



2004 JUL 21 PM 2: 53

FAX COVER SHEET

TO: Mr. Peter Woicke
Executive Vice President

FROM: Ronke Macaulay
Coordinator, Office of the Secretary General
Amnesty International

DATE: 21 July 2004

DESTINATION FAX NO: 202 974 4359

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET: 4

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Peter Woicke
 Executive Vice President
 International Finance Corporation
 2121 Pennsylvania Avenue, NW
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20 July 2004

Dear Mr Woicke,

Re: Safeguards Policy Update and Disclosure Policy Review - International Project Contracts and International Law

As the International Finance Corporation (IFC) continues with its Safeguards Policy Update and Disclosure Policy Review and in the context of improving and strengthening the World Bank's operating standards, Amnesty International wishes to indicate its support for the review process.

We welcome the IFC's commitment to clarifying its responsibilities and those of its loan recipients and to putting into place rules to guarantee that these responsibilities are met. We also welcome your plan to consult with civil society on these matters.

However, there is one issue that we wish to draw to your attention at this stage, arising from our work on international project contracts: project contracts should not hinder the State from meeting its obligations to comply with international human rights law.

In the light of our work on the host government agreement (HGA) of the Baku Tbilisi Ceyhan (BTC) pipeline project, and of our ongoing work on investment agreements and human rights in other parts of the world, we believe that all projects supported by the World Bank should respect human rights as a core guiding principle as defined by the International Covenants for Civil and Political Rights (ICCPR), and Economic, Social and Cultural Rights (ICESCR).

By way of illustration, I draw your attention to the report on "Human rights, trade and investment" issued in July 2003 by the UN High Commissioner for Human Rights. The Report pinpoints a series of dangers to human rights posed by investment treaties which are also relevant in the context of private investment agreements covering particular projects. A key concern referred to in the Report of the High Commissioner is the potential for such agreements to limit states' ability to introduce new domestic regulations to implement their human rights obligations. The

'stabilization' clauses in investment agreements should not limit the ability of the host state to enact new laws or apply existing legislation to investment projects in order to ensure that such projects are consistent with human rights.

Preventing the evolution of domestic law applicable to such projects may lead to a stagnation of many aspects of human rights, including, for example, the rights of indigenous people, protection of the rights of minorities, health and safety standards, and the right to a healthy environment.

The ability of a state to undertake legislative change to realise its international obligations is a sine qua non for the effective protection of human rights. Any clause which sought to limit this would be incompatible with the requirements of international law and would seriously undermine the human rights of individuals affected by investment projects.

Furthermore, it is important that these agreements be disclosed in full as a condition of receiving support from IFC. Investment agreements, when a host state is a party, are necessarily a matter of public interest. The BTC project provides an example of the importance of disclosure. In the BTC pipeline context, after civil society organizations demonstrated the dangers of the project agreements, both the investors and the host states agreed to append a 'human rights undertaking' to the investment agreement to guide its future interpretation. The purpose of the undertaking was to guard against the possibility of negative consequences for human rights including health, safety and environmental protection. This development was only possible because civil society bodies had access to the project agreements. If disclosure had not taken place, these dangers may only have emerged after damage had been done.

In sum, Amnesty International urges that the IFC

- ensures that the project agreements are fully disclosed and publicised in a manner that reflects the public interest and importance of such documents; and,
- develops an assessment tool to ensure that the project agreements:
 1. do not contravene international law or discourage compliance with international law obligations;
 2. do not discourage the development of domestic legal and policy safeguards for human rights;
 3. envisage access to an effective remedy for any victim of a human rights abuse arising from the project; and,
 4. do not compromise the ability of the host state to protect the public interest and affected populations.

Without a pre-lending assessment of the project agreements that includes the above elements, any safeguard policy will remain incomplete.

Yours sincerely,



Irene Khan
Secretary-General

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