

Annex 5.1

Use Of The Rap Fund In Turkey

1. USE OF THE RAP FUND

This section supersedes section 5.5.2 in Chapter 5.

1.1 Introduction

The RAP aims to ensure that all affected parties are compensated and assisted in restoring their livelihoods. In accordance with applicable Turkish legislation, the below compensation payments will be made to registered landowners (title deed holders) and tenants, who can provide written tenancy agreements. Compensation payments are scheduled for the owners of land in terms of:

- Compensation for land purchase and assets (8m corridor and AGIs);
- Compensation for restricted access and temporary loss of productivity land usage and assets in the pipeline construction corridor (22-35m); and
- Compensation for seeded crops, which may not be harvested due to construction activities and loss of grazing in private lands.

In cases where customary ownership exists the BTC Project will assist the formalisation of the ownership rights. The Project has already initiated a process of formalisation of the customary ownership of all affected groups to have the courts recognise the customary ownership rights.

The RAP Fund is being developed by BTC Co. with the support of local and international consultants to be used in cases where the Turkish Legislation does not permit compensation. As there is no legal scheme or procedure set forth for the compensation of informal land users/fishermen according to the Turkish Expropriation Law, these people will be compensated in line with the World Bank OD 4.30 guidelines.

1.2 RAP Fund Implementation Principles

The RAP Fund will be implemented according to following principles:

- Fair and transparent valuation and compensation;
- It will ensure that the requirements of OD 4.30 are met;
- It will act where local law does not provide a basis for compensation;
- Proposed schemes will take into account the views, roles and rights of groups, including NGOs and local communities. Consultation has been undertaken on mitigation options and further liaison will be completed to refine strategies; and
- Schemes will be developed that take into account and balance the socio-economic needs of local communities.

1.3 Categories of people that fall under RAP Fund

The Project has identified the main categories of people who cannot be compensated according to the Turkish laws during the RAP preparation process. These categories will be fully identified/verified at

the end of the study, which is being undertaken by a local consultant firm G&G Consulting, specialising in land/asset valuation and compensation development. Details of this study are presented in this document (see section 1.4.3 item 3 below). The main objective of this study is to develop a fair compensation methodology for each type of user who cannot be compensated according to the Turkish Expropriation Law along the pipeline route. The study, which is being undertaken by G&G, will be completed by mid May 2003. It will be publicly available as an annex to Land Manual once the Manual is completed. However, according to the in-depth discussions held with DSA, G&G and BTC Co. the Project has already made the crop/asset payments to the individual non-eligible users in the first 100kms in each lot, which was delivered to the construction contractors on April 15, 2003. The same compensation methodology was applied to the informal individual users as with formal individual users in line with the suggestions developed by G&G's experts.

BTC Co. signed a contract with a consultant company comprising agricultural economists and compensation experts, who will make the payments for lands which are used by the whole community including pasture, forest and village common lands in the first 100kms¹, prior to the construction activities based on the strategy developed by G&G. However since some of the compensation payments will be in the form of in-kind compensation to the whole village, the implementation of the compensation method, which will be agreed with the whole village, may continue during the construction phase.

There are mainly four broad areas where RAP Fund will be used;

- Compensation to the eligible users without tenancy agreement: compensation of the crop/trees to the current users of the land (can be traditional tenants or one of the shareholders who cannot provide their tenancy agreement) will be made through RAP Fund;
- Compensation to the non-eligible² users of private/state owned lands (see: all types of user categories in section 1.4.3);
- Assistance to private landowners who are facing difficulties due to the complexities in the expropriation law and or due to any problems related to compensation procedures; "small" costs incurred by land shareholders related to registration, legal representation, transportation or others, which are not reimbursable in accordance with Turkish law will be paid through RAP Fund; and
- Compensation of fishermen.

1.4 Studies Undertaken to Develop a Mechanism for Use of the RAP Fund

The Project has undertaken several steps to ensure that the directly affected people who are not addressed by the Turkish Expropriation Law are also recognised and compensated in a fair and transparent way as other legal owners.

Five main studies have been undertaken to develop the compensation mechanism for Project Affected Peoples (PAPs) that are not addressed by the Turkish Expropriation Law and who will be compensated through RAP Fund.

1- Initial User Identification Study;

¹ The communal lands are generally in Lot A and in Lot B. There is no land on the pipeline route used by the whole community within the first 100 km in Lot C.

² Users of state lands (forest, treasury, pasture etc) without an agreement are referred as non-eligible users according to the Turkish Expropriation Law.

- 2- Additional User Identification/Verification Study;
- 3- Development of Compensation Methodology for the Users;
- 4- Development of Compensation Methodology for the Fishermen in Golovasi;
- 5-Evaluation of crop/trees and asset prices; and
- 6-Regular monitoring studies for the landowners/users during land acquisition and compensation process.

1.4.1 Initial User Identification Study

The Project identified other categories of PAPs who are not eligible for compensation under Turkish Expropriation Law during the initial data census. However, this initial figure does not reflect the final status of the land owners/users since the final statistics show that the number of people who are registering their lands is increasing day by day. One reason for this is that the World Bank (WB) programme³ provides subsidies to farmers in order to encourage agricultural production in Turkey. One of the main requirements for eligibility in the WB Programme is the registration of land titles. The second reason for this is the fact that some of the land users who did not complete their title deed registration, registered their lands after the consultation meetings held with the communities during the EIA process. Therefore some of the PAPs who were initially identified as users are now legal owners. The Project has initiated another study to ensure that the data on users is updated and reflects the existing situation prior to crop payments (see below item 2).

In addition to the user identification study based on the GIS data, communities that will suffer some restricted access to forest and pasture lands were also identified during the data collection process.

1.4.2 Additional User Identification and Verification Study

BOTA^a /DSA commenced an additional “User Identification and Verification Study” in February 2003. The aim of this study was to review and verify the previously commenced User Identification study prior to crop payments.

BOTA^a /DSA and BTC Co. identified the methodology for the commencement of additional local investigations in order to identify all possible users, which legally or illegally occupy or benefit from the project affected lands and where the rightful ownership or customary ownership belongs to other real or juristic person(s). These investigations are being supported by an independent NGO RUDF, through monitoring the land acquisition and compensation process in line with OD 4.30 guidelines.

User status in all categories of registered or unregistered private and state lands including forest or forest-designated lands was included within the scope of this study. In addition, identification and verification of land use status, type of cultivated crops, addresses of the users and other supported information are identified.

The village headman (Muhtar), the elders of the village and the local inhabitants are the sources for identification of users along the pipeline route. The land acquisition teams take signature of the users/owners as well as the Muhtar to avoid the ownership conflicts, which might happen during payment process. In addition, the information collected during preparation of land acquisition files; title deed investigation, cadastral survey and customary ownerships records will be widely used and

³ The aim of this WB programme is to increase agricultural production and the income of farmers through the expansion of agricultural credit, and to strengthen the capacity of agricultural credit institutions (TCZB and TTK - the Agricultural Credit Cooperatives).

incorporated. However, any unidentified user shall have the right to claim compensation retrospectively.

1.4.3 Development of Compensation Methodology for the Users

BOTA^a /DSA contracted a consultancy company called G&G Consulting in February 2003 to develop a compensation methodology for all categories of PAPs, which are not addressed by the Turkish Expropriation Law. The team includes agricultural experts, forest engineers, sociologists, economists and legal advisors.

The aim of this study includes the following:

- Determination of eligibility for user payments in line with the WB guidelines and development of a compensation strategy for each category that is not addressed by the Turkish laws;
- Calculation of user payment amounts for all different case scenarios; and
- Compensation method and mechanisms, i.e. cash payment to individuals or communities or other investment programmes.

The Project will perform an in-depth appraisal of the RAP and develop a workable implementation plan and strategy in view of providing equitable compensations to individuals and communities (those who are not covered by the Turkish Expropriation law) in order to compensate the impacts resulting from:

- Permanent or temporary loss of cultivated land;
- Loss of forest land and/or reduced access and use of such forest resources as a consequence of the BTC pipeline construction and operation;
- Loss of pasture and grazing lands, and/or reduced access and use of such resources as a consequence of the BTC pipeline construction and operation; and
- Severance from own resources and other individual or communal cases as listed below as a result of building AGIs.

The Project identified the possible categories of land users and land usage used as a base during this study. However, this research aims a further refinement of the categories (listed below) and the performance of case studies covering all applicable scenarios encountered for the installation of the BTC Pipeline.

The first set of user categories originally identified is as follows:

a. Land Users

- Individual users on private land with written tenancy agreement⁴;
- Individual users on private lands without written agreement (verbal consent);
- Individual users of public land with written agreement;
- Individual users of public land without written agreement;
- Individual users of forest land;
- Community usage of forest, public and village common land; and
- Illegal users of private lands (if any).

⁴ The users who can provide legal tenancy agreement will receive crop/asset compensation according to the Turkish Expropriation Law.

b. Land Usage

- Seeding and cropping;
- Planting of trees and collection of fruits (assets);
- Grazing of livestock; and
- Collecting of wood.

The impacts will be assessed from both short and long-term perspectives. Hence, measurement and estimation are two essential features of the proposed study. Impacts will also distinguish between forest and non-forest villages, and subject to data availability, take into account the underlying income differentials between different strata within rural communities.

In more specific terms, the Project will develop replicable methodologies for calculating compensation for affected users of land including forests (whether such use is legal or otherwise), pastures, owners of AGI plots and other use categories referenced above. These methodologies will comply with the overall requirements of the RAP. To compensate users of forest and pasture, or common village lands, compensation packages will be designed to indemnify the affected individuals or communities, whichever represents the more practical and acceptable manner of applying the desired compensation to the targeted PAP.

In carrying out and finalising this research study, the Consultant's major tools and/or sources for compiling information are;

1. Secondary information; RAP and EIA has provided the necessary background information to the Consultant's study on i) legal framework, ii) land requirements, iii) project affected area by types of land, as well as mitigation measures for the affected community and individuals;
2. In-depth interviews and information, which will be collected from local staff;
3. Face to face interviews with affected individuals;
4. Focus group meetings with the affected communities; and
5. Case studies.

Focus Group meetings will be held with the directly affected people for the purpose of identifying different types of users and the extent of the impact for these specific categories. In addition, these meetings will also assist in identifying different types of community investment programmes in cases where the project-affected land is used by the whole community. Focus groups will be formed of those affected users who share common interests within their production systems.

In each site visited, semi-structured interviews with women assessing their land ownership status, participation in community and family decision making will be conducted separately.

Case studies are envisaged as the last step of the study for the purpose of evaluating any outstanding findings, which have major impacts on the overall community of the pipeline, in the pump station areas and camp station sites. Case studies will also be conducted with the participation of affected communities, which represent different parties involved in the land utilization within the area of the pipeline.

It should be emphasised here that there are two cases which need to be handled differently:

(a) lands used by individuals; and

(b) lands used by the whole community. The amount of compensation will be determined according to the impact on the individuals and the relative share of the affected persons in the village or community.

The experts are developing different compensation methods for these two cases. The initial recommendation from this study is that individual users should be paid cash compensation as the legal owners. However, in cases where the land is used by the whole community they suggest community investment programmes to compensate losses. These programmes will follow a similar implementation methodology to the Community Investment Programme funded by BTC Co. The two programmes will complement one another and will develop joint synergies in ensuring that the Project has a positive impact on PAPs along the entire pipeline route and the BTC Marine Terminal. The main difference between the two funds is that the RAP Fund will be responsible for dealing with compensation and mitigation issues, whilst the CIP goes beyond mitigation and compensation and seeks to provide 'additionality' to the Project's activities.

1.4.4 Studies Undertaken to Develop Compensation Methodology for the Fishermen

There is no record of compensation by any governmental or private organisations to fishermen in Turkey. The Turkish Resettlement Law and Expropriation Law do not address compensation to fishermen. However, the Project will compensate the income loss of fishermen according to the OD 4.30 principles, as economically displaced persons and it has been necessary for the BTC Project to work out a fair and transparent method for evaluating compensation measures for affected fishermen. A six-stage process has been developed to prepare this methodology:

1. Development of preliminary compensation methodology by BTC project team based on the studies undertaken by local and international experts during the EIA process;
2. Review of preliminary compensation methodology by an internal expert group;
3. Review of compensation methodology proposed by internal expert group by an economist to determine its economic soundness;
4. Review by an external expert group (including fishermen and local representatives) to assess initial compensation methodology;
5. Consultation with impacted fishermen; and
6. Meetings with each affected fishermen and household survey.

The Project prepared a draft compensation methodology and tested it with the External Expert Group (including fishermen and local representatives) on January 17, 2003 in Adana. The methodology was amended according to the comments made by wide range of stakeholders during this meeting.

The main outcomes of External Expert Group meeting were discussed in a meeting with the affected fishermen, which was held in Golovasi on March 13, 2003. Representatives from the BTC Project were present including BTC Co., BOTAS, TEKFEN, Yumurtalik district agriculture director, etc. Almost all of the fishermen who are members of Golovasi Cooperative attended the meeting. This meeting consisted of a general presentation by KORA (METU) followed by a lengthy and detailed discussion of the issues and proposed compensation measures with affected fishermen. A participatory approach was followed since it was considered important to discuss this as a group so that everybody's views were taken into account between the fishermen and the Project. The meeting concluded with general agreement that further actions are required and that the Project would develop a four-month action plan for finalising the compensation strategy as outlined below.

The following outlines the key aspects to the action plan:

1. BTC Co. to discuss the implementation of operation and security zones by the Coast Guard to understand the issues concerning their 'strained' relationship with the fishermen;
2. Golovasi Fishing cooperative to submit (in writing) their suggestions and recommendations on the impact to their livelihoods and their preferences for compensation – based on the presentation given to them on March 13, 2003;
3. BTC Co. to prepare a household survey questionnaire for fishermen with external consultants – by mid April.
4. BTC Co. to organise a household survey with external consultants – by end of April/early May;
5. The Project to provide assurance that it will begin monitoring of fishing activities to highlight any potential construction impacts on livelihoods;
6. BTC Co. to finalise compensation strategy with fishermen by July 2003.

The most critical stage is to conduct further household surveys of affected fishermen in Golovasi. This is to ensure that the Project has accurate information of household income, in order to determine any loss of livelihoods during construction and operation of the BTC Terminal in line with WB OD 4.30 guidelines.

Details of the draft compensation methodology are provided in the draft Guide to Compensation for Fishermen (GCF), which was amended after the consultation meeting with the fishermen.

1.4.5 Evaluation of crop/trees and asset prices

As stated in the RAP, BOTA^a /DSA approached to the District Agriculture Offices (which are belong to the Ministry of Agriculture) to determine the crop/trees and asset values in the settlements along the pipeline route.

The Project with the support of a group of experts including agricultural economists, forest engineers, compensation experts etc reviewed the prices of each crop/tree received from different districts within the first 100kms in each lot. The objective of this study was to avoid the issues that might occur due to the lack of local capacity in the district agriculture offices and to ensure fairness on prices in different regions⁵.

The compensation approaches for crop/tree values cultivated in private/state/forest/pasture lands, and income losses are based on the O.D. 4.30 guidelines. The value of annual crops at the beginning of the development periods will be based on *cost approach*, which covers the production costs such as tillage, fertilizers, seeds, labor, interest, land rent, and overhead. If crops are in harvesting season, the crop value will be based on the *market value of crops* including by-products except harvest and transportation costs. Value of orchard trees, vine trees, and timber will be calculated by using *income methods*. In addition to these calculations, value of trees in different ages and development periods are also checked by the *market value of these assets*.

⁵ During the consultation and disclosure process one of the major concern raised by the communities along the pipeline route was about different prices for the same product in neighboring settlements.

1.4.6 Regular monitoring for the landowners/users during land acquisition process

BTC Co. engaged a third party, Rural and Urban Development Foundation (RUDF), to undertake regular day-to-day monitoring on land acquisition activities. Each activity has been assessed very carefully and all potential negative impacts on the landowners/users such as the complexities in the law, lack of capacities in the state offices (i.e. title deed offices, registration offices) and lack of updated data about the ownership status etc. have been identified during RAP preparation and RAP implementation process. The Project will continue to develop additional measures and identify areas for assistance together with BOTA^a /DSA (Designated State Authority) who's responsible for the land acquisition and compensation activities in Turkey with the support of RUDF.

1.5 Way forward

The Project has already made the crop/asset payments to the individual eligible and non-eligible users in the first 100kms in each lot which was delivered to the construction contractors in April 15, 2003. Compensation for the lands, which are used by the whole community in the first 100kms⁶, will be made by end of April, at least one month prior to the construction activities.

Crop/asset identification and valuation process will continue for the remaining portion of the pipeline (approx 750km) according to the construction schedule.

The Project will make the compensation payments to these PAPs prior to land entry as with other legal owners.

With regard to affected fishermen in Golovasi, the Project will not restrict the fishing grounds during the construction phase and there is no legal framework to compensate fishermen in Turkey. The Project is currently developing a robust compensation methodology for fishermen. This will be finalised once all the necessary studies and meetings outlined above have been completed (See 1.4.4).

⁶ The communal lands are generally in Lot A and in Lot B. There is no land on the pipeline route used by the whole community within the first 100 km in Lot C.