

BAKU-TBILISI-CEYHAN OIL PIPELINE:

Human Rights, Social and Environmental Impacts Turkey Section

Final Report of Fourth Fact Finding Mission

Ardahan and İmranlı Regions

19-27 September 2004

Kurdish Human Rights Project
KHRP
Established 1992

THE
CORNER
HOUSE


Friends of
the Earth

e
ENVIRONMENTAL DEFENSE
finding the ways that work

**BAKU-TBILISI-CEYHAN OIL PIPELINE:
HUMAN RIGHTS, SOCIAL AND
ENVIRONMENTAL IMPACTS
TURKEY SECTION**

**FINAL REPORT OF FOURTH FACT FINDING MISSION
ARDAHAN AND İMRANLI REGIONS
19-27 SEPTEMBER 2004**

Kurdish Human Rights Project

The Corner House

Friends of the Earth (England, Wales and Northern Ireland)

Environmental Defense (USA)



Kurdish Human Rights Project

The Kurdish Human Rights Project (KHRP) is independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living with the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people

2 New Burlington Place
London W1S 2HP
Tel: +44 (020) 7287 2772
Fax: +44 (020) 7734 4927
Email: khrp@khrp.org



The Corner House

The Corner House is a research and solidarity group focusing on human rights, environment and development.

The Corner House
Station Road
Sturminster Newton
Dorset DT10 1YJ UK
Tel: +44 (0) 1258 473795
Fax: +44 (0) 1258 473748
www.thecornerhouse.org.uk
cornerhouse@gn.apc.org



Friends of the Earth (England, Wales and Northern Ireland)

26-28 Underwood Street
London,
N1 7JQ, UK
Tel: +44 (0) 207 490 1555
Fax: +44 (0) 207 490 0881
www.foe.co.uk
info@foe.co.uk

Friends of the Earth is the UK's most influential national environmental campaigning organization. It is the most extensive environmental network in the world, with almost one million supporters across five continents and over 70 national organisations worldwide. A unique network of campaigning local groups, it works in over 200 communities throughout England, Wales and Northern Ireland. It is dependent on individuals for over 90 per cent of its income.



Environmental Defense

257 Park Avenue South
New York
NY 10010, USA
Tel: (212) 505-2100
Fax: (212) 505-2375

www.environmentaldefense.org
members@environmentaldefense.org

Environmental Defense is a leading national nonprofit organization representing more than 400,000 members. Since 1967, we have linked science, economics and law to create innovative, equitable and cost-effective solutions to society's most urgent environmental problems.

Design & Layout: Torske & Sterling Law Advertising www.torske.co.uk

Printed in Great Britain

Published by the Kurdish Human Rights Project

ISBN 1 900175 79 7

All rights reserved

CONTENTS

	Page
SUMMARY	5
1.00 BACKGROUND TO THE PROJECT	11
2.00 DEVELOPMENTS SINCE FINANCIAL CLOSURE	13
A. European Court of Human Rights cases	13
B. Alleged human rights abuses	15
C. Concern over quality of construction	15
3.00 THE FACT-FINDING MISSION AND ITS REMIT	19
4.00 THE MISSION'S FINDINGS	23
A. Failure to Bargain	23
B. Inadequate compensation	25
C. Use of Emergency Powers to Expropriate Land	26
D. Expropriation without Compensation	28
E. Failure to Compensate for Ancillary Damages	30
F. Concerns over Restoration	32
G. Access to Law	33
H. Local Sourcing and Associated Economic Benefits	34
I. Discrimination in BTC Employment Practice	35
J. Discrimination in Community Programmes	38
K. Implications of BTC for the South Caucasus Gas Pipeline	38
5.00 CONCERNS OVER QUALITY CONTROL	41

6.00	HUMAN RIGHTS ABUSES AND INTIMIDATION	43
A.	An Atmosphere of Intimidation	43
B.	The Case of Ferhat Kaya	44
C.	The Trials	51
	Trial of Police Officers (Nebile Karaman, Kahraman Ediz, Yalçın Yıldız, Yunus Ulus, Şener Emir, Selim Çam, Ergün Karakuş, Özer Çelik, Recep Cesur, Osman Kocabaş, Ercan Yaman) charged with ill treatment of Mr. Kaya.	
	Trial of Mr. Kaya for assaulting and insulting police officers damaging police property	
D.	Summary of the concerns over the trial	53
E.	Human Rights Reforms and the BTC Experience	55
F.	Implications of Human Rights Impacts of BTC for IFI due diligence	56
APPENDIX A -	Statement of Ali Aktaş, president of the Chamber of Agriculture	59
APPENDIX B -	Statement of Mr. İlyas Alban	61
APPENDIX C -	Response from Minister for Trade to Preliminary Report	63

SUMMARY

- i. This report constitutes the findings of the fourth international Fact Finding Mission (FFM)¹ to assess human rights, social and environmental impacts of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline, which BP and other companies (as part of the BTC Consortium) are currently building in order to bring oil from Caspian Sea oilfields to Western markets. Construction of the pipeline commenced in 2002 and is due to be completed by 2005.
- ii. The Mission visited Turkey from 19-27 September 2004, undertaking field visits in the Ardahan (North-East) and Sivas (central) sections of the pipeline route and conducting interviews in Ankara.² Regrettably, BOTAŞ, the Turkish state company building the Turkish section of the pipeline, and the Turkish Ministry of Energy declined to meet with the Mission.
- iii. Serious concerns, particularly relating to human rights abuses, expropriation of land, labour violations, and serious failures in quality control during construction, have been raised by affected peoples, experts, pipeline workers, non-governmental organisations and the project's own monitoring reports. The Mission's remit (see Section 3.00) was to investigate further these concerns.
- iv. **Throughout much of its time in the field, the Mission was subject to police surveillance.** In the Ardahan region, the Mission was stopped by plainclothes security police who recorded the Mission's passport information and who then followed the Mission to the villages it visited, whilst in the İmranlı region police and BOTAŞ officials intruded on the Mission's meetings with villagers and were present during almost all interviews. **The Mission notes that this use of police power only serves to intimidate affected villagers and others seeking independently to monitor and provide information about the project.** In the Ardahan region, the Mission also found clear evidence of police powers being used to prevent the legitimate political activities of DEHAP³ party workers and others documenting the impacts of the project on villagers. **The Mission's experience strongly suggests that the human rights reforms implemented by the Turkish Government in advance of its EU accession application have had little impact in the Northeast region, perhaps because of a relative lack of attention from national and international human rights monitors. The Mission welcomes comments made by EC officials that this lacuna in monitoring the progress of**

Turkey's human rights reforms is recognised and that the Northeast may be more closely scrutinised in the future.

- v. The Mission was also shocked by the extent to which **the project is being implemented in breach of agreed standards, particularly those relating to land acquisition, potentially placing the project in violation of host country law, project loan conditions and the European Convention on Human Rights.** The Mission found that problems identified by previous Fact-Finding Missions continued unaddressed, with severe impacts for villagers:
- Of particular concern is the extensive use of emergency powers under Article 27 of the Turkish Expropriation Law to expropriate land for construction prior to compensation being paid to landowners. The Mission views the widespread invocation of these emergency powers as a failure in project planning and a clear breach of World Bank guidelines on resettlement, with which the project is legally bound to comply. **The Mission recommends that the public lenders involved in the financing of this project conduct an independent review to assess the extent and appropriateness of the project's use of Article 27. The future use of Article 27 for BTC expropriation should be suspended until its appropriateness can be ensured; and in all existing cases where Article 27 has been used, identified landowners should be compensated immediately.**
 - **The Mission was also profoundly disturbed by the use of important areas of land without any formal expropriation procedures being undertaken or compensation paid.** The use of land without any prior expropriation or compensation is unacceptable and potentially places the project in violation of host country law, the legal framework for the project, the European Convention on Human Rights and the resettlement guidelines of the World Bank. **The Mission recommends that an urgent independent investigation is made of the use of land outside the 28-metre corridor or other expropriated areas and that affected villagers are paid not only compensation but also damages. The project lenders should obtain a guarantee from BOTAŞ that the practice will cease and, if there are further violations, legal remedies, including possible suspension of funding, should be sought as foreseen in the loan agreement.**

- The Mission heard numerous cases of major damages being caused by the project – such as the unforeseen destruction of numerous important trees in one village or, in others, extreme amounts of dust kicked up by constant heavy convoy traffic – that have not been addressed or compensated. **The Mission recommends that an independent survey of ancillary damages be carried out in all affected villages along the pipeline route and that damages be assessed and compensated.**
- **The Mission was disturbed to learn of the difficulties experienced by affected villagers in obtaining legal redress for damages incurred or for unfair compensation. The Mission recommends that accurate information regarding appropriate legal remedies be provided to all households affected by the construction of the pipeline, and that independent legal advice be made available to all affected persons.**
- Villagers in both the Ardahan and İmranlı regions expressed concern that the land would not be restored as promised. The Mission witnessed practices which suggested that this could indeed be the case. **The Mission recommends that the project lenders should extend the period of intensive project monitoring after completion of the pipeline until full restoration has taken place to ensure that BTC has fulfilled its promises and not left behind destroyed or unproductive land.** In particular, project lenders and contractors should closely monitor and ensure the saving, protecting, and returning of topsoil; revegetation; erosion control – so that the land's productivity will be maintained; and also ensure that rocks excavated from the trenches or piled for other uses are not left over to obstruct farming and grazing.
- The Mission heard a number of allegations of discrimination against ethnic minorities in both BTC employment practices and in the carrying out of community development programmes. **It recommends that the discrimination cases brought to its attention (see paras 4.37-4.49) be investigated and addressed and that BOTAŞ make public the data on road-paving and other community projects completed in each village; the number of villagers who are, or have been, employed on the project (and the duration of their employment); and the villages and districts from which they came.**
- The Mission heard allegations from a former worker of poor quality

control in the construction of the pipeline. These allegations lend support to concerns already raised by UK experts who have worked on the BTC project. **The Mission recommends that project lenders undertake a full quality control audit of the construction work undertaken to date.**

- vi. The Mission attended hearings in (a) the trial of Ferhat Kaya, a human rights defender who was detained and allegedly tortured as a result of his work with BTC-affected villagers, and in (b) the trial of the 11 police officers accused of mistreating him. **A full report regarding compliance of these two hearings with international fair trial standards has been published separately.** The following features were of particular concern to the Mission:
- That the trial of the 11 police officers on such serious charges was concluded in three short hearings with no apparent detailed questioning of the police officers by either the prosecution or the trial judge;
 - That the Public Prosecutor had felt that there was sufficient evidence to lodge an indictment alleging ill-treatment – including medical evidence of injuries – and then, without explanation, requested that the trial judge find the defendants not guilty;
 - The trial judge did not exercise her powers to investigate further the allegations after the Public Prosecutor suddenly expressed his request to acquit the police officers;
 - That a complainant felt compelled to withdraw his complaint as a result of intimidation;
 - That most of the defendants charged with the ill-treatment of Mr. Kaya failed to attend the hearing;
 - The apparent contradiction between defence counsel's assertion in one case that Mr. Kaya's injuries were sustained as a result of legitimate use of force and the assertion of the complainant in the other case that Mr. Kaya's injuries were sustained as a result of his own actions;
 - The failure of a defence lawyer to attend a court hearing where his client is charged with a serious criminal offence punishable with imprisonment;

- The failure to give the defendant an opportunity to question or have questioned the complainant in the case against him;
- The lack of impartiality of the tribunal where trials in relation to essentially the same incident are heard by the same judge and prosecuted by the same prosecutor at the same sitting;
- The structure of the court-room where the prosecutor and the trial judge sit at the same level and retire through the same door during recess
- The accuracy of the court transcript where the stenographer notes exactly what the prosecutor says in court but where the judge summarises for the stenographer what should be noted of what all other parties say.

The view of the Mission is that the above factors give rise to concerns that the hearings observed did not meet the following international fair trial standards:

- The right to a fair trial;
- The right to competent and effective defence counsel;
- The right to trial by an independent tribunal;
- The right to trial by an impartial tribunal;
- The right to equality of arms;
- The right to be presumed innocent.

The Mission recommends that all efforts be made to ensure that international fair trial standards are complied with by the Turkish authorities.

- vii. **The Mission notes that the failures it has identified were, for the most part, observed or predicted by previous Fact Finding Missions.** It concludes that, in many cases, these failures could have been avoided, had the project lenders been inclined to exercise greater realism with regards to the likelihood that project implementation could, and would, comply with agreed standards. In particular, the reluctance of the project lenders to consider the wider human

rights and political context in which the project is being implemented — and then to exercise sufficiently adequate oversight — is a major cause of the project's continuing failure to meet international best practice. **The Mission recommends that, in the future, the International Finance Corporation, the European Bank for Reconstruction and Development and the Export Credit Agencies take full account of the political and human rights contexts in which projects will be implemented, including the implications of this context for adherence with required standards. It also recommends that the International Financial Institutions (IFIs) explicitly screen projects for their potential human rights impacts.**

- viii. **The Mission recommends that the project lenders now come to terms with the context in which this project is being implemented, including the capacity of BOTAS and the Turkish Government to ensure fair expropriation and compensation practices with relation to poor and often ethnically marginalized villagers, and take immediate steps to address the failures identified and require project developers to comply with the project's agreed, legally-binding project standards. This should include much closer and more independent oversight, monitoring, and scrutiny by project lenders.**

1.00 BACKGROUND TO THE PROJECT

- 1.01 Construction on BP's controversial Baku-Tbilisi-Ceyhan (BTC) oil pipeline is now well underway. The pipeline, which is being buried along its entire route, save surface facilities, will 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. All the oil transported through the pipeline will be exported to Western markets, despite major energy shortages for poorer people in the transit countries.⁴ The route chosen is more expensive than many other possible options for Caspian oil exports, and, like the project itself, is generally acknowledged to have been driven by political considerations, notably the desire by the USA and Europe to secure a non-Arabian source of oil.⁵
- 1.02 BP is the lead company in the BTC Consortium (BTC Co.)⁶ which will own and operate the pipeline. In Turkey, the pipeline will 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 is also being expanded in order to accommodate the tankers that will transport the crude oil for refining and sale in western markets
- 1.03 In Turkey, construction work is being carried out by BOTAŞ, the nationalised Turkish pipeline company, which is also responsible for overseeing the expropriation of land and the compensation of affected villagers. Under a Lump-Sum Turnkey Agreement, BOTAŞ has agreed to construct the pipeline for an agreed price of \$1.3 billion, thereby relieving the BTC Consortium of the financial risks of any cost overruns. Analysts have commented that the real cost – even assuming no over-runs – is more likely to be around \$2 billion.⁷ Even BP has said that it thinks it is unlikely BOTAŞ will complete its contract within budget and on schedule.⁸ In this eventuality, the Turkish government will have to pay a penalty to the consortium, potentially of several hundred million dollars. Inevitably, there are concerns that BOTAŞ is cutting corners – particularly over land acquisition and quality control – in order to reduce

cost overruns and construction penalties.

- 1.04 Seventy per cent of the project's costs have been raised through debt financing, through both private banks and public development banks. In November 2003, financial support for the project was approved by the World Bank Group's International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD).⁹ Export credit and insurance guarantees have also been approved by a number of Export Credit Agencies, including Britain's Export Credits Guarantee Department (ECGD), Germany's Hermes, Italy's Sace, France's Coface and the USA's Ex-Im Bank. Support has also come from 15 private banks, including ABN Amro, the Royal Bank of Scotland, Banca Intesa,¹⁰ Mizuho, Societe Generale and Citigroup.
- 1.05 Concern over the project's direct social, environmental and human rights impacts, in addition to its wider ramifications for poverty, regional economic development and democracy, has led to criticism from a range of non-governmental organisations, including Amnesty International and the World Wildlife Fund. In 2003, an analysis of the Environmental Impact Assessment for the Turkey section of the pipeline by the Baku Ceyhan Campaign, a UK coalition of concerned NGOs, found the project to be in breach of all relevant World Bank safeguard policies on multiple counts, in addition to violating other project standards.¹¹ In all, the review identified at least 153 partial or total violations of IFC and EBRD Operational Policies (48 on Consultation, 28 on Resettlement, 29 on Cultural Heritage, 10 on Environmental Assessment, 8 on Assessment of Alternatives and 30 on Ethnic Minorities), plus a further 18 partial or total violations of the European Commission's Directive on EIA, and at least two direct violations of Turkish law (specifically the Expropriation Law¹²), giving a total of at least 173 violations of mandatory applicable standards. Because compliance with these standards is required under the legal regime for the project, such violations of the standards put the project potentially in conflict with host country law. To date, no detailed response to the Baku Ceyhan Campaign's concerns has been received.

2.00 DEVELOPMENTS SINCE FINANCIAL CLOSURE

2.01 Once financial support from the IFIs was agreed, further evidence has emerged of continuing problems with land acquisition, compensation, human rights and construction:

A. EUROPEAN COURT OF HUMAN RIGHTS CASES

2.02 In January 2004, a Fact-Finding Mission by the Kurdish Human Rights Project and The Corner House took statements from affected villagers in the Ardahan region which resulted in an application to the European Court of Human Rights being made by 38 persons alleging multiple violations of the European Convention on Human Rights including Article 1 of Protocol 1 (the right to peaceful enjoyment of property), Article 14 (convention rights to be secured without discrimination), Article 13 (the right to an effective remedy) and Article 8 (the right to respect for private and family life). Specific problems that were documented by the Fact-Finding Mission included:

- Minimal or no consultation prior to BTC commencing;
- Documents being circulated in English, despite villagers being Kurdish or Turkish speakers;
- Failure to inform landowners and communities of the dangers of the pipeline;
- Landowners being misinformed about their legal rights – for example, many were told that if they went to court they would receive no compensation or reduced compensation or that they had no right to challenge the compensation paid;
- Problems obtaining legal advice and representation due to local lawyers being employed by BOTAŞ;

- No negotiation on the level of compensation – despite negotiation being a requirement of the Turkish Expropriation law;
- Use of Article 27,¹³ a provision which allows land to be expropriated for military purposes or in “national emergencies”, as a threat to coerce villagers into signing over their land;
- Cases of landowners granting BOTAŞ power of attorney after signing blank pieces of paper;
- Meetings being held in Turkish when the landowners spoke Kurdish as their first language;
- Cases of landowners only being told of the amount they would receive in compensation *after* they had signed over their land;
- Cases of compensation being far less than landowners were originally promised;
- Generalised failure of compensation to reflect the true value of the land expropriated and the losses incurred;
- Complaints that a significant proportion of compensation has been eaten up by travel costs to attend meetings with BOTAŞ etc;
- Cases of landowners being threatened where they refused to accept the compensation on offer;
- Cases of land being entered without compensation first being agreed and paid;
- Cases of the pipeline route being altered without compensation being paid for the affected land;
- Cases of villagers not being informed that they were eligible for compensation for use of common land through the RAP fund;
- Cases of villagers – particularly poorer tenants - having to leave their villages in search of employment because the compensation they received

was too low to allow them to continue farming;

- Promises of community development programmes – such as medical centres – that never materialised;
- Villagers having to pay towards community development schemes that have been implemented;
- Concerns regarding the environmental hazards inherent in living or working on land in such close proximity to the pipeline.

B. ALLEGED HUMAN RIGHTS ABUSES

2.04 Intimidation of those critical of the project – or seeking to secure their rights – has been widely reported, with villagers stating that they were fearful of questioning the land acquisition procedures because “it was a state project”. Local human rights defenders have also been subject to harassment or worse. Ferhat Kaya, was detained in May 2004 and allegedly beaten up and tortured¹⁴ as a direct result of his work in documenting cases of abuses related to land expropriation. Subsequently, eleven police officers were charged with mistreatment under Article 245 of the Turkish Penal Code (as amended). A prosecution was commenced by the office of the public prosecutor. The trial concluded on 22 September and the police officers were acquitted. At the same time Mr. Kaya was charged with assaulting and insulting police officers under Article 266 of the Turkish Penal Code and damaging police property under Article 516 of the Turkish Penal Code. (*For further details, see paras 6.34-6.40*). His trial was adjourned to 3 November 2004 and subsequently to December 2004 and then again to 2005.

C. CONCERN OVER QUALITY OF CONSTRUCTION

2.05 In December 2003, a month after the World Bank and the European Bank for Reconstruction and development approved financial support for the project, a report by the project funders’ own consultants, Mott McDonald,¹⁵ noted a range of failures in construction, including:

- Inadequacy in contractor staff numbers and training, particularly in environmental and social matters;
- Failure in auditing and self-auditing from both BTC Co. and its

contractors;

- Insufficient resources on the part of contractors to complete environmental and social work;
- Inadequate treatment of waste water and discharges of effluent into irrigation and drinking water;
- Failure to undertake the requisite surveys and getting the necessary permits before starting work;
- Failures to meet or even report on Key Performance Indicators and non-implementation of policies, particularly on noise and other pollution.

2.06 Similar concerns were also raised by BP's own 'independent' monitoring body, the Caspian Development Advisory Panel, (CDAP), which also reported in December 2004. The Panel warned that Turkish officials which it had interviewed appeared to be unwilling to adhere to agreed standards, viewing them as "too stringent" and in need of being relaxed.¹⁶ The Panel's concerns are sufficiently worrying to merit quoting in full:

"[T]he pressure to complete the Project on schedule and on budget, coupled with a weak if evolving environmental and social compliance culture in BOTAS and its contractors, may give rise to pressures to ignore standards and cut corners. In fact, in meetings with the Panel, key senior Turkish government officials demonstrated little appreciation of the need for such standards. Instead, they voiced complaints about BP's insistence on maintaining its environmental, health, and safety standards and suggested that a relaxation of these standards would better enable BOTAS to complete construction on time and under budget. The Panel left these meetings with serious questions about the political commitment by the responsible Turkish government ministries to ensure that the pipeline is constructed and operated in compliance with the environmental, health, and safety standards stipulated in the various Project agreements, including the EIA for Turkey."¹⁷

2.07 The Panel also noted that, in its opinion, BP had proved unable to exercise proper

control over BOTAŞ:

“Whereas in Azerbaijan and Georgia, BP and BTC are directly hiring and supervising contractors handling the construction, BTC is one step removed in Turkey, with BOTAŞ serving as Managing Contractor. This arrangement, coupled with a weak but evolving environmental and social compliance culture in BOTAŞ and its contractors, raises questions for the Panel about whether the various environmental and social commitments made in the Environmental Impact Assessment (EIA) and health and safety commitments made in other project documents will be met. In particular, the Panel heard concerns that BOTAŞ and its contractors might feel pressure to cut corners on environmental, social, and technical standards to remain on schedule and/or under budget vis-à-vis the LSTK [Lump Sum Turnkey] Agreement and that BP and BTC personnel lacked the authority, short of stopping work or exercising other severe contract remedies, to ensure that BOTAŞ and its contractors meet BTC’s EIA commitments.”¹⁸

- 2.08 The Panel’s concerns have since been reinforced by the emergence of a number of supervisors and other experts previously employed by BOTAŞ on the project who have come forward to reveal major problems in quality control (see Section 5.00 for further details).

3.00 THE FACT-FINDING MISSION AND ITS REMIT

3.01 The Mission consisted, in alphabetical order, of representatives from The Corner House (UK), Environmental Defense (USA), Friends of the Earth (England, Wales and Northern Ireland) and the Kurdish Human Rights Project (KHRP) (UK).¹⁹ Ms Pırl Akkuş acted as the Mission's interpreter. The Mission was the fourth undertaken in Turkey by international non-governmental organisations since 2002.²⁰

3.02 The Mission's remit was to:

- Investigate allegations that land has been expropriated in breach of the project's Resettlement Action Plan (RAP) and potential the European Convention on Human Rights;
- Investigate complaints that compensation had been inadequate and that promised benefits for affected communities have not been forthcoming;
- Investigate allegations of losses sustained because of construction for which no compensation has been paid;
- Investigate allegations of discrimination in the employment of local workers on the pipeline;
- Investigate allegations of discrimination in the application of community development schemes associated with the project;
- Investigate the wider economic benefits of the project, particularly to local businesses;
- Observe the trial of 11 police officers charged with mistreating Mr. Ferhat Kaya, a local human rights defender, who had been detained and allegedly tortured following his work in seeking redress for the grievances of villagers affected by the pipeline;

- Attend the trial of Mr. Kaya on charges of insulting and assaulting the police officers who had detained him;
 - Investigate the land expropriation procedures for the South Caucasus Pipeline which is being built in tandem with the BTC oil pipeline, a gas pipeline led by a consortium including BP.
- 3.03 The Mission visited two villages in the Ardahan region and met with a delegation from two further villages in the Damal district. In addition, the Mission met with the Mayors of Ardahan and Hanak and observed both the trial of Mr. Ferhat Kaya and that of 11 police officers accused of mistreating him. A meeting was requested with the Governor of Ardahan but no mutually convenient time could be found for the meeting.
- 3.04 After visiting Ardahan, the Mission spent two days in Ankara, where it met with Erdoğan Karaca of the Chamber of Environmental Engineers (CMO-TMOBB), Chris Bradley of the British Embassy, Martin Dawson and Umut Ergezer of the European Commission's Delegation to Turkey.
- 3.05 Requests were made by fax prior to the Mission for meetings with the Minister of Energy and the Director-General of BOTAŞ. No replies were received. However, whilst in Ankara, the Mission made further efforts to secure meetings. These were turned down. In the case of BOTAŞ, the Director General was already committed so the Mission's interpreter sought an interview with his Deputy, Mr. Fuat Celebçi, who told the Mission's interpreter that if there had been no response from the Director General to the Mission's faxed request for a meeting it was because he did not want to meet with the Mission. Mr. Celebçi further stated that BOTAŞ's BTC Project Directorate was responsible for the pipeline and that the Mission's questions should be addressed to them: "They knew more about the project than us". The Mission therefore sought to meet with Mr. Osman Z. Göksel, Project Director of the BTC Project Directorate. Mr Göksel met the delegation in the lobby of the Directorate's building but was unwilling to answer questions directly and requested that they be put in writing. He also told the Mission that BOTAŞ was indeed responsible for the project and that his team was only involved in its implementation. Any request for future meetings should be directed to the Director General of BOTAŞ, as the Mission had done. *[For further discussion of this meeting, see para 6.02]* **The Mission deeply regrets BOTAŞ's decision to refuse to meet and its attempts to obfuscate its involvement in the project and thereby its responsibilities**

for ensuring that the project meets international standards.

- 3.06 Finally, the Mission travelled to İmranlı, near Sivas, undertaking interviews with the Chamber of Agriculture and with villagers from Kılıçköy village.

4.00 THE MISSION'S FINDINGS

- 4.01 For poorer people, life in the North-east of Turkey is financially precarious. The harsh environment and long winters greatly restrict the possibilities of agricultural development and there is little local industry. Consequently, the livelihoods of many communities are precarious, with many families being forced to migrate for work outside the region.
- 4.02 The disruption – both physical and social – caused by a project such as the BTC pipeline can therefore prove ruinous for those on the economic margins, particularly where compensation levels are low. **It is thus of considerable concern that the Mission found continuing evidence of failures in the land acquisition process; inadequate compensation payments; the use of land for construction without compensation being paid in advance; allegations of discrimination against minorities in both BTC employment practice and in the carrying out of community development programmes; failure to implement promised community schemes; and disputes over the wider regional benefits of the project. In many instances, such failures constitute continuing violations of World Bank guidelines and potential violations of the European Convention on Human Rights.** The Mission also found a growing anger amongst villagers at having “been cheated” by BTC. As a result, villagers are determined to obtain their rights with respect to the land acquisition process currently being undertaken for the BP-led South Caucasus gas pipeline, which runs parallel to the BTC oil pipeline.
- 4.03 The Mission's findings are detailed below:
- A. FAILURE TO BARGAIN**
- 4.04 Article 8 of Turkish Expropriation Law²¹ states that “the administration [in this case, BOTAŞ] 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)
- 4.05 By contrast, the Resettlement Action Plan (RAP) explicitly rules out any

bargaining or bartering in the negotiation process. In its clearest explanation of the procedure that has been adopted, it states:

“The Negotiations Commission begins discussions with landowners based on the range of land values established by the Valuation Commission. The “negotiation” process does not consist of bargaining. Indeed . . . the negotiation commission has no room for bargaining. Rather, this commission explains the basis of valuation to affected communities and each of the affected titled deed owners. It provides detailed information obtained from each source specified under the Law and shows how valuation decisions have been reached.”²²

- 4.06 The conflicts between the RAP and local law have been explored elsewhere.²³ The Mission notes that NGOs have already raised concerns that they place the project in breach of World Bank, EBRD and ECA standards, which require compliance with host country legislation and that these concerns have never been answered.
- 4.07 The Mission met with Ali Aktaş, President of the Chamber of Agriculture in İmranlı, who stated that no bargaining had been permitted in the land acquisition process. This was in sharp contrast to normal practice in land acquisition. Moreover, BOTAŞ had informed him and affected villagers that there would be “one-to-one bargaining” over land prices. Instead uniform prices had been imposed. Those prices had been set by a local land commission whose members – a local taxi driver and a local ironmonger – had little or no knowledge of land issues or of the criteria for setting land values. At no time had the Chamber of Agriculture, which has extensive knowledge of land prices in the area and expertise in determining land values based on soil analysis and other factors, been consulted. Mr Aktaş considered that the procedure had breached that laid down in the Expropriation law.²⁴ Although Mr Aktaş had complained to BOTAŞ on this score, his complaints had been ignored. Where villagers had challenged the compensation imposed by BOTAŞ – 1 million lira per square metre for expropriated land in the 8-metre corridor – higher awards had been made. Mr Aktaş gave a signed statement to the Mission, detailing his concerns, which is attached as Appendix A.

B. INADEQUATE COMPENSATION

- 4.08 Previous Fact-Finding Missions have documented complaints by villagers of the low levels of compensation paid both for the land acquired for the pipeline and for the loss of crops to construction. The Mission heard many similar complaints from villagers. In Hasköy village near Ardahan, villagers were paid 1 million lire per square metre for land acquired – a sum which, they pointed out, would hardly buy a packet of the cheapest cigarettes. A common comment was, “We were cheated”. In Çalabaş village, the Mission was told: “If you take a factory from a businessman, he gets properly compensated. The soil is our factory but we are not being paid its value.” Others equated the small sums paid to the value that the State placed upon them as individuals: “The value given to the land is the value given to the person. We grew up here. We will die here.”
- 4.09 The resentment of low compensation was equally apparent in the İmranlı area. Villagers in Kilicköy told the Mission that the compensation paid for land expropriated in the 8-metre corridor was 1 million lira per square metre. This was lower than other villages in the region – Piredede was reported to have been paid 1.3 million lire per m² and, around İmranlı, villagers had received 12.5 million per m². One villager said he had been paid 365 million lira for 2000 square metres, when his estimate of the income that he would have received from the land during the year it was being used for construction was 1.5 billion lira.
- 4.10 Mr Aktaş of the Chamber of Agriculture, who is commonly called upon to appraise land values, and villagers blamed the low compensation rates on the lack of expertise of the two assessors who had been appointed by BOTAŞ to value the land (see above para 4.07 and Appendix A).
- 4.11 The Mission notes that the failure adequately to compensate villagers forms part of an application to the European Court of Human Rights by 38 villagers. It recommends that:
- **Steps be taken to ensure that villagers are paid in full for all losses sustained as a result of construction;**
 - **A full reassessment of compensation levels be undertaken and that local Chambers of Agriculture be fully involved;**

- **BTC should publish figures for compensation paid to all villagers affected by the pipeline, with details of the name of the villagers compensated, the type of land held, the procedure for expropriation used and the areas of land affected.**

C. USE OF EMERGENCY POWERS TO EXPROPRIATE LAND

- 4.12 Because of difficulties in accomplishing land acquisition in cases where the land is jointly owned by many relatives, some of whom no longer live in the affected villages, the Turkish authorities have invoked emergency powers under Article 27 of the Expropriation Law which allows BOTAŞ to use the land for construction in advance of the formal expropriation process being completed.²⁵ In such cases, compensation is paid into a bank account but not handed over to the landowner until all landowning parties have signed over the land transfer documents.
- 4.13 Considerable resentment – and confusion – has arisen over BTC/BOTAŞ invoking emergency powers under Article 27 to expropriate land prior to paying compensation. The Mission believes this to be in breach of World Bank resettlement guidelines (known as OD 4.30), with which the project is legally required to comply under the Host Government Agreement signed between Turkey and the BTC consortium. **OD 4.30 is unequivocal in its requirement that compensation should be negotiated and paid *prior* to displacement.²⁶ There are no provisions for derogation from this requirement.**
- 4.14 Article 27 allows for land to be expropriated prior to paying compensation for the purposes of “national defence or in case of emergency”. Given that cadastral surveys in many of the areas through which the pipeline passes are out of date, and that Article 27 is the only available law for expropriating land where the owners cannot be traced, the Mission accepts that there may be a case for invoking *in the last instance*. The key issue is whether sufficient effort was made to trace owners and whether a delay in construction to locate landowners would have constituted a national emergency, as claimed by BTC.²⁷ It is difficult to see how purely *commercial* considerations can properly be deemed a national emergency. **As one villager put it to the Mission: “Turkey is not at war. And the Turkish government says that all people should be treated equally. If there is no war, we should be treated the same as everyone else. The use of Article 27 is unjustified.”**

- 4.15 In its November 2002 Resettlement Action Plan (RAP), the BTC Consortium was emphatic that this article would only be used “when other avenues have failed”.²⁸ The revised May 2003 RAP states that, despite the implementation of Article 27, it is still *intended* that compensation will be paid prior to land entry by the contractor.²⁹ However, the clash between the commercial interests of BOTAŞ, which is subject to substantial penalties if the pipeline is not built on time, and the necessarily slow process of ensuring mutually agreeable compensation terms strongly suggests that this intention has proved wishful thinking.
- 4.16 Far from being the exception, Article 27 cases are now widespread – an acknowledged sign of failure in the expropriation process. As BP’s own Caspian Advisory Development Council stated in December 2003: “BOTAŞ used Article 27 to acquire slightly less than half of the privately owned parcels along the first 331 kilometres of right-of-way. This trend of much greater-than-anticipated reliance on Article 27 has broadly continued as the land acquisition process moves towards completion. The mid-stream procedural change from Article 10 to Article 27 has caused uncertainty and led to criticism that might have been avoided if the complexities of land tenure had been identified at an early enough stage that the utilization of Article 27 procedures could have been made part of the disclosure and consultation process.”³⁰
- 4.17 Although the expropriation agencies are still required to place the deemed value of the expropriated land into a bank in advance of construction,³¹ the extent of ongoing disputes over land valuation strongly suggest that many affected parties are likely to end up disadvantaged. **The Mission was told by Ali Aktaş that those who land had been expropriated under Article 27 would not receive any compensation until all joint landowners had been traced and had signed over their property rights to BOTAŞ.** “If any of the joint inheritors are not found, then no-one gets paid.” As a result, land was being used – often extensively (see below) – without compensation being paid and, in some cases, with little realistic prospect of such compensation being in the near future.
- 4.18 **The Mission views the need for Article 27 to be invoked as a failure in project planning. World Bank guidelines clearly state that up-to-date cadastral surveys are a pre-requisite in resettlement planning. The absence of such surveys should have been addressed prior to IFI support being agreed.**
- 4.19 The Mission also notes that the Lenders’ Group’s own RAP monitoring

team³² has warned that the use of land prior to compensation being paid is in potential breach of the World Bank's Involuntary Resettlement Directive (OD 4.30),³³ compliance with which is a requirement both of IFI support and of the legal regime for the project.³⁴ Whilst the Mission accepts that limited use of Article 27 might be compatible with the World Bank Guidelines, it views the disproportionate use of the procedure in the project as a clear breach of OD 4.30. **The Mission recommends that the public lenders involved in the financing of this project conduct an independent review to assess the extent and appropriateness of the project's use of Article 27. The future use of Article 27 for BTC expropriation should be suspended until its appropriateness can be ensured; and in all existing cases where Article 27 has been used, identified landowners should be compensated immediately.**

D. EXPROPRIATION WITHOUT COMPENSATION

4.20 The Mission met with a number of landowners who complained that their land had been used for construction without compensation being paid. In at least two cases, both in Kılıçköy, extensive areas of land had been used without any formal expropriation process even being initiated.

- In Otağlı, the village grazing land was owned by the state ("treasury land"). No compensation has been paid to the villagers for the use of the land for construction. The money went to the State. When the villagers complained to the BOTAŞ expropriation office in Kars, they were told that they would only be compensated 4 billion lira for loss of crops, which they still have not received.
- İlyas Alban³⁵ from Otağlı reported that he had customary rights to a parcel of land but he had not used the land for a few years. When BOTAŞ came to the village to identify the affected landowners, the Muhtar, for reasons that are unexplained, told the land registry team that Mr Alban's land was a meadow. Subsequently, when Mr Alban realised that his land would be affected, owing to markers having been placed along the pipeline route, he objected. Mr Alban's land is elongated and the expropriated portion of this land would essentially occupy all but two metres on either side. He was told to report the problem to the construction team when work commenced on the site and that he would then be paid for his land. However, when construction commenced in May 2004, he was told that he must go to court to obtain compensation. He sought out a lawyer to take his case but

was told that it would cost 5 billion lira. He has now lodged a complaint with BOTAŞ. The complaint has been acknowledged.³⁶ According to Mr Alban, 4-5 others villagers are in a similar situation but have been unable to resolve the mistake in registration because they cannot afford a lawyer. Mr Alban told the Mission that at no time had he received any documentation on the project's Resettlement Action Plan (RAP).

- A second villager, Solmaz Cankan from Seyitveren,³⁷ reported that his land was expropriated in 2004, not for the pipeline but for electricity lines leading to the pipeline's pumping station. Mr Cankan has not received any compensation and has sought legal assistance. The mission was told that the lawyer representing him also works for BOTAŞ.
- In Kılıçköy, near İmranlı, one landowner told the Mission that approximately 2000 square metres of his land outside of the 28-metre corridor had been used to pile earth and rocks. The land would usually have been used to grow wheat. The land could not be used this season and would not be usable next year either, said the landowner.
- Kılıçköy villagers had lost extensive areas of land to two roads that have been built parallel to the pipeline and well outside of the 28-metre corridor, without any formal expropriation or compensation. The road system stretches for a number of kilometres. Although the mission did not travel the entire length of the road. It was clear that the road extended for a considerable length of the pipeline route (*see photograph*).



4.21 The use of land without any prior expropriation or compensation is unacceptable and potentially places the project in violation of host government law, the legal framework for the project, the European Convention on Human Rights and the resettlement guidelines of the World Bank. The Mission recommends that an urgent independent investigation is made of the use of land outside the 28-metre corridor or other expropriated areas and that affected villagers are paid not only compensation but also damages. The project lenders should obtain a guarantee from BOTAŞ that the practice will cease and, if there are further violations, legal remedies, including possible suspension of funding, should be sought as foreseen in the loan agreement.

E. FAILURE TO COMPENSATE FOR ANCILLARY DAMAGES

4.22 The impacts of construction have been considerable. In many cases, villagers reported that they had received no compensation for important ancillary impacts:

- The Muhtar of Otağlı told the Mission that the village's summer pasture had been bisected by the pipeline, cutting the villagers summer dwellings from the village water supply. (The village moves from a winter settlement to a summer settlement each year to take advantage of the availability of grazing land). As a result, women now had to walk one kilometre each way to collect water, rather than the 400 metres they usually walked. The village was also unable to use the summer pasture for grazing and had moved their livestock to a lower quality pasture on the mountainside. The villagers stated that this had resulted in milk yields declining significantly as the cattle did not have sufficient water. BOTAŞ had refused to pipe the water from the existing summer water supply across the construction works to the summer dwellings. It had also refused to connect a new water source that had been discovered during construction to the village houses, despite the villagers needing water.
- During construction, Otağlı's cattle pen had been destroyed. BOTAŞ refused to rebuild the pen but promised 200 sacks of cement, which have been received, and three lorry-loads of sand, which have not been received. The villagers will have to reconstruct the pen themselves. BOTAŞ has refused to pay for their work or to supply bricks. The villagers estimated that it would take the village a month to rebuild the pen.

- Villagers from the Damal area also reported livestock dying as a result of eating detritus left after the welding of pipes. In one village 4 bulls had been lost.
- Villagers in Hasköy, near Ardahan, reported that a large proportion of their pasture had been rendered unusable by construction of the pipeline. Land had been lost to both the construction works in the 28-metre corridor and to spoil heaps. Construction has also taken place outside of the 28-metre corridor, for which no compensation had been paid. Moreover, the heavy dust clouds from the construction works had made the pasture outside of the construction corridor unusable for the village's cattle. The village Muhtar noted that 250 cows had miscarried in the past year – a far higher figure than usual. This he blamed on having to keep the cattle indoors, increasing the risk of infection, and on the stress of the constant traffic to the site. Milk yields were also down by 50 per cent on previous years.
- In the village Kılıçköy, near İmranlı, two villagers reported that their trees had been destroyed without compensation. One had lost 30, another 6, a third 20 – some fruit and others juniper. Some of the trees were reportedly 75-100 years old. The mission was taken along the pipeline route and shown many of the destroyed trees. The Muhtar of Kılıçköy told the mission that he was told trees would be re-planted, but they have not been. Villagers also reported damage caused to their village road. The Muhtar had complained verbally to BOTAŞ and the village had been assured that 1 billion lira would be given to repair damages to the village road. No money had been received and no repairs carried out.
- Kılıçköy villages also stated that the route to a water source for livestock had been cut off by the piling of rocks outside of the 28-metre corridor, requiring that livestock now be taken to the source via a route that was extremely precipitous and dangerous.

4.23 The Mission notes that many of the above ancillary damages – for example those related to crop damage from dust and reduced milk supplies – could have been predicted and recompensed as part of the compensation package. It is regrettable that this was not envisaged and attention should be paid by the IFIs to consideration of this in future loans.

4.24 The Mission recommends that an independent survey of ancillary damages be

carried out in all affected villages along the pipeline route and damages assessed and compensated.

F. CONCERNS OVER RESTORATION

4.25 Under the environmental management plan for the BTC project, BTC is committed to restoring the land to its original use within two years. Topsoil is therefore required to be piled separately from other soil so that the land can be reinstated.

4.26 Villagers in both Hasköy and Kılıçköy expressed grave concern over restoration:

- In Hasköy, villagers were concerned that it would take more than two years before pasture land was restored to its previous state. “Crops can be planted again but how long will it take for the pasture land to come back?”
- In Kılıçköy, villagers repeatedly told the Mission that they doubted whether the land could be reinstated, even though the top soil was being piled separately. They pointed to large piles of rock (*see photograph*) that now dotted the pipeline route outside the 28-metre corridor. They feared the rock piles would left where they were, preventing land from being used subsequently for agriculture. The villagers’ concern was amplified by their previous experience with a BOTAŞ natural gas pipeline, which has left a visible scar on the landscape.



- 4.27 **The Mission recommends that the project lenders should extend the period of intensive project monitoring after completion of the pipeline until full restoration has taken place to ensure that BTC has fulfilled its promises and not left behind destroyed or unproductive land.** In particular, project lenders and contractors should closely monitor and ensure the saving, protecting, and returning of topsoil; revegetation; erosion control – so that the land’s productivity will be maintained; and also ensure that rocks excavated from the trenches or piled for other uses are not left over to obstruct farming and grazing.

G. ACCESS TO LAW

- 4.28 Previous Fact Finding Missions have highlighted concerns over the lack of effective legal remedies for those affected by the pipeline. These concerns centre on a failure by BOTAŞ to inform affected villagers of their legal rights; attempts by BOTAŞ to dissuade villagers from going to court to challenge compensation levels; the difficulties faced by villagers in finding lawyers (most of those in the Ardahan region are already employed by BOTAŞ); the vulnerable position of villagers from minority groups in relation to the State; and the limited financial means of the villagers and lack of legal aid provisions.
- 4.29 The Mission heard evidence from villagers that reinforces these concerns. In the İmranlı district, the Mission was told that villagers had been informed by a BOTAŞ lawyer that attempts to challenge the compensation offered would be futile. Villagers variously quoted the public relations officer, Ms Bahar Demirel, saying as: “No matter where you go, in the end you will come to me”; “There is no point in going to court. You won’t get a better price. Your applications in the end will come to me and I will make the judgement”; and “You can search wherever you want but in the end it will come back to us.” It was put to the Mission that this attitude had persuaded many villagers to accept the low compensation payments on offer rather than challenging them through the courts.
- 4.30 The high costs of employing lawyers to challenge compensation payments was also reported to be a deterrent to taking cases, particularly for poorer villagers. In the Ardahan region, Mr Alban from Otağlı told the Mission that when he sought legal advice to challenge the use of his land without compensation, he found that the lawyer would charge 5 billion lira – a sum that was far beyond his means.

4.31 The pervasive view that criticism of the pipeline is an act of treachery against the state (*see below, para 6.02*) has also inhibited lawyers from taking cases involving human abuses associated with the project. Ferhat Kaya, for example, reported to the Mission that he was unable to find a lawyer from Ardahan to defend him against charges of resisting arrest when he was detained and allegedly tortured following his work with affected villagers seeking compensation for land expropriated by the pipeline or redress for damages incurred as a result of the project (*see below Sections 6-A and 6-B*). When he finally found a lawyer, a family friend, the lawyer failed to attend his hearing before the court. Kaya is now defending himself.

4.32 **The Mission recommends that:**

- **Accurate information regarding appropriate legal remedies be provided to all persons affected by the construction of the pipeline;**
- **Independent legal advice should be made available to all affected persons. Where all of the lawyers in one area are employed by BOTAŞ, efforts should be made to assist affected persons to obtain independent legal advice and representation, if necessary, from outside the area;**
- **Immediate action be taken to ensure that persons voicing criticism of the pipeline are able to access effective, independent and confidential legal advice and representation in accordance with international fair trial standards.**

H. LOCAL SOURCING AND ACCOMPANYING ECONOMIC BENEFITS

4.33 In January 2004, the then Mayor of Ardahan reported to the joint KHRP/Corner House Fact-Finding Mission that BTC had failed to bring the promised boost to local businesses, noting that BOTAŞ officials stayed in Kars and travelled from there to worksites in the Ardahan district and that food and other supplies were largely sourced from outside. This view was supported by the Lenders' Group's own monitoring report, which noted in December 2003:

“The target for the proportion in terms of value of materials purchased in-country as a percentage of overall materials purchased in categories agreed is set at approximately 9%. The contractor has recorded a KPI of approximately 3%. For services, the target is approximately 22% and the

performance is 4%.²³⁸

- 4.34 More generally, the then Mayor suggested that BP's Community Development Programme was undermining local government. In his view, the supply of water and roads to local communities was the responsibility of the Ardahan Municipality and central government. The provision of such services by BTC was undermining the ability of the municipality to fulfil its responsibilities since central government was less willing to provide the necessary budgets. In addition, the supply of services to project affected communities would, in the Mayor's view, lead to resentment in other non-affected villages.
- 4.35 The current Fact-Finding Mission met with the new Mayor of Ardahan, elected in March 2004, to seek his views on these issues. The Mayor denied that BOTAŞ was sourcing supplies from outside the district, other than those – such as trucks and cars – which could not be supplied from within Ardahan province.
- 4.36 **The Mission recommends that BTC make public its figures on local sourcing and employment and that the project lenders ensure that target figures are met.**

I. DISCRIMINATION IN BTC EMPLOYMENT PRACTICE

- 4.37 BTC's Employment and Training Management Plan commits the project to an employment strategy aimed at ensuring that the project's "recruitment procedure is transparent and there is no discrimination."²³⁹
- 4.38 The Mission met with a delegation from Otağlı and Seyitveren, two villages in Damal district, through which the pipeline passes. The villages are Alevi. The Alevis are Muslims whose traditions differ markedly from the Sunni majority in Turkey. Typically, while Sunnis gather for prayer in a Cami (mosque) with men and women separated, the Alevis assemble together in a Cemevi or assembly hall. Alevis constitute 20 per cent of the population and have been subject to widespread discrimination, despite legal protection of their religion. In 1995, a mob attacked a gathering of Alevi writers and artists in Sivas, resulting in fire which killed 37, mostly Alevis.
- 4.39 The Mission heard allegations of discrimination from Mr. İlyas Alban, a former employee of Tepe/NACAP, a contractor working in the Hanak/Damal District section of the pipeline. Tepe-Nacap is a Turkish-Dutch joint venture.

- 4.40 Mr Alban was fired from his job on 31 August 2004. He had worked for three months as an assistant welder. He reported that, on the night of 30 August 2004, he was woken in the middle of the night and told by two foremen, Erdal Keçelli and Seyfi (no surname known), “You will not go to work in the morning. You are Alevi. If you go to work, I will break your legs.” Mr. Alban was also told: “I passed through five villages and could not find any mosques.”
- 4.41 In the morning, he went to complain to the chief supervisor, Cem Mihçioğlu, who said that he knew about the incident. Nonetheless, he shouted at Mr Alban and gave him his dismissal paper, which Mr Alban was forced to sign. The only reason cited on the dismissal paper is Article 17 of Labour Law 4857, which exempts employers from giving a reason for dismissal. However, in such circumstances employers are required that 15 days prior notice be given before dismissing a person. In Mr. Alban’s case no notice was given. Mr Alban was not told what legal remedies were available to him. However, he has since filed a petition with the Ardahan Chief Prosecutor and lodged a complaint with the office of the Governor of Ardahan and BOTAŞ in Ankara. He also informed the press (*see* Appendix B), and the case received publicity in a local paper. The Mission was given copies of all the complaints that had been filed.
- 4.42 Mr Alban told the Mission that he had never been in trouble at work, nor had his work been criticised. He is now left unemployed and is in considerable economic plight. He cannot afford medicine for his mentally-incapacitated wife. He said: “I have two children in primary school and my house is about to fall down. My electricity has been cut off as I could not pay the bill and I have now running water. I am contemplated suicide.”
- 4.43 Mr Alban did not expect that he would achieve a satisfactory outcome through his petitions and was looking toward making an application to the European Court of Human Rights.
- 4.44 The Mission was informed by the Muhtar of Otağlı that Mr Alban’s case was indicative of a wider possible discrimination. All but one of the Alevis that he knew to have been working on the BTC pipeline in Damal district – Canali Çepkin, Ali Hanav, Metin Kumru – had been dismissed.
- 4.45 The one exception, Solmaz Cankan from Seyitveren, had worked in 2003 as a night watchman, a post for which local people were preferred because of the extreme cold at night even in summer. At the end of 2003, he was laid off

as a seasonal worker whilst construction halted over the winter, but NACAP promised to re-employ him in the spring. When spring arrived this promise was not fulfilled and he was obliged to resort to using his contacts amongst the local elite to get his job back. He worked for 15-16 hours a day but was only paid for 12 hours, receiving 600,000,000 TL a month inclusive of overtime. He was told that company policy was to only pay for 12 hours a day. During his work he experienced some discrimination: "Some people humiliated me because I am Alevi." He explained the fact that he still had his job by saying nobody else would do the work that he was doing – nobody else could withstand the cold temperatures at night. At 2500m above sea level night temperatures are very low even in summer.

- 4.46 Villagers reported that those hired in both the Posof and Hanak districts were predominantly local. By contrast, in Damal, an Alevi district, only 5 or 6 of the workers were hired from the four affected villages – all the other workers are from other non-Alevi districts. This was despite both BOTAŞ having promised employment to local people and the Muhtar informed NACAP when construction that there were many who wanted to work.
- 4.47 The Mission subsequently met with the Mayors of Ardahan and Hanak. The Mayor of Ardahan assured the Mission that there was no discrimination in employment practices for BTC because discrimination would be unlawful. Hiring and dismissals of local people were strictly controlled. The Mission requested the evidence on which this assurance was given, specifically figures on the numbers of villagers employed in the different districts through which the pipelines passes. The Mayor of Ardahan was unable to supply such figures but said that his information came from briefings he had received from BOTAŞ. The Mayor of Hanak offered to supply the Mission with any information it sought.
- 4.48 The Mission was unable to inquire about discrimination in labour and community programmes in the İmranlı region due to the constant police presence during interviews with villagers and the sensitivity of the issue in Turkey.
- 4.49 **The Mission recommends that:**
- **The case of Mr İlyas Alban and other dismissed Alevis be independently investigated;**

- **The allegation that NACAP requires significant unpaid labour from its workers should be independently investigated;**
- **BOTAŞ should make public the figures on the numbers of affected villagers who are or have been employed on the pipeline (as well as the duration of their employment) and the villages and districts from which they come.**

J. DISCRIMINATION IN COMMUNITY PROGRAMMES

4.50 The Muhtar of the Alevi village of Otağlı told the Mission: “Two pipelines have passed through our village. In return for all the disruption caused, we asked BOTAŞ to repair our road. But they have not done so.” The Muhtar was concerned that this inaction may be rooted in discrimination against the Alevis. “BTC is bringing roads to other affected villages in the districts of Posof, Ardahan and Hanak, but not to the Alevi villages in Damal district. Similarly, villages outside of Damal have been provided with roads, but not Damal’s Alevi villages.”

4.51 **The Mission recommends that project lenders investigate the allocation of community programmes and ensure that no discrimination has taken place.**

K. IMPLICATIONS OF BTC FOR THE SOUTH CAUCASUS GAS PIPELINE

4.52 The Mission notes that, to date, there have been no protests against the pipeline in the north-eastern section of the pipeline in Turkey. This is in sharp contrast to neighbouring Georgia where, by December 2003, there had already been more than 80 demonstrations and road blockages along the pipeline, mainly by affected communities and workers unhappy at compensation and payment arrangements.⁴⁰

4.53 **However, this should not be taken as an indication that villagers are content with the project. On the contrary, villagers consistently expressed anger, frustration and even despair at the impacts of the project.** Some communities had even contemplated blockading construction roads – but had been deterred from doing so due to the contractors threatening to extract financial damages for any disruption to the work.

- 4.54 The Mission notes that several villagers interviewed stated that they were not prepared, in their words, to “be cheated again” by the land acquisition process for the South Caucasus natural gas pipeline, the non-Turkish section of which is supported by the European Bank for Reconstruction and Development. In one village through which the gas pipeline will pass, villagers told the Mission that their experience of minimal compensation for the BTC pipeline had meant that they would not accept the compensation on offer for the gas pipeline and would pursue their cases through the courts right up to the European Court on Human Rights. One villager talked about having been “asleep” when the BTC pipeline came but of now being “awake” and determined to claim his rights.

5.00 CONCERNS OVER QUALITY CONTROL

- 5.01 As noted above (paras 2.05-2.08), both official and unofficial sources have expressed grave disquiet over BOTAŞ's oversight of construction and quality control.
- 5.02 In June 2004, *The Independent*, a UK quality daily, published a report, detailing allegations from a number of engineers and others experts who have been working on the pipeline.⁴¹ Several concurred that BTC is the worst project they have ever worked on. At least one engineering agency is now recommending that clients do not work on BTC as it will be seen as a black mark in later years. They raise a litany of concerns, including:
- Workers' complaints over delayed pay, inadequate working and living conditions, and rapid dismissal from their jobs;
 - The widespread bankruptcy of local businesses and hotels as contractors book services on credit and fail to pay;
 - The systematic removal of qualified expatriate staff in favour of local staff with little or no experience;
 - Major design anomalies likely to result in leaks and accidents, especially in the event of earthquakes (the pipeline follows the North Anatolian fault-line for hundreds of miles);
 - Systematic failure to do welding correctly, followed by the falsification of records or failure to keep any records of work done.
 - The refusal of contractors to spend the money necessary to get in specialist staff like seismologists and engineers.
- 5.03 The Mission heard allegations from a former worker on the North-Eastern section of the pipeline which supports the reports from the UK experts.

Apprentice welders were allegedly working on the main pipeline without proper qualification. The worker and others were often posted as lookouts to see if foreign quality control supervisors were approaching. The welders were given no safety masks unless foreigners were in the vicinity.

- 5.04 Of particular concern was an allegation that the procedures for welding were being short-circuited in order to speed up construction. “In my opinion”, the worker said, “it was very bad work. Others more knowledgeable than me said that procedures were not being not being followed.” He gave an example. Standard procedures requires that the welding be undertaken in three phases. The Mission was told that the first two phases – involving welding with 3mm and 4 mm electrodes – were not being undertaken. Only the final phase – using 5mm electrodes – was done. The workers were prevented from complaining to controllers: “They put us to one side when the foreign controllers came”. Workers were also afraid to complain for fear of losing their jobs. “The rules were only applied when the foreigners were there.”
- 5.05 The Mission was deeply disturbed to hear further allegations of poor workmanship and poor quality control. It notes that these allegations chime with concerns raised in the monitoring reports commissioned by the lenders’ group.⁴²
- 5.06 The Mission recommends that project lenders undertake a full quality control audit of the construction work undertaken to date.**

6.00 HUMAN RIGHTS ABUSES AND INTIMIDATION

A. AN ATMOSPHERE OF INTIMIDATION

6.01 Previous Fact-Finding Mission reports have drawn attention to the pervasive climate of repression in the North-eastern region of Turkey and the constraints that this has imposed on consultation on the BTC project and obtaining redress for abuses associated with land acquisition. The 2003 Fact-Finding Mission to the Ardahan region, for example, stated:

“A pervasive atmosphere of repression and lack of freedom of speech in the region . . . precludes dissent about the BTC project. . . [This was] 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.***”

6.02 The Mission received reports of (and itself directly experienced) this atmosphere of intimidation. For example:

- The Mission was told by one villager, “The philosophy of people here is that you cannot challenge the state. The state does whatever it wants. The fear of the Gendarmes [para-military police] makes people passive.”
- It was reported to the Mission that critics of the BTC project, or those seeking to uphold the rights of affected villagers, had been accused of being “traitors to the their country.” This accusation was frequently elided with accusations of supporting “separatism” and the PKK, the Kurdish guerrilla movement.
- The Mission itself was stopped and had its passport details taken. Subsequently plainclothes police followed the Mission on a visit to a village

and remained in the village whilst the Mission spoke to villagers. The Mission later learned that the police had asked the village Muhtar about the Mission.

- When the Mission contacted BOTAŞ headquarters, its interpreter was told that the Deputy Director General would not see the Mission. When she asked whether she could tell the Mission that BOTAŞ had refused a meeting, she was told that should bear in mind that although she was employed by the Mission, she was “a citizen of this country”.
- Meeting with a prominent Turkish professional association in Ankara that routinely gives input on implementation of large projects in Turkey, the Mission was told that efforts to monitor the BTC project have been frustrated both by a reduced flow of information and by the sensitive situation in some of the project-affected regions. It was noted that sometimes even state officials cannot reach certain regions, as soldiers simply stop visitors and send them back.
- Following the Mission’s visit to Ardahan, a local newspaper accused the Mission of fermenting ethnic tensions and of using local villagers’ concerns to “blackmail BP”.
- In the İmranlı region, police and BOTAŞ officials intruded on the Mission’s meetings with villagers and were present during almost all interviews.

6.03 The most egregious example of intimidation, however, is the alleged torture and harassment of Ferhat Kaya which is discussed in more detail below.

B. FERHAT KAYA

6.04 Ferhat Kaya is shop-keeper and the Chair of Ardahan Central District Branch of the Democratic People’s Party (DEHAP).⁴³ He has been campaigning for the rights of villagers affected by the BTC pipeline since March 2003. He claims that he has been subjected to intimidation and discrimination because of his work. He describes receiving threats from anonymous phone callers and complains that his business has decreased by 90 percent and that State institutions such as schools and State officials such as doctors and teachers no longer obtain supplies from his shop: “They made me an outcast. The people who worked for me received threats and therefore all but one left the job.”

- 6.05 In September 2003 Mr. Kaya was invited to Italy to speak to senators about the pipeline and to meet with the Italian Export Credit Agency which was considering financing the project. Mr. Kaya's intention was to report to them about the problems for local people created by the implementation of the project. Mr. Kaya received a telephone call the day before he was due to leave for Italy. The caller used the name of one of Mr. Kaya's friends and asked Mr. Kaya where he was. Mr. Kaya did not recognise the voice of the caller as that of his friend and said that he would call the person back and hung up. Mr. Kaya received a further telephone call from the same person who insulted him and made death threats against him. The next day a friend [name supplied] took him to the bus stop when he was leaving for Italy. Later the police visited his friend's sister's workplace and telephoned his parents. They told them that Mr. Kaya was going to Italy and that their son had taken him to the bus station. They also said that if he continued to work for Mr. Kaya it would have negative consequences for him. Two or three days after this telephone call, while Mr. Kaya was still in Italy, three unidentified assailants assaulted the same friend on the streets in Ardahan at night. Mr. Kaya believes that this attack could only have been made by or at the request of the persons who had previously telephoned his friend's family. As a result of this intimidation his friend felt unable to continue to work for Mr. Kaya. His friend has reported receiving further threats and intimidation as a result of his continued association with Mr. Kaya.
- 6.06 More recently, Mr. Kaya claims that he has been subjected to further intimidation and ill-treatment at the hands of the police as a result of his campaign work in relation to the BTC pipeline. The police actions have been the subject of two prosecutions at the Penal Court of First Instance in Ardahan. In the first set of proceedings, 11 police officers were charged under Article 245 of the Turkish Penal Code with the ill-treatment of Mr. Kaya on 5 May 2004. In the second set of proceedings (which relate to the same incident), Mr. Kaya was charged with assaulting and insulting the same police officers on the same date under Articles 266 and 269 of the Turkish Penal Code, resisting an officer in charge under Article 258 and damaging police property under Article 516 of the Turkish Penal Code.

STATEMENT OF FERHAT KAYA

- 6.07 Mr. Kaya provided the following statement to the September 2004 Fact Finding Mission:

- 6.08 “My name is Ferhat Kaya. I live in Ardahan, Turkey. I am the Chairman of the Ardahan Central District branch of DEHAP. I am actively involved in campaigning for the rights of the villagers in my area who have been affected by the construction of the BP Baku-Tbilisi-Ceyhan (BTC) oil pipeline.
- 6.09 “Mr. Ziya Avşar is one of these affected villagers. He is a land-owner who is currently involved in litigation with BOTAŞ regarding customary land which has been expropriated for the purposes of the pipeline. BOTAŞ says that it is treasury land. Mr. Avşar says that it is his land. The villagers support him and say that it belongs to his family. He says that from his grandfather’s time the family has used the land but that there are no title deeds. Mr. Avşar is also an applicant in a case currently before the European Court of Human Rights (ECtHR) regarding the lack of adequate compensation for this land. Mr. Avşar had been to the BOTAŞ offices in Ardahan numerous times. On one visit a few days prior to 5 May 2004, he was thrown out of their offices because they had recently become aware of the ECtHR cases.
- 6.10 “Mr. Avşar came to my shop some time during the morning of 5 May 2004. He was very angry that his land had been demarcated and excavated for the purpose of the BTC pipeline construction. He made serious threats regarding the people who had done this to his land. He felt that he had no other option as his objections to the construction had been ignored. He was frustrated that he had been unable to resolve his problems through the courts. I urged Mr. Avşar not to carry out his threats. He asked me to help him. I advised him to continue to seek to resolve his problems through the courts. I also advised him to talk to BOTAŞ again and to talk to his lawyer. He said that he would never go to BOTAŞ again and that the lawyer had told him that there is nothing that he could do while they were waiting for an outcome from the court. I agreed to call BOTAŞ at his request. First I introduced myself as Chairman of DEHAP in Ardahan and then handed the phone to Mr. Avşar. The BOTAŞ employee said that there was nobody who could talk to him. Mr. Avşar said that he lived off the land and had no other means of living. He said that his children do not take care of him. He repeated his threats of violence. On hearing this I took the phone from him. The person on the phone said that they knew Mr. Avşar. I explained that Mr. Avşar is of Kurdish origin and does not speak Turkish very well. I explained that he had come to me seeking help as a result of the expropriation of his land. I requested more information about the expropriation of his land. I explained that Mr. Avşar was having difficulties understanding why BOTAŞ were refusing to accept that they should compensate him for the expropriation of his land.

The BOTAŞ employee said that he was taking notes and that he would give a message to the competent person. The BOTAŞ employee suggested that I phone again when there was someone who would be able to speak to me about the problem. After the phone call I could see that Mr. Avşar was serious about his threats. I persuaded him that this was not a good idea and advised him to wait to see if his problems could be resolved by the courts. I sent him home. This happened about 12.00 midday on 5 May.

- 6.11 “That afternoon I attended a meeting at Eğitim-Sen (trade union of teachers) in Ardahan. There were some people from the Yılmaz Güney cultural and arts foundation (which provides scholarships). Members of the foundation were fundraising by selling books and CD’s. I had to go back to my shop to get money so that I could go back and buy a book. As I passed the police station (Polis Merkezi) which is approximately 100 metres away from where the meeting was being held, a police man asked whether I was Ferhat Kaya . I asked him why he wanted to know this. Another police officer then came and the two of them dragged me into the police station by my wrists. They had not asked me to go inside and had not told me why they wanted to know who I was. I asked why. I did not struggle in any way. Once we were inside the police station they told me that the Public Prosecutor had issued a warrant and that I was required to be at court the following day. They stated that the Public Prosecutor had requested that I be brought to court in handcuffs by the police. I objected to this, stating that I had not been informed of any hearing but stated that if I was required to go to court for some reason, that there was no need for the police to bring me there. I stated that I was known to the police and that there was no reason to detain me even if there was such a hearing. They refused to listen and requested my ID card which I showed to them. Still they said that there was a warrant from the prosecutor and asked for my ID card. I was concerned about my safety as I had previously been tortured by the police so I called a friend who works at the Kurdish Human Rights Project in London. I also called another friend who lived locally. In accordance with detention procedures the police brought me to the local hospital to have a medical examination. The report which was completed at 18.30 on 5 May 2004 shows that I was in good health and had no injuries to my person.
- 6.12 “Before we went to the hospital the police had been impolite and rude but up until that point they had not harmed me. The situation changed when we returned to the police station after my medical examination. There were lots of policemen and two policewomen present. They were all talking about me. I

was put into a room with the two policewomen. I think that they were talking to the Public Prosecutor on the phone. The policewomen were saying that I had resisted the police officers. I told them that I had not resisted and had provided my identification when they had requested it. There were policemen also present and they were insulting me and accusing me of being a supporter of the PKK. They were insulting my family and said that I was a traitor to my country because I had been travelling abroad even though I had my own country. This was a reference to my campaign work in Italy and the United Kingdom regarding the BTC pipeline. It is the only time that I have travelled abroad recently. I asked them to stop saying these things. They were laughing at me for defending DEHAP even whilst I am in the police station.

- 6.13 “One of the policewomen was the first to hit me. She said that I was talking too much and then hit me on the cheek with her open hand. Then a policeman started beating me and took me to a room across the corridor which was crowded with at least five or six police officers. They handcuffed my hands behind my back and made me lay face-down on the ground. They kicked all over my body. They folded my legs back onto my back. One or two of them sat on my legs when they were like this, which was extremely painful.
- 6.14 “There was a policeman who had a rifle – it might have been a Kalashnikov. He pointed this rifle into the room that I was in from outside the door. I was very frightened and believed that he was going to shoot me. I had recently witnessed a person being killed in police custody and was terrified for my life. When he cocked the rifle the policemen stopped kicking me and went to prevent this policeman from shooting me. I saw the glass in the door break and thought that he had shot at me. The policemen and women who were present were trying to calm the policeman with the rifle down. The policemen came back into the room and put me on my back so that I was looking at the ceiling. They resumed beating me and standing on me. I do not know how long they were beating me for as I lost consciousness at some point.
- 6.15 “After a while they took me to the hospital again. I was covered in blood and in extreme pain. They made me walk to the hospital through the streets handcuffed in this condition. I had sustained numerous injuries as a result of the beatings. Four or five policemen accompanied me whilst the doctor examined me. I was concerned that the doctor would be affected by their presence and would not accurately record my injuries. I objected to their presence but they refused to leave the room. The doctor assured me that their presence would not affect his

report. The doctor completed his report at 19.30 hours. I requested a copy of this report and on receiving it saw that the doctor had stated that I would not be able to work for three days. I was very surprised as this did not reflect the serious injuries that I had sustained and started to discuss this with the doctor. The police would not let me say anything and removed me from the hospital immediately. I did not receive any medical treatment for my injuries.

- 6.16 “On leaving the hospital the police took me to another place of detention. Still in handcuffs, I was placed in a cell that was in the basement. I was not aware of any other prisoners. There were very bright lights shining in the cell. I would estimate that the lights were 20 times brighter than a normal domestic light bulb. There was a loud speaker in the cell that was emitting a constant noise. The noise sounded like the noise which comes from a machine. The noise and the lights remained all night. My handcuffs were not removed. I was very distressed and in severe pain.
- 6.17 “The following morning the police took me to the hospital again. I was still in severe pain and my injuries were in need of medical attention. I was subjected to a brief examination by a doctor whose report did not reflect any injuries. This was in clear contradiction to the report which had been made at 19.30 hours the previous evening. I did not receive any treatment for my injuries despite the fact that I complained of being in pain.
- 6.18 “I was then brought by the police to the Public Prosecutor’s office. Again I was made to walk through the streets in handcuffs. I saw a prosecutor called Mehmet Çömük. He told me that the police were alleging that I had resisted the police officer in charge. I denied this resistance. I said that I had shown the police my identification card when I had been detained and stated that I had had no knowledge of the supposed court hearing which was the reason that they had given me for my detention. I complained that the police had beaten me up and pointed out that the medical report would show that I had no injuries on my first trip to the hospital the previous evening. The police were present during this meeting with the prosecutor and I did not feel able to go into all of the details of the attack on me by the police officers. The prosecutor did not let me talk for long. He said that they would transfer me to the court and that I could make my complaint to the judge.
- 6.19 “The judge made an order for my arrest (tutuklanmak) at the request of the prosecutor. I was taken to the prison. When I arrived at the prison there were

a number of soldiers waiting for me at the entrance. They had a file in my name and they questioned me about my job and family for two hours. They noted down my description. Later when I spoke to the other detainees at the prison I learned that this is not the usual procedure and that they had not been questioned in the same way. I was still in a lot of pain and suffering because I had not received any medical treatment for my injuries. Whilst I was being questioned I was holding my hands behind my back. A soldier got angry at me and told me to put my hands in front of me and to stand straight. The soldier threatened to break my bones if I made him angry. The gaoler intervened and I was taken to a dormitory (Koğuş). Because I was in such a bad state the other prisoners made up a bed for me and I slept.

- 6.20 “A day or two after that I wrote a petition addressed to the judge who had ordered my arrest. Such a petition must first go to the prison administration, then to the public prosecutors office and finally to the judge. The court is very close to the prison and I was concerned when I had not received any response after three or four days. As a result of this I decided to commence a hunger strike despite the fact that I was still suffering from the injuries I had sustained on 5 May 2004.
- 6.21 “When I started this hunger strike I was moved to the women’s section of the prison which was empty. It was in an extremely bad state of repair as it had been out of use for a long time. The windows were broken and it was very cold (Ardahan is a mountain province where the temperatures at night can drop very low even in summer). The toilets were in a very bad state and there were no kitchen facilities which meant that I was unable to make the sweet water which was the only substance that I would allow to cross my lips during this hunger strike. My family were notified about my hunger strike and were asked to come to the prison to persuade me to stop. My family were shocked at the state that I was in and eventually I ceased the hunger strike because of requests by my family and by DEHAP.
- 6.22 “When I came off the hunger strike I lodged a complaint with the Public Prosecutor regarding my torture by the police. The Public Prosecutor Mehmet Çömük, came to the prison and took a statement from me. He brought many photos of policemen and women and I identified officers who were involved in beating me. The prosecutor investigated the complaint and lodged an indictment concerning ill-treatment under Article 245 of the Turkish Penal Code at the Ardahan Penal Court of First Instance. This case was joined to

the prosecution against me for assaulting, insulting and resisting police officers and damaging state property at the first court hearing. My friend Barış Altun also lodged a complaint with the public prosecutor and was registered as a complainant in my case. He provided a witness statement to the prosecution which corroborated the allegations which I had made. He was later forced to withdraw as a result of intimidation and threats by the police.

- 6.23 My family talked to the lawyers in Ardahan but none of them wanted to take the case. DEHAP also searched for lawyers but the ones they found were too far away and they would not come. In the end my family found a local lawyer who made an application for bail. I was finally released 18 days after my initial detention. The final hearing in the prosecution against the 11 police officers was on 22 September 2004. The public prosecutor, Metin Aslan, requested that the court acquit the police officers of the charges on the indictment because the elements of the offence had not been proved. I was very surprised when the prosecutor said this as the office of the public prosecutor had obviously felt that there was sufficient evidence to lodge an indictment. The judge, Şermin Gölünçür, found the 11 police officers not guilty of ill-treatment. Immediately after that hearing the case regarding the charge of resisting arrest was heard by the same judge. The prosecutor was also the same. That hearing was adjourned until 3 November at 11.30am in order to ensure that Ziya Avcı can come and give evidence in support of my defence.”

C. THE TRIALS

- 6.24 The Mission attended the Ardahan Court of First Instance on 22 September 2004 and observed the following hearings:⁴⁴
- 6.25 Trial of Police Officers (Nebile Karaman, Kahraman Ediz, Yalçın Yıldız, Yunus Ulus, Şener Emir, Selim Çam, Ergün Karakuş, Özer Çelik, Recep Cesur, Osman Kocabaş, Ercan Yaman) charged with ill treatment of Mr. Kaya.
- 6.26 The trial judge was Şermin Gölünçür. The prosecutor was Metin Aslan. Only three of the defendants⁴⁵ were in attendance.
- 6.27 At the outset of the hearing a friend of Mr Kaya [who was also a complainant in the case] requested that his complaint be withdrawn. Whilst he did not give a reason for this request to the court, he had made it clear to the Mission that this action was as a result of police intimidation. The friend's complaint was withdrawn and he left the courtroom.

- 6.28 Mr. Kaya addressed the court. He complained that the transcript of the previous hearing was incomplete in that it did not include reference to the fact that Mr. Kaya had referred to his campaign work on the BP Baku-Tbilisi-Ceyhan (BTC) oil pipeline as being a reason for his detention and ill treatment.
- 6.29 Mr. Aslan then concluded the case for the prosecution. He stated that he did not wish the judge to enlarge the enquiry into the offences and requested the judge to find the defendants not guilty as he believed that they did not commit the crimes that they were charged with.
- 6.30 Counsel for the Defendants stated that he agreed with the request of the prosecutor and further stated that the force used by the police officers had been legitimate force in the course of their duty.
- 6.31 Her Honour Ms Gölünçür, gave a preliminary judgment finding the defendants not guilty of ill-treatment of Mr. Kaya. Detailed reasons will be handed down at a later date.
- 6.32 The hearing lasted for 15 minutes.
- 6.33 Trial of Mr. Kaya for assaulting and insulting police officers damaging police property**
- 6.34 This hearing took place immediately after the conclusion of the trial of the 11 police officers on 22 September. The trial judge was Şermin Gölünçür. The prosecutor was Metin Aslan. Mr. Kaya was not represented by Counsel⁴⁶.
- 6.35 The complainant Ms. Fatmanur Küçük gave evidence adopting her previous witness statements and stating that the injuries reflected in the medical report were sustained as a result of Mr. Kaya's own actions. She stated that he threw himself around the "lawyers" room in which he was being detained. She said that he hit the glass in the door and then hit his back and shoulder on the walls. She stated that whilst he was doing this he was shouting insults at the police officers and threatening to make a complaint alleging that they had tortured him.
- 6.36 The second prosecution witness, Mr Gültekin Özkurt gave evidence stating that he had not been at the police station on 5 May during the time when Mr. Kaya was alleged to have resisted arrest. Her Honour, Ms. Şermin Gölünçür inquired as to the reason for the discrepancy between the oral evidence that

he was giving to the court and the evidence which he had given in his written statement. He stated that the evidence in his written statement referred to an incident which occurred on the way to the court on 6 May 2004, the following morning, and not to any incident on the 5 May 2004.

- 6.37 Mr. Kaya addressed the court stating that he believes that the complainant and the witness were part of a conspiracy to have him sent to prison. He stated that he believed that his detention was as a result of his work on the BTC pipeline. He requested that the hearing be adjourned in order to allow Mr. Ziya Avşar, witness for the defence to attend. Mr. Kaya explained that Mr. Avşar will be able to tell the court about Mr. Kaya's campaign work regarding lack of adequate compensation for villagers affected by the BTC pipeline. Mr. Kaya stated to the court that he was of the view that this campaign work formed the reason for his detention by the police. He stated that when he was detained by the police they called him a "terrorist" and a "traitor" when referring to his international campaign work relating to the pipeline.
- 6.38 Mr. Kaya stressed his concerns regarding the independence of the trial judge in light of the fact that she had also been the trial judge in the case of the 11 police officers which had immediately preceded the present hearing.
- 6.39 The trial continues and the next hearing is scheduled for March 2005.

D. SUMMARY OF THE CONCERNS OVER THE TRIALS

- 6.40 A full report regarding compliance of these two hearings with international fair trial standards has been published separately⁴⁷. The following features of the hearings were of particular concern to the Mission:
- That the trial of the 11 police officers on such serious charges was concluded in three short hearings with no apparent detailed questioning of the police officers by either the prosecution or the trial judge;
 - That the Public Prosecutor had felt that there was sufficient evidence to lodge an indictment alleging ill-treatment – including medical evidence of injuries – and then, without explanation, requested that the trial judge find the defendants not guilty;
 - The trial judge did not exercise her powers to investigate further the

allegations after the Public Prosecutor suddenly expressed his request to acquit the police officers;

- That a complainant felt compelled to withdraw his complaint as a result of intimidation;
- That most of the defendants charged with the ill-treatment of Mr. Kaya failed to attend the hearing;
- The apparent contradiction between defence counsel's assertion in one case that Mr. Kaya's injuries were sustained as a result of legitimate use of force and the assertion of the complainant in the other case that Mr. Kaya's injuries were sustained as a result of his own actions;
- The failure of a defence lawyer to attend a court hearing where his client is charged with a serious criminal offence punishable with imprisonment;
- The failure to give the defendant an opportunity to question or have questioned the complainant in the case against him;
- The lack of impartiality of the tribunal where trials in relation to essentially the same incident are heard by the same judge and prosecuted by the same prosecutor at the same sitting;
- The structure of the court-room where the prosecutor and the trial judge sit at the same level and retire through the same door during recess
- The accuracy of the court transcript where the stenographer notes exactly what the prosecutor says in court but where the judge summarises for the stenographer what should be noted of what all other parties say.

6.41 In brief, the preliminary view of the Mission is that the above factors give rise to concerns that the hearings observed do not meet the following international fair trial standards:

- The right to a fair trial;
- The right to competent and effective defence counsel;

- The right to trial by an independent tribunal;
- The right to trial by an impartial tribunal;
- The right to equality of arms;
- The right to be presumed innocent;
- The right to examine or have examined witnesses against an accused.

6.42 The Mission recommends that all efforts be made to ensure that international fair trial standards are complied with by Turkish authorities.

E. HUMAN RIGHTS REFORMS AND THE BTC EXPERIENCE

6.43 The Mission considers that intimidation has shaped the implementation of the BTC project, both during the consultation period (see previous reports) and during construction. The intimidatory use of police power – as witnessed directly by the Mission itself and illustrated by the experience of Ferhat Kaya – can only have one result: preventing already-marginalized affected villagers and those that would advocate on their behalf from freely communicating their concerns and pursuing redress. In the Ardahan region, the use of police harassment/violence and the courts to prevent the legitimate activities of DEHAP party workers and others documenting the impacts of the project on villagers was of particular concern to the Mission.

6.44 Indeed, **the Mission was left with the strong impression that the human rights reforms implemented by the Turkish Government in advance of its EU accession application have had little impact in the North-East region, perhaps because of the relative lack of national and international scrutiny.** In that respect, the Mission was told that had a DEHAP representative in the South-East of Turkey been detained under similar circumstances to those that pertained in the case of Mr Kaya, there would have been widespread coverage in the national newspapers and investigation by international observers.

6.45 **The Mission raised this concern with members of the EC Delegation in Ankara and with officials of both the UK and Netherlands Embassies. It notes that this lacuna in monitoring the progress of Turkey's human rights reforms is recognised and that the North-East may be subject to**

closer scrutiny in future. In the Mission's views, this is both necessary and welcome.

F. IMPLICATIONS OF HUMAN RIGHTS IMPACTS OF BTC FOR IFI DUE DILIGENCE

6.46 The detention and alleged ill-treatment and possible torture of Ferhat Kaya for his work on the BTC pipeline, together with the clear evidence of lack of freedom of expression in Turkey generally and the North-East in particular, raises serious concerns about the due diligence undertaken by the project lenders with regard to compliance with the World Bank's guidelines on resettlement and consultation. It is clear that the atmosphere of repression made meaningful consultation on the project and negotiation of compensation nigh on impossible. Yet, as successive NGO reports have documented, the project lenders consistently failed to take account of the social, political and human rights context in which the project was being implemented.

6.47 In the Mission's view, this failure lies at the root of many of the violations of best practice that the Mission has observed. The Mission notes that the World Bank has now promised to adopt new standards for extractive industry projects, notably ensuring that such projects are based on "free prior informed consultation". The Mission believes that the BTC project would not have come close to meeting this new standard, which in itself falls far short of the "free prior informed consent" recommended by the World Bank's own Extractive Industries Review.⁴⁸

6.48 **The Mission recommends that, in the future, the International Finance Corporation, the European Bank for Reconstruction and Development and the Export Credit Agencies take full account of the political and human rights contexts in which projects will be implemented, including the implications of this context for adherence with required standards. It also recommends that the International Financial Institutions (IFIs) explicitly screen projects for their potential human rights impacts.**

6.49 **The Mission recommends that the project lenders now come to terms with the context in which this project is being implemented, including the capacity of BOTAS and the Turkish Government to ensure fair expropriation and compensation practices with relation to poor and often ethnically marginalized villagers, and take immediate steps to address**

the failures identified and require project developers to comply with the project's agreed, legally-binding project standards. This should include much closer and more independent oversight, monitoring, and scrutiny by project lenders.

Kurdish Human Rights Project (UK)

The Corner House (UK)

Environmental Defense (USA)

Friends of the Earth (England, Wales and Northern Ireland)

APPENDIX A

STATEMENT OF ALI AKTAŞ, PRESIDENT OF THE CHAMBER OF AGRICULTURE

There has been no consultation with me as the President of the Chamber of Agriculture of İmranlı district, regarding establishment of the price or expropriation transactions within the borders of İmranlı district in relation to the construction works of the crude oil pipeline.

As is common knowledge, the Chamber of Agriculture is committed to protect the rights of the farmers. Therefore, it is required that my opinion is asked especially to establish the prices of the properties to be expropriated; which didn't happen.

The fact that a taxi driver and an iron monger, who weren't registered to our chamber as farmers and who don't own any land, were chosen as local experts in establishment of the prices and that the prices were established in line with their statements is in contradiction to the objective and essence of the Expropriation Law No.2942.

Our Chamber's opinion was not asked concerning Environmental and Social Impact Assessment. BOTAŞ didn't consult with our Chamber, nor with the farmers in the villages on the route of the pipeline regarding any point on the construction of the Crude Oil Pipeline that it had undertaken. This information was provided by verbal reports from the farmers to our chamber.

It was also understood by the verbal reports from farmers that BOTAŞ occupied areas of land that were not included in the expropriated section – by building a road and piling stones and soil without consent of the farmers on this land.

Furthermore, Ms. Bahar Demirel, public relations officer of BOTAŞ said in the meeting she held with the villagers “Whoever you apply to, it will end up with me, and I will give the decision” to the villagers who had problems regarding expropriation and construction works. These remarks of the mentioned lady discouraged the landowners from applying to the Courts. The information in this respect was also provided by verbal reports from the farmers to our chamber.

It was understood from the verbal reports by the farmers that the prices of the juniper trees, that are inseparable parts of the properties owned by some of the villagers, have not been determined or compensated for, in expropriation by BOTAŞ.

In conclusion; it was established that BOTAŞ didn't comply with the points set out in the Environmental and Social Impact Assessment information package regarding the above mentioned grounds and regarding lack of consultation with our Chamber.

Ali Aktaş

President of the Chamber of Agriculture

Yusuf Üstündağ

As witness

25 September 2004

APPENDIX B

STATEMENT OF MR. İLYAS ALBAN

If I am writing, there is a reason

İlyas Alban, borne in 1954, registered to Ardahan province, Damal district, Otağlı village

Subject: The corruption in BTC pipeline's Hanak construction site

I invite TRT (Turkish Broadcasting Institution) and all private media and press institutions to bring this corruption to a stop. I condemn an international company's involvement in the corruption.

Erdal Keçeli and foreman Seyfi, together with workers from Osmaniye came to me and threatened me. They woke me up in night, and wanted to fire me saying, "We passed through five villages of Damal district, but we couldn't see one single mosque, you can't work here". When I complained of them to the chief in the morning, the chief of the construction site shouted at me saying, "They did those under my information".

The common land of our village was expropriated about 3 km long, however the price hasn't been compensated. Furthermore, although they had administrative records of their lands, 40 people from the village haven't received any compensation.

Despite the fact that they had promised to employ us along the route of the pipeline, they employed only one person from Damal district and then fired him because of racism. At the moment, people brought from other provinces are employed on our lands.

We invite Mr. Governor; Commander of the Gendarme; and our MPs elected by people's vote to bring these corruptions to a stop.

İlyas Alban
20.09.2004
Signature

APPENDIX C

LETTER FROM DOUGLAS ALEXANDER P, MINISTER OF STATE FOR TRADE, INVESTMENT AND FOREIGN AFFAIRS, 6 DECEMBER 2004 IN RESPONSE TO THE FACT FINDING MISSION'S PRELIMINARY REPORT OF OCTOBER 2004

dti

Department of Trade and Industry

6 December 2004

Mr Nicholas Hildyard
The Corner House
Station Road
Sturminster Newton
Dorset
DT10 1YJ

Our reference: MIN3/00510418

Dear Mr Hildyard

Re: Baku-Tbilisi-Ceyhan Pipeline

Thank you for your letter of 23 October enclosing a preliminary report of an international Fact Finding Mission (FFM) regarding the BTC Pipeline in Turkey. I apologise for the delay in responding.

The FFM report highlights issues that are a cause for concern to the UK Government, two of which were identified by the lenders' independent environmental consultant (D'Appolonia) in their most recent quarterly site visit report: compensation for accidental damage and use of land outside the 28 metre right of way. D'Appolonia's previous quarterly site visit reports can be found on the internet at www.caspiandevlopmentandexport.com, on the BTC documentation page.

In light of the comments raised in D'Appolonia's site visit report, ECGD and the other lenders asked for and have received an assurance from BTC Co. that BOTAS will be required to ensure, in a reasonable time frame, that all legitimate claims for compensation resulting from accidental damage are met. D'Appolonia will report, after its next site visit in January 2005, on the use of land outside the 28 metre corridor and whether there are still issues surrounding the compensation of landowners.

The lender group's independent midstream consultant (WorleyParsons) is also reporting on pipeline construction on a quarterly basis, and carrying out semi annual site visits. In addition an independent Social and Resettlement Action Plan (SRAP) Monitoring Panel is reviewing the project on a semi-annual basis, with the objective of:

- 1) assessing the project's overall compliance with the Resettlement Action Plan (RAP),
- 2) verifying that measures to restore or enhance affected peoples' quality of life and livelihood are being implemented and
- 3) assessing the extent to which the quality of life or livelihood of affected communities have been restored.



**Foreign &
Commonwealth
Office**

London SW1A 2AH

*From The Minister of State for
Trade, Investment and Foreign Affa*

BR



The SRAP reviews can be found on the website mentioned above.

In respect of other issues raised in the FFM report, no evidence has been reported by the independent consultants regarding discrimination against minorities in both BTC employment practice and in the carrying out of community development programmes. However, the lenders will take these issues into account when planning the programme of future site visits.

ECGD will continue to monitor the project closely and will be kept informed of developments from the lenders' consultants. In particular, you should note that the consultants will continue to monitor the project once construction is complete, with the environmental consultant conducting yearly site visits during the operation phase for the duration of the ECGD covered loan (until 2015).

We have taken note of the serious concerns raised concerning Mr Kaya's trial. The FCO treat all allegations of judicial malpractice in Turkey very seriously and is in regular contact with the Turkish Authorities on this issue. Officials at our Embassy in Ankara will raise the allegations of misconduct in Mr Kaya's trial with the Turkish Authorities.

You will be aware that the European Commission recommendation to the December European Council concludes that Turkey has met the Copenhagen political criteria and that accession negotiations be opened. The Foreign Secretary has welcomed the Commission's recommendation, noting that Turkey has undergone remarkable changes over the last few years.

The Commission's Regular Report, which issued with the recommendation, records the enormous progress made by Turkey since the 2002 Copenhagen European Council. It also draws attention to areas where there is a need for further progress, and encourages the Turkish Government to maintain the momentum of reform. The Report records important changes made to the judicial system in 2004: the abolition of State Security courts; the adoption of a new Penal Code; and, the pronouncement of the primacy of international human rights conventions over domestic law. It notes progress in aligning the rights of the defence with European standards. A second expert mission to Turkey in July "found that significant progress had been made" in the functioning of the judicial system. The report records that the judiciary is increasingly relying on European Court of Human Rights rulings as a basis for its judgements, and that the Court of Cassation has delivered important judgements applying the reforms on freedom of expression; Kurdish language; re-trial, and torture that will guide the lower courts in the application of the reforms.

It is clear that further efforts are required to prevent restrictive interpretation of the reforms and to ensure that the Judiciary, prosecutors and law enforcement agencies consistently implement and enact the new legislation. Senior officials raised implementation during the fourth UK/Turkey Human Rights Dialogue on 15 July. The Turkish Delegation spoke of its Government's commitment to addressing implementation and of the huge investment that had been made in training programmes. Time was also required to allow the development of jurisprudence. The



UK supports a decision at the December European Council to open accession negotiations with Turkey in the firm belief that the pre-accession process continues to underpin substantial reform in the country, and that all remaining human rights concerns will be resolved during accession negotiations. We will continue to urge the Turkish Government to ensure the rapid and consistent implementation of the reforms passed to safeguard human rights. The Foreign Secretary last raised this with the Turkish Justice Minister during his visit to Ankara on 7 October.

The UK has worked closely with the Turkish Authorities on aspects of judicial reform, including at the most senior levels. In addition, the UK has just co-sponsored a very successful project with the Turkish Ministry of Justice that has seen the training of 8,700 judges and prosecutors in Human Rights and European Law, across the length and breadth of Turkey. The UK spent over £200,000 training 3,200 members of the judiciary. 220 of the judges have also been trained as trainers and will now continue to pass on the expertise gained in human rights. The project saw a close working relationship develop between the UK and Ministry of Justice, and we have been delighted by the commitment shown to the programme by officials and by the Turkish Justice Minister.

I am copying this letter to Jack Straw and Hilary Benn.

Yours sincerely

Douglas Alexander

FOOTNOTES

1. See, for example, reports for September 2002 and March 2003, www.baku.org.uk
2. The Mission visited two further villages from the Damal district. In addition, the Mission met with the Mayors of Ardahan and Hanak and observed hearings in both the trial of Mr. Ferhat Kaya and that of 11 police officers accused of torturing him. The Mission also met with officials in Ankara, including staff of the European Delegation in Ankara and the UK and Netherlands Embassies. Requests for meetings with BOTAŞ and the Minister of Energy were made by fax prior to the Mission going to Turkey. No response was received. The Mission followed up with further attempts to meet with both parties at their headquarters in Ankara, which were turned down, as was a request for a meeting with BOTAŞ's BTC Project Directorate. Finally, the Mission travelled to İmranlı, near Sivas, undertaking interviews with the Chamber of Agriculture and visiting Kılıçköy village.
3. DEHAP is a legally constituted political party committed to upholding Kurdish and other minority rights.
4. As BP's own Caspian Development Advisory Panel notes in its December 2003 report; "The Panel also notes the potential incongruity of more than one million barrels of oil and an equally significant amount of natural gas passing every day through or near villages and towns along the pipeline corridor where some houses have no heat or electricity. In the Panel's view, such a dichotomy would be neither healthy nor sustainable over the long term. If the host countries do not manage the anticipated economic gains for the benefit of their populations, BP and its Partners could be exposed to criticism, warranted or not, for having failed to help the region capitalize on a historic opportunity while exporting resources and related profits for the benefit of the Project Participants and consumers in industrialized nations." See: Caspian Development Advisory Panel Report, December 2003, p.3, www.caspiandevlopmentandexport.com
5. Export Guarantees Advisory Council (EGAC), 2004, 2nd Meeting, Minutes of Meeting held on 17 March 2004, www.ecgd.gov.uk: "Politics had dictated the route – the aim was to get the oil from the Caspian to the Mediterranean without going through the Black Sea, Iran, Armenia and certain areas of Georgia." For a discussion of the geopolitics behind the project, see: Platform et al., *Some Common Concerns*, www.baku.org.uk
6. 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.
7. See for example Sunday Business, 1/7/01, 'Lazard win puts Caspian oil deal firmly on line'
8. BP presentation to selected NGOs and investors, London, 24/3/03
9. BP's chief executive, Lord Browne, stated in 1998 that the project would only be possible if the company, one of the most profitable in the world, was able to obtain "free public money" through the major international development banks. See: Corzine, R., "Wisdom of Baku pipeline queried", *Financial Times*, 4 November 1998, p.4.
10. In December 2004, Banca Intesa confirmed that it was seeking to withdraw from the project and had already sold one-third of its \$60 stake. The Bank cited concerns over reputational risks. See: Morrison, K, "Intesa in talks over exit from pipeline project", *Financial Times*, 1st

- December 2004.
- 11 Baku Ceyhan Campaign, Review of the BTC Environmental Impact Assessment – Turkey Section, September 2003, www.baku.org
 - 12 Turkish Expropriation Law, No.2942, Official Gazette No 18215.
 - 13 Turkish Expropriation Law, No.2942, Official Gazette No 18215, Article 27.
 - 14 In his complaint to the Prosecutor, Ferhat Kaya alleged that he was “beaten up and tortured by the police”. The case lodged by the Prosecutor against the eleven police officers was for “ill-treatment”.
 - 15 Mott MacDonald, BTC Project Lender Group, *BTC Pipeline Project: Pre-financial Close Environmental and Social Construction Monitoring, September-October 2003*, 17 December 2003, www.caspiandevlopmentandexport.com
 - 16 Caspian Development Advisory Panel Report, December 2003, p.83-84, www.caspiandevlopmentandexport.com
 - 17 Caspian Development Advisory Panel Report, December 2003, p.40, www.caspiandevlopmentandexport.com
 - 18 Caspian Development Advisory Panel Report, December 2003, p.9, www.caspiandevlopmentandexport.com
 - 19 The Kurdish Human Rights Project participated in the Ardahan and Ankara sections of the Mission: Friends of the Earth in the Ankara and İmranlı sections.
 - 20 See, for example, September 2003 and March 2004 Reports, www.baku.org.uk
 - 21 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
 - 22 RAP Turkey Final Report, Chapter 5: Land Acquisition Procedures, 5.2.2, p. 5-12, November 2002
 - 23 See Baku Ceyhan Campaign, Chapter 4: Land Expropriation, Compensation and Resettlement on the BTC Project, BTC Pipeline (Turkey Section) EIA Review, October 2003, www.baku.org.uk.
 - 24 Article 8 of the Expropriation Law (2942) requires that a land commission be established to value the land “by taking reports from experts, institutions or organisations specialised in this field and if necessary by using the information to be taken from the Chambers of Industry and Trade and the local real estate agents.” See: BTC Resettlement Action Plan, Annex 3.1, Expropriation Law.
 - 25 The full text of Article 27 reads: “In cases of expropriation subject to a Cabinet Decree for national defense or an emergency as per the provisions of the law on National Defense Obligations No.3634 or for the expropriation of immovable property in emergency as stipulated in special laws, any immovable property may be seized by the related administration. In that case, the proceedings other than those related to appraisal shall be conducted later. Upon request of the respective administration, the value of the immovable property in question shall be appraised by the experts as per the provisions of Article 10 and 15 within seven days. Seizure shall be made after the amount specified by the invitation and the announcement to be made in accordance with Article 10 herein is deposited by the administration in the name of the owner. The amount to be deposited in cases stipulated in the second paragraph of Article 3 herein shall be the first installment to be paid.”
 - 26 World Bank, Involuntary Resettlement, OD 4.30. Para 10 of OD 4.30 states: “For impacts covered in para 3 (a) of this policy, [the necessary measures for resettlement] include provision of compensation and of other assistance required for relocation prior to displacement.” The impacts referred to in Para 3 (a) include “loss of assets or access to assets” and “loss of

income sources or means of livelihood, whether or not the affected persons must move to another location”. Both these attributes apply to the BTC project. The requirement for prior compensation is thus a clear-cut obligation if the project is to be in compliance with OD 4.30 and thus the undertakings specified in the HGAs. The requirement to compensate in advance is not restricted to OD 4.30. It is also a feature of Turkish law, to which the project is also committed under the HGA.

- 27 The “emergency” cited by BTC Co. in justification for invoking Article 27 was “ensuring the completion of the acquisition process in accordance with the overall project time schedule”, RAP Turkey, Annex Implementation of Article 27, May 2003, p.3
- 28 RAP, Chapter Three: Policy and Legislative Framework, November 2002, p.3-7
- 29 RAP, Annex 3.4, Implementation of Article 27, May 2003, Table, p.10.
30Caspian Development Advisory Panel Report, December 2003, p.66, www.caspiandevelopmentandexport.com
- 31 BTC Project – Resettlement Action Plan Turkey, Final Report, Chapter 3: Policy and Legislative Framework, November 2002 p. 3-1. A public interest order was sought in November 2002. The RAP states (p.3-1): “A legal process is in place to obtain a Declaration of Public Interest. In this instance, a declaration to undertake the land acquisition for the Project was passed by the Board of Directors of BOTAŞ in February 2002 and formally approved by the Ministry of Energy and Natural Resources (MENR) in March 2002.
- 32 BTC SRAP Expert Panel Review, Part A, www.caspiandevelopmentandexport.com. The report states: “BTC Co must direct more attention to eliminating cases where land is occupied prior to payment of compensation. Whilst the number of instances where this has occurred is small relative to the overall number of land transactions, the practice is contrary to World Bank OD 4.30 principles and should be avoided.”
- 33 World Bank, Involuntary Resettlement, OD 4.30. Para 10 of OD 4.30 states: “For impacts covered in para 3 (a) of this policy, [the necessary measures for resettlement] include provision of compensation and of other assistance required for relocation prior to displacement.” The impacts referred to in Para 3 (a) include “loss of assets or access to assets” and “loss of income sources or means of livelihood, whether or not the affected persons must move to another location”. Both these attributes apply to the BTC project.
- 34 The Lump Sum Turnkey Agreement signed between the BTC consortium and BOTAŞ – an annexe to the Host Governmental Agreement, and hence also part of Turkish law – sets legally binding requirements with regard to resettlement. Section 8.42, Appendix A of the Lump Sum Turnkey Agreement LSTA requires that the land acquisition procedures are compliant with OD 4.30, the World Bank Group’s policy on involuntary resettlement. See BTC Resettlement Action Plan, 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.”
- 35 Mr Alban specifically requested that his case be identified by the mission.
- 36 The summary of his complaint reads: “Though the pipeline passes through 2 separate plots of complainant, he declared that he has not received any compensation and demands and urgent solution.” The complaint was lodged on 19 September 2004.
- 37 Mr Cankan specifically requested that the mission identify his case.
- 38 Mott MacDonald, BTC Project Lender Group, *BTC Pipeline Project: Pre-financial Close Environmental and Social Construction Monitoring, September-October 2003*, 17 December 2003, p.58.

- 39 BTC Environmental and Social Impact Assessment, Appendix C8 – Social Management and Management Plan, C8-40.
- 40 Mott MacDonald, BTC Project Lender Group, *BTC Pipeline Project: Pre-financial Close Environmental and Social Construction Monitoring, September-October 2003*, 17 December 2003, www.caspiandevlopmentandexport, p.30
- 41 Thornton, P., “Exposed: BP, its pipeline, and an environmental timebomb”, *The Independent*, 26th June 2004; and Thornton, P., “Hidden costs of pipeline meant to safeguard West’s oil supply”, *The Independent*, 26 June 2004
- 42 See, for example, Mott MacDonald, BTC Project Lender Group, *BTC Pipeline Project: Pre-financial Close Environmental and Social Construction Monitoring, September-October 2003*, 17 December 2003, www.caspiandevlopmentandexport . Mott MacDonald states (p.61): “BTC Co. is generally late in the delivery of self-audits under its internal audit programme and in the delivery of formal audits of the construction contractors...MM considers that there is an overall lack of formal audits of the contractors...”
- 43 A legally-established, pro-Kurdish political party.
- 44 These were the third hearing in each of the cases involving Mr. Kaya. The previous hearings had been on 28 May 2004 and 30 June 2004.
- 45 Recep Cesur, Kahraman Ediz, Ergün Karakuş
- 46 Mr. Kaya reported to the Mission that he did have a lawyer but that in addition to failing to attend the present hearing he had also failed to attend the hearing on 30 June 2004 and he had not heard from him since. He therefore felt compelled to represent himself.
- 47 Vine, C., *The Trials of Ferhat Kaya*: September 2004, Trial Observation Report, Kurdish Human Rights Project et al., London.
- 48 Selim, E., *Striking a Better Balance: Extractive Industries Review*, December 2003, available from: www.eireview.org





BAKU-TBILISI-CEYHAN OIL PIPELINE:
Human Rights, Social and Environmental Impacts Turkey Section
ISBN 1 900175 79 7