

## **3 POLICY AND LEGISLATIVE FRAMEWORK**

### **3.1 GENERAL**

The following section outlines the principal policy and legislative framework that pertains to land acquisition and resettlement issues in Turkey. It also summarises the relevant World Bank/IFC policies and shows that Turkish Law and the international guidelines have very similar objectives. The analysis presented in this section demonstrates that the local legislative framework provides adequate compensation to affected private and public parties in a fair and transparent manner. It also shows that the major difference between Turkish legislation and World Bank/IFC policies concerns compensation for private parties who use public lands or who benefit from common resources. Turkish Law compensates the public at large for the expropriation of public lands while World Bank/IFC policies provide a process for compensating the specific private parties who actually use the public lands. The RAP contains elements to address this difference through, in particular, the establishment of a RAP Fund to be administered by BTC Co.

Finally, the local legislative framework is less specific on consultation and disclosure requirements for the RAP. The activities relevant to RAP consultations and disclosure were designed following Turkish national legislation and relevant World Bank Group/IFC policies and guidelines, which have surpassed those that have hitherto been applied in Turkey in the context of other land acquisition and resettlement projects.

### **3.2 NATIONAL LEGISLATIVE FRAMEWORK**

#### **3.2.1 Turkish Constitution**

The Turkish Constitution as amended in October 2001 includes major elements to protect the public interest and private owners during the expropriation process. Private users cannot benefit from expropriating public lands and assets without paying compensation to the public at large. Even when land is acquired for public interest, expropriation agencies cannot benefit from the expropriation of private lands and assets without paying into a private bank account, in advance of actual land appropriation and Project construction, the value of the expropriated assets. On the other hand, the Project gains use of the expropriated land and assets and Project construction can begin once this legal path has been followed and completed.

Article 46 of the Turkish Constitution allows for confiscation of property with compensation by a public agency for the public benefit. In the case of the Project, a special legal entity, the Designated State Agency (DSA), BOTA<sup>a</sup>, will acquire land either temporarily or permanently for the Project. 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 BOTA<sup>a</sup> in February 2002 and formally approved by the Ministry of Energy and Natural Resources (MENR) in March 2002.

### **3.2.2 The Modern Legislative Framework in Turkey and Customary Land Rights**

Until recently, much of agricultural land was held without a formal title. The rights of lineage and families to the land they cultivated were recognised. If these rights were disputed, either the customary mediation mechanisms or modern courts determined the rights of the actual users of the land. Modern laws also recognise, through the usufruct (“zilyet”) system, the right of ownership if users can demonstrate that they have used the land for 20 years<sup>1</sup> without any dispute or any interference.

In many cases, the customary practice of land use allows the transfer of State or Treasury land to people, except in those situations in which the State was about to protect the land for the public under State ownership. Regulations and practices with respect to the protection of forest areas have recently become stricter; until then forests were illegally cleared for cultivation or for other uses. In some cases, the use of forest lands was not recognised as “zilyet” and in other cases people who had official ownership deeds to such land lost their rights because the Forest Department reclassified the privately owned lands as “forest land.” The courts currently have a large number of on-going cases concerning disputed ownership of forestlands.

While user (usufruct) rights established under customary law are recognised as legal rights under the modern law of Turkey, there are other aspects of customary land use that may be contradicted by civil law. For example, in practice the management and inheritance of land used for cultivation in much of the affected areas of Turkey is occasionally passed from the father to the eldest son unless otherwise decided upon within the extended family. Customary law in the Project areas may deny women the right to own or manage cultivated lands. These customs are not recognised by civil law, which states that all siblings and extended family members, regardless of gender and age, have similar inheritance rights. Therefore, even in areas where cadastral surveys have been completed and “zilyet” rights have been converted into formal legal rights, families continue the management of cultivated land and the sharing of revenues under the customary system.

Even when the civil code is in force with regard to land, often when the patriarch with a formal land deed dies, the eldest son takes over the management without dividing the land and registering the shares of his mother and his siblings on the title deed. However, the adversely affected people have the right to successfully challenge the traditional practices in the civil courts, seeking justice under the modern laws. When expropriation of these lands occurs under the modern legislative structure, the expropriation agency assumes a great burden to research the customary rights, to ensure their recognition and to register the entitlements of heirs as per the modern civil code before compensation can be made to all affected persons.

### **3.2.3 Land Deed and Registration Law**

The Land Deed and Registration Law (No. 3402) provides for the establishment of real estate ownership that is not registered in the cadastre but has some “traditional” characteristics of ownership status as follows:

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<sup>1</sup> In resettlement situations, however, many state agencies, such as the State Hydraulic Institute (DSI), in the case of large dam projects, have recognized resettlement entitlement if people could demonstrate three years of continuous residence in a community, in accordance with the Resettlement Law.

- For land with a surface area of up to 40 acres on “wet” soil and 100 acres on “dry” soil, registration can be done on behalf of a possessor who can prove undisputed and continuous land ownership for at least 20 years with documentation or by applying to experts and witnesses;<sup>2</sup>
- For land not covered by the above, ownership has to be proven by one of the following documents:
  - Tax records on or before December 31, 1881;
  - Copies of the wills and related decrees of the Sultan;
  - Administration of a foundation, cavalry, or tax-farmer status/legal title deed;
  - A title deed, even if registration is not available, or evidence of abolished Treasury property documents or temporary possession documents;
  - Uncertified title deed inspection documents; or
  - Real estate documents and records of accountancy offices.

The entitlement regarding customary ownership is provided in Chapter 6.

### **3.2.4 The Expropriation Law<sup>3</sup>**

The Expropriation Law (No. 2942) as amended in 2001 regulates:

- The proceedings to be carried out for the expropriation of immovable objects under the ownership of real persons and legal entities subject to private law by the State and public legal entities;
- Calculation of the cost of expropriation;
- Registration of the immovable property and the right of easement thereto, in the name of the administration;
- Return of the unused portion of the immovable property;
- Transfer of the immovable properties between the administrations;

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<sup>2</sup>The distinction between “wet” and “dry” (irrigated versus non-irrigated land is regulated by Law No. 3083.

<sup>3</sup> Annex 3.1

- Matters regarding reciprocal rights and liabilities and the settlement procedures and methods of the disputes arising therefrom, in cases so required in the public interest.

The main elements of the legislation concern:

- **Finalisation of the expropriation process.** One of the most important changes in the expropriation law concerns the time limits imposed upon various key actors' decisions or actions. For instance, the courts are expected to reach a final decision within a month. Various other agencies are expected to provide documentation to the expropriation agency within relatively short periods of time. However, the limited capacity of the local instrumentalities has made it difficult for other state agencies to implement the law. For instance, the local courts have been unable to sufficiently process cases as specified by the law when they receive a large number of cases all at once.
- **Expropriating agency.** Only public agencies are allowed to acquire land temporarily or permanently through a Public Interest decision. In the case of the Project, a special legal entity, the designated state authority (DSA), assumes this responsibility through the framework of the Host Government Agreement. BOTA<sup>a</sup> is appointed as the DSA for land rights acquisition. DSA/BOTA<sup>a</sup> shares its right for expropriation with the relevant local agencies and the public agencies.
- **Expropriation process.** The law states that the DSA will *“develop or have others develop a scaled plan demonstrating the borders, surface area and type of the immovable properties or resources to be expropriated or on which right of easement be established through expropriation, and shall define and document the owners of the immovable property being expropriated, possessors of such properties in case there exist no registered title deed and their addresses with the help of records kept at the title deed offices, tax offices and the registries or by means of an external investigation to be conducted. The related tax office shall present the tax statement and values of the immovable properties and the resources or the value appraised in lieu of statement in cases where there does not exist any tax statement utmost within one month upon the request of the administration.”*

In the event that there is no registration or cadastral records at the title deed and land registration office, DSA/BOTA<sup>a</sup> will apply to the highest local government administration and request *“the selection of four experts, two principal and two substitute members, at the place where expropriation is to be carried out. The civil administrator will ensure within eight days as from such request of the administrator that the experts are selected, oaths are given before the court of justice of the peace and names are notified to the administrator to carry out the expropriation.”*

- **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/BOTA<sup>a</sup> must request official permission to extend its right of expropriation.

- **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 a pipeline. Easements can be obtained for up to 99 years.
- **Expropriation during a period of challenge.** The DSA can seek court permission to allow expropriation if land ownership is challenged, provided payment for the land is held by a trustee (a bank) and continues to earn interest at a commercial rate. This may happen in cases where the owners, including heirs, challenge their ownership shares among themselves.
- **Use of expropriated land.** Once all legal procedures for land acquisition are complete and payment is made, the Project can begin to use the land since there are no further legal appeals allowed. However, the right of the prior owner or land user to go to a higher commercial court for re-valuation and to an administrative court to challenge the expropriation remains.
- **Compensation for public land.** Payments made to the public sector for public land are made to the relevant public sector agencies rather than to those communities and people who may be using the public lands. The RAP Fund will be used to compensate the users of public land as per requirements of OD 4.30 (see Annex 3.3). The valuation procedures for compensation of different categories of public lands, including forestlands, are also defined by special legislation for relevant agencies. The methods for the valuation of private lands and assets are described in Section 5.2, and are summarised below.
- **Legal framework for land valuation.** Land valuation is initially established by the DSA/BOTA<sup>a</sup> following a pattern of identification of areas, establishment of productive uses and prices, and consultation with a broad and specific list of agencies. In the event of dispute between landowners and the DSA/BOTA<sup>a</sup> regarding valuation, a court will appoint another valuation commission from agreed lists of experts. The court costs of disputing valuation are borne entirely by DSA/BOTA<sup>a</sup> and not by the landowner or user. In case of customary ownership, the cost of registration is paid only for the strip that BOTAS/DSA will be registering in its own name; the project cannot legally register the customary owners lands in their name in title deeds. However, by applying to the court for justification of ownership for the customary owners, the project is certifying the rights of the customary owners. DSA/BOTA<sup>a</sup> also establishes a “negotiations commission” that has the authority to offer compensation to owners or users in a court hearing for loss of assets and of income, although this in no way prevents an affected person from disputing a valuation.

In case the parties fail to reach an agreement on the appropriate compensation for the taking at the hearing held before the court, the judge shall set a date of estimation within ten days and a

day of hearing for thirty days thereafter and shall make an on-site estimation<sup>4</sup> for determining the value of the immovable property with the help of experts mentioned under Article 15 (of the Expropriation Law) and before all related parties.<sup>5</sup>

The Expropriation Law establishes different procedures for customary landowners. In their case, DSA/BOTA<sup>a</sup> would still carry out a valuation but would only use it to evaluate the fairness of the court appointed commissions. The DSA is required to apply directly to the local courts to seek the recognition of the ownership rights of the affected customary landowners<sup>6</sup>. While requesting that the customarily owned land be registered on these owners' names as deeded ownership, DSA/BOTA<sup>a</sup> automatically requests the courts to appoint a valuation commission. Thus, all customarily owned lands are valued by court appointed commissions. The owners have the right to appeal the decision of the first commission. When this happens, the court is required to appoint yet another commission to reach a final decision. Similarly, BOTA<sup>a</sup> has the right to compare the court appointed commission's valuation with its own and challenge the court decision<sup>7</sup>.

The new legal framework protects the affected people in particular by ensuring that:

- No land will be used until compensation is paid;
- Compensation is paid to a national bank account, or a trustee in the event of disputed ownership;
- Market-based interest rates are charged for the value of the compensation if for any reason payment of compensation is deferred;
- All ownership is recognised, including customary and traditional ownership;
- Costs of due process are borne by DSA/BOTA<sup>a</sup> , not by affected people.

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<sup>4</sup> The expert group takes into account: (i) the type and quality of the property or resource; (ii) the surface area; (iii) all the qualities and properties that can affect the value of the property and the values of every quality and property; (iv) tax statements, if any; (v) an estimate made by official authorities on the date of expropriation; (vi) net revenue of the land, immovable property or resource according to the locations and conditions valid on the date of expropriation and the determination of its value based on its original condition; (vii) the sales value of similar land sold before the date of expropriation; (viii) official unit prices, construction cost estimates and depreciation of buildings on the date of expropriation; and (ix) other objective measurements that influence the determination of the valuation.

<sup>5</sup>The legislation also provides for the case in which the group of experts cannot reach a consensus on the valuation.

<sup>6</sup> This system favours the customary owners in two ways. First, it provides an opportunity for them to have their customary ownership legally recognized and registered, at least for those portions of their land that will be permanently acquired. This, in turn, would facilitate the recognition of their rights for the larger plot. Secondly, it allows them the maximum possible valuation as the court appointed commissions have been known to have provided higher valuations than expropriation agencies.

<sup>7</sup> DSA/BOTA<sup>a</sup> will not use its legal right to appeal court valuations in order to ensure that the affected people receive the highest possible compensation.

### **3.2.5 Additional Temporary Land Requested by the Contractor**

The Contractor retained by BOTA<sup>a</sup> to actually construct the Turkish segment of the BTC Pipeline may lease or request land acquisition for additional temporary areas only after approval by BOTA<sup>a</sup> and subject to completion of relevant acquisition procedures (such as those relevant to the identification of lands owned under the customary law). Within 60 days from the award of the Construction Contract with BOTA<sup>a</sup>, the Contractor shall provide information outlining any and all temporary land acquisition requirements. These requirements shall be provided in the form of both drawings and schedules.

The acquisition of additional lands is subject to the approval of BOTA<sup>a</sup>. As between BOTA<sup>a</sup> and its Contractor, all relevant costs including loss, damage and reinstatement payments as well as all environmental, archaeological and geo-technical investigations for requested additional land will be to the Contractor's own account.

After completion of the reinstatement work a "Reinstatement Confirmation" must be prepared and signed by the landowner or user, DSA/BOTA<sup>a</sup>, the environmental expert retained by BOTA<sup>a</sup> and the Contractor.

### **3.2.6 Urgent/Immediate Expropriation**

The Expropriation Law (Article 27) states 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 undertaking expropriation for public interest. Such a Council of Ministers Decree has already been obtained by BOTA<sup>a</sup> with respect to the Project. To apply the emergency clause of the law and to urgently acquire land through this mechanism, the value of the immovable property in question must be appraised by the valuation commission within seven days. The expropriation shall be made after the appraised value of the immovables is deposited by the administration in the name of the owner. The amount to be deposited, as stipulated in the second paragraph of Article 3 of the Expropriation Law, shall be the first instalment to be paid.

Article 27 of the Expropriation Law allows the expropriation body to enter the field earlier, as compared to the timing of entry under the standard expropriation procedures, but the article does not limit the claims of the owner on valuation of land and fixed assets. The valuation process is done by the court or court nominated experts within one week<sup>8</sup>. This Article will only be used when other avenues have failed.

### **3.2.7 Acquisition of State Lands**

Land acquisition and registration of State lands are regulated in Article 8 of Transit Law – No. 4586. Accordingly, the unregistered lands under the possession and jurisdiction of the State, forests with no circumscription, pastures which are regulated according to Pasture Law No. 4342 (after changing the status by the MENR which fall inside the BTC Pipeline Corridor) will be registered on behalf of the Treasury upon request of the expropriation body.

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<sup>8</sup> While the Expropriation Law imposes deadlines for court decisions, there may be difficulties in practice. Many local courts have limited capacities in dealing with a large number of cases all at once.

According to the Transit Law, the exclusive and unrestricted rights to the land that are, or will be, registered on behalf of the Treasury and lands of other State Authorities will be transferred to BOTA<sup>a</sup>.

Additionally, for the forestlands, an obligation promissory note for transfer of rights and permissions between the Ministry of Forestry and BOTA<sup>a</sup> shall be prepared and signed.

### **3.2.8 Areas with Overlapping Servitude**

The BTC Pipeline route crosses a large number of roads, rivers, railways, and infrastructure installations like pipelines, channels and areas where other entities may already have established servitude rights. The servitude rights for such areas normally belong to the relevant State Authority and are thus noted on the title deeds for the registered private or registered State lands. Other unregistered lands belong to the Treasury.

According to the Transit Law, the areas under the jurisdiction and possession of the State are registered in the name of the Treasury. Servitude rights are established in the name of the expropriation agency for the registered state or state authority lands. The status of pasturelands are changed by the MENR and registered in the name of the Treasury and, subsequently, the servitude rights of these lands are established once again in the name of the expropriation agency. Servitude rights for forests are established according to the Forest Law. The servitude rights established in the name of the expropriation agency are transferable via a protocol. The Transit Law also stipulates that exclusive and unrestricted rights shall be bestowed upon the immovables that belong to other State Authorities, including with respect to the forests.

When the servitude rights are transferred to BTC Co., other existing servitude rights of State Authorities remain intact but subrogated to the rights of the Project.

### **3.2.9 The Resettlement Law<sup>9</sup>**

Turkey, one of the few countries with a specific Resettlement Law (No. 2510 enacted on June 21, 1934), has a legal resettlement framework that largely conforms to World Bank/IFC policies. However, there has been considerable variation in the implementation of the law, primarily because of the lack of appropriate land within impacted areas. This is particularly true with respect to the construction and operation of large dams that affect substantial numbers of people who have to be resettled as communities. In the case of the Project, however, no physical resettlement is anticipated. The Resettlement Law, in accordance with international practices, also provides for people to request state-assisted resettlement if the expropriation of assets causes a substantial proportion of a family's livelihood to be reduced. This is not expected to occur as a result of the Project, but if it did, the Project would follow OD 4.30. However, even if no physical resettlement takes place, the provisions of the Resettlement Law nevertheless may be applied to the Project by way of analogy in order to upgrade the treatment called for by the Turkish legislation to that of the World Bank/IFC policies.

The Resettlement Law provides:

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<sup>9</sup> Annex 3.2

- State-assisted resettlement in rural and urban areas. Families who work on the land (farming) are resettled in rural areas while families engaged in work other than agriculture are resettled in towns and cities;
- Those who are resettled will be provided services free of charge beginning with the initiation of transportation and continuing until the resettlers become productive in their new homes with: (i) transportation to their place of resettlement; (ii) accommodation, food, fuel and health care; and (iii) clothing as a one-time grant for those in extreme need;
- Resettlement is the provision to a family of a home and a land plot sufficient to meet its needs given household size, the provision to artisans and traders of credits to re-establish their workshops, and making available to farmers sufficient land, livestock, staples, farm equipment, seeds and storage units;
- Residents who do not have any assets to be expropriated can also be resettled by the government if they have been living in the area for more than three years; and
- While expropriation compensation payments are granted to all individuals who hold immovable property, government assistance in resettlement is given to households rather than to individuals with due regard for orphans, widows, and others who may be families of one.

The type of land to be allocated, transferred and assigned under the Law includes:

- Land controlled and used by the State;
- Land and parcels owned by the State but not used in public service;
- Land owned jointly by one or several villages, town or cities and registered in the name of the Treasury, indicating that it is in excess of public need;
- Places transferred free of charge by the Treasury to municipalities, not allocated for any purpose and falling outside the objective of Law no. 775;
- Land coming into existence as a result of the drying up of lakes by themselves or by action of the State and the similar filling up of rivers to create dry land;
- Land reclaimed through improvement by the State from salty, alkaline, stony and similar soils which are not suitable for cultivation;
- Land and parcels expropriated from private and legal persons under the provisions of Law no. 6830, or purchased under this regulation.

Article 17 of the Resettlement Law states: *“Settlement shall be carried out by providing a family with a house or with land on which to build a house according to its size and requirements”. An artisan or businessman will be provided with working capital and with a shop or store that is sufficient for his livelihood, or with a similar structure or with land on which to build such a shop, store or similar structure. A farmer will be provided with sufficient land, farm animals, tools and instruments, seeds, a stable and barn, or with land on which to build the same.*” There is also provision in the Law for *“model projects that are prepared with their costs met from a special settlement fund.”* This shall be provided to villagers who are willing, in order to improve their capacity, to meet their requirements for housing, agricultural management structures and social structures.

The Law also provides for special situations:

*“The surplus population in agriculture, farmers who cannot be provided with land, persons who do not have a trade or art but wish to work in another trade or art, and persons who wish to become partners in industrial or other facilities to be established, shall be settled as artisans under the settlement program after they are trained in cooperation and in accordance with a training program prepared jointly by the Ministries of Industry, National Education, Employment and Rural Affairs, according to the need felt and to the projects prepared.”*

### **3.2.10 The Forestry Law and the Pasture Law**

In accordance with the Forestry Law, the Project must obtain permission from the Ministry of Forestry to perform activities in forests and is required to indemnify damages to public forests resulting from the construction of the pipeline. While the Forestry Law is designed to protect the forests, the pasture law is designed basically to de-classify pastures. This latter law states that all pastures expropriated by State Authorities lose their status as pastures, subject to the approval of a special commission. As such, even when they are temporarily expropriated, they will no longer re-assume their pasture status. In addition, the Transit Law (no. 4586) dictates that expropriated pasturelands will be de-classified and transferred to the MENR to be registered in the name of BOTA<sup>a</sup> for Project purposes. Thus, neither the right of the public nor of the specific users of pastures is recognised under the local legislative framework<sup>10</sup>. Compensation will be paid for pasturelands and forestlands, to the relevant public agencies.

### **3.2.11 The Law of Cultural Heritage Protection**

Any Project activities that are performed in an archaeological site require the special permission of the Ministry of Culture. In addition, these activities fall within the guidelines of the World Bank/IFC policies on cultural heritage. It is not expected that the Project will impact archaeological sites or trigger World Bank/IFC cultural heritage policies<sup>11</sup>. The relevant issues are dealt with in the ESIA.

Article 15 of the Cultural Property Law deals with expropriation of immovable cultural and natural wealth and its protective environment, including buildings reserved for cultural purposes. Expropriation is carried out in accordance with the Expropriation Law unless it falls within the specific provisions of the Cultural Property Law. It is not expected that any permanent or temporary expropriation for the Project will fall within the specific provisions of the Cultural Property Law.

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<sup>10</sup> According to this Law, “Common lands such as pastures, meadows, plateaus, winter quarters that are located along the route of the transit pipeline project shall be removed by the Ministry of Energy and Natural Resources on its own decision without being subject to the provisions of the Pasture Law no. 4342. It shall then be registered in the name of the Treasury and thereafter an individual and permanent right shall be established in the favour of the public institutions assigned for expropriation”.

<sup>11</sup> By September 2002, five separate evaluations were completed on each metre along the corridor to ensure that cultural heritage would not be impacted and that appropriate route changes would be made to avoid potential adverse affects.

### **3.2.12 The Public Settlement Law**

The Public Settlement Law entitles “municipalities to connect plots and lands with or without buildings without requirement of consent of owners or other right holders; with each other, with road access, with places belonging to state offices or municipalities; to divide them into blocks or subdivisions compliant to the development plan; to distribute them to the right holders on independent, shared or flat ownership basis and to register them *ex officio*. In case the said places are out of municipality and adjacent area, the above mentioned authorities are given to the government.”

The distribution of plots and lands arranged by the municipality or the government become “*arrangement participation shares*” which can only be used for common services such as roads, squares, parks, parking lots, playgrounds, green areas, mosques and police stations, and facilities allocated for these services. The Public Settlement Law also provides for compensation for expropriation of common public services mentioned under the law. It is not expected that the Project will implicate the provisions of the Public Settlement Law since the Project site and route selection deliberately avoid settled residential areas<sup>12</sup>.

### **3.2.13 The Law on Transit Passage of Petroleum by Pipelines (Transit Law: 4586)**

This law was published in the Official Gazette No. 24096 and entered into force on June 23, 2000. It contains articles to facilitate the implementation of international agreements signed by Turkey. Article 8 of the Transit Law No. 4586 covers the issues related to Land Acquisition. According to Article 8, the MENR can unilaterally change the status of pastures and, after registering these pasturelands in the name of the Treasury, can acquire exclusive and unrestricted rights to them. The granting of exclusive and unrestricted rights for the pipeline route and facilities in the forestlands is subject to Forest Law No. 6831.

In addition, Article 8 of the Transit Law stipulates that exclusive and unrestricted rights shall be granted on land that belongs to other State Authorities after the expropriating authority makes a notification to the related State Authority. This provision is also addressed in the Expropriation Law, though differently. According to Expropriation Law, the expropriating authority shall obtain the consent of the other State Authority and, if they cannot agree on the amount of compensation, the dispute should be brought to the Council of State for resolution.

Another important point in the Transit Law is that all the rights that are obtained by the expropriating agency are transferable. Furthermore, the Transit Law states that in relation to the subjects within the scope of this law, the restrictive and limiting provisions of any law, including Title Deed Law No. 2644, Environment Law No. 2872, Foreign Capital Encouragement Law No. 6224, Petroleum Law No. 6326, and Forest Law No. 6831, are not applicable with respect to matters in the international agreements.

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<sup>12</sup> It is also this Law that would allow the Project to ensure compliance with use restrictions imposed upon the 8-metre corridor, and upon a few metres immediately adjacent to it, so that no building permits are issued.

### **3.2.14 The Communications Law**

The Communications Law (No. 7201) provides for the process of notification for landowners and land users whose address is unknown as determined by the Notification Officer who, if he considers it necessary, may investigate and identify addresses from public or private institutions and through police sources. There is also a provision for notification by publication through (i) an advertisement<sup>13</sup> placed in a newspaper whose readership is considered large enough to provide for actual or constructive notice and which includes the jurisdictional area of the notifying authority, and (ii) posting a copy of the advertisement in a public location in the notifying authority's jurisdiction.

### **3.2.15 Legal Framework for Consultations and Disclosure**

The key legal instruments that regulate land expropriation and resettlement require different levels of consultation with and participation by affected populations. The Expropriation Law focuses primarily on the provision of information to the affected populations and on a higher degree of consultation with the relevant governmental institutions<sup>14</sup>. The law also requires consultations and negotiations for the valuation of the expropriated assets; this requirement instructs the expropriation agency to work together with all relevant local institutions, including branches of the Ministry of Agriculture, other government departments and real estate firms, as well as with the affected populations. Indeed, the law entitles the agency to expropriate “involuntarily” (through a court decision) only in the case of failure to negotiate. In addition, the established practice of expropriation allows ample room for feedback from affected people and communities to modify the siting arrangements for projects.<sup>15</sup> The Resettlement Law incorporates a level of consultation with affected persons and communities that goes beyond mere information provision. Nonetheless, these requirements primarily focus on the choice of resettlement sites rather than on encompassing broader aspects of the resettlement process. Notwithstanding this, due to the high degree of feedback received from affected populations in almost all resettlement situations, in practice, consultations usually do cover many other aspects of resettlement as well.

The Environment Law (No. 2872) of 1983 does not cover either social or consultation issues. However, as explained below, the Project in Turkey is governed by a Host Government Agreement (HGA), which includes the LSTK. 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. As described in Chapter 7 of the RAP, this was indeed done and covered both social and

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<sup>13</sup> It is compulsory that the advertisement include the names and surnames, occupation, residence/ domicile or work place of the concerned. Also needed is an abstract of the documentation to be posted, a clearly delineated subject and reason for the notification, the name of the notifying authority and, if the publication includes an invitation to a meeting, the place, reason, date and time of the invitation.

<sup>14</sup> BOTA<sup>a</sup> has already met with a large number of governmental institutions, including the Ministry of Agriculture, Forestry, Energy, and DSI, to reach mutual understanding on the handling of forestlands, pastures, electricity infrastructure, roads, and irrigation networks. The minutes of these consultations reflect the agreements for compensation for the affected lands and infrastructure.

<sup>15</sup> In the specific case of BTC Project, the communities and local government had approximately 2 years time to present their feedback to the Project. Nevertheless, the Project will continue consulting the communities during the construction as well. (Chapter 7)

environmental issues. The environmental impact assessment process included a comprehensive assessment of environmental and social impacts, resulting in a detailed Environmental Impact Assessment (EIA). The EIA was made public as required by the HGA.

The local legislation, HGA and relevant World Bank/IFC policies for disclosure on the social aspects of the Project are discussed in Chapter 7 together with actions to be taken to remedy differences.

The RAP will be disclosed and consulted on internationally as part of the EIA disclosure. This will also take place on at a local and national level, in line with applicable World Bank and IFC requirements on these issues. Additionally a Guide to Land Acquisition and Compensation is being disclosed to each affected land owner/user.

### **3.3 HOST GOVERNMENT AGREEMENT (HGA)**

The Host Government Agreement (HGA) incorporates principles through which the Project will acquire the land rights necessary for construction and operation of the Pipeline. 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. In this regard, the HGA states that the State Authorities shall “*exercise such powers of taking, compulsory acquisition, eminent domain or other similar sovereign powers to allow each of the MEP Participants and their [BTC Co. and its] designees to receive and exercise the Rights to Land and, in particular, to fulfil the grant by the State Authorities to BTC Co. (the MEP Participants) the exclusive unrestricted property right (other than ownership) to the Permanent Land.*”. The HGA provides that BTC Co. (the MEP Participants) will pay a sum of \$99,000,000 (ninety nine million dollars) to the DSA for the Land Rights.<sup>16</sup> All references to “*the MEP Participants*” are now referred to as BTC Co. other than where direct quotes are used.

The HGA further provides that the State Authorities shall indemnify the BTC Co., the Turnkey Contractor and other affected Project Participants against losses and claims related to the Land Rights.

Appendix 4 to the HGA, entitled “*Rights to land in the territory associated with the project*”, sets forth further details regarding the land expropriation process. It provides for the rights to land in the Territory and associated rights (including rights of exclusive use, possession and control, rights of ingress and egress, rights of construction upon and/or under, licenses to enter and perform Project Activities on the land of third parties and all other similar rights in the Territory) which are to be notified by the MEP Participants to the State Authorities as the phased

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<sup>16</sup> Section 3.1.2.2. of the Turnkey Contract states that the Turnkey Contractor shall be responsible for securing the timely co-operation, consistent with the Work Schedule of the designated State Authority (in accordance with the Host Government Agreement), with respect to the Rights to Land necessary for the Facilities and to perform the Work and, in particular, to co-ordinate the activities of the designated State Authority, which will exercise sovereign powers to acquire the Permanent Land to be granted to BTC Co for the Facilities. To avoid any doubt, and notwithstanding that the Turnkey Contractor will require only those Rights to Land as are necessary to complete its Work and deliver the Facilities during the term of this Agreement, payment of a total of ninety nine million Dollars (\$99,000,000) shall be the total consideration paid by the BTC Co for all Rights to Land for the entire duration of the Project, including those Rights to Land necessary for the Turnkey Contractor to perform the Turnkey Contract.

implementation of the Project requires to be “*obtained by the State Authorities in accordance with Turkish Law<sup>17</sup> and granted to the MEP Participants.*”

The HGA provides for the State Authorities to acquire and transfer to BTC Co. the Land Rights necessary for each phase of the Project’s construction, including the routing process. Further, the HGA provides that, when necessary, BTC Co. shall have full access to all relevant and non-classified information related to the land.

### **3.4 WORLD BANK/IFC POLICIES AND GUIDELINES**

BTC Co. will apply certain World Bank Group Policies and Guidelines to the Project. These policies and guidelines are explicitly recognised under Section 8.42 of Appendix A to the LSTK Agreement.

The central World Bank Group policy and procedural document on resettlement and compensation is IFC OD 4.30<sup>18</sup>. In preparing the RAP, the Project also took into account the public consultation and disclosure guidelines set out in the IFC’s “*Doing Better Business through Effective Public Consultation and Disclosure – A Good Practice Manual*” (October 1998) and IFC’s Handbook on Preparing a Resettlement Action Plan. The description of OD 4.30 and other policies in this section and throughout the RAP are summaries only and are qualified in their entirety by references to the policy itself and any undertaking relating to OD 4.30 will be reflected in the financing documents.

The policy objective of OD 4.30 is to ensure that the population displaced by a project receives benefits from it. OD 4.30 recognizes that involuntary resettlement is an integral part of project design that should be dealt with from the earliest stages of project preparation, taking into account the following considerations:

- Involuntary resettlement should be avoided or minimised where feasible, exploring all viable alternative project designs;
- Where displacement is unavoidable, resettlement plans should be developed and involuntary resettlement should be conceived and executed as development programs, providing resettlers with sufficient investment resources to share in Project benefits;
- Community participation in planning and implementing resettlement should be encouraged;
- Displaced persons should be integrated socially and economically into host communities, so that adverse impacts on host communities are minimised. This can be achieved by resettling people in areas benefiting from the project and through consultation with the future hosts; and
- Land, housing, infrastructure and other compensation should be provided to the adversely affected population.

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<sup>18</sup> The principles set out in OD 4.30 are being applied because BTC Co. is under discussions relating to a possible financing with IFC and other international institutions.

OD 4.30 instructs the Project to provide displaced persons with, among the other things, compensation for their losses at full replacement cost and assistance in improving their former living standards, income earning capacity, and production levels or at least restoring them.

Moreover, OD 4.30 requires the Project to create and implement a resettlement plan, the preparation of which involves the involuntary resettlers and hosts in planning. In this regard, OD 4.30 requires the Project to systematically inform and consult resettlers about their options and rights during the preparation of the resettlement plan. The Project's compliance with this directive is discussed in detail in Section 7 of this RAP.

“Replacement cost” is the method of valuing assets endorsed by OD 4.30, which sets out the following criteria for valuation:

- Paying special attention to the adequacy of the legal arrangements concerning land title, registration, and site occupation (see Section 3);
- Publicising among people to be displaced the laws and regulations on valuation and compensation (see Section 7);
- Establishing criteria for determining the resettlement eligibility of affected households (see Section 4); and
- The grievance procedures available for dispute over land acquisition (see Section 5).

OD 4.30 also recognizes that some types of loss, such as access to public services, customers and suppliers and fishing, grazing or forest areas, cannot easily be compensated for in monetary terms and, therefore, requires the Project to attempt to make or establish access to equivalent and culturally acceptable resources and earning opportunities.

While OD 4.30 covers all affected people, it calls on the Project to pay particular attention to the needs of the poorest groups to be resettled and specifically states that the absence of legal title to land should not bar compensation to the population adversely affected by the Project, indigenous groups, ethnic minorities and pastoralists who may have usufruct or customary rights to the land or resources taken for the project. Additionally, OD 4.30 provides that the RAP must include land allocation or culturally acceptable alternative income-earning strategies to protect the livelihood of vulnerable groups, such as indigenous people, the landless, semi-landless and households headed by females who, though displace, may not be protected through national land compensation legislation.

The borrower under an IFC funding agreement, in this case BTC Co., is responsible for preparing the RAP, which presents among other things, a statement of objectives and policies and detailed provision for the planning and implementation of resettlement, meeting the goals of OD 4.30. The scope and level of detail of the RAP varies with the magnitude and complexity of the land acquisition and compensation issues. The full costs of the RAP are included in the total costs of the Project. BTC Co. has the responsibility to ensure that the Project implementation plan is fully consistent with the RAP and also to provide for adequate monitoring and evaluation of the activities set out in the RAP. The IFC regularly supervises RAP implementation to determine compliance with OD 4.30.

Figure 2.1 Typology of Affected Lands and the Discrepancy Between Local and International Entitlement Policies

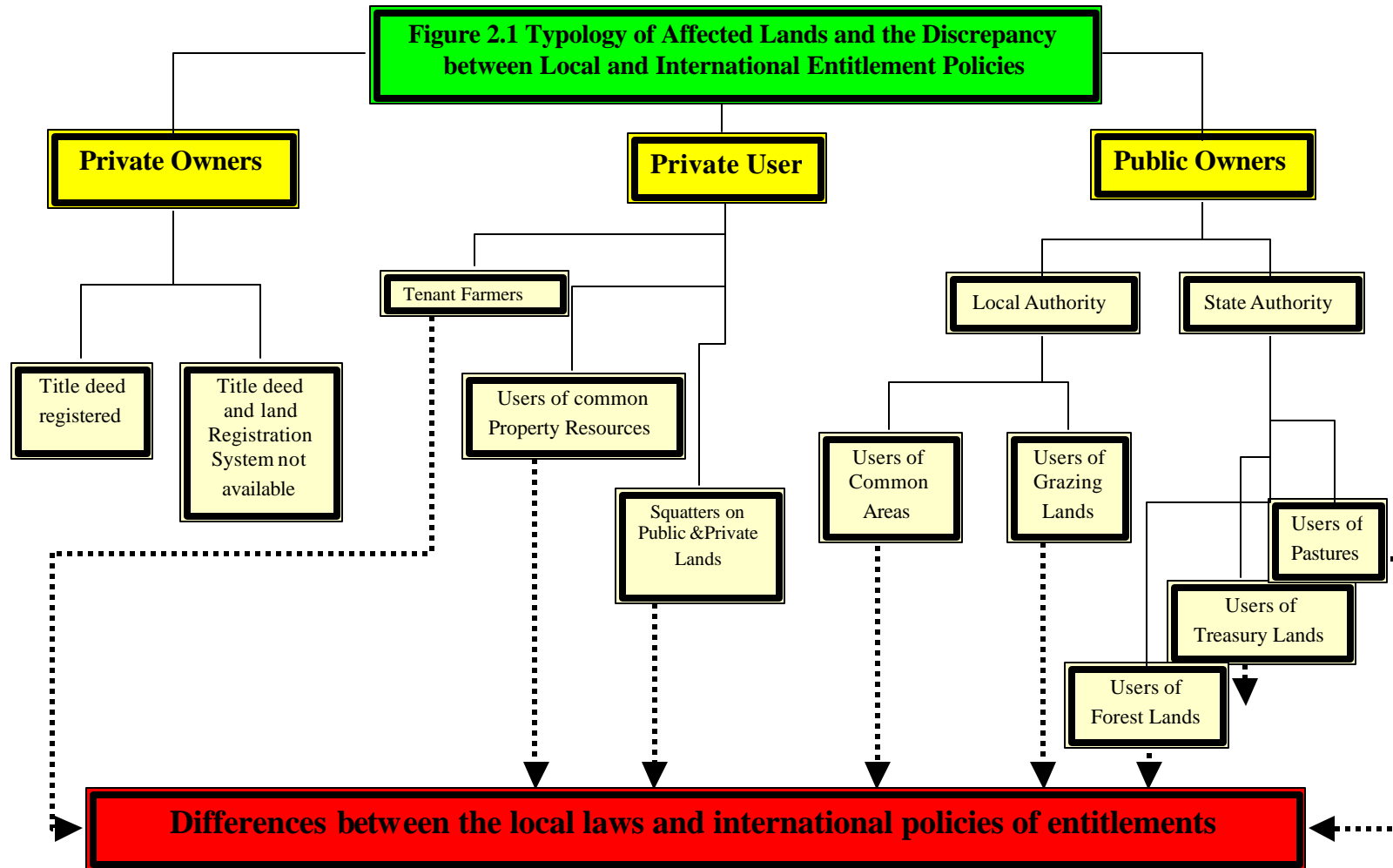


Figure 2.1 summarises the key groups affected by the expropriation process consisting of private owner/users, public owners and communal owners. As mentioned, a large number of court files are outstanding for conflicts between individuals and the forest department with regard to ownership (indicated as C in the figures). Should any such disputed plot fall within expropriated areas, DSA will comply with the court decisions; however, there is no indication that the issue is salient in the Project areas. As for communal properties, such as riverbanks or village sport facility areas, the local legal framework requires that the community be compensated through its (government) administration without specific benefits to individual users.

The main gaps between Turkish Law and resettlement instruments are also outlined in Figure 2.1 and concern three areas:

- First, those benefiting from the use of but not owning public assets, such as those who keep livestock on public pastures or grow trees in public forests, are not directly compensated for permanent or temporary expropriation, or, in the case of trees, on the 22<sup>19</sup>-meter corridor where forestry is not permitted. Instead, compensation goes to the appropriate public agencies for use in their overall activities rather than to assist those who are directly affected. In the case of a dam, which takes large areas of land, this loss of income can be substantial. In the case of a pipeline with a narrow band of land, much of it in remote areas and high elevation, the impact on loss of forest assets and pasturing for people should be minimal. However, the Project will establish a methodology for estimating this loss and offering compensation to affected people. DSA/BOTA<sup>a</sup> is compensating the relevant government departments for these losses therefore it cannot, at the same time, compensate the users. To overcome the difficulty of “double payment” by DSA/BOTA<sup>a</sup>, the entitlements of this group will be recognized through the RAP Fund (Chapter 5).
- Second, the newly amended Expropriation Law does not provide compensation for tenant users of land. The compensation for trees, crops, informal irrigation facilities that tenant farmers might have put on the land is to be paid to the owners and not directly to the tenants. Indeed, the local traditions are strong and are likely to protect the tenants’ rights. The situation is made more complicated in the case of the Project both because there are many different types of tenancy arrangements and because absentee ownership is widespread. Two separate measures are adopted to provide full entitlement to the tenants. First, letters will be written to ask tenants to obtain letters from the land owners concerning the tenancy arrangements so that payments for assets and crops contributed by the tenants could be paid directly to the tenant. Secondly, when tenants fail to provide supportive documents, the RAP Fund will consider their entitlements.
- Third, the current Expropriation Law, in contrast to its predecessor, does not provide for compensation for squatters on public or private land, since compensation for loss of land and income goes to the owner only. OD 4.30 recognizes that land users should be compensated and that the “absence of legal title to land” should not be a bar to compensation. The Project will provide the required support through the RAP Fund since DSA/BOTA<sup>a</sup> is prevented from doing so by the local laws. This approach will provide conformity with the World Bank/IFC standards. Specifically, for all plots, including the larger plots to be expropriated for the pumping stations, the RAP Fund will consider compensation claims by squatters for crops, trees and other assets they may have on the land. Additional compensation will be indirectly available to squatters in communities that may enjoy benefits of the community-based RAP funded programmes that the Sponsor is establishing.

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<sup>19</sup> It is important to note that to minimize irreversible adverse impacts on forests and on the people using them, only 22 meters of corridor will be acquired in forest areas (whether or not there is tree cover on them).

- There are also several legal issues that the BTC Project in Turkey is facing; failure to resolve them would create problems in meeting the requirements of OD 4.30. These issues include:
  - a) The Expropriation Law allows all landowners to discuss their concerns with BOTAS/DSA regarding the valuation. For customary owners<sup>20</sup>, the court expert will decide the value of their affected lands and assets;
  - b) Seventeen of the affected villages have irregularities with respect to titles. Land consolidation works that were completed in these villages nearly two decades ago resulted in letters provided to then owners by the village headmen to certify ownership. Since then land has changed hands many times but the recording could not be done in the absence of a land registration system. The local laws require that the affected villagers resolve their own ownership problem. However, to accord with the spirit of the OD 4.30, the Project is working with the land registration office to expedite the completion of the registry system and, thus, to identify rightful owners of affected plots; and
  - c) Ownership disputes between individuals within a family, among families, and between families and the State is not uncommon. In all cases, the resolution of these disputes is the responsibility of the parties concerned. To ensure that these disputes do not hinder the ability of project affected persons to receive their compensation in a timely manner, BTC Co. is sending individual letters to the concerned owners and providing guidance for mechanisms for dispute resolution.

### **3.5 MEASURES TO COMPLY WITH WORLD BANK/IFC POLICIES**

The Turkish legislation, especially with the amendments made in 2001, accords substantially with World Bank/IFC policies. This is particularly the case since there is no need for physical resettlement. With respect to the expropriation process, the gaps identified above remain. In addition, the local disclosure and consultation requirements are less demanding than those of IFC. Finally, there are no local monitoring and feedback requirements; this too poses a gap to be addressed by BTC Co.

Measures, as indicated below, will be used to close the gaps between local and international policies. First, as already mentioned, a RAP Fund will be created to compensate communities for losses of forest and pasture areas. The resources of the Fund will be allocated based on systematic calculations of relative community losses. Second, the RAP Fund will respond to disputed needs of tenant farmers. This fund may also be utilized for disputed ownership between state and private owners, especially for those customary owners whose rights might otherwise be denied under national legislation. Several dozen squatters who were cultivating the

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<sup>20</sup> The Project is legally recognizing that portion of the customary owners' land that will be affected by the 28-metre corridor or by the Above Ground Installations. DSA/BOTA<sup>a</sup> has the responsibility to help the owners to register ownership rights on lands directly affected by the Project. Given the lack of a land registration system in communities that customary ownership prevails, DSA/BOTA<sup>a</sup> is not allowed to act upon the total holdings of customary owners. Nor can customary owners' claim that a large portion of their affected parcels has been expropriated by the project, making cultivation in the remaining part inefficient. This is because when land registration systems are absent, land holding are not divided into parcels; rather people cultivate their land in large plots. As such, severance issues are not expected to arise with respect to customary owners. Should this happen, the claims will be considered on a case by case basis.

affected plots at the time of asset inventory (completed by July 2002) could also be compensated for their crops through use of this Fund. Entitlements after this cut-off date will not be considered. Third, a series of communication and consultation activities have already been carried out to maximise the possibility that:

- People are informed of their rights under the amended Expropriation Law and informed that their rights will not be jeopardized. This will be achieved primarily through preparation and distribution of summaries of the relevant Laws to both resident and absentee owners;
- There is transparency in the valuation of assets and a determination on behalf of the Project to set fair compensation. This will be achieved through collaboration a national NGO specialized in land acquisition and resettlement issues;
- People are aware of the RAP Fund. This will be achieved through providing information to the village administration of directly affected communities;
- Affected people are encouraged to come forward and receive information on valuation of their individual assets and have an opportunity to bring up their concerns;
- The expropriation agency visits the affected persons and communities, to address people's concerns; the agency facilitates people's transport to land registration offices;
- Tenant farmers, squatters, those with severance problems, customary owners and other special groups receive fair compensation in accordance with OD 4.30, whether or not adequate measures are available under the Turkish law; and
- People understand the detail of the valuation methodology that the compensation paid would cover their entitlements, as appropriate, for loss income, loss productivity as a result of re-instatement of land, severance, encumbrance and other Project impacts that might adversely affect their incomes, wealth and livelihood.

### **3.6 BP'S CORPORATE POLICY**

BP serves as Manager of BTC Co., and BTC Co. has endorsed BP's HSE policy for the purposes of the BTC Project.

BOTA<sup>a</sup>, in turn, has agreed to comply with the relevant portions of BP's HSE policy.

BP HSE policy focuses on five areas: ethical conduct; employees; relationships; health; safety and environment; and control and finance.

#### **3.6.1 Ethical Conduct**

BP's policy on ethical conduct states: *"We will pursue our business with integrity, respecting the different cultures and the dignity and rights of individuals in all countries where we operate. BP supports the belief that human rights are universal. They are enshrined in the United Nations Declaration of Human Rights (UNDHR), which we support"*.

#### **3.6.2 Employees**

BP's policy with respect to employees states: *"We respect the rights and dignity of all employees. Everyone who works for BP contributes to our success and to creating a distinctive company. Working together, drawing from our diverse talents and perspectives, we will stimulate new and creative opportunities for our business. Collectively we will generate a more*

*exciting and rewarding environment for work in which every individual feels responsible for the performance and reputation of our company”.*

### **3.6.3 Relationships**

BP’s policy on business relationships states: *“We believe that long-term relationships founded on trust and mutual advantage are vital to BP’s business success. Our commitment is to create mutual advantage in all our relationships so that others will always prefer to do business with BP”.*

### **3.6.4 HSE Management**

BP manages HSE through the application of a set of Corporate HSE Elements and Expectations embodied in the BP documents *“Getting HSE Right”* or GHSER. All aspects of environmental management are addressed including the requirements for risk assessment; environmental impact assessment; emergency preparedness and response; community relations; and reporting and disclosure of information.

BP expects to apply its corporate policies, and in particular on safety, health and the environment as long as it remains Manager of BTC Co., and subject to the decisions made by BTC Co. with respect to operation of the Project. BP will apply these policies as in effect from time to time and the policies described in this EIA are subject to change.