeting due to the journalist's increasing distress at the men's presence.

Outside the office the men talked to us for a short period, asking questions about our identity, which we willingly gave, and itinerary, which we politely declined to answer. They did not identify themselves.

18.00 We returned to our hotel, where the two men returned and questioned us more intensively. Having discovered that one of the men was the Deputy Chief of Security, we replied that they had no right to investigate us; they denied that this was an investigation, merely an offer of assistance and escort if necessary. We responded that we had no need for their help, but that we would be interested to hear details of the security threats to which we were allegedly subject, since BP had informed us on several occasions that the area presented no security risk. We offered to pass on any information he gave us to BP. He declined to provide details or, when requested, to give his name. Eventually the Deputy Chief and his colleague changed their requests, denying that they were interested in our plans, and left.

19.00 The Mission was invited to visit the village of some local people it had met in Ardahan that day. On our way to the village, during which we were followed once again,

we were stopped by officers of the Gendarmerie at Çamilçatak. After a few minutes of waiting, we were asked to enter the Gendarmerie station, where our passports were retained and we were held for approximately one hour from 19.45 to 20.45. We were informed that we had not been officially detained, and were provided with tea. However, the Gendarmerie refused to answer repeated requests as to the reason for our delay or its potential duration and we were not allowed to leave.

Because of this, we made contact with both the Italian Embassy and, via contacts in England, the British Embassy in Ankara and the Foreign Office. Notably, the Gendarmerie refused to accept several phone calls from the Italian Embassy seeking clarification of the status of one of its citizens. Moreover, the soldiers present also refused requests to put us in touch with more senior officers.

Eventually the FFM was released and its passports returned. No reason was given as to why we had been held or released. After approximately half an hour of driving, during which the ubiquitous tailing took place once more, we were pulled over for a second time and asked to return to the Gendarmerie station. On this occasion, a reason for detention was eventually proffered: our interpreter's maiden name was different from her married name on her identification cards. Why this issue was not resolved during the first holding period was unclear.

During the second period in the Gendarmerie station our passports were taken once again. Additional personnel were present, including a plainclothes officer who evidently understood English but refused to talk to us. Again requests to see a senior officer were denied, even when the Mission noted that it would make a formal complaint about our treatment. By this stage our contacts in England informed us that several parliamentarians had made formal inquiries about our welfare. We were also informed by the Italian Embassy that the Governor of Ardahan, contacted as suggested by the Gendarmerie station personnel, had declined to accept their call.

We were once again released approximately half an hour later, at 21.45, and were tailed on our return back to Ardahan. We returned to the hotel to find that the luggage of all but one of the members of the Mission had been searched while locked in our rooms, and clumsily replaced. Nothing had apparently been taken. We were also informed by a Turkish source who is not named for security reasons that the colonel of the local Gendarmerie was threatening to have us arrested if we did not stop conversing with members of DEHAP, a legally constituted political party which has taken up the Kurdish issue.

Alarmed by these latest developments, the Mission made contact with the British Consulate in Ankara. We informed him of our itinerary for the next two days and promised to keep in touch. KHRP Executive Director Kerim Yildiz also informed us that he had made contact with the Turkish government, who had denied all knowledge of our detention but suggested that we might have been stopped for ID checks. While having dinner in the hotel's restaurant, we were watched constantly by State security operatives.

Later, we heard that that evening the Gendarmerie had surrounded several villages that had been celebrating Newroz, the Kurdish New Year, blocking all entrance and egress. The Provincial Governor had banned all such celebrations, although they take place all across the Middle East and even in the South-East of Turkey. Two men we had met were arrested that evening, and one alleged that he was forced to pay a bribe of 440 million Turkish lira (approx. £170, a huge sum in the region) to obtain his release.

March 22. The following morning we were constantly surveyed and followed, including as we had breakfast. We were unable to carry out any meetings in villages, as we were followed for the whole day. A well-placed source told us that BOTAŞ had been responsible for our detention; rumours had been spread that we were in the pay of a rival company to BOTAŞ, seeking the contract for the pipeline.

We stopped for lunch north of Ardahan in a small village. The JITEM (secret service) tail pulled up behind us. As one of our members went to buy cigarettes, a tailing security operative burst into the shop behind her and screamed at the shopkeeper not to talk to her.

When driving from Ardahan to Kars we were again tailed – by two cars and two Gendarmerie vans. In total, we calculated that 16 men had been assigned to follow us. Due to this heavy surveillance, the FFM therefore cancelled a planned meeting with villagers who had asked to see us in order that they could detail the problems they were experiencing with compensation (see Section 3 for further details).

The Mission later stopped en route for a female member of the team to go to the lavatory. As soon as we stopped a Gendarmerie van pulled over and four men got out of the van. In a rather aggressive manner they asked what we were doing. Once we explained, they got in the van and waited for us to resume our journey.

Later on we were stopped outside Kars by members of the Gendarmerie with our license plate number. They whistled us over and explained that they had been ordered to stop the Mission, but unfortunately the senior officer who gave the order had failed to tell his subordinates what to do with us afterwards. They let us go again.

In the words of one of the local people who accompanied us that night, “You give up in the end. You just get sick of it and give up.”

1.3.2 The Banning of Newroz

The FFM visited the Kars and Ardahan areas over the period of the Kurdish New Year festival, Newroz. The response of the state authorities to attempts by local villagers to celebrate the festival provided the FFM with compelling evidence of the state’s willingness to use that power to suppress human rights.

Although Newroz is widely celebrated across the Middle East, in past decades the Turkish authorities took the view that the festival was being used by the Kurdish

population as a forum for Kurdish cultural expression. Celebrations were therefore violently repressed, culminating in the Newroz massacres of 1992 in which Turkish security forces killed over a hundred celebrating Kurds. In recent years, the Turkish state, realising that it was creating a focus of resistance, has reluctantly embraced the festival, with the result that this year hundreds of thousands of people celebrated Newroz peacefully in both Istanbul and Diyarbakir, the largest city in the Kurdish regions of Turkey.

As the FFM discovered, this liberalisation has not spread to the Kars and Ardahan regions. In Ardahan province, the Provincial Governor banned Newroz celebrations not just in the towns but in the surrounding villages. The FFM learned that Gendarmerie units had been sent to all local villages deemed likely to engage in celebrations in order to ensure the ban was strictly adhered to. The FFM was told of two villages that had been surrounded by Gendarmerie in order to prevent anyone from entering or leaving. Due to police harassment, however, the FFM was unable to verify this independently.

The FFM also learned of incidents of intimidation directed against the local Kurdish population. One of the FFM's interviewees told of how he had used his car to bring tractor tyres back to his village, in the corridor affected by the pipeline. He was detained by the Gendarmerie and interrogated, on the premise that he was planning to use the tyres to burn in Newroz fires, a central part of the New Year celebration. His baffled response was to point out that these were new tyres, intended for use on his tractor; if he had intended to burn tyres, he would at least have bought second-hand ones. Eventually, he was released.⁴³ Others were not so lucky; one interviewee told the FFM of how, having been arrested for celebrating Newroz, he had to pay substantial bribes to get himself released.⁴⁴

The FFM was also presented with evidence of other attempts to intimidate people from celebrating Newroz. One interviewee showed the FFM a letter he had received on the day of the festival, telling him he had been given a large fine and a suspended sentence for allegedly "endangering people's lives with my actions" during Newroz 2001. He interpreted the timing of the letter as a flagrant attempt to warn him off any action this year.⁴⁵ The FFM is of the same opinion.

1.3.3 Increased Detentions and Arrests

The FFM interviewed members of DEHAP, the successor to HADEP, Turkey's main pro-Kurdish party. HADEP was dissolved on March 13 of this year as part of what Kurdish groups claim is a process of systematic disenfranchisement of their electoral interests.⁴⁶

⁴³ Interview in Ardahan, March 21, 2003. Interviewee's name withheld for reasons of personal safety.

⁴⁴ Interview in Ardahan, March 21, 2003. Interviewee's name withheld for reasons of personal safety.

⁴⁵ Interview in Ardahan, March 21, 2003. Interviewee's name withheld for reasons of personal safety.

⁴⁶ See KHRP press release, "Turkey Breaks EU Promises; HADEP is Closed", March 14 2003. For more on allegations of electoral manipulations during the recent national elections in November 2002, see Jim Lobe, 'Turkish Security Forces Accused of Intimidation in November 3 Elections', *Yahoo.com News*, December 2, 2002; Andreas Schug, *Neues Deutschland*, November 6, 2002

The chair of DEHAP's Ardahan city branch noted that the last two years had seen a relaxation of surveillance, following an easing of tensions in the wake of the ceasefire declared by the Kurdistan Workers' Party (PKK) in September 1999. However, both he and the regional chair of DEHAP reported a marked rise over recent months in the surveillance both of local people and of the party offices. The regional chair also noted an escalation in the number of detentions and arbitrary arrests. Both men cited the recent dissolution of HADEP, DEHAP's predecessor, as evidence that despite Turkey's aspirations to EU accession, fair and equal access to democratic rights was still far from the norm.

Moreover, in addition to citing specific incidents of repression, the DEHAP representatives emphasised the psychological pressure to which villagers in particular - Turkish as well as Kurdish - were subjected in the region. Villagers were frequently stopped at checkpoints and asked for ID cards, despite a lack of an obvious rationale or threat. Both men suggested that this was part of the military and state's assertion of dominance in the region. *This interpretation accords with the FFM's own experience. The FFM notes, for example, that the security personnel who followed the Mission made no attempt to conceal themselves, indicating that their presence was intended to exert a "chill effect" that would inhibit the FFM from action and local villagers from talking to the mission.*

The FFM was told that the resurgence in arrests and detentions in recent months paralleled the increasing isolation by the Turkish authorities of the jailed Kurdish leader Abdullah Öcalan, including denying him access to his lawyer or other visitors.⁴⁷ Many of those interviewed by the FFM saw the two trends as connected and expressed fears of a new clampdown in the region, on Kurds in particular. The FFM also heard evidence that tensions in the Kurdish regions of Turkey have been heightened by the invasion of Iraq and Turkey's expressed desire to move military forces into Iraqi Kurdistan. *The FFM notes that any increase in tensions – particularly if it results in a breach of the Kurdish guerrillas' ceasefire - would have grave implications for both the security of the BTC pipeline and the human rights of those who would live along it, should it be built.*

Most serious of all, the political context of the pipeline is influencing people's perception of the project, which in turn is compounding resentment. The FFM heard the view expressed that there was a hidden agenda behind BTC Co.'s systematically inadequate compensation levels. "It is a deliberate policy designed to move people out," several respondents in one Kurdish village insisted.⁴⁸ In the view of these project-affected people, the combination of lost and damaged land and inadequate compensation was intended to upset the delicate calculus of their difficult rural lives, in order to further the ongoing migration of people from 'sensitive' regions into mainstream Turkish society

⁴⁷ See the ruling of the European Court, March 12 2003, in which the Court found that Öcalan's rights under Article 6 of the Convention had been violated in several respects. It ruled that he was not tried before an independent and impartial tribunal, that he was not allowed access to his lawyers while being questioned in police custody and that neither he nor his lawyers were able to obtain adequate access to the 17,000 page case file. The Court found that the overall effect of his treatment "so restricted the rights of the defence that the principle of a fair trial was contravened". Finally, the Court ruled that Öcalan's rights under Article 5 of the Convention had been violated, holding that the length of his detention before being brought before a judge and the inability to challenge his detention at the domestic level violated both Article 5(3) and Article 5(4) of the Convention.

⁴⁸ Interviews in village close to Ardahan, March 21, 2003. Interviewees' names withheld for reasons of personal safety.

which has been a documented focus of recent state policy.⁴⁹ *This view concurs with those of political leaders all over eastern Turkey, who often complain that their budgets are systematically cut to further impoverish their regions. In the FFM's view, the fact that affected people are making these allegations of a hidden agenda indicates a severe lack of local faith in the legitimacy of both the consultation process for BTC and in the project itself.*

1.3.4 Denial of language rights

Consistent with the other forms of cultural repression outlined above, through much of the history of the Republic of Turkey, the Kurdish language has been banned, in either written or spoken form. Indeed in 1924, the year after the Republic was formed under the leadership of Mustafa Kemal Atatürk, an official decree banned all Kurdish schools, organisations and publications. Use of the words “Kurd” and “Kurdistan” was forbidden and references to them were removed from Turkish history books.

The Kurdish language was banned outright until 1991, and even after that its use remained highly restricted. With the Harmonisation Laws of August 2002, these restrictions began – in theory at least – to be lifted. These laws allowed the teaching of Kurdish in schools, and the broadcasting of programmes in Kurdish. However, their implementation in practice is almost non-existent: to open a Kurdish language school requires the permission of both the central government and the military-dominated National Security Council in Ankara, while Kurdish TV is only allowed to be broadcast two hours per week and must be subtitled or otherwise translated into Turkish.

BTC Co has decided not to publish the project documents in Kurdish, only Turkish and English. The FFM believes that this decision is a tacit endorsement of the historical linguistic disenfranchisement of the Kurds. With the passing of the Harmonisation Laws, BTC Co, and BP – the operator of the project, and a company which likes to claim to be more progressive than its rivals – could have taken the opportunity to assert the equal cultural and linguistic rights of the people living along the pipeline route. It has declined to do so.

Furthermore, in meetings held in Kurdish villages visited by the FFM, BTC / BOTAŞ did not bring a Kurdish speaker, and held the meetings only in Turkish. As a result, non-Turkish speakers in these villages, which include the majority of women, were neither informed nor consulted at all about the BTC project.

⁴⁹ This allegation, that the state has consciously attempt to force the mass migration and displacement of Kurds in order to encourage assimilation as a solution to the ‘Kurdish problem’, has been raised with particular reference to GAP, the series of massive dams in the south-east. For more details, see the reports listed in footnote 19, particularly “*This is the Only Valley Where We Live.*”

1.4 PIPELINE SECURITY AND THE GENDARMERIE

In the light of the clear evidence of human rights abuses in the north-eastern region, the security arrangements which have been agreed between BTC Co. and the Turkish government are of deep concern.

Under the legal frameworks for the BTC project, the responsibility for security along the pipeline rests entirely with the Turkish government. The Inter-Governmental Agreement (IGA) mandates that “each State shall use the security forces of that State, and/or make provision for such security personnel and services, as may be necessary to satisfy this obligation, to ensure the safety and security of all personnel...the Facilities, all other assets of Project Investors...and all Petroleum in transit.” This includes “the right of access to and from its Territory” and “permit[ting] a right of free movement in its Territory.”⁵⁰

The Host Government Agreement (HGA) goes further. Article 12 mandates the protection of the pipeline and its personnel from the following array of potential threats: “civil war, sabotage, vandalism, blockade, revolution, riot, insurrection, civil disturbance, terrorism, kidnapping, commercial extortion, organised crime or other destructive events.”⁵¹ No further clarification is given and no context provided – which gives rise to concern that such vague rubrics provide significant opportunities for misuse, and consequent impacts on human rights.

Furthermore, the responsibility for policing the pipeline has been placed in the hands of the Gendarmerie. Whilst BP has pledged to use unarmed local groups for immediate security along the pipeline route, the company has still not at this late stage clarified exactly what function the Gendarmerie will play – simply that they will have “overall responsibility” for pipeline security. The FFM notes with considerable alarm that the Gendarmerie is a military police force implicated in many of the very worst human rights abuses and atrocities perpetrated on civilians in the Kurdish regions in recent decades. Indeed, its record has been so poor that the Council of Europe has denounced it on several occasions, the most recent being the Committee of Ministers proclamation in July 2002, which recommended a total overhaul of the corps.⁵²

Even if Turkey were a country with a relatively unblemished human rights record and a benign law enforcement agency, the FFM would be deeply concerned that such an open-ended security rubric might invite human rights abuses. Given Turkey’s human rights record and that of the Gendarmerie, however, the FFM is firmly convinced that the security arrangements envisaged for the pipeline, as mandated by the HGA, make it a high risk that human rights violations will occur.

⁵⁰ Inter-Governmental Agreement (IGA), Article III, (2) and (3)

⁵¹ Host Government Agreement (HGA) for Turkey, Article 12.1

⁵² Council of Europe Committee of Ministers, Interim Resolution ResDH(2002)98, adopted 10 July 2002

The FFM notes that the HGA includes no clauses aimed at preventing what the BTC Co refers to as “overly zealous” behaviour on the part of the security forces.⁵³ On the contrary, the FFM notes that BTC Co / BP has attempted to put as much distance between itself and the whole security issue as it possibly can. As BP representatives told members of the FFM at a January 2003 meeting, “Security is an obligation of the *state*; a sovereign state must ensure the safety of its people and territory. The HGA is completely consistent with that.”⁵⁴ Consistent with that position, the HGA not only places all the responsibilities and costs for security onto Turkey; it also insulates BTC Co from the cost of potential court cases for human rights violations in the course of protecting the pipeline:

“As among the Parties, the Government shall be solely liable for the conduct of all operations of the security forces of the State and neither the MEP Participants nor any other Project Participants shall have any liability or obligation to any Person for any acts or activities of the security forces of the State or be obligated to reimburse the Government for the cost and expense of providing security as contemplated hereby.”⁵⁵

In addition, the Host Government Agreement requires the state to compensate BTC Co if it fails to fully protect its security.⁵⁶ With the Turkish state liable to lose money if there is a civil disturbance of any sort, the FFM believes that this financial incentive – coupled with the Gendarmerie’s current approach to enforcing security - is very likely to lead to “over-zealous” policing.

The FFM is also concerned that the HGA contains no effective mechanisms for ensuring state respect for local people’s human rights. BP has talked of introducing a set of “Voluntary Principles on Security and Human Rights” as a protocol to the HGA. As yet, however, no text has been made public. The voluntary status of the proposed principles, combined with their late arrival and conspicuous absence from the original agreements which so carefully ensure the rights of the project participants, gives the FFM no confidence as to the mitigatory powers of such a protocol.

Finally, the FFM notes that none of the villagers to whom the FFM spoke were aware that by signing deals with BTC Co., they have given license to the military police to come onto their land. Not a single person who the FFM interviewed was aware that any arrangements had been made for securing the pipeline, let alone that they involved the

⁵³ Meeting of BP staff (including Barry Halton (Regional Affairs Director for BTC), Tom Dimitroff (lawyer), Tony Ling (Security Advisor), Eldar Naruzadeh (Azeri Security Manager), Neil Cox (Georgian Security Manager) and others), with International Alert, Amnesty International and Kurdish Human Rights Project, London, January 10, 2003

⁵⁴ Ibid.

⁵⁵ HGA, Article 12.3

⁵⁶ ARTICLE 5 - Para 5.2(iii): “the State Authorities shall not act or fail to act in any manner that could hinder or delay any Project Activity or otherwise negatively affect the Project or impair any rights granted under any Project Agreement (including any such action or inaction predicated on security, health, environmental or safety considerations that, directly or indirectly, could interrupt, impede or limit the flow of Petroleum in or through the Facilities...)”

ARTICLE 10 - Para 10.1: “Without prejudice to the right of the MEP Participants to seek full performance by the State Authorities of the State Authorities’ obligations under any Project Agreement, the Government shall provide monetary compensation as provided in this Article 10 for any Loss or Damage which is caused by or arises from:

“(i) any failure of the State Authorities, whether as a result of action or inaction, to fully satisfy or perform all of their obligations under all Project Agreements...”

Gendarmerie. Inquiries as to whether people had been told there might be security issues surrounding the BTC project were met with blank looks. The FFM was left with the strong impression that BTC / BOTAŞ, in violation of their responsibilities, had entirely failed to warn people of the possible negative outcomes or implications of the pipeline. **Communities along the pipeline route may thus have signed away their land without the slightest indication that this might involve visits or surveillance from the military.**

1.5 BTC AND FREEDOM OF EXPRESSION

The FFM's findings directly challenge two key claims surrounding the BTC project: firstly, that the pipeline does not pass through any areas in which security and human rights violations are an issue; and, secondly, that the BTC pipeline will not worsen or exacerbate the human rights situation along the route.

From the evidence of repression it received from interviewees, and the corroborating evidence it experienced first hand, the FFM concludes:

- ***The lack of freedom of expression in the Kars and Ardahan regions renders wholly illegitimate the consultation processes that the BTC Co. has carried out.*** The FFM considers it untenable to suggest that people subject to the kind of duress that it witnessed would be in a position openly to object to a project of great importance to the state, being carried out by the state pipeline company.
- ***The flawed and inadmissible consultation processes carried out by BTC Co. have in themselves compounded the atmosphere of human rights repression in the north-east, by giving a veneer of collective participation to what is in reality a state-imposed decision on local people.*** In failing to take proper account of the repression in the region, BTC Co. have arguably further disempowered rather than empowered local people, by extracting their sanction for a potentially damaging project when they had no option but to give it. This has reinforced the position of the state and further contributes to the very atmosphere of human rights repression in the region, which BTC Co. has denied exists.
- ***The prospect of a legitimate consultation process being carried out in the absence of major human rights reforms is unattainable.*** The problems relating to repression are so systemic as to transcend particular social groups: in the FFM's view, they are the product of a state and military which is intolerant of dissent and freedom of expression. There can be no such thing as genuine consultation when those 'consulted' enjoy neither the right nor the conditions in which to say what they think.
- ***The combination of the desire of the BTC consortium to insulate itself from the security issue, the investment of security powers in a military body with an internationally-criticised human rights record and the atmosphere of repression and intense surveillance which characterises large stretches of the pipeline route,***

make a marked increase in human rights abuses and violations - both immediately and in the long-term – highly probable.

Since these factors are chronic, systemic aspects of the political situation in Turkey, and thus cannot be readily fixed nor glossed over, the FFM sees no alternative but to call for a moratorium on the BTC pipeline project until independent monitoring deems them to have been addressed.

Section 2

CONSULTATION AND DISCLOSURE OF BTC PROJECT INFORMATION

Consultation and disclosure of information are critical for the effective participation of those people who are impacted by the project. Those affected and other interested parties are entitled to be consulted so that they are in a position to influence the project's outcome, positively or negatively.

In March 2003, the FFM sought to assess; *first*, the extent to which a legitimate consultation (which implies the existence of freedom of speech) is possible in Turkey; and, *second*, the adequacy of the consultation process conducted as part of the Environmental Impact Assessment and Resettlement Action Plan.

Section 1 set out the FFM's findings with regard to freedom of expression and the political culture pertaining in Turkey. In this section, the FFM's findings on the consultation process itself are presented. On paper it would appear that consultation has been conducted in a way that addresses the interests and needs of the project affected people. The FFM, however, concludes that the consultation to date does not fully comply with international and domestic requirements.

2.0 SUMMARY OF PREVIOUS FACT FINDING MISSION FINDINGS

In the last Fact Finding Mission in August 2002, the Mission found numerous inadequacies and failures in both the design and the implementation of the consultation procedures. The FFM found that the project violated four of the World Bank's safeguard policies on consultation. The FFM also found that the project failed to satisfy the guidelines contained in the International Finance Corporation's (IFC) manual *Doing Better Business Through Effective Public Consultation and Disclosure*, according to which a project sponsor is to ensure that the process of public consultation is accessible to all potentially affected parties, from national to local level.

In particular, the Mission found:

- Half of the affected communities listed as having been consulted were, in fact, not consulted.
- Where villages had been consulted, the consultation could not be deemed meaningful.
- The consultation package failed to take account of the political culture in Turkey, which prevented the free expression of critical views about a State-backed project.

- The inadequate design of written information disseminated by BTC/BOTAŞ was insufficient to secure an informed response. The wording of the questionnaires discouraged frank expression of concerns about the pipeline’s impact.
- The consultation package failed to acknowledge the status and concerns of Turkey’s minority groups.

2.1 FRAMEWORK OF CONSULTATION

2.1.1 Environmental Impact Assessment (EIA)

The Environmental Impact Assessment (EIA) consultation process is subject to international and domestic requirements on consultation. According to BTC Co.’s Public Consultation and Disclosure Plan⁵⁷ (PCDP) the consultation process will conform to Turkish regulations as well as guidelines established by international organisations, specifically, the requirements of the International Financial Corporation of the World Bank Group, European Bank for Reconstruction and Development (EBRD), European Commission and other relevant international conventions.

In addition, the PCDP⁵⁸ aims to:

- “Identify key stakeholders and ensure there are adequate mechanisms for stakeholder feedback and information sharing.”
- “Provide an outline for consultation at the local, national and international levels, starting at the project planning stage, and continuing throughout the construction, operation and decommissioning of the pipeline.”
- “Ensure issues raised by stakeholders are addressed in the EIA report as well as in project decision-making and design phase.”
- “Outline a grievance mechanism for local stakeholders.”

In particular, the BTC project in Turkey is governed by the Host Government Agreement (‘HGA’), which overrides all national laws except the Constitution. The consultation process takes place in accordance with Appendix 5 of the HGA⁵⁹, which requires that the EIA be released to the public for review and comment in accordance with the following procedures:

- Key stakeholders shall be notified of the nature of the project during the development of the EIA.

⁵⁷ EIA Turkey Appendix A1, Public Consultation and Disclosure Plan, June 2002, page A1-5.

⁵⁸ EIA Turkey Appendix A1, Public Consultation and Disclosure Plan, June 2002, page A1-1.

⁵⁹ Host Government Agreement, Appendix 5, Article 3.9(ii)-(iii).

- Upon completion of the EIA, the public shall be provided with information on the environmental aspects of the project to enable it to comment.
- A maximum of 60 days shall be allowed for public comments.
- Once approved by the Government, BP, BTC Co and BOTAŞ shall implement mitigation and monitoring activities.

International standards, including the World Bank Group’s Environmental Assessment Policy OP 4.01, January 1999⁶⁰ and the IFC’s manual *Doing better business through effective public consultation and disclosure: a good practice manual*, emphasise that all potentially affected parties at national and local level be consulted. In particular, the sponsor has to ensure that⁶¹:

- (i) Project information is meaningful and easily accessible;
- (ii) all stakeholders have early access to project information;
- (iii) the information provided can be understood;
- (iv) the locations for consultation are accessible to all who want to attend; and
- (v) measures are put in place which ensure that vulnerable or minority groups are consulted.

In addition, both the IFC and the ERBD require a thorough scoping procedure for all Category “A” projects (of which the BTC pipeline is one), which, in this instance, would involve BTC/BOTAŞ consulting all relevant stakeholders during scoping and before the terms of reference of the EIA are finalised.

The FFM found that BTC Co. has failed to adequately comply with the majority of the aforementioned standards. In particular, the FFM found that:

- Not all stakeholders had early access to project information.
- Not all stakeholders were notified of the nature of the project during the development of the EIA.
- There was a consistent lack of provision of information about the project’s negative impacts and risks, while the potential benefits of the project were consistently overstated.
- Due to the absence of early consultation, stakeholders were deprived of a meaningful opportunity to raise their concerns at a stage when these could have influenced the EIA process.

⁶⁰ Other guidelines of relevance are: Operational Policy 4.04 Natural Habitats, Operational Policy 4.12 Involuntary Resettlement and Operational Directive 4.20 Indigenous Peoples.

⁶¹ IFC, ‘*Doing better business through effective public consultation and disclosure: a good practice manual*’, page 14 section B, ‘4 management principles’

- On completion of the EIA, a significant section of project-affected people were not provided with information on all the environmental aspects of the project to enable it to comment.
- The project information provided could not be understood by a relevant number of villagers affected and consultation was not accessible to all those who wanted to attend.
- No assessment was carried out as to the extent to which meaningful consultation was possible, in particular with regard to the consultation of those belonging to vulnerable and minority groups.
- In some instances, grievance mechanisms for local stakeholders have not been outlined.

2.1.2 Resettlement Action Plan (RAP)⁶²

In recognition of the World Bank/IFC policies on consultation and participation, the BTC Consortium has produced a Resettlement Action Plan (RAP). Consultation, participation and the establishment of a process to redress the grievances of affected people are seen as a key step to achieve the goals mandated by the World Bank and the IFC.

Specifically, the RAP commits itself to:

- “establish[ing] a process of consultation with the affected populations, and with local public and civic organisations [to] maximise understanding [...] implementation arrangements for resettlement, expropriation and compensation;”⁶³
- “provid[ing] straightforward avenues for people to lodge a complaint about the project and obtain redress;”⁶⁴
- “inform[ing] all directly affected communities in advance so that tenants can make clear cut compensation sharing agreements with owners when drawing up future leases;”⁶⁵
- “ensur[ing] that the RAP is publicly available throughout the Project area.”⁶⁶

⁶² RAP Turkey Final Report, November 2002.

⁶³ RAP November 2002: Chapter 1, page 1-7.

⁶⁴ RAP November 2002: Chapter 1, page 1-7.

⁶⁵ RAP November 2002: Chapter 1, page 1-7.

⁶⁶ RAP November 2002: Chapter 7, page 7-14.

2.2 COMPLIANCE WITH INTERNATIONAL STANDARDS ON CONSULTATION

2.2.1 Inadequate Consultation on the EIA and RAP

The FFM visited a number of concerned organisations that had been identified by BTC/BOTAŞ as having been consulted. The FFM found serious flaws in the process of consultation of these groups that, according the standards set out in Section 2.1 above, should have taken place during the scoping period and, in any event, at an early stage of the process.⁶⁷ This group included two NGOs, three journalists, representatives of one political party in different localities, the Chairman of the parliamentary Human Rights Commission and the Chamber of Agriculture of an affected district. The FFM found that of all these concerned parties few had been informed about the project and those which had been consulted were not satisfied with the consultation process as a whole. Specifically, the FFM found that:

- The Worldwide Fund for Nature (WWF) - a key stakeholder of the voluntary sector - had not been notified of the nature of the project during the development of the EIA. As one of the oldest nature conservation organisations in Turkey, WWF had expected to be one of the first organisations to be approached by the consortium. The FFM learned from the WWF that they had not been informed about the project until after the draft EIA had already been published. Their first contact with pipeline companies was at a public meeting. WWF felt that, at that late stage of the process, it was not possible for them to influence the project in any meaningful way, nor indeed to assist in the preparation of the EIA. In a letter, dated 20.9.02, WWF raised their concerns regarding the participation process but BTC's response merely referred them to the PCDP for a detailed account of stakeholder consultation throughout the EIA process⁶⁸. Despite WWF's concerns that they had not been consulted at an earlier stage, BTC Co. has decided to include them in the stakeholder list of the EIA⁶⁹ to which WWF was referred in the first place.
- The Chamber of Environmental Engineers,⁷⁰ a highly respected professional body, was not consulted. The FFM was not able to determine whether other semi-official bodies that the FFM would have *expected* to have been consulted had indeed been consulted. The Chamber of Engineers was extremely concerned and dissatisfied with the consultation stage of the project. They said that they had received information only shortly before a public meeting on the BTC project took place and that, in any event, the EIA had already been drafted. A further concern expressed was that the meeting had been unofficial and no transcript of the meetings would be readily available. It was only after the meeting that the BTC Consortium directly contacted the Chamber

⁶⁷ IFC Guidance Note 1: "Public Consultation should occur as early as possible and in a timely manner", *Doing Better Business Through Effective Public Consultation and Disclosure*, p.4. See further RAP November 2002: Chapter 7, page 7-2 on the requirements of early consultation and participation activities that the BTC Co. claims to have fulfilled.

⁶⁸ EIA Appendix A8, Consultation Results, page A8-126.

⁶⁹ PCDP Appendix A2- PCDP Stakeholder list, October 2002, page A2-5.

⁷⁰ The Chamber comprises approximately 3000 Turkish environmental engineers and has 11 branches all over Turkey. The main office is in Ankara.

via email and asked them to comment on the EIA. Given the time constraints and the length of the EIA, the Chamber was only able to send a bullet point list of concerns and objections to the EIA and the consultation process. When the FFM met with the Chamber they were still awaiting a response from the BTC Consortium. The FFM finds that, although the EIA's Public Consultation and Disclosure Plan (PCDP) states that the Chamber of Environmental Engineers was consulted at a public meeting in Ankara⁷¹, the Chamber did not consider that the public meeting amounted to meaningful consultation. According to the CEE representatives whom the FFM met: "the whole process of consultation was all a facade".

- The Chamber of Environmental Engineers told the FFM that, in the past, the EIA of major engineering projects would be submitted to the Ministry of Environment for review and approval. In the case of the BTC project, this procedure had been bypassed and the Ministry of Environment was invited as a guest at the public presentation meetings, not as a host. This, the Chamber said, was contrary to the procedure followed in other major Turkish engineering projects. **As a direct result of this procedure, the Chamber thought that the EIA process was not officially binding; in other words, were the Ministry to have any objections to the pipeline process, the BTC Consortium would have no obligation to take account of them or to make suggested changes.** In the words of Chamber President Ethem Torunoğlu,

"We would like to emphasise the differences between a normal EIA and this one. In the past, even though there were political interventions for other projects, a proper public consultation on EIAs took place and there was an interaction. With this project, things have been totally different. Before, CEE was invited to attend consultation meetings and then to make submissions. After the consultation process it would generally take the EIA consultants a year to make changes according to our objections."⁷²

In this case, however, the FFM finds that, due to late consultation, BTC Co. would not have been able to incorporate the Chamber's comments to the process and thus the consultation was useless; the EIA was already drafted by the time it came under the engineers' scrutiny. The Chamber expressed extreme concern that this effectively amounted to the wholesale privatisation of processes that have to include representatives of civil society. "This sets a terrible precedent: what is the use of professional environmental engineers or civil society? Everything can be done by private companies."

- In Kars and Ardahan, DEHAP⁷³, a national party which in these provinces was the largest single vote-winner in the last elections, with 23,467 votes and 9,700 votes respectively, was not provided with any information about the project. DEHAP local representatives told the FFM that they had not received any written documentation relating to the project. Of even greater concern is the fact that DEHAP was not even invited to attend any of the public meetings held in the area. This is of particular

⁷¹ EIA Appendix A1- Public Consultation and Disclosure Plan, June 2002, page A1-21.

⁷² Interview with Chamber of Environmental Engineers, Ankara, March 17 2003

⁷³ Though DEHAP Ankara appears in the list of consulted stakeholders, DEHAP Kars does not.

concern given the security situation and the lack of freedom of expression in the north-east⁷⁴. In these circumstances, a political party, widely supported in the area, can become the only channel through which project affected people might be able to voice their objections and concerns.

- The Chairman of a Chamber of Agriculture of a district affected by the pipeline told the FFM that, although the Chamber keeps records of and has direct dealings with most of the landowners in the area, he was only consulted once, four years ago. In the Chamber's district there are eleven villages directly affected by the BTC project. Though he had been given some leaflets and other larger documents on the BTC project, he was not satisfied with the fact the Chamber had only been consulted once.
- A previous mission, carried out in July 2002, had questioned BTC Co.'s / BOTAŞ' assertion in the EIA that the muhtar (community leader) of Hacibayram had been consulted by telephone, pointing out that the village of Hacibayram is deserted and has neither people living there nor telephones (*see* Box: Hacibayram-The Continuing Mystery). The FFM attempted to visit the muhtar of Hacibayram, but he was out of town at the time of our visit. The FFM was keen to speak with the muhtar, because of the recent insinuations that the previous mission had exaggerated or concocted its account of the failures to consult in Hacibayram⁷⁵. Several follow-up phone calls to the muhtar, Abdurrahman Aksu, after the FFM returned home, established the inaccuracy of this suggestion. Mr. Aksu stated that his first contact with BTC/BOTAŞ was only to correct their misconception that Hacibayram was still inhabited, but that he had not been meaningfully consulted prior to the publication of the EIA. He was insistent that there was still no settlement in the village, and that farmers merely went there in the summer to farm. Far from being "aghast" at the FFM suggestion that Hacibayram is an empty village, as the IFC suggested to FFM members he was⁷⁶, he observed, "Why should we feel sad about it? It is the truth."⁷⁷
- More importantly, Mr. Aksu noted the inadequacy of consultation and especially of compensation in the village. He said he had been visited by BOTAŞ personnel, from Erzincan, only once during the whole consultation and compensation process, shortly before the FFM's recent visit. He had subsequently been to Erzincan for further information but was unable to get access to BOTAŞ staff. Worst of all, far from consultation being comprehensive and compensation generous, as the FFM was told by both BP and the IFC⁷⁸, the village is very unhappy. One prominent family, he reported, has sued BOTAŞ for their refusal to distinguish between irrigated and non-irrigated land when appraising compensation values. Because of the village's failure to accord with BTC/BOTAŞ price for land, alleges the muhtar, BTC/BOTAŞ has suspended all payments to the village while the court case and disagreements continue.

⁷⁴ See section 1 of this report.

⁷⁵ For instance, Ted Pollet of the IFC suggested in a meeting with the KHRP on February 26, 2003, that "people are saying this [what Mr Pollet called the 'furore' of Hacibayram] was some kind of set up", due to allegedly inadequate research into the Hacibayram situation. Mr Pollet did not specify which people had made such allegations.

⁷⁶ *Ibid.*

⁷⁷ Phone interviews with Abdurrahman Aksu, 30 March-3 April, 2003

⁷⁸ Ted Pollet, meeting with KHRP, February 26, 2003, said that "BTC is aiming for the high end of market valuations for land".

- Dr. Coşkun Yurteri, Deputy Chair of ENVY, the environmental engineering company which was a secondary subcontractor for the basic engineering phase of the EIA and one of the two primary subcontractors for the detailed phase, recognised that the HGA requirements as to consultation and the time frame for the consultation period were so stringent that the company had to contact the Ministry of Environment unofficially a year before the project started. Normally, said Dr. Yurteri, there would be 60 working days for the Ministry of the Environment and Natural Resources to review and approve the EIA; “this time everything had to finish within 30 days—it was all squeezed down,” he noted.⁷⁹ Because of this, he said, an unofficial liaison with the Ministry of Environment was established just in case someone came up with a difficult question that they would have to answer later on. He was unable to provide more details and it was unclear which departments were consulted and to what extent during the scoping phase of the EIA process. This irregularity reflects, in the view of the FFM, an awareness that the consultation of key stakeholders and governmental bodies was inadequate and that ‘alternative’ mitigation measures had to be found.

Hacibayram – the continuing mystery...

The previous FFM to Turkey, undertaken in July 2002, visited one village, Hacibayram, which was marked in the EIA as consulted by telephone, but which was now empty, the residents having left during the recent conflict between Kurdish guerrillas and Turkish state security forces. Since that FFM’s reports, a number of explanations have been given, by BP, by ERM (the contractor which carried out the EIA consultation) and by the IFC. However, these explanations contradict each other, both on the issue of how and why the villagers left, and on how they were in fact consulted. Indeed, BP has given different accounts on two different occasions.

The second FFM was unable to travel to the village due to snow, and could not meet the Muhtar (who now lives in Tercan), because he was away. However, it did speak to the Muhtar three times on the phone. He also contradicted several of the accounts, especially that of the IFC. In particular, these calls indicated that the first FFM was correct that Hacibayram was not properly consulted, in contradiction to what was stated in the EIA, and that the Muhtar remained unhappy with the village's treatment by BTC/BOTAŞ

The claims and counter claims are listed chronologically below:

“Hacibayram village in Erzincan province, marked on Map 20 C of the EIA's Supplement II Series C: Social Baseline Maps as having been consulted by telephone, had been deserted for many years, its houses having fallen into ruins. There were neither telephones nor anyone to answer them. Some former residents still come to the village area, but from the FFM's interviews, it was clear that none of them had been consulted. There had been rumours of plans for the pipeline, but never from official sources.”

- International Fact-Finding Mission (CRBM, KHRP, Corner House, Ilisu Dam Campaign, PLATFORM), BTC – Turkey Section, Preliminary Report, August 2002

⁷⁹ Interview with Dr. Yurteri of Envy, Ankara, March 18 2003

"Their point really is not the whole story", says Halton. "The villagers - a community of some eighty people - left during the 1990s because of the violence of the Kurdish Workers' Party (PKK). It's a sad fact that they had to abandon their houses. They still regard themselves as a community. We are in touch with those people and will see that they receive compensation".

- Barry Halton, BP's Regional Affairs Director for BTC, interview on *OpenDemocracy.net, Globolog, 3/12/02, 'The Baku-Ceyhan oil pipeline - BP replies'*

"The people have left the village, but some of them still come back to graze their animals etc. We consulted with those villagers when they returned."

- ERM, speaking to protesters at demonstration at ERM Manchester office, 13/1/03

The villagers have been moving away to Tercan, a town 19km away, since the 1950s, to get better schools jobs and facilities. The last five families left in 1994. There was unrest from 1989 to 1995, but the village itself was not affected; in Alsalce village, 20-30 km away, people were killed, in Rezabe, Goçdeye and Yamanla most people moved away because of unrest.

Nobody has given up their land rights; there are 29 Turkish Sunni households and one Alevi (who rented). Some families go back in the summer to farm, some rent out the land. They still see themselves as Hacibayram villagers; the Muhtar is still registered and gets a stipend, still deals with administrative matters. They were "aghast" to be thought of as an "abandoned village", and the other nearby villages feel the same.

The BTC contact was made through a phone call to a member of the Elders' Committee, whose son took the call and gave them the information, but never mentioned the community no longer lives in Hacibayram. They have all now had individual meetings, and all but one have signed agreements. They are very happy with the consultation process, and are being treated like human beings. They want to go back to the village and have applied to the government's Return to the Village programme. They have even suggested to BTC that they site a construction camp in the village.

What concerns us is that people are saying this was some kind of set-up. It happened before the summit in Johannesburg, and there was all this furore about the "abandoned village". The Muhtar still gets a salary, and the people still consider themselves a community. This wasn't researched well. The guy who goes back most to the village said he met some foreigners who didn't say who they were, just that they were doing an investigation.

- Ted Pollett (IFC), meeting with KHRP, 26/2/03. From contemporary notes taken by KHRP

"The people left because they were economic migrants; they went to a nearby town but still cultivate the land."

- BP presentation to NGOs and SRI investors, 24/3/03

There is still no settlement in the village. The farmers as usual go there during summer to perform some farming, and that is all. A Top family has sued BOTAŞ, the accusation being no distinction had been made between irrigated and non irrigated land. Since the

case is going on this family has not been paid any compensation yet. I don't know the details. I send my greetings to you all.

- *Abdurrahman Aksu, Muhtar of Hacibayram, phone conversation with FFM, 30/3/03*

I've been visited by BOTAŞ only once during the whole process, and that was about a month ago. These were BOTAŞ people from Erzincan. I once went to Erzincan to meet them, but was not able to see BOTAŞ people then. I called Ankara BOTAŞ earlier today to ask about the money to be paid to my fellow villagers (I haven't got any land to be expropriated, therefore my efforts are for my fellow villagers, but not for myself). The result: BOTAŞ says the payment has been suspended due to disagreements about the prices.

[Asked about the village being empty, and their feeling about FFM articulating this fact in its report]: "Why should we feel sad about it? It is the truth."

- *Abdurrahman Aksu, Muhtar of Hacibayram, phone conversation with FFM, 2/4/03*

[When specifically asked if he was contacted by telephone or otherwise before summer 2002, i.e. before the EIA was published]:

Some people on behalf of BOTAŞ visited TERCAN before the EIA. I myself was not there. And some other person from Hacibayram misled those visitors telling them that there was still settlement in the village at that time. However, soon after this incident some lady whose second name was Caglayan called me. On this call, I made a correction on the other villager's declaration about the village being inhabited. Meanwhile, I would like your assistance about the payments to be made. Some of my fellow villagers called BOTAŞ very recently about the payments. Even though some of the villagers have been paid, some haven't yet, and that this makes people uneasy.

- *Abdurrahman Aksu, Muhtar of Hacibayram, phone conversation with FFM, 8/4/03*

2.2.2 Inadequate Consultation of Directly Affected People

The Mission visited seven rural communities along the pipeline route from Sivas to Posof, interviewing four muhtars and one deputy muhtar. All of the rural communities were within the four-kilometre-wide pipeline corridor and all are listed in the BTC EIA as having been consulted about the pipeline either in person or by telephone.⁸⁰ The FFM found, however, that the standard of the consultation was low and fundamentally flawed in several respects.

- **Villagers told the FFM that they were not provided with information on the negative environmental impacts of the project.** One villager told the FFM that at the consultation meeting in the village they had been informed that, as a result of the project, their land would gain value and that there were no environmental risks. Some

⁸⁰ EIA, Supplement II, Series C, Social Baseline maps, June 2002

villagers told the FFM that they were unaware of a decommissioning stage. When the FFM explained some of the environmental risks involved, one villager summed up his surprise at this new information as follows: “Had I known that before, I would not have let BOTAŞ build on my land. I would not have signed the documents unless BOTAŞ committed itself to decommissioning.”

- **The same villagers interviewed by the FFM were told that compensation would be generous, contrary to the findings of section 3 of this report.** The villager, quoted above, was subsequently sent a letter from the bank informing him that compensation had been paid at a fixed rate, which he described as below market value. Thus, not only was the procedure followed irregular, but also the amount offered was significantly less than the villagers had expected after the consultation meetings. This led to much disappointment and in some cases the withdrawal of consent to the project, to the extent that villagers vowed not to give BOTAS their land (although by this point many of them had already signed legal forms).
- **Representatives of all villages visited by the FFM expressed concerns about the way the information 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. 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.
- **All of the villages visited said the documentation provided was too technical and lacked clarity.** 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.
- The FFM gathered that the information given regarding the means of redress in case of complaints was confusing and one-sided. In some instances, the villagers were simply not told anything about their legal rights. In others, they were openly discouraged from seeking redress from the courts as, according to the consortium, it would take a long time and they would in any event fail to obtain a better price for their land. And, finally, some were told that to go to court was not an option and that the expropriating agency would not be bearing the legal costs. This failure goes to the core of the process and breaches the project’s own guidelines.

In a further illustration of the opacity of the consultation process, the FFM was denied the chance on two consecutive days to obtain an appointment with local BOTAŞ officials. The FFM was later informed by the Social Team Coordinator in the Community Investment Programme of the BTC Directorate in Ankara that BOTAŞ field staff would not be able to meet with the FFM. The reason for this, she said, was that BOTAŞ was part of the Turkish state and thus subject to rules that stipulate that public officials cannot meet journalists or NGOs without official approval. However, she went on to say that the

FFM would be welcome to meet them in Ankara. The FFM is seriously concerned that villagers' associations, either seeking to gather further information or to raise the concerns of those they represent, will be refused local meetings and invited to travel to Ankara to obtain an answer to their questions. This would be in direct breach of the relevant standards applicable to the consultation process.

In several of the villages the FFM visited and in meetings with other interested parties, the FFM was plied with the very same questions – for example, how was it decided how much people would be paid for their land? Why was it less than what others were supposedly receiving elsewhere? What would be the impact of construction on their land? – that the RAP was designed to address⁸¹. This amounts to further evidence of the inadequacy of the consultation process.

2.3 FLAWED CONSULTATION DUE TO LACK OF FREEDOM OF EXPRESSION

Consultation requires freedom of expression. In order for any consultation process to be legitimate, it must firstly assess the extent to which those consulted are able to freely express their opinion without fear of repercussion. However, the FFM has not been able to discover any evidence to indicate that such an assessment has taken place; no reference to this is made in the EIA or the RAP. Had such an assessment been undertaken, it would have become clear that the conditions do not currently exist which would enable meaningful consultation to take place, at least in the north-east of the country. Furthermore, in the FFM's view, this assessment becomes of crucial importance when consultation is to take place in a country with a well-documented poor human rights record.⁸² The European Court of Human Rights has found Turkey in breach of the right to freedom of expression in numerous cases.

The IFC's Consultation and Disclosure manual⁸³ emphasises the need for the project sponsor to ensure that the process of public consultation is accessible to all potentially affected parties and that measures are put in place, which ensure that vulnerable or minority groups are consulted.

In addition, it is recognised that consultation is a key step when undertaking these types of projects. The Resettlement Action Plan ('RAP') states:

“A key step in the World Bank/IFC policies on resettlement, land acquisition and compensation is a framework for public consultation, participation and the establishment of a process to redress the grievances of affected people. Consultation with the affected population and with officials of local government, civil society and other representatives of the affected population is essential for gaining a comprehensive understanding of the types and

⁸¹ RAP November 2002: Chapter 7, page 7-6, 7-8.

⁸² See 2003 country reports published by Human Rights Watch, Amnesty International, the Country and Information Policy Unit UK and the US Department of State Human Rights Bureau.

⁸³ “*Doing Better Business Through Effective Public Consultation And Disclosure: A Good Practice Manual*”.

degrees of adverse effects.”⁸⁴

As recognised by the IFC, “ in certain countries and contexts, public consultation with local communities can be politically sensitive and therefore actively discouraged or limited by local and national government.”⁸⁵ Further, the IFC states that “political factors should not be considered insurmountable obstacles, however, nor should they be seen as excuses for failing to consult with locally affected people.”⁸⁶

Whilst recognising the complexity of this task where the process encompasses a vast geographical area, the FFM finds that the sponsors of the project failed to put measures in place to assess whether project affected people in the north-eastern region were obviously constrained when expressing their views. The systemic and the specific failures to acknowledge the security situation along sections of the pipeline are dealt with elsewhere in this report. Both the EIA and the RAP are silent on potential limitations on the freedom of expression. On the contrary, far from measures being taken by the project developers to ensure affected people did not feel intimidated during meetings with officials, the BTC Consortium clearly permitted members of the feared Gendarmerie to be present. As the RAP recalls⁸⁷:

“BOX 7.1: Kelkit/Gumushane, August 2001: Participants of the BTC information meeting included the district governor, district Director of Agriculture, Commander of Gendarme, district security director, Mayor and 12 villages headmen” (FFM emphasis)

“BOX 7.2: Askale/Erzurum, August 2001: Participants of the BTC information meeting consisted of the Commander of the Gendarme and 8 village headmen.” (FFM emphasis)

Thus the BTC information meetings clearly failed to recognise the need for supplementary measures to ensure that project affected people did not feel intimidated or suppressed. The FFM was very concerned by the blatant failure of BTC/BOTAŞ to take account of aspects of current political culture in Turkey which prevent the free expression of critical views about a national project such as the BTC pipeline. A village representative told the FFM that villagers had felt unable to express their views at the meetings held. This, he explained, was due to the fact that the BTC project information groups came accompanied by law enforcement officials. He explained that in the current political situation, where villagers of Kurdish ethnicity are routinely harassed and detained by the same law enforcement officials, nobody dared to speak up at the meetings.

As documented in Section 1, the FFM finds that, due to the socio-political conditions in the north-east region, there is no real prospect of an open debate on the issue. Intimidation and harassment by the police and security personnel ensure that many local

⁸⁴ Chapter 7: Public Consultation and Disclosure, November 2002, p. 7-1.

⁸⁵ “*Doing Better Business Through Effective Public Consultation and Disclosure: A Good Practice Manual*”, page 5.

⁸⁶ *Ibid.*, page 4.

⁸⁷ RAP, Chapter 7: Public Consultation and Disclosure, November 2002, p7-7, boxes 7.2 and 7.1.

people are afraid to publicly voice their concerns over the project⁸⁸. Moreover, the FFM's attempts to visit more villages were curtailed by the surveillance and tailing it experienced, itself indicative of the human rights situation in the region

The fear of freely expressing opinion applies also to political parties. In the case of smaller opposition political parties, their freedom of expression and advocacy are furthered weakened by the fear of proscription or closure⁸⁹. Accordingly, the consultation process is fundamentally flawed in that it failed to understand and take into consideration the political agenda that operates in the area.

Local DEHAP politicians told the FFM that nobody had consulted local branches of the party, a critical representative of the interests of the Kurdish community, with regard to the BTC project. They further stated that in the region, they feel they do not have the political freedom to voice the concerns of their voters. Whenever they call a demonstration, even when the subject matter is the environment, they and the participants are subjected to pressure from the police and the state. The DEHAP regional chair said that there is no freedom of expression in Turkey and that, although the recent Harmonisation Laws (*see* Section 1) are very welcome, implementation on the ground is yet to come. Both representatives of DEHAP interviewed by the FFM said that the number of detentions and arbitrary arrests had increased in recent times, that the party is under 24-hour surveillance and that villagers are under unabated psychological pressure.

Another local, a journalist, told the FFM that the BTC project has been pushed through like the Bergama project⁹⁰ and that BTC had a 'golden chance' in the north-east because in that part of the country people have been successfully silenced for decades. His newspaper, one of the few to criticise the project, has been shut down three times.

It is perhaps significant that the FFM was repeatedly told by those that it interviewed that there would be a better chance for voicing opposition in the West of the country and that the project could be a tool for hastening the already existing migration patterns of Kurdish people out of the north-east.

The FFM acknowledges that due to constraints of time and particularly of state harassment, it was only able to interview a small sample of villages and local representatives during its visit. Nevertheless, the consistency of accounts by villagers of intimidation and harassment, resulting in the lack of freedom of expression, merits investigation by the BTC Consortium and the sponsors of this project. In light of all the aforementioned, the FFM finds that no meaningful consultation could have taken in the north-east region of Turkey.

⁸⁸ See Section 1 of this report for further details.

⁸⁹ Illustrative is the high number of cases in which the ECtHR has found Turkey in violation of the freedom of expression of political parties. See for example: *The United Communist v Turkey*; *The Socialist Party et al v Turkey*; *The Freedom and Democracy Party v Turkey*; *The Welfare (Refah) Party v Turkey*; *Yazar, Karatas Aksoy and the People's Labour Party (HEP) v Turkey*.

⁹⁰ For the past 12 years, thousands of local farmers from 17 villages in Ovacik, near Bergama in the Northern Aegean region of Turkey, have resisted a proposed gold mine which the US mining corporation Newmount seeks to develop. The mine has been contested in court and has prompted a major civil disobedience campaign.

2.4 INADEQUACIES IN THE CONSULTATION OF WOMEN⁹¹

The FFM is very concerned that women were not adequately consulted and, in some instances, not consulted at all. The FFM's concern is directly germane to the issue of consultation in that the FFM found that, in the majority of villages visited, women held land titles or were benefiting from the use of common land. In order to ensure effective consultation, women - as an often-neglected group, and often-invisible actors of local economies - are to be considered at the planning stages of the process. Accordingly, the Public Consultation and Disclosure Plan⁹² ('PCDP') states that "the PCDP aims to identify key stakeholders and ensure adequate mechanisms for stakeholder feedback and information sharing".

The FFM found that the consultation process failed to comply with the IFC guidelines on public consultation and disclosure with respect to women on a number of counts. Specifically, the BTC Consortium failed to:

- (i) proactively disseminate in a culturally appropriate manner a summary of the project in the local language;
- (ii) consider undertaking other traditional mechanisms for consultation and decision-making;
- (iii) pay particular attention to seeking out less powerful and disadvantaged groups such as women;
- (iv) select appropriate and effective methods of consultation that recognise the specific needs of women;
- (v) consult all relevant stakeholders, including project affected women.

The Consortium claims that there is no need for Kurdish language consultation on the project, neither orally or in written form. Yet the FFM found that some of the women landowners or users of land were illiterate and thus unable to read the information distributed. Moreover, the majority of women in Kurdish areas were only able to speak Kurdish, not Turkish. Some villagers told the FFM that, though women were invited to attend the public meetings and that the BTC information group included a woman, they had no reason to attend as all the members of the BTC/BOTAŞ team only spoke Turkish. In other words, BTC Co.'s failure to disseminate information in Kurdish amounts to a form of gender discrimination by language, systematically depriving women of equal rights to access to knowledge and information about the project. This discrimination has its roots in BTC Co.'s equation of ethnicity with language⁹³, which the FFM regards as both theoretically and practically flawed.

In one village the FFM was told by a large group of villagers that women own 10% of the land but no one had consulted them at all. The villagers did not know whether the women had complained about this. The FFM then met with one of the affected women and she expressed her dissatisfaction with the compensation paid. Two other villages told the FFM that, though there was a female representative at the information meetings, she

⁹¹ For further discussion, see Section 4 on Ethnic Minorities and Vulnerable Groups.

⁹² EIA, Appendix A1, June 2002, p. A1-1.

⁹³ See Section 4 of this report "Project Impacts on Minority and Disadvantaged Groups"

never asked to see the women separately and thus they were not consulted. These examples illustrate the flawed approach taken to consultation, notably the assumption that the presence of a female representative is enough to ensure that women are consulted.

In addition, the FFM was disturbed by the lack of political representation of women in the area and the reasons behind it. The Chairman of a local political party told the FFM that, though their party would wish to encourage greater political participation of women, they are afraid because, if detained, women are at risk of sexual violence⁹⁴. Thus in the north-east women are a singularly vulnerable group in that they cannot benefit from anonymous political representation and advocacy that focus on their specific problems and concerns.

2.5 LACK OF CONSULTATION ON THE IGA AND THE HGA

According to the IFC's manual *Doing Better Business Through Effective Public Consultation and Disclosure* all relevant private and public stakeholders are to be consulted on the project. The Host Government Agreement is at the core of the BTC project and thus the FFM is of the view that, notwithstanding the fact that they are not statutory bodies, stakeholders should have been consulted on the nature of the documents governing the project. In this case, the FFM finds that consultation on the HGA is of crucial importance given that the agreements define the rights and duties of all interested parties, including those of project affected people.

None of the bodies, organisations or villages visited by the FFM was informed by project companies of the existence or nature of the HGA and IGA. Given the crucial importance of these agreements to Turkey, its citizens and the project itself and the likely implications these may have on Turkey's EU accession, the FFM finds this omission of particular concern.

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.⁹⁵ Thus it does not impose an obligation on the BTC Consortium to involve key stakeholders in the drafting of the EIA and in so doing it does not require the consortium to take account of the technical expertise and research of relevant NGOs and Turkish professional organisations. Taking into account the intrinsically complex nature of the project, the decision to reduce the governmental approval period from 60 days to 30 days⁹⁶ made it almost certain that the process was insufficient.

⁹⁴ For more on the issues of sexual violence and women's rights in Turkey, and the role of the state in these, see the KHRP's recent report on the trial of women's rights advocate Eren Keskin. Kurdish Human Rights Project, *The State and Sexual Violence: Turkish Court Silences Female Advocate*, (London: January 2003)

⁹⁵ "The EIA shall be subjected to public review and comment in accordance with the following procedures:

- (a) Affected public and non-governmental organisations will be notified about the *nature* of the operation of the Facilities during the development of the EIA through dissemination of information to these organisations through meetings and exhibitions.
- (b) *Following the completion of the EIA*, the public will be provided with information on the environmental aspects of the Project to enable it to comment with respect thereto."

(*Emphasis added*)

⁹⁶ See above Section 2.2.1.

- The Chairman of the Human Rights Commission of the Turkish Parliament informed the FFM that, to his knowledge, the Commission had not been consulted about the project and no information had been provided regarding the agreements.
- WWF was not consulted on the drafting or adoption of these agreements. WWF is concerned that the HGA will constrain the application of EU law in the future and that there will be no point for them in lobbying the Government on environment issues as they are bound by the HGA.
- The Chamber of Environmental Engineers was not consulted during the drafting of either of these agreements. They are worried that such important documents for the future of Turkey had gone unnoticed and without the consultation of the Turkish public at large. This lack of consultation, they said, is of crucial relevance given that the HGA overrides existing environmental legislation and might create a bad precedent for the future to which the government will not be able to object.

The FFM notes that the generalised failure to ensure proper consultation on the EIA, the RAP and the HGA is neither in the interests of those affected nor of the project developers. On the contrary, there is a strong possibility that the failure to consult will engender resentment of the project and act against its smooth implementation and future operation, in addition to incurring reputational risks for the companies that form the BTC Consortium.

Section 3

LAND EXPROPRIATION, COMPENSATION AND THE RESETTLEMENT ACTION PLAN

The BTC pipeline would affect 3,105 hectares of land in Turkey.⁹⁷ Under the Host Government Agreement for the BTC project, the Government of Turkey has undertaken to obtain the requisite land rights for the project through an expropriation process that conforms to Turkish law and to appoint a Designated State Authority (DSA) to undertake the land acquisition process.⁹⁸ 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.⁹⁹ The Turnkey Agreement forms part of the HGA and requires that the land acquisition procedures are compliant with OD 4.30, the World Bank Group's policy on involuntary resettlement.¹⁰⁰ All the expropriation procedures will be carried out by BOTAS' Land Survey and Expropriation Department "on behalf of BTC Co."¹⁰¹

However, it has recently been suggested in the Turkish press that BP has written to the Turkish Prime Minister, Tayyip Erdoğan, giving a detailed critique of BOTAS's alleged failings, which include not completing the appropriation process rapidly enough, administrative inefficiency and a superfluity of bureaucracy, and a tendency to undertake obstructive corruption allegations when, "The consortium sufficiently examines allegations of corruption regarding BTC." According to these suggestions, BP has threatened to withdraw the BTC contract from BOTAS and award it elsewhere.¹⁰²

Although no-one would be required to physically move from their homes or villages as a result of the project, some 10,117 households,¹⁰³ affecting 30,000 people,¹⁰⁴ would lose the use or ownership of land, and suffer "economic displacement". Under OD 4.30, the project developers must therefore produce and implement a Resettlement Action Plan (RAP) aimed at ensuring that those affected by the project are no worse off than prior to the project and preferably better off.¹⁰⁵

⁹⁷ RAP, Chapter 2: Project Description, p.2.7, Box 2.1 Land Requirements for the project.

⁹⁸ 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."

⁹⁹ 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."

¹⁰⁰ RAP, 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."

¹⁰¹ 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."

¹⁰² See Deniz Zeyrek, "Ultimatum to Prime Minister", Radikal, 13 April 2003. English translation available on request.

¹⁰³ RAP summary overview, page 6, November 2002

¹⁰⁴ RAP Turkey Final Report, section 1.8, page 1-7, November 2002

¹⁰⁵ World Bank, Operation 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.

The previous Fact-Finding Mission (FFM) to Turkey in July 2002 found that BTC/BOTAŞ was failing to apply the land expropriation and compensation required under the HGA and LSTA in all of the villages that the FFM visited (*see* Box: Findings of the July 2002 Fact Finding Mission). Moreover, the FFM heard evidence that strongly suggested that such failures were common along the entire pipeline route. The FFM found that, in addition to violating OD 4.30, the project also violated the World Bank safeguard policy on Indigenous Peoples, which covers the treatment of ethnic minorities.¹⁰⁶ The FFM was of the view that, if the project went ahead as then pursued, there would be strong grounds for a legal challenge under the European Convention on Human Rights and other international human rights instruments.

Since the first FFM reported, the BTC consortium has produced a full RAP for the project, IN which the consortium claims to comply with requirements of the HGA, Turkish Law and the relevant World Bank Group standards.¹⁰⁷ This section reviews:

- The provisions of the RAP against the provisions of the Host Government Agreement (HGA) for Turkey and the Lump Sum Turnkey Agreement agreed between the BTC Consortium and BOTAŞ;
- The extent to which the project developers have remedied resettlement-related problems identified by a previous FFM in July 2002;
- The implementation of the RAP against relevant World Bank group/IFC standards and Turkish domestic law.

The FFM found that significant progress had been made towards resolving several of the issues identified by the previous Fact Finding Mission, notably on the issue of compensation for land users without title. **However, such progress is restricted to the central section of the pipeline route (Sivas to Erzurum). Moreover, throughout the pipeline route, the FFM found widespread evidence of major shortcomings in the design and implementation of the RAP.** These are set out in detail in the rest of this section. In summary:

- There are still major problems with the compensation of customary owners in the north-east, many of whom have been told they have to obtain their titles, at their own cost, in order to be eligible for compensation.
- Understanding of compensation arrangements is poor, and many landowners only found out which part of their land they would lose when they went to the bank to collect their compensation. Non-Turkish speakers have suffered the most through lack of information, as project companies have not provided Kurdish speakers.

¹⁰⁶ World Bank, Operational Directive 4.20, Indigenous Peoples. For further discussion, see Section 4 of this report.

¹⁰⁷ RAP Turkey Final Report, section 1.8, page 1-6, November 2002. "A Resettlement Action Plan (RAP) has been developed for the Project and designed in conformance with the HGAs, for all three transit states, relevant national law and applicable World Bank Group policies."

- The RAP's provisions on negotiating land prices appear to be in conflict with the requirements of Turkey's Expropriation Law, placing the project in potential breach of the HGA.
- By failing to get a measure of the true rather than the registered market value of land, BTC is consistently underpaying and failing to provide a fair price, despite claims to the contrary.¹⁰⁸ According to villagers interviewed by the FFM, not a single payment was as high as the budgeted *average* in the RAP, and most were about half that level.
- Villagers interviewed by the FFM suggested that they had been consistently misinformed about their opportunities for redress if they disagreed with the compensation figure or process. Some were told they were not entitled to go to court, others that they could go, but it would be expensive and time-consuming. Under Turkish law, the cost of ensuring due process should be borne by the expropriating authority.
- Although a RAP fund has been set up to compensate those without land title, in compliance with the requirements of OD 4.30, no-one interviewed by the FFM had any knowledge of the Fund. As a result, those eligible for compensation 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.
- Similarly, it is highly improbable both for practical and cultural reasons that the majority of tenants will receive any form of compensation, which will be given to their landlords and which they are in no realistic position to request. In any case, as tenants will only be compensated for assets, of which almost by definition they have very few, rather than loss of income, the amount of money involved would not be enough to restore their socio-economic position even if they were able to obtain it.
- This is part of a wider phenomenon of BTC's systematic failure to compensate for loss of income rather than for immediate assets lost. This includes failure to compensate for loss of ongoing productivity, failure to pay the full replacement cost of land and failure to compensate for economic opportunities foregone and investments precluded by the pipeline and its construction processes.

The FFM is thus disturbed that the majority of the protection mechanisms that BTC has claimed to ensure that all project-affected people are not negatively impacted by BTC are either unknown to local people, inoperative, ineffective or not being applied by BTC staff. It is of particular concern that BTC Co has claimed credit from IFIs and other potential project funders for policies which in practice do not exist.

¹⁰⁸ For instance, Ted Pollett of the IFC told FFM members, "BTC is aiming at the high end of market valuations for land". Meeting of Ted Pollett and KHRP, London, February 26, 2003

Whilst some of these shortcomings (for example, the lack of knowledge about the RAP Fund) may be addressed through improvements to the RAP, the FFM is convinced that the political repression evident in the north-east section of the pipeline route renders fair negotiation over compensation currently impossible. The FFM finds this a further compelling reason for both the project developers and the international financial institutions to impose a moratorium on the project.

Findings of the July 2002 Fact Finding Mission

In July 2002, a previous Fact-Finding Mission travelled the length of the pipeline route from the site of the Ceyhan pipeline terminal to Erzurum. The Mission interviewed villagers from 8 communities affected by the pipeline in order to assess the extent to which affected communities had been informed about the social and environmental impacts of the project and of their legal rights with respect to damages and compensation. It found widespread evidence of inadequacies and failures in both the design and the implementation of the consultation and compensation procedures for the project. Specifically:

- Although the BTC consortium had committed itself to paying compensation to anyone affected by the project, villagers had been told by BTC/BOTAŞ that only *formally registered* landowners would be compensated. In effect, many of those whose land would be affected by the pipeline would be deprived of any compensation whatsoever.
 - Contrary to claims by BTC / BOTAŞ that the value of lost assets “would be made in accordance with fair market value”, the price paid for land lost was likely to be well below the land's market value.
 - In several of the villages surveyed by the FFM, BTC / BOTAŞ had not spoken to landowners. There was thus considerable worry and uncertainty about whether they would be compensated for loss of their land.
 - In all villages visited, there was a complete lack of knowledge about possible recourse in the event of unexpected damage.
 - BTC / BOTAŞ had given no indication that they would be willing to compensate for losses incurred to further land, resources and infrastructure that would be damaged outside the immediate pipeline corridor.
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3.1 CONFLICTS BETWEEN THE RAP AND THE HGA

As noted above, the project agreements reached between Turkey and the BTC Consortium require that the procedures for acquiring land rights for the project comply with Turkish law¹⁰⁹ and with the World Bank group's standards for involuntary resettlement (OD 4.30)¹¹⁰.

The FFM was unable to review the full range of Turkish laws of relevance to compensation and resettlement.¹¹¹ However, it compared the RAP against the recently-amended Expropriation Law¹¹² and was disturbed to find striking inconsistencies with regard to the RAP's provisions for negotiating land values and consequent levels of compensation.

Article 8 of Turkish Expropriation Law¹¹³ 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)

Under Turkish law, bargaining and barter are thus central to the process of negotiation over land values. This would accord with normal usage of the word “negotiate”, as defined by the Oxford English Dictionary: namely, “to confer in order to reach an agreement”.¹¹⁴ By contrast, the RAP explicitly rules out any bargaining or bartering in the negotiation process. In its clearest explanation of the procedure to be 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

¹⁰⁹ *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, Itochu 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).”*

¹¹⁰ Section 8.42, Appendix A of the Lump Sum Turnkey Agreement

¹¹¹ The relevant laws cited by the RAP are: Turkish Constitution, Land Deed and Registration Law, The Expropriation Law, The Resettlement Law, The Forestry Law and Pasture Law, The Law of Cultural Heritage Protection, The Public Settlement Law, The Law on Transit Passage of Petroleum by Pipelines (Transit Law: 4586). See: RAP, Chapter Three: Policy and Legislative Framework, November 2002, p.3-11.

¹¹² Law No. 2942, ratified 4 November 1983, published in Official Gazette 8 November 1983, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law.

¹¹³ 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

¹¹⁴ Oxford University Press, *Oxford English Dictionary*, Oxford 1966.

titled deed owners. It provides detailed information obtained from each source specified under the Law and shows how valuation decisions have been reached.”¹¹⁵

This entirely top-down approach flatly contradicts the impression BTC Co / BOTAŞ have created that the negotiating of compensation is a collaborative, consensual process. In addition, whilst the Expropriation Law requires that the landowner should not be told of the deemed value of their land,¹¹⁶ 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; and...
- “To *demonstrate* that the proposed land valuation is fair and detail the appraisal criteria for the individual parcel.”¹¹⁷

Moreover, the Commission is only assigned a responsibility to negotiate the proposed land price “in the interest of averting a court case”.¹¹⁸ 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 FFM finds that the RAP’s “negotiation” procedures constitute a direct encouragement to impose prices where possible.

The FFM finds the exclusion of “bargaining” from RAP’s provisions on negotiations to be in potential conflict with Turkey’s Expropriation Law and consequently in breach of the HGA which requires compliance with the Expropriation Law.¹¹⁹ As documented below, the breach is not only on paper: the practice on the ground is clearly to impose land values rather than negotiate them. **The FFM recommends that the IFC and other international financial institutions should refuse funding for the BTC pipeline until they are assured that the RAP conforms to Article 8 of the Expropriation Law, both on paper and in practice.**

3.2 DEFICIENCIES IN THE IMPLEMENTATION OF THE RAP

A key remit of the FFM was to review the implementation of the RAP against its stated objectives. Although some progress since the previous FFM in July 2002 was recorded, the

¹¹⁵ RAP Turkey Final Report, Chapter 5: Land Acquisition Procedures, 5.2.2, p. 5-12, November 2002

¹¹⁶ 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 8 states: “The administration shall notify the owner in writing through an official registered letter, without mentioning the estimated cost determined by the value appraisal commission...”

¹¹⁷ RAP Turkey Final Report, Chapter 5: Land Acquisition Procedures, 5.3.3, p. 5-25, November 2002. *Emphasis added*

¹¹⁸ 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; and
- To negotiate the proposed land price in the interest of averting a court case.
- To demonstrate that the proposed land valuation is fair and detail the appraisal criteria for the individual parcel”

¹¹⁹ Section 8.42, Appendix A of the Lump Sum Turnkey Agreement, which forms part of the HGA

FFM found that BTC / BOTAŞ is still violating many of the project's own guidelines, as described in the RAP. Such violations, coupled with fundamental problems in the design of the RAP itself, places the project in continuing breach of World Bank group/IFC safeguard policies and domestic Turkish law.

The FFM notes that the support of OECD Export Credit Agencies would require that the project complies with host government standards.¹²⁰ Potential breaches of Turkish law relating to land acquisition and compensation are therefore particularly problematic for the project, since the Host Government Agreement requires compliance with the Turkish Expropriation law. Since the HGA constitutes the prevailing local law governing the project, any breaches of the Expropriation Law, if upheld, would constitute grounds for challenging any export credits from OECD countries. Breaches of the World Bank's Involuntary Resettlement policy (OD 4.30) would similarly place the project in conflict with OECD rules, since compliance with OD 4.30 is required under Section 8.42, Appendix A of the Lump Sum Turnkey Agreement, which forms part of the HGA.¹²¹

The FFM's findings are detailed below.

3.2.1 Compensating customary land-owners and users

RAP objective: "Ensure that all affected parties are compensated and assisted in restoring their livelihoods... whether these lands are formally or customarily owned".¹²²

Both Turkish law¹²³ and OD 4.30 require that all users of private land should be compensated.

The FFM found that in the central section of the pipeline (Erzurum-Sivas), significant progress had been made towards resolving the issue of compensation for land users without official title to private land. In three of the six villages that it surveyed in this region, the FFM was told that – while there had indeed previously been a problem – BTC / BOTAŞ had now agreed to pay compensation to all users of private land affected by the project. The Mission also confirmed that BTC was making significant efforts to contact landowners who were no longer resident in the pipeline corridor, in order to compensate them.

¹²⁰ 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/good/services to comply with host/destination country legislation, regulations and standards." See: ECGD, "Summary of ECGD Impact Analysis Procedures", April 2003, www.ecgd.gov.uk.

¹²¹ RAP, Policy and Legislative Framework, p.3.14, November 2002: "BTC Co will apply certain World Bank Group Policies and Guidelines to the Project. These policies and guidelines are explicitly recognised under Section 8.42 of Appendix A to the LSTK Agreement".

¹²² RAP Turkey Final Report, section 1.8, page 1-7, November 2002

¹²³ The amended (2001) Turkish Expropriation Law (No. 2942) sets out the mechanism by which customary owners should be compensated, which did not exist prior to the amendments. The RAP Turkey Final Report, Chapter 3: Policy and Legislative Framework summarises: "The new legal framework [the Expropriation Law] protects the affected people in particular by ensuring that... all ownership is recognised, including customary and traditional ownership" (p. 3-6).

The FFM welcomes the steps that have been taken to respond to the concerns raised in the first Fact-Finding Mission, in relation to this issue. However, it notes with considerable disquiet that the same problem appears to remain unresolved in the north-eastern section of the proposed pipeline (Posof-Kars). The FFM interviewed a number of landowners without official title: all reported negative experiences and lack of clarity. The failure to resolve problems arising over land titles in the north-eastern section of the pipeline route is particularly disturbing, given that the vast majority of households in the north-east lack formal title to land – respectively 87% and 68% in Kars and Ardahan provinces, compared to an average of 32% along the whole route.¹²⁴

Although Turkish law stipulates¹²⁵ that it is the responsibility of BOTAS to regularise land titles at its own cost¹²⁶ - and, indeed the RAP commits to do so¹²⁷ - most of the villagers who the FFM interviewed 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 FFM deems this 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,¹²⁸ which specifies a process for compensating landowners who lack title without their having to go to court to register their land.

Such practices would appear to constitute discrimination against those without land title. **As such, they would contravene Clause 17 of World Bank Operational Directive OD 4.30, which states: “The objective is to treat customary and formal rights as equally as possible in devising compensation rules and procedures.”** The FFM also notes that the discrimination against land users without title impacts disproportionately on women. One villager reported that it was worst for widows, whose land is registered in their husbands’ names. “BOTAS told them to go to court to get titles. This costs a lot, so the women are helpless”.

Several villagers were very angry that they were being asked to pay court costs in order to be eligible for compensation. In one village, it was reported that several landowners

¹²⁴ RAP Turkey Final Report, section 4.7, page 4-10, November 2002

¹²⁵ 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. Articles 10-19.

¹²⁶ 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.

¹²⁷ 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.”

¹²⁸ 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”.

had been to court to obtain their official titles – at considerable cost. Some villagers are sticking to their rights, however. One told the FFM, “I am determined that I will get my payment without having to pay for it. I am ready to fight with BOTAŞ and not give them my land”.¹²⁹

Many villagers, however, 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 1): the FFM considers it highly probable that the fear of such harassment actively discourages people from taking on a powerful state institution such as BOTAŞ. The disempowerment of villagers is further compounded by a lack of information as to their rights and how they can protect them.

RAP plays down importance of compensation

Based on the accounts of the people it interviewed, the FFM disputes the claim in the RAP by BTC that “the level of expropriation is substantive in terms of total hectares, but is modest in terms of the impact on each family”, a claim it bases on the observation that only 19% of the land area of affected plots will be used in construction. Those interviewed by the FFM strongly indicated that they would be significantly impacted by the project. BTC’s observation ignores both the impact on a plot of bisecting it (so that the sub-plot either side of the corridor becomes too small to work), and the often marginal and subsistence nature of production in the rural areas crossed by the pipeline – such that 19% is in fact a substantial proportion.

The RAP further claims that on average only 0.5% of household income would be lost due to the project. Although the FFM does not have sufficient data to assess the estimate, it does not accord with the extent of concern expressed by all of the FFM’s interviewees. The FFM speculates as to whether this average is skewed by a number of much wealthier landowners, who would be less impacted, or whether there were even errors in its methodology of calculation.

Whatever the true picture of the proportion of people’s incomes lost to the pipeline project, this should emphatically not be taken as a justification for the lack of diligence in applying the compensation procedures outlined below, nor for the below-market rate of compensation offered.

Source: RAP Turkey Final Report, section 4.12, page 4-25, November 2002

¹²⁹ Interview near Ardahan, March 21, 2003. Interviewee’s name withheld for reasons of personal security.

3.2.2 Understanding of implementation arrangements

RAP Objective: Establish “a process of consultation with affected populations, and with local public and civic organisations [to] maximise understanding ... [of] implementation arrangements for resettlement, expropriation and compensation.”¹³⁰

The 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. The Muhtar was also the only one whose villagers had been given the opportunity to negotiate on price, and the only one who thought the price was fair; indeed, the only one who was broadly happy with the compensation regime. The FFM notes that same muhtar has expressed strong criticisms of the compensation procedures when the previous FFM visited him in July 2002.¹³¹

Elsewhere, the Mission found understanding of the land acquisition and compensation process among landowners and users was disturbingly slight:

- 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 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.
- Although the RAP requires “transparency in the valuation of assets”,¹³² 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 BOTAŞ 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.
- While the RAP reports that 30,000 brochures (the Guide to Land Acquisition and Compensation) would be 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

¹³⁰ RAP Turkey Final Report, section 1.8, page 1-7, November 2002

¹³¹ The FFM also spoke on the phone to the Muhtar of Hacibayram, the village visited by the previous FFM whose residents have now moved away. This Muhtar was not happy, but the distant nature of the community makes it a different type of case.

¹³² RAP Turkey Final Report, section 3.5, page 3-19, November 2002

for hours, and it wasn't very useful. It would have been better to have more, shorter meetings”.

- The RAP also commits BOTAŞ to ensuring that “people are informed of their rights under the amended [2001] Expropriation Law and informed that their rights will not be jeopardised.”¹³³ This will be achieved “primarily through preparation and distribution of summaries of the relevant Laws to both resident and absentee owners”. The FFM found no-one who was appraised of the amendments to the law, or who understood their own rights.
- The FFM found no evidence of special efforts to consult with, or explain arrangements to, women landowners. In one village, this was because BTC / BOTAŞ staff never asked to talk to the women, and the local men never offered to make suitable arrangements. In two Kurdish villages, BTC / BOTAŞ 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.

In the FFM’s view, such deficiencies place the project in breach of Clause 14(b) of OD 4.30, which states that “Compensation is facilitated by publicising among people to be displaced the laws and regulations on valuation and compensation.”

In addition, by failing to consult Kurdish speakers at all village meetings in Kurdish areas, and by not specifically consulting women, the project violates Clause 8 of OD 4.30: “Particular attention must be given to ensure that vulnerable groups such as indigenous people, ethnic minorities, the landless, and women are represented adequately in such [consultation and participatory planning] arrangements.”

The FFM also notes that the project fails to follow the “management principles” set out in the IFC’s *Doing Better Business through Effective Public Consultation and Disclosure – A Good Practice Manual*, which the BTC Consortium states it has taken into account when drawing up the RAP.¹³⁴ The Manual states that companies should “aim to provide information to the public as early as possible during the planning and implementation of a project, except in cases where such disclosure would materially harm the interests of the company” and “provide information in a form that is readily understandable and meaningful to project-affected people”.

The IFC principles also state that local languages and dialects, clarity, cultural sensitivity, gender, age, ethnicity and literacy levels should be taken into account. The lack of Kurdish language presentation and discussion with affected Kurdish women landowners is clearly a direct violation of this guidance.

¹³³ RAP Turkey Final Report, section 3.5, page 3-19, November 2002

¹³⁴ RAP Turkey Final Report, Chapter 3: Policy and Legislative Framework, November 2002, p.3-14.

3.2.3 Negotiation of compensation deals

RAP Objective: “Undertake land acquisition through negotiation with affected landowners, users and occupiers”¹³⁵

As noted earlier, the RAP’s approach to “negotiation” currently conflicts with the approach set out in Turkish law. The FFM has also found that, on the ground, Turkish law is also being breached in the implementation of the land acquisition procedures.

The FFM recognises that, for a project as large and complex as BTC, no crude or simplistic approach to compensation mechanisms will be adequate: if the overall goal of BTC is to restore or improve the livelihoods of those affected, compensation issues must be approached with as much sophistication and rigour as engineering, economic and financial issues.

The previous FFM report raised concerns that compensation agreements reached in secret between BTC / BOTAŞ and individual landowners were likely to lead to tensions between neighbours and within communities. It therefore recommended greater collectivisation of bargaining procedures, involving Muhtars in negotiations, and at the very least some transparency in the process.

BTC / BOTAŞ has since changed its approach to one of common fixed pricing of land, mostly jettisoning negotiation altogether. The result is that villagers no longer feel jealousies over their neighbours’ treatment:¹³⁶ instead they know that *everyone* in their village is being treated unfairly. The FFM believes that this situation is in fact far worse than that which was expected by interviewees of the first FFM:

No Negotiation

Of the eight villages whose members were interviewed by the FFM, only one reported that BTC / BOTAŞ 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.

One local journalist in the north-east commented that “The pipeline agreement is like a war decision. They just take land without even consulting people.” A number of villagers reported that they had not been told by BTC / BOTAŞ which precise parts of their land would be lost until compensation payments were paid, giving them no opportunity to negotiate on the basis of the quality of the land affected.

¹³⁵ RAP summary overview, page 17, November 2002; see also RAP Turkey Final Report, section 1.8, page 1-8, November 2002

¹³⁶ Indeed, one Muhtar, when asked by the FFM if he thought there may be problems from jealousies between the haves and the have-nots, he said not – “We’re not talking about large sums of money!”.

High Transaction Costs for Affected People

A further problem is the cost to landowners of participating in the process of negotiation and payment. The legal costs incurred by landowners are referred to above and below, but there are further costs related to transport and loss of work time.

The RAP states, “landowners will not be obliged to visit the local DSA/BOTAŞ branch. To facilitate discussions, the relevant DSA/BOTAŞ officers will visit each affected village.”¹³⁷ However, in all villages which the FFM visited, villagers had been obliged to travel - at their own expense – up to 40 kilometres to obtain their compensation from the bank, BOTAŞ office or other agency. Although the RAP commits that “the agency [BOTAŞ] facilitates people’s transport to land registration offices”,¹³⁸ in no case did this take place.

One Muhtar was particularly aggrieved that members of his village had been told a date to come to claim their compensation; only when they arrived were they told that the date had been postponed, and they would have to come back again the following week. Not only did these villagers have to pay for a second trip, mostly they lost two days’ work rather than one.

3.2.4 Fairness of price

RAP Objective: “Pay fair compensation based on market value, full replacement cost or loss of income, as the case may be.”¹³⁹

In the majority of villages it surveyed, the FFM heard complaints over the fairness of the compensation received and their failure to reflect either sale values or full replacement costs, in contravention of OD 4.30.¹⁴⁰ The FFM also found evidence that the compensation payments being made by BOTAŞ were well below those budgeted.

Unfair Payments

Of the eight villages whose members were interviewed by the FFM:

- five said the compensation price was unfair;
- one said it was fair;
- one did not express an opinion; and
- one did not comment on the value of compensation itself but stated that it was unfair if damage to land outside the 28-metre corridor was not compensated.

However, the village that said the price was fair qualified this view by adding that its fairness was dependent on the land being quickly restored to its former quality after construction. The FFM’s interviews with Turkish environmental experts suggested that

¹³⁷ RAP Turkey Final Report, section 5.2.2, page 5-12, November 2002

¹³⁸ RAP Turkey Final Report, section 3.5, page 3-19, November 2002

¹³⁹ RAP summary overview, page 17, November 2002

¹⁴⁰ OD 4.30, clauses 3(b)(i) and 14

this was very unlikely to be the case, based on their assessments of the EIA, of pipeline construction procedures and of the Turkish environment.¹⁴¹ Indeed, the East Anatolian Natural Gas Pipeline – which was also built by BOTAŞ along much of the same route as BTC (between Erzurum and Sivas), in 2000-2001 – left the land completely unusable, and badly scarred.¹⁴²

The FFM found particular anger over compensation arrangements in the north-east section of the pipeline. In 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. To compound the problem, early in the project BTC / BOTAŞ told landowners that the compensation would be generous, and thus raised their expectations. According to one interviewee, “At the public meeting, they said our land would gain in value from this project, and we would be paid very good compensation – more than we could imagine... Villagers asked how much compensation would be paid, and they said enough to satisfy you – you will not lose out... This all made me think I would like to buy a tractor with the compensation money. In reality, of course, there was nothing like enough”.

Failure to Reflect Sale Value of Land

The FFM is concerned that BTC / BOTAŞ appears to have taken the officially registered price as the market value of the land. Indeed, the eight specific factors taken into account in valuation, as specified in the RAP, include alongside the physical characteristics of the land, the following four that relate to the *registered* value:¹⁴³

- (iv) tax statements;
- (v) an estimate made by official authorities;
- (vii) the sales amount of similar land sold before the date of expropriation;
- (viii) official unit prices.

Similarly, five of the six expert institutions that the Valuation Commission is recommended to consult are likely to be in possession only of registered prices: title deed registry offices, municipalities (based on tax records), state property directorships, state authorities, and real estate agencies.¹⁴⁴

Indeed, the FFM consistently found that land is registered at below the real value, as is common practice, 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.

¹⁴¹ As Dr. Yurteri of Envy, the environmental baseline contractors involved in the design of the pipeline route acknowledged, many of the same firms that erred so badly in the East Anatolian case will be involved in the construction of BTC. All that is different is the purportedly close monitoring of BP.

¹⁴² The FFM found widespread concern among the villagers interviewed by the FFM that BOTAŞ and its subcontractors would not restore the land as well as it had promised during the consultations. One villager, for example, commented that “If they did the same again [as they did in the NGP gas pipeline], putting the soil back upside down, we would end up with unproductive soil, and this would be a real problem for us”. He said that this time BOTAŞ said it would do it properly. When the FFM asked if he believed BOTAŞ when they said this, he said “Yes, we believe them. We have to – what else could we do?”.

¹⁴³ RAP Turkey Final Report, section 5.3, page 5-23, November 2002

¹⁴⁴ RAP Turkey Final Report, section 5.3.2, page 5-24, November 2002

Unsurprisingly, 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. Many villagers pointed that the declared price for land sales was always far below the actual price paid by villagers because of high taxes levied by the state.

Failure to Pay Full Replacement Cost

Although the RAP states that “in assessing the value of the asset... full replacement cost is the principle”,¹⁴⁵ the 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 finds 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.¹⁴⁶ It also deems it to be a breach of the RAP and of OD 4.30, which states, “Displaced persons should be compensated for their losses at full replacement cost”.¹⁴⁷

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”.¹⁴⁸ However, in no village visited by the FFM had this long-term productivity loss been explained; instead “full restoration” was promised. The RAP also claims: “In the calculation of the compensation levels for the 20-metre corridor that will be returned to people, this factor will be taken into account”.¹⁴⁹ This is contradicted by the FFM’s own findings: 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. In one case, one year’s crop profit was offered, in another (the village visited by the first FFM), three years’.

Payments Below those Budgeted

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.¹⁵⁰ In no case did the 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

¹⁴⁵ RAP Turkey Final Report, section 5.3.4, page 5-25, November 2002

¹⁴⁶ Law No. 3083 – this is referred to in the RAP, section 3.2.3, page 3-3

¹⁴⁷ World Bank, Involuntary Resettlement, Operational Directive OD 4.30, para 3(b)(i), also clause 14.

¹⁴⁸ RAP Turkey Final Report, section 5.3.4, page 5-25, November 2002

¹⁴⁹ RAP Turkey Final Report, section 6.6.1.2, page 6-14, November 2002; also section 7.6.4, page 7-22

¹⁵⁰ 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.

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. The FFM recommends that potential funders obtain an explanation from BTC / BOTAŞ.**

Discrimination against users of customarily-owned land

A similar calculation to that above shows that the average budgeted payment for customarily-owned land is \$1.13 / sq m, or 1.9m lira¹⁵¹, compared to \$1.49 = 2.5m lira for titled land. The FFM sees no demographic reason why customarily-owned land should be less valuable than formally titled land. The FFM is therefore concerned that there is discrimination against customary owners in price, on top of the problems outlined above. **This will impact disproportionately on the poor and on the residents of Kars and Ardahan provinces, where there is a larger Kurdish population. The FFM notes that the difference in budgeted level of payment between formally and customarily owned land is also in violation of Clause 17 of OD 4.30, which states, “The objective is to treat customary and formal rights as equally as possible in devising compensation rules and procedures”.**

Engineering Consent

The FFM is particularly concerned that at one point in the RAP, BTC seems to be more concerned with convincing people that they are receiving a fair price, than with ensuring that the arrangements are indeed fair:

“DSA/BOTAŞ ... will need to have special training and procedures for its field staff to emphasise a positive, relevant, objective and individual approach to assessing compensation levels and beginning the negotiation process. This is particularly important at the beginning since the tone and character of first land and asset acquisition attempts will become rapidly known across the affected provinces. If plot owners feel that DSA/BOTAŞ is sensitive to owner concerns, the process will certainly go better than if plot owners view DSA/BOTAŞ as unresponsive and unfair. If the first compensation offers from DSA/BOTAŞ are seen as fair and relevant to individual situations, plot owners will be more willing to avoid the court process.”¹⁵²

It is not only that BTC Co. has to be “seen as fair”; more importantly, the company must **ensure** fairness in all its dealings with those affected by the project. The RAP states that BTC / BOTAŞ staff should be, “assuring people that valuation is done for each individual plot.” However, the RAP is silent as to the mechanisms by which this assurance is to be turned into reality. The FFM’s findings indicate conclusively that valuation of individual plots of land has not been the norm along the pipeline route.

¹⁵¹ From the same sources, budget of \$1,943,260 for 172.0 ha

¹⁵² RAP Turkey Final Report, section 7.4, page 7-19, November 2002

3.2.5 Mechanisms of Redress

RAP Objective: “provide straightforward avenues for people to lodge a complaint about the project and obtain redress”¹⁵³

Although BTC claims to have established two complaint and grievance procedures,¹⁵⁴ none of the villages surveyed by the 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 outside of the courts. The RAP states that, in the event of dispute, it is up to BOTAŞ to apply to the court for a judgment,¹⁵⁵ a procedure that accords with the Turkish Expropriation Law.¹⁵⁶ The RAP also states: “Costs of due process are borne by DSA/BOTAŞ, not by affected people”¹⁵⁷ Similarly, 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.”¹⁵⁸

Disturbingly, the FFM heard evidence that suggests a number of misapprehensions have arisen in the minds of those to whom BTC / BOTAŞ has spoken, namely that:

1. 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.*¹⁵⁹

2. 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.*¹⁶⁰

¹⁵³ RAP summary overview, page 17, November 2002

¹⁵⁴ RAP Turkey Final Report, section 7.6.6, page 7-23, November 2002

¹⁵⁵ RAP Turkey Final Report, section 5.2.2.2, page 5-13, November 2002; “DSA/BOTAŞ applies to the court ... and the court summons the landowner”

¹⁵⁶ 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 [ie mutual agreement], the administration [in this case, BOTAŞ] shall apply to the court of first instance ... The court shall summon the owner of the immovable property by notifying the date of hearing.”

¹⁵⁷ RAP Turkey Final Report, Chapter 3: Policy and Legislative Framework, para 3.2.4, p.3-7, November 2002.

¹⁵⁸ IFC Handbook for Preparing a Resettlement Action Plan, 8/7/2001, p. 48

¹⁵⁹ 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 annulment 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.”

¹⁶⁰ 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,

3. **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. 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 / BOTAŞ. The FFM also notes that, if villagers are indeed to be charged court costs, 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.¹⁶¹

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."¹⁶² However, the RAP does not answer these fears, nor any of the other points listed in the RAP as raised by its interviewees. The FFM believes that the very fact of concerns being raised by people on the ground should have suggested to BTC that there were grounds for investigation, especially given the seriousness of the complaints. **The FFM recommends that the International Financial Institutions investigate whether BOTAŞ and BTC Co. are complying with their agreements and take immediate steps to bring the project into line with World Bank Group/IFC guidelines and Turkish domestic law should any infractions be found to have occurred.**

The FFM also finds that the issue of ultimate legal liability for infringements of the RAP is ambiguous. It recommends that the International Financial Institutions and the BTC Co. clearly sets out the responsibilities of the different parties to the various agreements and the avenues that can be used to obtain redress against each liable party.

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.

¹⁶¹ 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"

¹⁶² RAP Turkey Final Report, section 7.3.4, page 7-19, November 2002

3.2.6 Common land and the RAP Fund

*RAP Objective: Establish “a RAP Fund, administered by BTC Co, to ensure fair compensation to those groups denied compensation by the Turkish Expropriation Law”*¹⁶³

1,067 hectares of publicly-owned or common land would be used in the construction corridor (38% of the total land used by the pipeline).¹⁶⁴ The RAP acknowledges that there is a discrepancy between existing Turkish law and the World Bank’s guidelines on resettlement: unlike the Bank, Turkish law does not require compensation for individual and community users of public land, for example. However, BTC Co has undertaken to devise “mechanisms” to remedy these differences.¹⁶⁵ Specifically, it has set up a RAP fund to compensate users of public lands.

The RAP claims that, “Implementation arrangements for the [RAP] fund will be determined during the first stages of RAP implementation.”¹⁶⁶ It further requires that “people are aware of the RAP fund. This will be achieved through providing information to the village administration of directly affected communities.”¹⁶⁷

The FFM interviewed residents of three villages with substantial amounts of common land. All of them believed that no compensation at all was available for common land, and had specifically been told so by BTC / BOTAŞ. None of them (including a Muhtar interviewed in one of these cases and a Deputy Muhtar in another) had any knowledge of the RAP Fund, and stated that they had only heard of it from the FFM.

Even if the RAP Fund were publicised and provided, the amount of compensation would be very low. As noted above, the average compensation payment for private land is \$1.49 = 2.5m TL per square metre. BTC Co has allocated \$2 million for the RAP Fund¹⁶⁸, to compensate mainly for the loss of 319.8 hectares¹⁶⁹ of permanently acquired (in 8-metre corridor) public land. Even if no compensation is paid for temporarily lost public land (in the 28-metre construction corridor), the average compensation available for the 8-metre corridor is \$0.63 = 1.1m TL per square metre, which is clearly not enough money to replace the land.

Many interviewees said that poorer people relied on common land for grazing livestock, as poorer people did not have access to land of their own. Thus, the loss of common land without compensation will impact particularly on poor people.¹⁷⁰

¹⁶³ RAP Turkey Final Report, section 1.8, page 1-7, November 2002

¹⁶⁴ RAP Turkey Final Report, Table 6.3, page 6-10, November 2002

¹⁶⁵ RAP Turkey Final Report, section 1.8, page 1-8, November 2002

¹⁶⁶ RAP Turkey Final Report, section 1.8, page 1-8, November 2002

¹⁶⁷ RAP Turkey Final Report, section 3.5, page 3-19, November 2002

¹⁶⁸ RAP Turkey Final Report, Figure 9.2, page 9-3, November 2002

¹⁶⁹ RAP Turkey Final Report, Table 6.3, page 6-10, November 2002

¹⁷⁰ RAP Turkey Final Report, section 4.11, page 4-24, November 2002. The RAP admits that, “A high proportion of the affected households maintain livestock. They rely on common property resources (pasture and open water resources) for animal maintenance. On average, 83% of these households have livestock... Grazing on common lands is the only way for these households to afford their livestock.”

By impacting more severely on poor people through not adequately compensating common land, the project fails to comply with Clause 3(b) of World Bank Policy OD 4.30, which states that “Particular attention should be paid to the needs of the poorest groups to be resettled.”

The project’s failure to ensure that affected land users know about the RAP Fund inevitably undermines its implementation, since money will only be made available to those who apply directly for funds. In the FFM’s view, this mean that the project remains in violation of Clause 15(c): “Some types of loss, such as access to ... fishing, grazing, or forest areas, cannot easily be evaluated or compensated for in monetary terms. Attempts must therefore be made to establish access to equivalent and culturally acceptable resources and earning opportunities.”

3.2.7 Tenants

RAP Objective: Inform “all directly affected communities in advance so that tenants can make clear cut compensation sharing agreements with owners when drawing up future leases”¹⁷¹

18% of plots of land affected by BTC (1,618 out of 8,987) are cultivated by tenants.¹⁷² The RAP correctly highlights concerns over tenants losing out on compensation: “The key concern of RAP does not have to do with tenants’ rights, rather [with] complicated tenancy arrangements. Additional issues may even arise from the fact that the tenants of today may not be the tenants of next year”.

To address this concern, BTC claims that BOTAŞ is informing “all directly affected communities in advance so that tenants can make clear-cut compensation-sharing arrangements with owners when drawing up future leases.” In addition, “the disclosure documentation distributed during the third week of September invites all tenants / sharecroppers to obtain a letter from the owners to somewhat formalise the tenancy arrangements and allow them to be compensated for the crops on the land at the time of the entry of the construction teams to the relevant plots.”¹⁷³

The FFM views the RAP’s proposed mechanism for resolving the complexities of tenancy arrangements as unrealistic:

- *According to the RAP, tenants will not be compensated for their loss of income, nor will access to other land from which to earn a livelihood be ensured.* Rather, the concrete mechanisms outlined in chapter 6 of the RAP make it clear that tenants will only be compensated for their *assets*, such as crops which have already been planted, and which are lost due to construction: “Their entitlements are limited to affected crops, trees (if planted by tenants) and structures (including informal irrigation works)

¹⁷¹ RAP Turkey Final Report, section 4.8, page 4-14, November 2002

¹⁷² RAP Turkey Final Report, section 4.8, page 4-13, November 2002

¹⁷³ RAP Turkey Final Report, section 4.8, page 4-14, November 2002

that might have been built by tenants”.¹⁷⁴ This payment is conditional on the tenants obtaining a letter from the owners, which states that the owners forego that element of the compensation.

- *BTC / BOTAS’ fundamental basis for compensation remains ownership of land, not impact on livelihoods.* The FFM visited two villages with significant amounts of rented land. In both cases, absentee landowners had returned to the villages to claim the compensation payment, leaving nothing for the tenants. Perhaps this is unsurprising: given that the compensation levels for the land itself have been found to be well below the land’s true value, landowners are likely to want to keep anything they get offered, in order to minimise their losses.
- *Many tenants are not in a position to ask their landlords for written agreements on compensation, due to imbalances of power in some cases, and cultural or family and friendship constraints in others.* The villagers the FFM met had heard nothing of BTC’s proposed mechanism for compensating tenants, and were even surprised when the FFM suggested it. “Of course, these people cannot ask their landlords!”

The RAP states rather optimistically that “local traditions are strong and are likely to protect the tenants’ rights”.¹⁷⁵ The FFM found no evidence to support this assertion.

3.3 OTHER LOSSES ASSOCIATED WITH PROJECT

The FFM heard evidence of concerns over two general forms of damage for which villagers feared they would not be compensated: immediate damage done to land outside the 28-metre pipeline corridor during construction; and long-term losses due to opportunities that would have to be foregone due to restriction on land use.

Immediate Losses incurred during Construction

The RAP acknowledges that, “During construction of the pipeline and related infrastructure there may be damage to land, assets and income of people not involved in the expropriation and compensation process,” and resolves that, “Additional measures will be taken to ensure that the users of affected land and assets who may not be owners are directly and adequately compensated.”¹⁷⁶ However, while the FFM spoke to several people and Muhtars who were concerned about this issue, in no case had compensation for this even been discussed by BTC / BOTAS, let alone agreed.

In relation to damage to infrastructure, the RAP states that BTC / BOTAS “will ensure that all potentially affected infrastructures are identified prior to the start of construction and instruct the contractors to avoid any damage.”¹⁷⁷ However, it does not accept or assign liability for accidental damage, nor propose remediation or repair of unavoidable damage, such as wear on roads due to the passage of heavy machinery. This echoes

¹⁷⁴ RAP Turkey Final Report, section 6.2.2, page 6-7, November 2002

¹⁷⁵ RAP Turkey Final Report, section 3.4, page 3-17, November 2002

¹⁷⁶ RAP Turkey Final Report, section 7.6.3, page 7-22, November 2002

¹⁷⁷ RAP Turkey Final Report, section 7.6.5, page 7-23, November 2002

complaints heard by the FFM in several villages that damage caused to roads and other infrastructure during the building of the East Anatolian gas pipeline was neither properly repaired nor compensated for.

Many villages – even those who were broadly satisfied with the compensation for the land directly used by the pipeline – expressed concern that the damage done by construction would extend beyond the 28-metre strip, and that they would not be compensated for this.

The only Muhtar whom the FFM found to be broadly happy with the direct compensation arrangements for the 28-metre corridor itself nonetheless remained seriously concerned about damage to fields outside the construction corridor. He knew that in theory drivers should use the corridor, but was worried that subcontractors (such as Alarko, which also built the East Anatolian Natural Gas Pipeline [NGP], and left enormous damage in this process) would take short cuts. BOTAŞ had told him that it would police the subcontractors on this issue, but that BOTAŞ itself declined to take legal responsibility for it. The Muhtar said that the only method of redress this left open to villagers whose fields and crops were damaged would be to sue the subcontractor in court – but that legal costs would exceed the compensation they were suing for, so no-one would use this recourse.

One village also anticipated that there would be damage to common land, and to community assets such as tracks and paths. The villagers said that when NGP was built, BOTAŞ only compensated main roads and not tracks; this time BTC / BOTAŞ had not even offered that.

In the case of bisected pasture and grazing lands, the RAP claims that, “passageways will be created ... to allow passage from one side of the pasture to the other, thus avoiding adverse impacts on animal feeding patterns”.¹⁷⁸ While this measure – if applied – would mitigate the impact, it is wrong to say that it would avoid the impact, as noise, activity and bisection would clearly each still disrupt feeding patterns.

*Long-term Losses due to Future Restrictions*¹⁷⁹

One village – which did not express a view on the fairness of the compensation for the corridor itself – was unhappy that the value of fields bisected by the pipeline would be reduced by more than just the proportion of land lost since these fields would take much longer to plough, because of the pipeline cutting across the middle. BTC / BOTAŞ has not offered compensation for this lost value.

In addition, there are concerns over future restrictions on building houses. According to the RAP¹⁸⁰, the BTC pipeline is classified by the Turkish Ministry of Health as a Non-

¹⁷⁸ RAP Turkey Final Report, section 6.6.4.2, page 6-16, November 2002

¹⁷⁹ The experience of BP’s OCENSA pipeline in Colombia – which is in many ways comparable to the Turkish section of BTC, both in terms of physical terrain and political situation – is that a much wider strip of land than that expropriated was in the event taken, as conflict and the threat of sabotage caused security arrangements to take up to 100 metres on either side of the line itself. There was an even wider strip of damage and loss due to groundwater pollution from the pipeline.¹⁷⁹

¹⁸⁰ RAP Turkey Final Report, section 2.9, page 2-8, November 2002

hygienic Establishment. Under Turkish health law, the construction of houses is therefore prohibited within seven metres of the pipeline. Many international standards recommend a much greater distance, for safety reasons. However, although people are restricted from building houses, no compensation is given for this restriction in the use of their land, outside the eight-metre expropriation corridor.

Turkish Expropriation Law states that if landowners apply for it, BOTAŞ should also expropriate (and hence compensate for) any land that would not be available for living on.¹⁸¹ Those interviewed by the FFM appeared to be unaware of this requirement on BOTAŞ; as a result, they will lose the right to build on this land, with no compensation.

The Mission notes that the project's failure to address the impacts on land value beyond the immediate expropriated portion puts it in violation of OD 4.30, which requires: "establishing criteria for determining the resettlement eligibility of affected households, e.g., households that have only partially lost their assets but are no longer economically viable should be entitled to full resettlement"¹⁸².

3.4 FAILURE TO PROTECT LIVELIHOODS OF AFFECTED PEOPLE

This report has outlined above many of the specific failings of the RAP, both in design and in implementation. However, on top of these, there are two more fundamental problems with BTC's very restricted approach to what constitutes compensation: first, that the compensation regime focuses on assets rather than incomes, and second, that compensation is only considered in cash, rather than in terms of replacement of lost resources. In the FFM's view, these two flaws will necessarily render many affected people worse off as a result of the project rather than better off or with their livelihood restored.

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"¹⁸³; "[agricultural landowners] will be compensated both for land that is permanently and temporarily acquired on the basis of discounted net income."¹⁸⁴ However, the compensation procedures, as explained in the RAP and as confirmed by the FFM, focuses almost entirely on compensating assets. This is particularly clear, for example, in the case of tenants (*see above*).

The FFM is concerned that in seeking a bureaucratically smooth procedure for compensation, BTC / BOTAŞ has adopted a legalistic approach that fails to take account of the subtleties and nuances of customary land ownership and use. In particular, property rights take precedence over customary rights. Not only does

¹⁸¹ Article 12 states that "On the condition that the part of the immovable property not to be expropriated is not available for living and use and that no lawsuit is filed against the expropriation proceedings before the civil courts, such part of the immovable property must be expropriated as well upon the written application of the owner of the immovable property within utmost 30 days as from the notification of the expropriation decision."

¹⁸² World Bank, Involuntary Resettlement, Operational Direct OD 4.30, para 14c.

¹⁸³ RAP Turkey Final Report, section 1.8, page 1-8, November 2002

¹⁸⁴ RAP Turkey Final Report, chapter 6, pages 6-4 and 6-11, November 2002

this approach encourage unfair valuation of assets, as outlined above, 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 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.

In the FFM’s view, the principal aim of the RAP should be to address the loss of livelihoods, not just assets. Indeed, the current emphasis on compensating lost assets rather than lost income violates the guidance of OD 4.30, whose Clause 16 states: “Vulnerable groups at particular risk are indigenous people, the landless and semi-landless, and households headed by females who, though displaced, may not be protected through national land compensation legislation. The resettlement plan must include land allocation or culturally acceptable alternative income-earning strategies *to protect the livelihood of these people*” (emphasis added).

The principles set out in the EIA 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 – this, 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 the FFM’s findings above show that it has in general 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.

The World Bank’s OD 4.30 (Involuntary Resettlement) is clear on this point. Clause 4 states that, “Experience indicates that cash compensation alone is normally inadequate.... Preference should be given to land-based resettlement strategies for people dislocated from agricultural settings. If suitable land is unavailable, non-land-based strategies built around opportunities for employment or self-employment may be used.” This is repeated in Clause 13: “The Bank encourages “land for land” approaches, providing replacement land at least equivalent to the lost land.”¹⁸⁵ **The FFM therefore recommends that alternatives to cash should be made available in order to give those affected by the project the choice of receiving replacement land.**

¹⁸⁵ World Bank, Involuntary Resettlement, Operational Directive OD 4.30. Clause 8 adds that “They should also be able to choose from a number of acceptable resettlement alternatives.”

3.5 INADEQUATE CONSULTATION WITH NGOs

It is worth also noting that BTC and BOTAŞ could have both ironed out and resolved problems in the RAP, and facilitated local understanding of the mechanisms, by working to a greater degree with NGOs.¹⁸⁶ Indeed, the principles of transparency would suggest that the RAP should have been disclosed to NGOs in a timely manner. However, the RAP, which is dated November 2002¹⁸⁷ was not in fact distributed to international NGOs until February 2003, when it was first put on the *caspiandevlopmentandexport.com* website. Even then, it was taken down after a few days, and only reinstated when NGOs insisted. The NGOs participating in the FFM had been asking BP for a copy of the RAP since autumn 2002, and the company had promised to send a copy as soon as it was completed. As a result of this delay, NGOs were only able to apprehend the problems and issues in the RAP at a stage when most of it had already been implemented – which was too late for constructive suggestions to be made to influence that implementation.

3.6 CONCLUSIONS

The FFM finds a wide gulf between the aspirations and commitments of the RAP on paper and the practice on the ground.

The FFM finds implementation of the RAP to be in potential violation of both Turkish law and the World Bank Group/IFC guidelines specified in the HGA. The FFM is therefore deeply concerned that the expropriation process is already under way and calls on the BTC Co. and the Turkish authorities to suspend the land acquisition process until the expropriation procedure is put in order.

¹⁸⁶ The RAP claims that “an independent NGO, Rural and Urban Development Foundation (RUDF), specialists in land acquisition and resettlement issues, will also monitor negotiation meetings to help ensure the fairness and transparency of the land acquisition process” (RAP, Section 7.25, p.7.17). The FFM does not question the integrity of RUDF, whose work is known to it, but questions whether a company under contract to BOTAŞ should be described as independent. The FFM also notes that RUDF appears, from its website, to be primarily a consultancy rather than a civil society group with a membership.

¹⁸⁷ RAP summary overview, page 2, November 2002

Section 4

PROJECT IMPACTS ON MINORITY AND DISADVANTAGED GROUPS

The BTC pipeline passes through a number of areas with significant ethnic and religious minorities. In Turkey, these minorities include Alevis, Çerkez and Kurds. Although the BTC Consortium has committed itself to ensuring that the BTC project conforms to some relevant World Bank group/IFC standards, 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 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".¹⁸⁸

This section 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. Finally, it presents the Mission's own findings with regard to ethnic minorities and disadvantaged groups.

The FFM rejects the view that OD 4.20 does not apply 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 FFM is deeply concerned that 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. Its arguments are set out below.

4.1 THE APPLICATION OF OD 4.20 TO TURKEY'S KURDISH MINORITY

4.1.1 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).¹⁸⁹ This Directive aims to "(a) ensure that indigenous people benefit from development

¹⁸⁸ RAP Turkey Final Report, Annex 4.6 Vulnerable Groups in the Context of BTC Project, November 2002.

¹⁸⁹ 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".

projects, and (b) avoid or mitigate potentially adverse effects on indigenous people caused by Bank-assisted activities”¹⁹⁰.

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.”¹⁹¹

4.1.2 The Kurds and OD 4.20

The IFC has 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.”¹⁹²

In listing these specific objections, the IFC seems to therefore implicitly 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 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 FFM argues strongly that 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, the FFM does not accept 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

¹⁹⁰ World Bank OD 4.20 (Indigenous Peoples), Clause 2, September 1991

¹⁹¹ World Bank OD 4.20 (Indigenous Peoples), Clause 5, September 1991

¹⁹² 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.

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).¹⁹³ The Turkish government's GAP Authority recently surveyed five provinces in the south-east, 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%."¹⁹⁴

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 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."¹⁹⁵ 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:

¹⁹³ David McDowall, *A Modern History of the Kurds*, (London: I. B. Tauris), 2000, p.14.

¹⁹⁴ 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."

¹⁹⁵ McDowall, op. cit., p.6

- 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 throughout this report, particularly above and in section 1, 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 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.¹⁹⁶

4.1.3 Isolation and Marginalisation

The IFC also argues 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.”¹⁹⁷ 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.¹⁹⁸

The IFC’s preoccupation with striking a balance between “insulating” and “acculturating” minority groups reflects a limited view of ethnic minorities and indigenous peoples that appears to be rooted in the reductive archetype of the rainforest tribe completely cut off from all communication with the outside world. In the FFM’s view, 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:¹⁹⁹

- Political discrimination: the repeated violation of the rights of Kurdish political parties and their members and representatives (see section 1). The Turkish

¹⁹⁶ World Bank OD 4.20 (Indigenous Peoples), September 1991

¹⁹⁷ 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.

¹⁹⁸ Meeting of Shawn Miller and Ted Pollett of IFC with Kurdish Human Rights Project, 17/10/02

¹⁹⁹ 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; section 1 of this report outlines the human rights problems encountered specifically on the pipeline route.

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,²⁰⁰ despite EU scrutiny of Turkey's human rights record. Dozens of Kurdish people disappear or are extra-judicially killed each year.
- Displacement: during the course of the 1990s, between three and four 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 rebel Kurdistan Workers' Party (PKK). Around 5,000 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.²⁰¹
- 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. Prosecutions and long jail sentences still regularly occur for 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.

In the FFM's view, this constitutes overwhelming evidence of both the need for and the applicability of OD 4.20 to the Kurds in the BTC project.

²⁰⁰ 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."

²⁰¹ See KHRP, "*This is the Only Valley Where we Live*", op. cit.

4.2 “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. In the FFM’s view, 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, the FFM notes that in the case of involuntary resettlement, BTC 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”.²⁰² 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, **the FFM finds no justification for BTC and the IFC’s refusal to apply OD 4.20 to fulfil its responsibilities for the protection of vulnerable groups. The FFM therefore urges the immediate application of OD 4.20 to the BTC project, and considers that the project planners will have failed to meet their obligations to affected people until they do so.**

4.2.1 Deficiencies in Project Policy

As far as the impact of BTC on vulnerable groups such as ethnic and religious minorities, women, the poor or landless and the elderly is concerned, the project documents are a classic instance of “the dog that didn’t bark”.²⁰³ 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 although this document has not yet (by mid-April

²⁰² RAP Turkey Final Report, section 1.8, page 1-6, November 2002

²⁰³ 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.

2003) been released,²⁰⁴ the indications are that it will not address these issues. Indeed, 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.”²⁰⁵

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”. The FFM believes this appendix to be fundamentally flawed.

These flaws are both methodological and conceptual. 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.”²⁰⁶

As documented in Sections 1 and 2, 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 the FFM 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. This failure also renders the evaluating tools of the project documents, which are primarily economic and linguistic, deeply inadequate.

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 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”²⁰⁷.

Instead, 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

²⁰⁴ Although its executive summary (dated February 2003 on the cover) was released in late March, the executive summary does not specifically deal with vulnerable groups. It does have a section on human rights, principally dealing with security.

²⁰⁵ BTC / AIOC / Shah Deniz / BP, Regional Review, Executive Summary, page 5, February 2003

²⁰⁶ Annex 4.6: Vulnerable Groups in the Context of BTC Project, p.2

²⁰⁷ World Bank, Glossary of Key Terms in Social Analysis, on World Bank website, accessed 8/4/03

groups. It is difficult to overstate the naivety – or perhaps disingenuousness – of this approach.

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. BP's / 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 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. In the FFM's view, 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. The FFM finds the narrowing tautology of the BTC Annex not only ineffective but also deeply flawed. **The FFM therefore recommends that the project be suspended until a genuine and full analysis of its impact on vulnerable groups is undertaken, and appropriate mitigation measures developed.**

4.3 ETHNIC MINORITIES - FINDINGS OF THE FFM

Other sections of this report outline the FFM's findings on the impacts on women, the elderly and poorer people, and how they have or have not been addressed by BTC (see also below, sections 4.4.1 and 4.4.2).

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 30% 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:

- 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.

4.3.1 Omissions and Inadequacies in the RAP

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.

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”.²⁰⁸ 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”²⁰⁹ 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

²⁰⁸ RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5-9, November 2002

²⁰⁹ Annex 4.6: Vulnerable Groups in the Context of BTC Project, p.5

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,²¹⁰ 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 attached to ethnicity in Turkey are by definition, and because of state policy, socio-political rather than economic in nature.

BTC Co., however, relies on the aforementioned economic surveys to evaluate vulnerability. This approach produces conclusions riddled with lacunae. 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,”²¹¹ 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.”²¹²

In other words, despite BTC Co.’s pledge “to understand power dynamics between various groups when mapping the local population,”²¹³ 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.

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.²¹⁴

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.

²¹⁰ Annex 4.6: Vulnerable Groups in the Context of BTC Project, p.5

²¹¹ RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5-8, November 2002

²¹² RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5-7, November 2002

²¹³ Annex 4.6: Vulnerable Groups in the Context of BTC Project, p.4

²¹⁴ 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: the Impact of the Munzur Dams*”, (London: April 2003), Part 1

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.

The FFM thus rejects the current arrangements for the insulation of vulnerable groups, particularly the Kurds, against the impacts of the pipeline as tautological, wholly ineffective and likely to lead to a worsening rather than improvement of these groups' position. It sees no alternative for the IFIs but to adopt a full Moratorium on the BTC project until such time as ethnic minorities and disadvantaged groups affected by the project are adequately protected.

4.3.2 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."²¹⁵

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" is entirely inappropriate. It ignores the contextual background of repression of minorities, especially Kurds, by the state. In the absence of any specific measure to 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.

²¹⁵ RAP Turkey Final Report, annex 4.5, section 1.3, page A4.5-15, November 2002

IFC also argues that there are other mechanisms for protecting vulnerable groups, such as the World Bank group's policy on Involuntary Resettlement and BP's community development plan.²¹⁶ This report has outlined how the policy on Involuntary Resettlement is violated in relation to its impacts on vulnerable groups (*see* section 3), and found that *no* special treatment has been applied to protect ethnic minorities.

4.4 WOMEN AS A DISADVANTAGED GROUP

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 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”.²¹⁷ However, in the villages that it visited, the FFM gathered evidence that suggested that BTC / BOTAŞ had not made any effort to contact them, 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 / BOTAŞ 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.²¹⁸ However, none of the villages surveyed had a separate public meeting just for women.²¹⁹

In the RAP, BTC 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 / BOTAŞ has not in reality made concrete efforts to compensate women without titles, even when it is known that they have customary ownership rights.

²¹⁶ Meeting of Shawn Miller and Ted Pollett of IFC with Kurdish Human Rights Project, 17/10/02

²¹⁷ RAP Turkey Final Report, section 6.2.3, page 6-8, November 2002

²¹⁸ 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.

²¹⁹ The previous FFM found only one village had separate meetings for men and women. In effect, only one out of the 16 villages surveyed by the two FFMs conformed to the EIA's claims.

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 / BOTAŞ told them to go to court to get titles. This costs a lot, so the women are helpless.”

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.”²²⁰ The EIA seems to use this observation as an excuse for not applying any mitigation measures against this problem.

The EIA also records a concern raised by local people during consultation 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.”²²¹ 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.²²² 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. **The FFM recommends that women are consulted as to appropriate measures and encouraged to participate in their design and implementation.**

The RAP states that, “an effort will be made to target women with some of the community development programs to be financed with the RAP Fund and Community Investment Programmes.” The FFM met women in two villages, and asked about women in other villages where it was not possible to talk to women directly. No one had heard anything about these measures, or indeed of any programmes that were available for women.

In conclusion, the FFM finds 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,²²³ 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

²²⁰ EIA Turkey, Draft for Disclosure, Table 6.12, page 6-40, June 2002

²²¹ EIA Turkey, Draft for Disclosure, Table 6.12, page 6-40, June 2002

²²² EIA Turkey, Draft for Disclosure, section 6.12.2.4, page 6-42, June 2002

²²³ EIA Turkey, Draft for Disclosure, Appendix 5, page A5-8, June 2002

particular, BTC has sketchily noted some of the difficulties it faces, problems which in the FFM's view are far from insurmountable, yet has made little effort to overcome them.

4.5 RELIGIOUS GROUPS

The FFM had limited opportunity to review the impact of the BTC project on religious groups. However, it notes with considerable concern that there remain outstanding very serious issues concerning violence between Alevi and Sunni groups, in particular repression of the Alevi, especially around the Sivas area.

There have been reported instances of violence between the communities, or between the communities and state authorities. For example, near Sivas, 32 Alevi artists and musicians died in 1992, when the building in which they were meeting was set on fire by a radical Islamic sect.²²⁴ In 1996, Alevi villages in Sivas province were displaced by the Turkish state,²²⁵ and in 1999 there was considerable local controversy over the alleged disproportionate impact of the East Anatolian Natural Gas pipeline on Alevi villages in the region.

As with the Kurds, the BTC EIA neither makes any mention of these background problems,²²⁶ nor proposes measures to ensure it does not exacerbate them. As noted above, the FFM eagerly awaits the public release of the project Regional Review. For now, the FFM notes that the Alevi are not mentioned in the Executive Summary of the Regional Review.

In the discussion of vulnerable groups in Annex 4.6 of the RAP, it is stated that “these sects [Alevi and Sunni] usually live side-by-side without discordance”.²²⁷ While it is the case that many communities do contain both Alevi and Sunni living harmoniously, the FFM is deeply concerned that BTC did not see fit to mention the exceptions to that harmony, in which extensive violence took place. As with the ethnic minorities, the FFM is of the view that the RAP's analysis of vulnerability of religious groups is simplistic and overly bureaucratic, looking only at the economic position of the different groups.²²⁸

The FFM was not able to research the current situation in relation to the Alevi; however it notes with concern that when it asked one community leader about the situation, he replied that he could not discuss it in public – suggesting that the issue remains very

²²⁴ See McDowall, op. cit., p. 424

²²⁵ Human rights newsletter Info-Türk, for example, reported that “Alevi cultural associations such as Divrigi, Pir Sultan Abdal and Imranli, in a preliminary report about the continuing pressure, stated that many citizens had been forced to leave their homes as a result of military operations in villages mainly populated by Alevis and Kurds. ‘Special team members have been provoking villagers, saying that they have lists in their hands and the villages will be eventually vacated... The report also claimed that the Alevi-Kurdish population is expected to leave the region, unable to cope with the siege mentality and the ongoing operations... Meanwhile, on February 6, the governor of Sivas has officially disclosed that 63 villages had already been evacuated. Officials have confirmed that over 150 schools in Divrigi and Zara townships have been closed. About 500 residents from various villages have been taken into custody and nearly 300 villages are under blockade, according to reports.” – Info-Türk, 224, Jan / Feb 1996, page 5, ‘Alevis forced to evacuate villages in Sivas (pub Brussels). Note that Imranli is within the affected pipeline corridor.

²²⁶ The EIA notes that “Sivas has experienced particularly high out-migration (notably of Alevi Muslims)” [EIA Turkey, Draft for Disclosure, 5.12.3, page 5-157, June 2002], but does not look into the reasons for this.

²²⁷ RAP Turkey Final Report, annex 4.5, section 1.2.2, page A4.5-11, November 2002

²²⁸ RAP Turkey Final Report, annex 4.5, section 1.3, pages A4.5-11 and A4.5-12, November 2002

sensitive. Given the history of tensions and human rights problems, **the FFM recommends that international financial institutions initiate an urgent and independent review of the human rights impacts the BTC project would have on Alevi communities and people.**

Section 5

CORRUPTION ALLEGATIONS

The FFM's remit included conducting preliminary investigations into allegations made in the Turkish press of corruption in the award of sub-contracts for work on the BTC pipeline. The FFM interviewed sources who had been following the allegations and is now awaiting further information. The FFM intends to publish a supplementary report shortly, detailing the Mission's findings.

Section 6

SUMMARY AND RECOMMENDATIONS

6.0 SUMMARY OF FINDINGS

6.0.1 Systemic Problems Undermine Legitimacy of Consultation

Whilst the current Fact-Finding Mission (FFM) found that the BTC Consortium (BTC Co.) has taken steps which partially address a number of the concerns identified by the July 2002 Mission, the FFM nonetheless found:

- **Continuing violations of international standards on consultation, compensation and resettlement still characterise the project;**
- **A pervasive atmosphere of repression and lack of freedom of speech in the region precludes dissent about the BTC project;**
- **The strong likelihood of the human rights situation in the region being 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.**

Specifically, the FFM found:

- **The lack of freedom of expression in the Kars and Ardahan regions renders wholly illegitimate the consultation processes which BTC Co. has carried out.** The FFM considers it untenable to suggest that people subject to the kind of duress which it witnessed and experienced would be in a position openly to object to a project of great importance to the state, being carried out by the state pipeline company.
- **The flawed and inadmissible consultation processes carried out by BTC Co. have in themselves compounded the atmosphere of human rights repression in the North-East, by giving a veneer of collective participation to what is in reality a state-imposed decision on local people.**
- **The prospect of a legitimate consultation process being carried out in the absence of major human rights reforms is unattainable.**
- **The combination of the desire of the BTC consortium to insulate itself from the security issue, the investment of security powers in the Gendarmerie and the atmosphere of repression and intense surveillance which characterises large stretches of the pipeline route, make a marked increase in human rights abuses - both immediately and in the long-term - highly probable. There are suggestions that the imminence of the BTC project has worsened the degree of state intrusion and the repression of dissent.**

6.0.2 Specific Deficiencies in Consultation and Compensation Procedures

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

- **A number of apparent conflicts between the Resettlement Action Plan (RAP) for the project and the Turkish Expropriation Law;**
- **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 the BTC Consortium is not carrying out the process of compensation in the manner claimed.** These failures are generating growing anger among affected people;
- **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 Host Government Agreement reached between BTC Co. and the Turkish Government. It also places the project in violation of a number of the World Bank Group's mandatory standards, including OD 4.30 (Involuntary Resettlement), and guidelines.

Specifically, the FFM found:

A. Consultation and Disclosure of Information Flawed

- **Serious flaws in the process of consultation that should have taken place during the scoping period for the Environmental Impact Assessment (EIA).**
- **The review and approval procedure for the EIA had been truncated**, leaving the Ministry of Environment with insufficient time to comment prior to approval.
- **Consultation of directly affected people was inadequate: villagers had not been provided with information on the negative environmental impacts of the project;** the potential benefits of the project were consistently overstated; what information had been provided was too technical; and the information given regarding the means of redress in case of complaints was confusing and one-sided.
- **Women were not adequately consulted, were discriminated against by the choice of language in the consultation process, and, in some instances, were not consulted at all.**
- **None of the bodies, organisations or villages visited by the FFM had been informed of the existence or nature of the Host Government Agreement and Intergovernmental Agreement which provide the legal framework for the project,**

despite the crucial importance of these agreements to Turkey, its citizens and the project itself.

The FFM notes that the generalised failure to ensure proper consultation on the EIA, the RAP and the HGA is neither in the interests of those affected nor of the project developers. On the contrary, there is a strong possibility that the failure to consult will engender resentment of the project and act against its smooth implementation and future operation, in addition to incurring reputational risks for the companies that form the BTC Consortium.

B. Land Expropriation and Compensation – Legal and Human Rights Concerns

The FFM found that significant progress had been made towards resolving several of the issues relating to resettlement identified by a previous Fact Finding Mission, notably on the issue of compensation for land users without title. **However, such progress does not extend to the north-eastern section of the pipeline route (Posof to Kars). Moreover, throughout the pipeline route, the FFM found widespread evidence of major shortcomings in the design and implementation of the RAP:**

- The RAP's provisions on negotiating land prices appear to be in conflict with the requirements of Turkey's Expropriation Law, placing the project in potential breach of the HGA;
- BTC is consistently underpaying and failing to provide a fair price for land, despite claims to the contrary. According to villagers interviewed by the FFM, not a single payment was as high as the budgeted *average* in the RAP, and most were about half that level. This is in part due to a failure to get a measure of the true rather than the registered market value of land.
- Although a 'RAP Fund' has been set up to compensate those without land title, in compliance with the requirements of the World Bank Group, no-one interviewed by the FFM had any knowledge of the Fund. As a result, those eligible for compensation 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;
- Similarly, it is highly improbable both for practical and cultural reasons that the majority of tenants will receive any form of compensation. In any case, as tenants will only be compensated for assets, of which almost by definition they have very few, rather than loss of income, the amount of money involved would not be enough to restore their socio-economic position even if they were able to obtain it.
- This is part of a wider phenomenon of BTC's systematic failure to compensate for loss of income rather than for immediate assets lost. This includes failure to compensate for loss of ongoing productivity, failure to pay the full replacement cost of land and failure to compensate for economic opportunities foregone and investments precluded by the pipeline and its construction processes.
- Villagers interviewed by the FFM suggested that they had been consistently misinformed about their opportunities for redress if they disagreed with the compensation figure or process. Some said they had been told they were not entitled to go to court, others that they could go, but it would be expensive and time-consuming. Under Turkish law, the costs of ensuring due process should be born by the expropriating authority.

- The majority of the protection mechanisms that BTC has claimed will ensure that all project-affected people are not negatively impacted by the project are either unknown to local people, inoperative, ineffective or are not being applied by BTC staff. It is of particular concern that BP has claimed credit from IFIs and other potential project funders for policies which in practice do not exist.

C. Continuing Lack of Provision for Minority and Disadvantaged Groups

Although the World Bank Group has a safeguards policy aimed at protecting ethnic minority (known as OD 4.20), both the BTC Co and the International Finance Corporation of the World Bank have argued that it does not apply to the BTC project. The FFM rejects this view. It finds that Turkey's Kurdish minority meets every one of the criteria which OD 4.20 stipulates as defining indigenous groups or necessitating special protective measures. Moreover, the FFM is deeply concerned that the "vulnerable groups" approach adopted by the project developers fails to protect the interests of ethnic minorities in the region and, more serious still, could exacerbate the problems they face.

The Mission also found:

- 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. 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 "if not practical" liberalisation of its Kurdish policies in recent years.
- 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.
- The FFM had limited opportunity to review the impact of the BTC project on religious groups. However, it notes with considerable concern that there remain outstanding very serious issues concerning violence between Alevi and Sunni groups, in particular repression of the Alevi, especially around the Sivas area.

6.1 THE CASE FOR A MORATORIUM

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 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:**

1. 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.²²⁹ 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”²³⁰ 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.”²³¹ **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.**

2. **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 is not in a position to 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.** As the BTC Consortium itself 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.”²³²
3. **The HGA signed by the project developers and the Government of the Republic of Turkey specifies that Turkey, not BTC Co, will be responsible for security. The project developers have therefore placed a vital arena of operations outside their control.** Without a renegotiation of the HGA, to which all parties must agree, the project developers therefore have no powers to control the security provisions and operations for the pipeline.

In such circumstances, the FFM believes that a Moratorium on appraising, financing and 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.

²²⁹ 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.

²³⁰ 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 l.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)

²³¹ *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.

²³² See: BTC/AIOC/Shah Deniz/BP, *Regional Review: Executive Summary*, February 2003, p.5.

6.2 RECOMMENDATIONS

A. An Immediate Moratorium

BTC Co and International Financial Institutions should place a moratorium on the project until it is able to ensure that implementation of the project is compliant not only with international law and standards applicable, including those which BTC Co has pledged to apply, but also with essential human rights practice in project affected areas.

The FFM further recommends that the resumption of the BTC project should be conditional on:

1. BTC Co obtaining independent confirmation that the Turkish authorities have taken appropriate measures to ensure that freedom of expression is a viable and genuine norm in project affected areas. This necessitates a systemic change in practices of security and respect for human rights in the region, which can only be instituted over a period of time.
2. Turkey being encouraged to comply demonstrably with the obligations which affect all European Union member states, in order to illustrate its acceptance of EU standards as its application for EU membership.
3. All states and companies involved in the project affirming their commitment to best practice, as set out in the OECD, IFC and World Bank guidelines, and acting in accordance with such practice.
4. Those affected by BTC being substantively involved in all stages of the project, including the opportunity within reason to modify aspects of the design or operation with which they are discontented or which they see as overly damaging or unfair. Thorough and sustainable strategies to ensure the participation of local people must be drawn up prior to recommencement of the project, in the light of the extreme conditions in the area.
5. BTC Co guaranteeing that compensation for land will be paid as a result of independent valuation and through genuine negotiation and bargaining between affected people and the companies involved.
6. BTC Co giving an undertaking that an independent body commissioned by an outside agency (i.e. not directly funded by either the project consortium or its financiers) will monitor all phases of the project, from construction to decommissioning, and that its recommendations will be implemented.
7. BTC Co and international financial institutions ensuring that all current irregularities and failings of the project outlined in this report are appropriately addressed prior to the recommencement of the project.

B. Consideration of legal remedies

Several aspects of the existing proposals threaten to breach domestic and international law. In the absence of remedial measures to address the concerns raised in this report, the FFM advises affected parties to explore the legal remedies available to them. Some of the fora in which legal redress might be pursued are outlined below:

4. Turkish domestic courts

- The lack of negotiation when reaching a price for the land is in apparent breach of Turkish Expropriation law;
- Current conditions in the region make it unlikely that the requirements of Turkish law concerning expropriation and compensation will be upheld. Those affected would, however, have access to the Turkish courts.
- Actions to review any final decision to proceed would be subject to judicial review in the Turkish administrative courts.

5. Domestic courts elsewhere

- Any decision to support the project financially through an arm of government could be the subject of administrative law review. The grounds for such a review include the legality of the decision making process, and might contain issues concerning the potential human rights violations which flow from the project, including social and political considerations and environmental concerns. The international laws, guidelines and standards relating to large-scale projects such as this will be of key relevance in such proceedings.
- Those companies which offer support for the project may be vulnerable to action from their shareholders, on the basis of a breach of company guidelines, or in view of the likely consequences to the company of proceeding with a project like this.

6. European Court of Human Rights

Subject to the exhaustion of domestic remedies, individuals ultimately affected by the project will have access to the European Court of Human Rights (ECtHR). Breaches of Article 6 (right to a fair hearing), 8 (right to home and family life), 10 (freedom of expression), 13 (right to an effective remedy), 14 (freedom from discrimination) and Article 1 of Protocol 1 (right to peaceful enjoyment of possessions) on the part of Turkey are all likely if the project goes ahead, and could therefore form the basis of private applications along the lines of the 403 cases in which the ECtHR had ruled against Turkey as of February 2003.

