

4. Land expropriation, compensation and resettlement on the BTC project (Turkey section)

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

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4.1 Summary

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

This review finds:

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

Specifically:

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

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

4.2 Introduction

The BTC pipeline would affect 3,105 hectares of land in Turkey.¹ Although no-one would be required to physically move from their homes or villages as a result of the project, some 10,117 households,² affecting 30,000 people,³ would lose the use or ownership of land, and suffer “economic displacement”. As a result, a Resettlement Action Plan is required in order to meet IFC and EBRD policies. The resettlement programme is required to ensure that those affected by the project are no worse off than prior to the project and preferably better off.⁴

Under the Host Government Agreement for the BTC project, the Government of Turkey has undertaken to obtain the requisite land rights for the project and to appoint a Designated State Authority (DSA) to undertake the land acquisition process.⁵ BOTAS, the state-owned pipeline company that would build the pipeline under a Lump Sum Turnkey Agreement (LSTA) signed in 19 October 2000, has been appointed the DSA.⁶ All the expropriation procedures will be carried out by BOTAS’ Land Survey and Expropriation Department “on behalf of BTC Co.”⁷

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

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

2 RAP summary overview, page 6, November 2002

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

4 World Bank, Operational Directive 4.30, Involuntary Resettlement, para 3: “The objective of the Bank’s resettlement policy is to ensure that the population displaced by a project receives benefits from it... [and that] displaced persons should be compensated for their loss at full replacement cost and assisted in improving their former living standards, income earning capacity and production levels or at least restoring them.” These objectives are summarised at RAP, Chapter 3: Policy and Legal Framework, November 2002, p 3.15.

5 RAP, Chapter 3: Policy and Legal Framework, November 2002, p 3.13: “The HGA provides that the Turkish Government will designate and authorise the DSA to acquire land rights and transfer the necessary land rights and privileges to the project.”

6 RAP, Chapter 3: Policy and Legislative Framework, November 2002, p.3-1: “A Declaration to undertake the land acquisition for the project was passed by the Board of Directors of BOTAS in February 2002 and finally approved by the Ministry of Energy and National Resources (MENR) in March 2002.”

7 RAP, Annex 7.1: Land Acquisition and Compensation Guide, November 2002, p.4: “All the expropriation procedures will be carried out by BOTAS Land Survey and Expropriation Department on behalf of BTC Co.”

4.3 Host country law – breaches and over-rides

Both the IFC and EBRD both make it mandatory for the project to comply with host government law.⁸ The OECD Export Credit Agencies have also agreed that support by OECD ECAs should be conditional on compliance with host government standards.⁹

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

4.3.1 Legal framework

The Host Government Agreement (HGA) signed between the BTC Consortium and the Government of Turkey has the status of law in Turkey¹⁰, and thus compliance with the HGA is required by the EBRD, IFC and ECA stipulations that projects must comply with local law. The HGA sets out the legal framework under which the land acquisition process for the BTC pipeline is to be carried out. Under the HGA, the resettlement programme is legally obliged to comply with:

A. Turkish law

The HGA requires that land acquisition complies with "Turkish Law".¹¹ The relevant laws cited by the RAP are: The Turkish Constitution, Land Deed and Registration Law, The Expropriation Law, The Resettlement Law, The Forestry Law and Pasture Law, The Law of Cultural Heritage Protection, The Public Settlement Law, The Law on Transit Passage of Petroleum by Pipelines (Transit Law: 4586).¹²

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

9 The OECD's recent "Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits: Revision 6", which has been adopted by the majority of OECD Export Credit Agencies states: "Projects should comply with the standards of the host country". See: OECD, Trade Directorate, Working Party on Export Credits and Credit Guarantees, TD/ECG (2000)11/Rev6, p.5. In the UK, for example, the Export Credits Guarantee Department (ECGD) states: "At a minimum, ECGD expects all projects/good/services to comply with host/destination country legislation, regulations and standards." See: ECGD, "Summary of ECGD Impact Analysis Procedures", April 2003, www.ecgd.gov.uk.

¹⁰ See chapter 2, Legal regime

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

12 RAP, Chapter Three: Policy and Legislative Framework, November 2002, p.3-11.

B. World Bank Group Involuntary Resettlement Policy OD 4.30

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

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

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

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

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

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

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

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

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

¹⁴ RAP Turkey, Annex Implementation of Article 27, May 2003, p.3

private bank account, in advance of actual land appropriation and Project construction, the value of the expropriated assets.”¹⁵ (Emphasis added)

“Expropriation Law - Timing of Expropriation. Land must be acquired and made available for the Project before construction begins. No construction can take place unless the valuation is completed, certified attempts are made to negotiate the transfer of ownership or use rights from private owners, and full payment in cash is made to the account of the owners. The expropriation agency is required to proceed with expropriation within six months of the Declaration of Public Interest (or the expropriation decision). Should it be delayed, DSA/BOTAS must request official permission to extend its right of expropriation.”¹⁶

“Expropriation Law - Timing of compensation. The law states: ‘As for the lands expropriated, the portion of amounts belonging to the individuals cultivating land by themselves and carrying out minor agricultural activities shall at all times be paid in advance.’ The value of land includes income loss for land temporarily acquired for which an easement is then granted, which would be the case for much of the land associated with the pipeline.”¹⁷

The Government of Turkey, however, has invoked clauses under Turkey’s Expropriation law (Article 27),¹⁸ which state that, subject to a Council of Ministers Decree for national defence or in case of emergency, any immovable property may be expropriated by the administration for public interest. Article 46 of the Turkish Constitution allows for confiscation of property by a public agency for the public interest.¹⁹ In its November 2002 RAP, the BTC Consortium was emphatic that this article would only be used “when other avenues have failed”.²⁰

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.²¹ However, the clash between the commercial interests of BOTAS, which is subject to substantial penalties if the pipeline is not built on time, and the necessarily slow process of ensuring mutually agreeable compensation terms strongly suggests that this intention cannot be relied upon. The invocation of emergency powers to speed up resettlement thus substantially undermines the whole purpose of the Resettlement Action Plan, whose aim is to ensure that the project works to the mutual benefit of all parties.

Although the expropriation agencies are still required to place the deemed value of the expropriated land into a bank in advance of construction,²² the extent of ongoing disputes over land valuation strongly suggest that many affected parties are likely to end up disadvantaged. Once the project is underway, their ability to achieve a fair settlement in

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

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

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

18 Turkish Expropriation Law, No.2942, Official Gazette No 18215, Article 27.

19 BTC Project – Resettlement Action Plan Turkey, Final Report, Chapter 3: Policy and Legislative Framework, November 2002, p.3-7.

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

21 RAP, Annex 3.4, Implementation of Article 27, May 2003, Table, p.10.

22 BTC Project – Resettlement Action Plan Turkey, Final Report, Chapter 3: Policy and Legislative Framework, November 2002 p. 3-1. A public interest order was sought in November 2002. The RAP states (p.3-1): “A legal process is in place to obtain a Declaration of Public Interest. In this instance, a declaration to undertake the land acquisition for the Project was passed by the Board of Directors of BOTAS in February 2002 and formally approved by the Ministry of Energy and Natural Resources (MENR) in March 2002.

disputed cases will be substantially undermined. Indeed, signed legal statement from affected villagers in the Northeast state unequivocally that many will have no option but to leave their land (see section 4.4.3.6, below).

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

The invocation of emergency powers places those affected by the project in the position of either *having* to accept the compensation offered to them, even though the compensation levels are widely contested as being well below market price, or of having to go through lengthy court proceedings in the hope of obtaining better rates of compensation. For poorer people, the likely outcome is that they will be worse off than before the project, in violation of OD 4.30's key premise that livelihoods should be improved or, at the very least, maintained. Some are already talking of having to leave their lands. Significantly, on the BTC Co.'s own figures, less than a third of those initially identified as losing land to the project accepted the first offer of compensation made to them.²³ For the rest, higher levels of compensation may only be achieved by going to court.

Whilst such emergency powers are potentially available to Turkey, a slippage in BTC Co.'s commercial timetable cannot reasonably be viewed as a national emergency. Indeed, the Intergovernmental Agreement for the BTC project specifically denies that the project has a public interest²⁴, a key requirement for any invocation of emergency powers under Turkey's Constitution. Moreover, no justification is given in the RAP as to why the Expropriation Law has been given precedence over OD 4.30, when the latter has equal status as law under the provisions for resettlement agreed under the HGA.

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

4.3.3 Breaches of host country law

A comparison of the provisions of the RAP against the legally binding requirements of Turkey's Expropriation Law²⁵ reveals the **RAP's provisions for negotiating land values would appear to be in direct and incontrovertible conflict with Turkish Law on two specific counts:**

- **negotiation and bargaining, and**

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

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

²⁵ Law No. 2942, ratified 4 November 1983, published in Official Gazette 8 November 1983, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law.

- **valuation procedures.**

4.3.3.1 Negotiation and bargaining

Article 8 of Turkish Expropriation Law²⁶ states that “the administration [in this case, BOTAS] shall assign one or more than one reconciliation commission ... for the purpose of executing and completing the purchasing works through *bargaining* over the estimated cost and through *barter*... the *bargaining negotiations* shall be held on a date designated by the commission.” (Italics added)

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

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

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

4.3.3.2 Breaches of valuation procedures

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

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

26 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

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

28 Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law. Article 8 states: “The administration shall notify the owner in writing through an official registered letter, without mentioning the estimated cost determined by the value appraisal commission...”

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

- Moreover, the Commission is only assigned a responsibility to negotiate the proposed land price “in the interest of averting a court case”.³⁰ This suggests that “negotiation” is a last resort, where a court case is threatened, rather than being the required means of agreeing a price. In this regard, the RAP’s “negotiation” procedures constitute a direct encouragement to impose prices where possible.

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

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

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

4.4 Breaches of World Bank guidelines relating to resettlement

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

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

4.4.1 Major relevant provisions

The BTC Consortium has undertaken to meet World Bank Operational Directives and Guidance.³¹ The World Bank has ten environmental and social safeguard policies, intended to ensure that Bank operations "do no harm" to people and the environment.³² The policies,³³ which are mandatory, have been in place since the early to late 1980s.

When first formulated, the safeguards took the form of Operational Directives which combined mandatory policy, Bank procedures and "good practice" advice. In order to distinguish "policies" from "procedures", however, the Bank is in the process of converting the old ODs into Operational Policies (OPs) and Bank Procedures (BP). The Bank has stated that that the conversions will not result in any dilution of the safeguards.³⁴ Most of the ODs have now been converted.

This section examines the BTC project against **Operational Directive OD 4.30, Involuntary Resettlement, June 1990**.³⁵ Although this policy has now been replaced by OP 4.12 (**Operational Policy 4.12, Involuntary Resettlement, 6 March 2001**)³⁶, along with corresponding BP 4.12 (**Bank Procedures BP 4.12, Involuntary Resettlement, 6 March 2001**)³⁷, it is nonetheless the version of the resettlement guidelines that the BTC cites as its standard. It is noted that the older policy is weaker than the new one in a number of important respects – for example, it merely encourages community participation in planning and implementing resettlement³⁸, whereas OP 4.12 requires that the views of affected people are taken into account.³⁹ Indeed, OP 4.12 applies to all World Bank projects involving involuntary resettlement, and arguably compliance with OP 4.12 and BP 4.12 should also be

31 EIA, Appendix C – Environmental Management and Monitoring Plan, October 2002, C1-12: "... the guidelines and standards set by the following organisations will also apply to the BTC project – World Bank Operational Directives and Guidance."

32 www.worldbank.org/whatwedo/policies p.2

33 wbln0018.worldbank.org/essd/essd.nsf/All/

34 wbln0018.worldbank.org/essd/essd.nsf/All/ p.2: "Management has instructed that there should be no dilution of the existing standards."

35 Hereafter OD 4.30 Involuntary Resettlement

36 Hereafter Draft OP 4.12 Involuntary Resettlement

37 Hereafter Draft BP 4.12 Involuntary Resettlement

38 OD 4.30, para 3 c

39 OP 4.12, para 19.

required, under Bank guidelines. No justification has been given for using the older, weaker standard. The new standards were published in March 2001, well before the first draft of the BTC Resettlement Action Plan (November 2002).

The other key relevant Bank standard is **Operational Directive OD 4.20 Indigenous Peoples, September 1991**.⁴⁰ This applies to all World Bank projects involving "social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process."⁴¹ This directive covers ethnic minorities, such as the Kurds of SE Turkey.⁴² IFC staff have exempted the BTC project from applying the directive, for reasons which have been contested by Non-governmental Organisations (see chapter 8, Ethnic minorities and vulnerable groups). A complaint is being prepared for submission to the IFC's Compliance Advisor Ombudsman (CAO).

4.4.2 Compensation must precede displacement

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

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

As detailed above (see section 4.3.2), emergency powers have been invoked to override the Turkish law that compensation be paid prior to the commencement of construction. It is noteworthy that construction began on the pipeline prior to both the RAP being finalised and a Council of Ministers Decree being obtained to allow for the use of emergency powers.⁴³

⁴⁰ Hereafter OD 4.20 Indigenous Peoples.

⁴¹ OD 4.20 Indigenous Peoples, para 3.

⁴² The Bank's definition of "indigenous peoples" embraces "indigenous ethnic groups". The Bank states (OD 4.20 Indigenous Peoples, para 5): "Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics: a) a close attachment to ancestral territories and to the natural resources in these areas; b) self-identification and identification by others as members of a distinct cultural group; c) an indigenous language, often different from the national language; d) presence of customary social and political institutions; e) primarily subsistence-oriented production." The ethnic Kurds of SE Turkey comply fully with this definition.

⁴³ The Decree was obtained in 2003. Construction officially started on 19 June 2002; that is, a full 3 months before the RAP was approved [US Dept of Energy, Energy Information Administration, Azerbaijan: Oil and Natural Gas Export Options, June 2002, <http://www.eia.doe.gov/emeu/cabs/azerexpo.html>. The Turkish Energy Minister also announced on 3 June 2002 that construction would begin on 19th June]. Although there have been a series of ceremonies to mark the construction, it is significant that construction was first officially inaugurated prior to the Decree. See also section 6.5.1 of chapter 6, Environmental assessment

4.4.3 Restoring livelihoods

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OD 4.30, para 2b (iii) Restore livelihoods	<i>“Displaced persons should be . . . assisted in their efforts to improve their former living standards, income earning capacity and production levels, or at least restore them.”</i>	<ol style="list-style-type: none"> 1. Concern over levels of compensation inaccurately reflected in RAP 2. Compensation levels do not adequately reflect local prices 3. No compensation for loss of ongoing productivity 4. Loss of income earning capacity not compensated 5. Failure to compensate for “orphan land” 6. Compensation levels in many cases are not satisfactory to restore livelihoods. 7. Failure to ensure that communal land is properly compensated and to make the existence of the RAP Fund widely known 	Non compliance

4.4.3.1 Concern over levels of compensation inaccurately reflected in RAP

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

“less than 6% of the represented parcels and less than 4% of the owners objected to the acquisition of the land. This indicated that there were no major problems in terms of the principle acceptance of the project and the offered indemnification prices by the vast majority of land owners.”⁴⁴

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

In the majority of villages it surveyed, the March 2003 FFM heard complaints over the fairness of the compensation received and the failure to reflect either sale values or full replacement costs, in contravention of OD 4.30.⁴⁵ Of the eight villages whose members were interviewed by the FFM, five said the compensation price was unfair. Only one said it was fair, and even this was on condition that the land be restored to full productivity after construction, an unlikely outcome. The FFM found particular anger over compensation arrangements in the north-east section of the pipeline. In more than one case, it was stated to the FFM that the low level of compensation was a deliberate attempt to force villagers to migrate to the cities.⁴⁶

⁴⁴ RAP, May 2003, Annex 3.4, p.3

⁴⁵ OD 4.30, clauses 3(b)(i) and 14

⁴⁶ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.72-73 (report pub. June 2003)

4.4.3.2 Compensation levels do not reflect local prices

The March 2003 FFM found that the compensation offered failed to reflect the true price of land.⁴⁷ BTC Co. appears to have taken the officially registered price as the market value of the land. However, local practice is that land is registered at below the real value because of excessive taxation levels. In no case did the FFM find an interviewee who had registered land at more than 50% of its value, and 10-20% was more common. The majority of villagers to whom the FFM spoke made it clear that the price being paid for both the 28-metre corridor and the 8-metre corridor was significantly below what they would obtain if they sold the land to neighbours. In the north-east, the figure given was 5 million lira per square metre in a normal land sale as compared to 1.0-1.5 million lira being paid for the 8-metre corridor.

4.4.3.3 No compensation for loss of ongoing productivity

The RAP admits that however meticulous its restoration of the 28-metre construction corridor, productivity losses will occur, affecting the land well beyond the completion of construction activities – for which it estimates at “a minimum 10% lifetime productivity loss”.⁴⁸ Compensation had not been offered for this ongoing loss of productivity in any of the villages it surveyed, only for losses during the period of construction.

4.4.3.4 Lost income not compensated

At times, the RAP makes reference to compensating lost income – for example, “the loss of income to other users of public lands will also be recognised and compensated”⁴⁹; “[agricultural landowners] will be compensated both for land that is permanently and temporarily acquired on the basis of discounted net income.”⁵⁰ However, the compensation procedures, as explained in the RAP and as confirmed by the March 2003 FFM, focuses almost entirely on compensating assets rather than income.

BTC Co. has adopted a legalistic approach that fails to take account of the realities of customary land ownership and use. In particular, in the compensation process, property rights take precedence over customary rights. Not only does this approach encourage unfair valuation of assets, it impacts disproportionately on those who use – but do not own – land. The latter are generally the poorest and most disadvantaged groups within communities. For example, the March 2003 Mission was told of one case where a widow who used the land registered in the name of her dead husband was being denied compensation, which was instead being paid to inheritors who do not use the land. In another case, eight inheritors of a portion of land were compensated equally, even though only one of those eight actually used the land – and so stood to suffer far more than the others. In these cases, livelihoods are damaged or lost without compensation.⁵¹

⁴⁷ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.73-74 (report pub. June 2003)

⁴⁸ RAP Turkey Final Report, section 5.3.4, page 5-25, November 2002.

⁴⁹ RAP Turkey Final Report, section 1.8, page 1-8, November 2002

⁵⁰ RAP Turkey Final Report, chapter 6, pages 6-4 and 6-11, November 2002

⁵¹ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.82-83 (report pub. June 2003)

4.4.3.5 Failure to compensate properly for orphan land

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

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

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

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

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

4.4.3.6 Compensation levels are inadequate to restore livelihoods

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

“If the true value of my land is not paid to me I shall be forced to leave my village and move elsewhere. Such a life would be very difficult as I have no profession and am an old woman.”

“In the event of the true value of my land not being paid I will be forced to leave my village and will incur irreversible losses. As can be seen in the title deeds my land has been split into three parts. I only have a small piece left. It is not possible for me to survive on this.”

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

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

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

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

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

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

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

⁵² RAP Turkey Final Report, November 2002, Table 6.3, pp.6-10

⁵³ RAP Turkey Final Report, November 2002, Table 6.3, pp.6-10

⁵⁴ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, p.78 (report pub. June 2003)

4.4.4 Consultation with affected communities

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OD 4.30, para 8 Requirement to consult ⁵⁵	<i>“To obtain cooperation, participation and feedback, the affected . . . resettlers need to be systematically informed and consulted during preparation of the resettlement ”</i>	<ol style="list-style-type: none"> 1. Less than 2% of those affected have been consulted face-to-face 2. Fishing communities not consulted on resettlement until after RAP approved by Turkish government. 3. Information provided on resettlement too technical and in a form that many were unable to understand. 	Partial compliance
		<ol style="list-style-type: none"> 4. No evidence that people likely to be economically displaced by the project have had any opportunity to participate in planning or resettlement programmes e.g. helping to decide on compensation rates. 5. Compensation mechanisms only explained when compensation paid - evidence that affected people have been excluded from planning, implementing resettlement. 6. Failure to make special efforts to inform women 	Non compliance

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

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

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

⁵⁵ OP 4.12 Involuntary Resettlement, which replaced OD 4.30 in December 2001, uses stronger language, requiring “meaningful” consultation.

⁵⁶ RAP Turkey, Annex 7.1 Guide to Land Acquisition and Compensation (GLAC), p.9.

⁵⁷ BTC EIA Turkey, Commitments Annex, no page number, Id No. APA8S16.

⁵⁸ BTC project Resettlement Action Plan Turkey, Final Report, November 2002, pp.7-7/7-8.

⁵⁹ BTC Project EIA, Turkey, Final EIA, October 2002, Appendix A1-Public Consultation and Disclosure Plan, p. A1-20

consultation. It is therefore only the 102 settlements visited in person that the project sponsors can claim to have consulted in any credible way. The EIA claims that these settlements represent 84% of the corridor population,⁶⁰ while it has not been possible to verify that claim, it is clear from a scrutinising the consultation data that only a tiny fraction of that group has actually been consulted. Figures in the EIA suggest that only **2.9%** of households in each consulted village were actually consulted. Moreover, household consultations generally took place with a single individual – the male head of the household. **When this is taken into account, as few as 2% of a total affected population of between 30-35,000 people were consulted in person. By any reasonable standards, this does not amount to adequate consultation.**

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

At the time that the RAP was approved by the Government of Turkey, a census of those affected by the Ceyhan Terminal had not been undertaken.⁶¹ Although construction on the Terminal was due to start “at the end of June/early July 2003”, the RAP states that the affected fishing community was not consulted as to compensation arrangements until 13 March 2003, a timeframe that does not permit for “meaningful consultation”.⁶²

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

The March 2003 FFM found only one Muhtar who had a good understanding of the compensation and expropriation process, which he explained almost exactly as it is described in the RAP – all other interviewees reported the compensation procedures very differently from the manner in which they are reported in the RAP. **Elsewhere, the March 2003 FFM found understanding of the land acquisition and compensation process among landowners and users was disturbingly slight.**⁶³

While the RAP reports that 30,000 brochures (the Guide to Land Acquisition and Compensation) had been sent out to landowners and users along the pipeline route, the FFM found many examples of villagers who had not received the brochures: others who had, reported the text to be too technical to understand. Since the FFM mainly visited Muhtars, it suspects the receipt and understanding of the GLAC may be even worse for the general population. A resident of another village told the FFM that the only consultation meeting was far too long and technical for him to understand or take in the information. “Some people spoke for hours, and it wasn’t very useful. It would have been better to have more, shorter meetings”.⁶⁴

60 BTC Project EIA, Final EIA, October 2002, Appendix A5—Baseline Data Collection for Social Aspects, p. A5-5

61 A footnote in the RAP notes: “The census of Project Affected Populations (PAPs) from the operational activities related to the Ceyhan Terminal and the use restrictions to be imposed on fisheries are not included in the Census. This is because the studies to identify fisheries impacts, if any relevant to livelihoods, are ongoing . . . Also, the adequacy of the ESIA studies to meet the RAP requirements will be examined, and a census of PAPs together with socio-economic studies will be prepared.

62 RAP, Annex 6.4, p.4.

63 International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.69-70 (report pub. June 2003)

64 International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.69-70 (report pub. June 2003)

4.4.4.4 Economically displaced people not given opportunity to participate in planning of resettlement programmes e.g. helping to decide on compensation rates.

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

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

In the case of the Fishing Communities' RAP, this is made explicit: stages 1-3 of the planning involved internal company discussion, expert group meetings and a review by an economist and officials from the Ministry of Agriculture. Fishermen's representatives were only consulted in stage 4 and affected fishermen themselves were not consulted until stage 5.⁶⁷

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

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

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

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

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

⁶⁶ Ibid.

⁶⁷ RAP, Annex 6.4, May 2003, pp.2-3.

⁶⁸ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, p.71 (report pub. June 2003)

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

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

4.4.4.6 Failure to make special efforts to inform women

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

4.4.5 Informing affected communities of their rights

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

⁶⁹ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.69-70 (report pub. June 2003)

⁷⁰ RAP Turkey Final Report, section 3.5, page 3-19, November 2002

⁷¹ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.69-70 (report pub. June 2003)

⁷² International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.69-70 (report pub. June 2003)

4.4.5.1 Evidence suggests rather that project affected people have been systematically under-informed or misinformed about their rights.

The RAP commits BOTAS to ensuring that “people are informed of their rights under the amended [2001] Expropriation Law and informed that their rights will not be jeopardised.”⁷³ This will be achieved “primarily through preparation and distribution of summaries of the relevant Laws to both resident and absentee owners”. The March 2003 FFM found no-one who was appraised of the amendments to the law, or who understood their own rights.⁷⁴

Although BTC claims to have established two complaint and grievance procedures,⁷⁵ none of the villages surveyed by the March 2003 FFM knew anything about them.⁷⁶ **The FFM also received evidence of major problems faced by villagers seeking to challenge compensation payments in the court and of breaches of both OD 4.30 and the Turkish Expropriation Law in the handling of disputes.**

No arbitration mechanisms for challenging compensation payments exist outwith the court system. The IFC *Handbook for Preparing a Resettlement Action Plan*, which the BTC Co. states it took into account when drawing up the RAP, requires “that the project sponsor ensure that procedures are in place to allow affected people to lodge a complaint or claim (including claims that derive from customary law and usage) without cost and with the assurance of a timely and satisfactory resolution of that complaint or claim.”⁷⁷ However, while the RAP acknowledges this, the reality on the ground does not seem to match the plans on paper.

The RAP states that, in the event of dispute, it is up to BOTAS to apply to the court for a judgment,⁷⁸ a procedure that accords with the Turkish Expropriation Law.⁷⁹ The RAP also states: “Costs of due process are borne by DSA/BOTAS, not by affected people”.⁸⁰ Disturbingly however, the FFM heard evidence that suggests a number of misapprehensions have arisen in the minds of those to whom BTC / BOTAS has spoken, often, it would appear, as a direct result of what villagers say BOTAS has told them. These include⁸¹:

- **Villagers did not have the right to go to court:**
*In fact, Article 14 of the Turkish Expropriation Law Article 14 clearly states that a landowner has the right to challenge the expropriation or the compensation payment.*⁸²

⁷³ RAP Turkey Final Report, section 3.5, page 3-19, November 2002

⁷⁴ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.69-70 (report pub. June 2003)

⁷⁵ RAP Turkey Final Report, section 7.6.6, page 7-23, November 2002

⁷⁶ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp. 76-77 (report pub. June 2003)

⁷⁷ IFC Handbook for Preparing a Resettlement Action Plan, 8/7/2001, p. 48

⁷⁸ RAP Turkey Final Report, section 5.2.2.2, page 5-13, November 2002; “DSA/BOTAŞ applies to the court ... and the court summons the landowner”

⁷⁹ Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law, Article 10. “On the condition that expropriation is not performed by means of purchasing [i.e. mutual agreement], the administration [in this case, BOTAŞ] shall apply to the court of first instance ... The court shall summon the owner of the immovable property by notifying the date of hearing.”

⁸⁰ RAP Turkey Final Report, Chapter 3: Policy and Legislative Framework, para 3.2.4, p.3-7, November 2002.

⁸¹ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.76-77 (report pub. June 2003)

⁸² Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law. Article 14: “The owner of the immovable property subject to expropriation shall have the right to file a annulment lawsuit before the administrative jurisdiction and a correction lawsuit against substantial errors before civil courts in accordance with the Article 10 within 30 days as from the date of notification made by the court or the date of announcement in the newspaper made by the court in return for the notification.”

- **Whilst the court option was theoretically available, the process would take many years:**
*This conflicts with Turkish Expropriation Law, which requires the whole court process to be completed within 100 days.*⁸³
- **Any court case would have to be paid for by the villagers so would it not be worth their while to take proceedings.**

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

In fact, Article 29 of the Expropriation Law states:

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

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

The RAP acknowledges many of the local people it surveyed were concerned about having to pay legal costs. “Despite the provision that legal costs will be borne by the expropriating agency, people also feared that the real costs of them going to court would be high.”⁸⁶ However, the RAP does not answer these fears.

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

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

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

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

⁸⁴ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp. 76-77 (report pub. June 2003)

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

⁸⁶ RAP Turkey Final Report, section 7.3.4, page 7-19, November 2002

4.4.6 Consultation on resettlement alternatives

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OD 4.30, para 8 Choice of resettlement alternatives	<i>“They [resettlers] should be also able to choose from an number of acceptable resettlement alternatives.”</i>	1. No evidence that people likely to be economically displaced by the project have been provided with any resettlement alternatives.	Non compliance

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

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

4.4.7 Vulnerable groups and ethnic minorities

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OD 4.30, para 8 and para 16 Special attention to be paid to needs of ethnic minorities and vulnerable groups	<i>“Particular attention must be given to ensure that vulnerable groups such as indigenous people, ethnic minorities, the landless and women are represented adequately in [participatory arrangements for consultation and information sharing].”</i> <i>“Vulnerable groups at particular risk</i>	1. Ethnic minorities not adequately identified 2. Inadequate attention to the problems faced by women 3. RAP fund virtually unknown by majority who would be eligible	Partial compliance

	<p><i>are indigenous people, the landless and semi-landless, and households headed by females . . . The resettlement plan must include . . . strategies to protect the livelihood of these people.”</i></p>		
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4.4.7.1 Ethnic minorities not adequately identified

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

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

“There is no difference in the potential impacts of land acquisition between Kurdish speaking and non-Kurdish speaking Turkish households... What is important however is that both groups lose a similar percentage of their affected plot to both the 28-metre and the 8-metre corridor.”⁸⁷

Thus the RAP concludes that

“Language/ethnic groups are unlikely to be disadvantaged since there is no difference in the potential impacts of expropriation and construction activities between Kurdish-speaking and non-Kurdish speaking Turkish households.”⁸⁸

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

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

⁸⁷ RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5- 7-8, November 2002

⁸⁸ RAP Turkey Final Report, annex 4.5, section 1.2.1, page A4.5-7, November 2002

4.4.7.2 Inadequate attention to problems faced by women

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

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

The RAP complains that, “Unfortunately women do not always come forward for consultation meetings”.⁸⁹ However, in the villages that it visited, the FFM gathered evidence that suggested that BTC / BOTAS had not made any effort to contact women, or to make meetings seem relevant or comprehensible to women. In at least three of the eight villages surveyed by the FFM, women had not been consulted at all. The others either did not know whether women had been consulted or did not comment. In both of the Kurdish villages surveyed, the FFM was told that many of the women do not speak Turkish, only Kurdish, and BTC / BOTAS did not come with Kurdish speakers. BTC Co.’s failure to take account of this by providing Kurdish speakers at meetings amounts to a form of gender disenfranchisement through language.⁹⁰

The EIA claims that special meetings for women were held, where it was necessary to do so.⁹¹ However, only one of the 16 villages surveyed by the two FFMs reported having had a separate public meeting just for women.⁹²

In the RAP, BTC Co. acknowledges that often only the male ‘head’ of household would respond to surveys investigating customary land rights and usage, thus depriving the women of recognition of their ownership rights. In the villages it surveyed, the FFM also found that BTC / BOTAS has not in reality made concrete efforts to compensate women without titles, even when it is known that they have customary ownership rights. According to one interviewee, “There are widows who use the land after their husbands’ deaths. There are lots of problems, because the land is registered in their husbands’ names. BTC / BOTAS told them to go to court to get titles. This costs a lot, so the women are helpless.”⁹³

4.4.7.3 RAP fund virtually unknown by majority who would be eligible

Although a ‘RAP Fund’ has been set up to compensate those without land title and to make special provision for vulnerable groups such as women, no one interviewed by the March 2003 FFM had any knowledge of the Fund.⁹⁴ As a result, those eligible for compensation

⁸⁹ RAP Turkey Final Report, section 6.2.3, page 6-8, November 2002

⁹⁰ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp. 57-58 and 96-98 (report pub. June 2003)

⁹¹ EIA Turkey, Draft for Disclosure, section 6.12.5.4, page 6-48, June 2002, states that: “Particular effort will be made to brief women on safety measures. These meetings will be held in local schools or in other appropriate locations. In settlements identified as traditional or conservative, efforts will be made to ensure that a female CLO will run the meeting. Information will be provided orally with written material only used to back up key messages.” The proposal for separate male and female meetings is repeated several times in Appendix A5 of the EIA, on methodology of social baseline data collection.

⁹² International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, p.96 (report pub. June 2003)

⁹³ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.96-97 (report pub. June 2003)

⁹⁴ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.78-79 (report pub. June 2003)

through the fund – often the poorest in the community – are not in a position to apply for compensation. The RAP Fund, in practice rather than theory, simply does not exist for people in the region. (See section 4.4.3.7, above).

4.4.8 Failure to pay at full replacement cost

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

4.4.8.1 Compensation paid below budgeted levels, and below replacement cost

The RAP gives an average budget payment for permanent expropriation (8-metre corridor) of \$1.49 per square metre of private land, or 2.5 million Turkish Lira.⁹⁵ In no case did the March 2003 Fact-Finding Mission (FFM) find a landowner who had been paid this much. In six of the villages visited by the FFM, the compensation payments reported by villagers were: 1.25m, 1.25m, range 1.1-1.3m, range 1.0-2.36m, 1m and 1.3m lira.⁹⁶ Assuming this to be a reasonably representative sample, **the FFM is deeply concerned that not a single payment was as high as the budgeted average, and most were about half that level.**

Since then, this apparent discrepancy has been repeatedly raised with BP. Unfortunately, BP has refused throughout to answer questions on this issue.⁹⁷

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

The RAP states that “in assessing the value of the asset... full replacement cost is the principle”,⁹⁸ but the March 2003 FFM found that this principle is being routinely flouted. Irrigated land, for example, is not being compensated at higher price than non-irrigated land. Many of those interviewed were aggrieved by this practice, which they found grossly unfair. Indeed, the issue was raised (unprompted) by members of six of the eight villages surveyed. The FFM found BTC / BOTAS’ failure to recognise the difference between irrigated and non-irrigated land in its compensation payments surprising, given that an official distinction is made within Turkish law.⁹⁹

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

⁹⁶ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, pp.74-75 (report pub. June 2003)

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

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

⁹⁹ Law No. 3083 – this is referred to in the RAP, section 3.2.3, page 3-3

4.4.9 Unreliable information on numbers economically displaced and settlements affected

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OD 4.30, para 11 Accurate information on numbers affected, included their names, required.	<i>“Resettlement plans should be placed on recent information about the scale and impact of resettlement on the displaced population . . . ”</i>	<ol style="list-style-type: none"> 1. The numbers affected by the project are unknown. Figures quoted in the RAP vary from 29,112 to 35,000 – a discrepancy of over 5,000. 2. As of November 2002, 17 settlements lacked cadastral surveys, others were out of date 3. No census carried out in fishing communities at time RAP was approved fit for purpose 	Non compliance

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

The EIA and RAP give figures for the total numbers affected that vary by over 5,000 – the size of a small town. The 2002 RAP gives a figure of 29,112,¹⁰⁰ the BTC Co. and the IFC a figure of “over 35,000”,¹⁰¹ and the revised May 2003 RAP a figure of 33,403.¹⁰² The revised RAP acknowledges that “the need for an additional owner and address identification programme” has been identified. In effect, the true numbers and identity of those affected are still not known. Yet the implications of this for the rights of those affected and the RAP’s budget are not addressed.

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

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

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

¹⁰⁰ RAP, Chapter 1, Introduction, Box 1.1, p.1-4. Owners 27,982, tenants/sharecroppers 1,130.

¹⁰¹ ‘Baku-Tbilisi-Ceyhan project FAQs’, on BP’s dedicated BTC website, available at <http://www.caspiandevlopmentandexport.com/ASP/FAQ.asp#6>. The significance which BP attaches to its claims on consultation is indicated by the fact that consultation is the second issue dealt with in a long list. The IFC, for its part, appears so persuaded of the accuracy of BP’s claim that it repeats it even more definitively on the FAQs section of its own website. “Landowner users and all the 500 or so communities within two kilometers of the route have now been contacted several times during the preparation of the ESIA’s and RAPs.” International Finance Corporation, ‘BTC Project: Frequently Asked Questions, Consultation’, available at <http://ifcln1.ifc.org/ifcext/btc.nsf/Content/Consultation>

¹⁰² RAP, Additional Annex 3.4, Implementation of Article 27, May 2003, p.2

¹⁰³ BTC Project – Resettlement Action Plan Turkey, Chapter 7: Public Consultation and Disclosure, November 2002, p.7-12, footnote 6.

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

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

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

(For further details, see section 4.4.4.2, above)

4.4.10 Customary Land Users

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OD 4.30, para 17 Equal treatment for all customary and formal rights	<i>“To objective is to treat customary and formal rights as equally as possible in devising compensation rules and procedures”</i>	<ol style="list-style-type: none"> 1. Customary landowners allege being charged for registering land title. 2. Discrimination against users of customarily owned land in prices paid 3. Discrimination against users of communally owned land in prices paid 	Partial compliance

4.4.10.1 Customary landowners allege being charged for registering land title

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

¹⁰⁴ RAP Turkey, Final Report, Overview of Project Affected Populations, November 2002, p.4-26

¹⁰⁵ RAP Turkey, Annex Implementation of Article 27, May 2003, p.2.

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

¹⁰⁷ RAP Turkey Final Report, Section 4.7, November 2002, p 4-10

Although Turkish law stipulates¹⁰⁸ that it is the responsibility of BOTAS to regularise land titles at its own cost¹⁰⁹ - and the RAP commits to do so¹¹⁰ - most of the villagers interviewed by the March 2003 FFM in the north-east had been told to obtain their titles themselves, at their own cost, in order to be compensated. The only exceptions were villagers who *insisted* that BOTAS arrange their compensation without titles. The practice discriminates in particular against poorer people and women. One villager reported that it was worst for widows, whose land is registered in their husbands' names.¹¹¹

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

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

4.4.10.2 Discrimination against users of customarily owned land in prices paid

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

¹⁰⁸ Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law. Articles 10-19.

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

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

¹¹¹ International Fact Finding Mission, Baku-Tbilisi-Ceyhan pipeline – Turkey section, March 2003, p.66-68 (report pub. June 2003)

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

¹¹³ RAP Turkey Final Report, November 2002: Figure 9.1, page 9-3 gives total budget \$5,398,400. Table 6.2, page 6-10 indicates that the total area expropriated within this category is 362.5 ha = 3,625,000 sq m.

4.4.10.3 Discrimination against users of communal land in prices paid

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

4.4.11 Approval of RAP prior to its completion

Relevant paragraph and key requirement	Specific obligations	Evaluation of compliance	Extent of compliance
OD 4.30, para 30 RAP must be complete before appraisal	<i>“Submission to the Bank of a time-bound resettlement plan and budget that conforms to Bank policy is a condition of appraisal for projects involving resettlement.”</i>	1. RAP approved by IFC staff as “fit for purpose” despite resettlement plan for fishing communities still not being finalised.	Non compliance

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

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

¹¹⁴ World Bank OD 4.30 Involuntary Resettlement, para 30; “Submission to the Bank of a time-bound resettlement plan and budget that conforms to Bank policy is a condition of appraisal for projects involving resettlement.”