

AZERBAIJAN LEGISLATIVE & REGULATORY FRAMEWORK

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3 AZERBAIJAN LEGISLATIVE AND REGULATORY FRAMEWORK

3.1 GENERAL

BTC Project obligations concerning land acquisition and involuntary resettlement are defined by the following instruments:

- Azerbaijan Law, including the BTC Host Government Agreements (HGAs) and Inter Government Agreements (IGAs)
- Policies and guidelines of the World Bank Group and International Finance Corporation (IFC)

Azerbaijan's legislative framework is in a state of transition as the Republic shifts from a Soviet controlled command economy to a market oriented system governed by an elected executive. A new *Land Code*, enacted in 1999, establishes the framework and principles for land ownership, land transfer and related compensation. Implementing regulations, however, are still at a formative stage with detailed administrative procedures and agency responsibilities for many types of land transaction yet to be defined.

Since the land privatization process commenced in 1996, outside of Baku there have been very few secondary market land transactions¹. While the new Land Code requires that land compensation be based on market prices, in reality, in most districts there have been too few transactions to establish market-based land or other property valuations. Land values and compensation therefore remain at least partially reliant on Soviet-era "normative" or standard land prices that are determined for each district by the government. The legislative framework thus has characteristics of both the former Soviet and free market systems.

BTC Co. is currently negotiating financing with a number of international financial institutions. In connection with any financing, lenders such as the International Finance Corporation (IFC), part of the World Bank Group, the European Bank for Reconstruction and Development (EBRD) and export credit agencies require compliance with specified environmental and social policies during the term of any financing provided by them. IFC has indicated that the World Bank Group's *Operational Directive 4.30 Involuntary Resettlement (OD4.30)* regarding resettlement would be applied by them in the context of a financing for BTC Co. Accordingly, BTC Co. has also designed its resettlement plans with the aim of complying with *OD 4.30*.

In a number of areas, requirements under *OD 4:30* are more extensive than is currently provided for in the applicable legislation of the Azerbaijan Republic. These areas are outlined in Section 3.5. Although the extent to which BTC Co. will undertake to comply with World Bank Group requirements will be specifically covered in any finance documents between it and the international financial institutions, specific measures that the project expects to adopt to comply with *OD 4.30* are described in Section 3.6.

As described in more detail in Section 5.4, BTC Co. will not acquire ownership of land used for the pipeline. Instead, land rights acquisition is the responsibility of the State Authorities

¹ The majority of private landowners retain land that they were allocated from government or collective land as part of land reforms commencing in 1996. So-called "secondary market" transactions refer to the on-sale of that land from one private owner to another.

under the BTC HGA and BTC Co. will be granted the necessary rights to use the land during pipeline construction and operation. These rights will last for the expected life of the BTC Project (40 years), although it should be noted that control of BTC Co. which owns the BTC Pipeline and relevant facilities will be transferred to the shareholder established by Azerbaijan after the BTC investors have achieved a specified rate of return on their investment in the pipeline, which is expected to occur in approximately 20 years.

Table 3.1 Selected Azerbaijan Legislation Relevant to Land Acquisition and Resettlement (other than the BTC HGA)

Law/Regulation	Application to the Project
<i>Azerbaijan Constitution (12 November 1995)</i>	Establishes the right of individuals or entities to possess property and that such 'property rights' shall be protected by law; also, establishes that no-one will be dispossessed of land without a 'decision of court', and that alienation of property for state needs shall only be allowed upon 'fair reimbursement of its value' (article 29).
<i>Land Code of Azerbaijan Republic (25 June 1999)</i>	Defines proprietary rights of the state, municipalities, private individuals and entities; empowers state and municipalities to resume land for municipal and public needs; sets out basis to be used for land valuation; provides for rental of state and municipal lands; defines responsibilities for imposition of land taxes and payments associated with land agreements; sets out roles and responsibilities for resolving land disputes.
<i>Law on Land Market (7 May 1999)</i>	Establishes requirements for land transactions such as purchasing and selling of land, mortgages, transferring of rights to other users and lessees, and transfer of land through inheritance; makes recommendations on the nature of land market agreements and contracts; requires registration of all land rights and sets out documentation requirements; and, outlines penalties for failure to comply with regulations.
<i>Resolution No. 42 of "On Some Normative and Legal Acts Relating to the Land Code of the Azerbaijan Republic" (15 March 2000)</i>	Expands on provisions of the Land Code with respect to the following areas: (a) procedures for determining payments for agricultural and forestry production losses and damage resulting from restrictions of use, or change in land use; (b) procedures for resumption of private land for state or public needs; (c) procedures for granting leases for grazing and hayfield use; and, (d) procedures for allotting land for industrial, transportation, communications and other purposes.
<i>Cabinet of Ministers' Decree No. 158 on Normative Costs of Land (1998)</i>	Sets out standard or normative values of land for each district in Azerbaijan.
<i>Law on Land Leases (11 December 1998)</i>	Defines general rules governing leasing of land, procedures for changing lease conditions and establishes the requirement for registration of leases.
<i>Civil Code (1 September 2000)</i>	Defines types of legal interest in property (full ownership, lease, third party); requires proprietary rights and other rights for immovable property, as well as any restrictions, formation, assignment or transfer of rights to be registered with the State. Use rights, servitude rights and mortgages must also be registered. Requires that land acquired for state or public needs shall be purchased by 'an authorized body of the Azerbaijan Republic' or municipality, by paying the market price in advance. Provides a landowner who opposes the purchase of his or her land for state or municipal needs, or is dissatisfied with compensation, recourse to the civil court. Provides for people to have the right to register their ownership due to long, actual possession (article 178.6 – 30 years; article 179.1 – 10 years).
<i>Civil Procedures Code (1 September 2000)</i>	Sets out procedures and applicable timeframes for actions and appeals through the courts. Court decisions on compulsory acquisition and the basis of any land valuation must be appealed with the higher court within one month of such decision (article 360).

3.2 NATIONAL LEGISLATION RELATING TO LAND ACQUISITION

Some principal legislative instruments relevant to project land acquisition are summarised in Table 3.1. This list is not exhaustive and the description is qualified by reference in its entirety to the actual text of the relevant law. Selected provisions of these instruments relevant to BTC Project land acquisition are described in the sections that follow.

3.2.1 Azerbaijan Constitution

The Azerbaijan Republic adopted a new Constitution by national referendum on 12 November 1995. The Constitution came into force on 27 November 1995 and establishes the requirement for payment of compensation where property is compulsorily acquired for State needs.

Article 29 of the Constitution establishes the right of individuals to possess movable or immovable property, including "...the owner's right to possess, use and dispose of the property, individually or jointly". Article 29 establishes that property rights shall be protected by law and that "...no one shall be dispossessed without the decision of court". Furthermore, "...the alienation of...property for...State needs or social needs shall be allowed only upon...fair reimbursement of its value".

3.2.2 Land Code

Law No. 695, *Land Code of the Azerbaijan Republic*, was promulgated on 25 June 1999. The *Land Code* establishes the primary legislative framework governing land ownership, transfer, resumption and related compensation. The principles established in the *Land Code* form the basis for a series of Cabinet of Minister's decrees that describe more detailed requirements and procedures for implementing the code. Some key provisions of the *Land Code* are summarized below.

Articles 48-54 set out and describe the rights that persons can have over land.

Article 70 describes procedures for resumption of land for state, municipal and public needs. Article 70 provides for land plots to be acquired through agreement based on landowners, users or lessee's consent (article 70.2) or through expropriation that must be implemented on the basis of a court decision (article 70.3). Expropriation is only permitted for important state, municipal and public facilities. Where privately owned plots are purchased for state needs, the holder of an interest in the property must be compensated by either payment of the full market value of the lot at the date of acquisition (article 70.5) or, through grant of another land plot of equal size and quality based on mutual consent (article 70.8). Complaints relating to resumption of land can be lodged in accordance with the *Civil Procedures Code*.

Article 96 outlines the approach to be used for determining the market price of land. In cases where a land plot is purchased for state needs, article 96 indicates the market price should be determined on the basis of the parties' mutual consent by taking an independent valuer's opinion into account (article 96.6). Any dispute shall be resolved in court. Provision is also made to value 'use rights' or 'lease rights' based on market price and mutual agreement between the government agency instigating the purchase and those with an interest in the property (article 96.7).

Chapter XXI Articles 103-108 - describe avenues for the resolution of land related disputes. Generally, responsibility for resolving land disputes rests with executive authorities, municipalities and district courts.

3.2.3 Resolution No. 42 “On Some Normative and Legal Acts Relating to the Land Code”

Resolution of the *Cabinet of Minister’s Resolution No. 42 “On Some Normative and Legal Acts Relating to the Land Code”*, 15 March 2000, expands on the *Land Code* to define procedures for: (i) determining payments for agricultural and forestry production losses and damage resulting from restrictions of use, or change in land use; (ii) recall and allotment of land for state or public needs; (iii) granting leases for grazing and hayfield use; and, (iv) allotment of land for industrial, transportation, communications and other purposes, including ‘expansion activities’.

Procedures for Application and Consideration of Requests for the Recall and Allotment of Land Plots for State and Public Needs – describes the process and documentation requirements for filing an application for allotment of land for state or public purposes.

Article 2 – requires that land plots for the construction of industrial enterprises, railways, roads, power and communication lines and trunk pipelines shall “...mainly be allotted from land plots that are unfit or less fit for agricultural purposes.” Similar provisions apply to use of forest fund lands.

Article 5 – requires that “...mandatory recall of land plots subject to ownership, utilization or lease shall be implemented in accordance with a court decision on the basis of a request from the Cabinet of Ministers of the Azerbaijan Republic...or the relevant municipality”.

Article 7 – describes the two-stage process that must be followed for the allocation of land for non-agricultural and non-forestry purposes. The two stages are as follows:

- Approval of the location of the facility (design)
- Legal formalization of the allocation of the land plot

Articles 16 – 20 – describe the process that must be followed to submit a request for issue of legal title for the subject land. Consents must be obtained from the local executive authority or municipalities as well as the nominated government agencies. Consents must be submitted to the State Land Committee. The State Land Committee shall carry out an expert examination and forward a recommendation to the Cabinet of Ministers. The State Land Committee will then prepare a State Act or Certificate describing the ownership and use rights for the land plot based on a Cabinet of Ministers decision to recall or allot the land for state or public needs. The State Land Committee then forwards this to the relevant town or district land department for state registration and issue to the requesting state authority.

3.2.4 Civil Code

The *Civil Code* defines the types of legal interest that can apply to immovable property in general and land in particular. These are explained further in Section 2.2.6. The *Civil Code* also requires that most legal interests in immovable property be registered.

Article 139 – requires that ownership rights and other rights for immovable property, as well as restrictions, formation, assignment or termination of these rights should be registered with

the State. Use rights, mortgages and servitude rights (a form of easement rights) for immovable property must also be registered.

Article 157.9 – requires that where property is alienated for state or public needs, this may only occur following payment of “...the amount of its market price in advance of the event for which it is required...”

Articles 178.6 and 179.1 – make provision for individuals or entities to have the right to register their ownership on the basis of long, actual possession based on periods of 30 years and 10 years respectively. The distinction between the two articles is not clear.

Article 248.1 – makes provision for an executive authority to file a claim with a court for compulsory acquisition of land in cases where a landowner is unhappy with a decision by the state or municipality to purchase his or her land for state or public needs or where agreement cannot be reached on its purchase price.

3.2.5 Civil Procedural Code

The *Civil Procedural Code* expands on the *Civil Code* by defining in greater detail judicial processes, appeal rights, and the time frames within which actions must be initiated. Appeals regarding purchase price or appeals against state or municipal purchase of land must be lodged within one month of the notice of the compensation order (article 360).

3.2.6 Land Tenure and Title²

Under Azerbaijan law, there are four main types of legal interest in land: (i) full ownership; (ii) right of use – either temporary (short term (15 years) or long term, with a maximum (renewable) term of 99 years) or permanent; and, (iii) lease (can be concluded for any term, but can be terminated by either party after 30 years); (iv) third party rights such as usufruct, servitude and interests of pledge holders. The proof of title to most legal interests in land requires registration (*Civil Code*, article 139; *Land Code*, article 67.3). Thus, if the property is not registered, under law there will be no obligation for the State to compulsorily purchase or compensate the landholder. Persons who do not have registered land rights can be divided into those who do not have any right to register their title, and those who have legally obtained the right to register their title, but for some reason have not completed the registration. It can be argued that the State cannot dispossess the latter from their lands without payment of compensation on the basis that they have not completed their registration. The project has made provision to compensate all affected owners and users identified in the project census, whether registered or not, above the minimum obligations defined under Azeri law (see also Section 5.2).

Types of formal land title are as follows:

Ownership Title to Land: The State Land Committee issues a certificate of ownership in respect of privately held land (*Land Code*, article 66.2). Owners are required to register the certificate and other documents of title with the State Land Cadaster and the State Land Register (both of which are kept by the State Land Committee) and the State Register of Immoveable Property held by the Ministry of Justice (*Land Code*, article 67.1, *Civil Code*, article 141).

² This section is based on an explanation of types of land tenure and ownership in Azerbaijan prepared by BTC Co. legal consultants, Baker Botts.

Titles to Lease of Land: Leases must be registered with the State Land Cadaster and the State Land Register, under the State Land Committee, and the State Register of Immovable Property held by the Ministry of Justice (*Land Code*, article 67.1, *Law on Land Lease*, article 12). Lease is the only right that a foreign entity or person can obtain in land in Azerbaijan (*Land Code*, article 48.3).

Right of Use: Right of Use must be registered with the State Land Cadaster and the State Land Register, under the State Land Committee and the State Register of Immovable Property held by the Ministry of Justice (*Land Code*, article 67.1).

Third Party Rights: Rights of usufruct (such as grazing rights) and servitude are registerable with the State Register of Immovable Property (*Land Code*, article 67.1, *Civil Code*, article 141).

3.2.7 Power of Eminent Domain

The State, and agencies of the State, are empowered to undertake mandatory acquisition of land where it is for "...important state, municipal and public facilities..." (*Land Code* (article 70)). Acquisition requires a court decision based on a petition submitted by the applying state authority (*Civil Code* (Section 248.1)). The compulsory acquisition order may be appealed.

The BTC Host Government Agreement (HGA) has several clauses that qualify the State's use of expropriation or mandatory acquisition. The State Authorities are required by the HGA to "...exercise such powers of taking, compulsory acquisition, eminent domain or other similar sovereign powers..." to enable the BTC participants to receive rights to land necessary for them to carry out the project (HGA article 7.2 (vii) (4)).

The State will only use the power of eminent domain when other means fail. The legal steps required to exercise to compulsorily acquire the rights of land are illustrated in Figure 5.1. The steps the Land Acquisition Team would go through to resolve any dispute before resorting to eminent domain are illustrated in Figure 5.3.

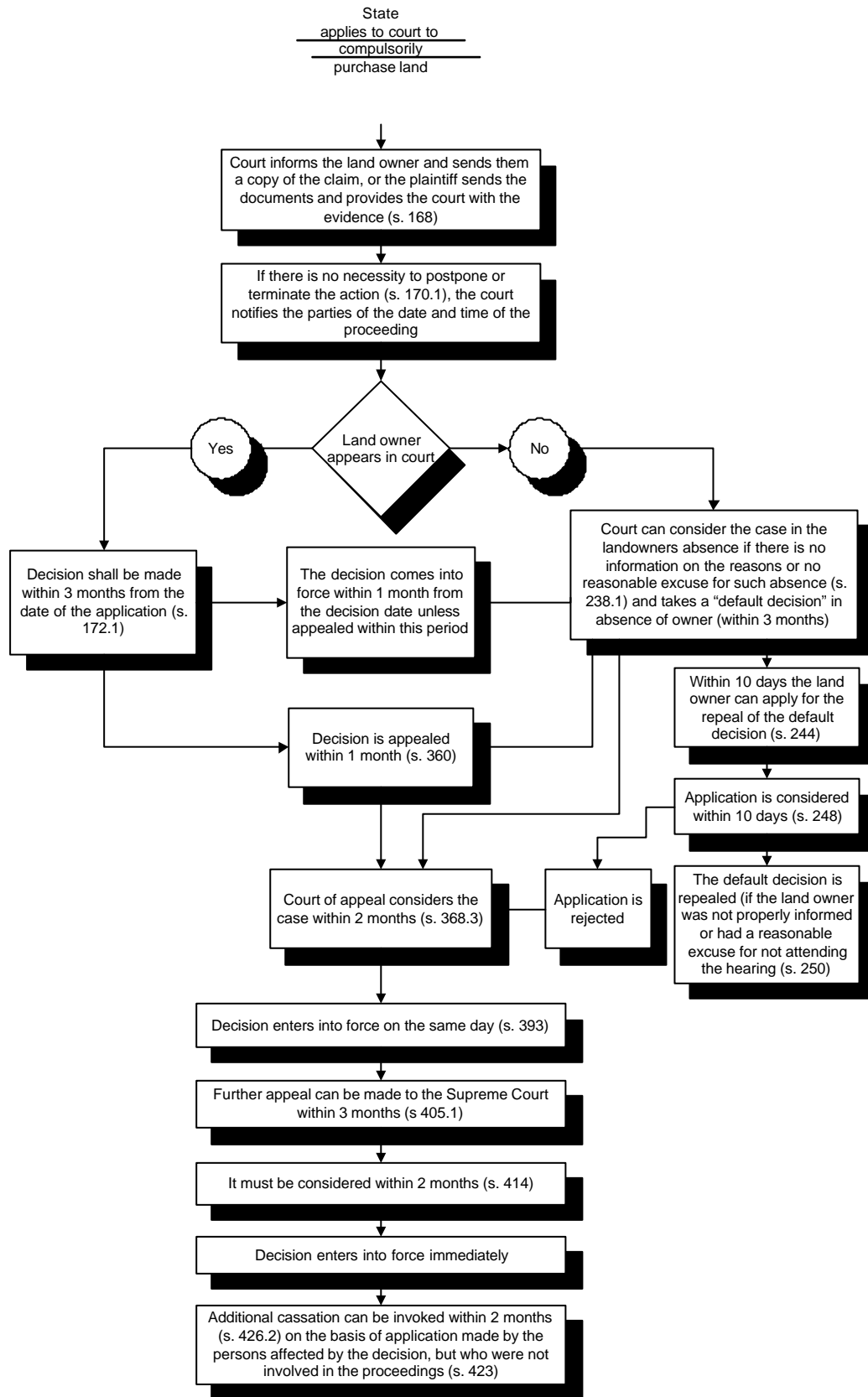
3.3 WORLD BANK GROUP / IFC INVOLUNTARY RESETTLEMENT POLICIES AND GUIDELINES

As noted in Section 3.1, BTC Co. is aiming to comply with the policies and guidelines of the World Bank Group for the purposes of the proposed BTC Project financing. For the purposes of preparing the RAP, the following documents have been referred to:

Table 3.2 World Bank Group/IFC Policy and Guidelines Referred to for Project RAP Preparation

Policy or Guideline Document	Application to the BTC Pipeline Project
<i>OD 4.30 Involuntary Resettlement</i>	Defines objectives, principles and recommends procedures to be followed for resettlement.
International Finance Corporation "Handbook for Preparing A Resettlement Action Plan"	Provides guidance on preparing RAPs for private sector projects
International Finance Corporation Good Practice Manual "Doing Better Business through Effective Public Consultation and Disclosure"	Recommends procedures and good practice for public consultation and information disclosure

Figure 3.1 Legal Procedure for Compulsory Purchase of Land (Eminent Domain)



Note: All references are to the *Civil Procedural Code, 2000*

3.3.1 OD 4.30 Involuntary Resettlement

This directive describes the World Bank Group/IFC's policy and procedures on involuntary resettlement and also sets out the conditions that sponsors are expected to meet in projects involving displacement of communities. *OD 4.30* has sections outlining policy objectives, the resettlement planning process and documentation requirements for resettlement projects. The discussion below is a summary only and is qualified by reference to the full text of *OD 4.30*.

Under the Policy Objective section (para. 3), the directive sets out six heads of consideration to be taken into account during project preparation and design:

Avoidance or minimization of involuntary resettlement (clause 3a) - establishes that wherever feasible, involuntary resettlement should be avoided or minimized. Project design should explore all viable project alternatives to reduce the need for resettlement.

Compensation at full replacement cost and restoration of living standards and livelihood (clause 3b) - indicates that where resettlement is unavoidable, resettlement plans should be developed. This should result in displaced persons being (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period; and, (iii) assisted in their efforts to improve their former living standards, income earning capacity, and production levels, or at least to restore them.

Community participation in the planning process (clause 3c) - advocates that community participation should be an integral part of planning and implementing resettlement. Wherever possible existing social and cultural institutions of the resettlers and their hosts should be used to the greatest possible extent.

Integration with host communities (clause 3d) - establishes that resettlers should be integrated socially and economically into their host communities so that impacts on host communities are minimized.

Absence of legal title to land should not be a bar to compensation (clause 3e) - states that land, housing infrastructure and other compensation should be provided to adversely affected populations, indigenous groups, ethnic minorities, and pastoralists with customary rights to the land or other resources to be taken by the project. Absence of legal title to land by such groups should not be a bar to compensation.

The needs of vulnerable groups such as the very poor, landless, ethnic minorities and women are singled out as requiring special attention during project consultation and in designing resettlement and livelihood restoration measures (clauses 3b, 8, 16).

The principle expressed in clause 3(b), that project affected people should be assisted *“to improve their former living standards, income earning capacity and production levels”* or *“...at least to restore them”* is a crucial tenet of the World Bank's policy. Further, the directive emphasizes the need to not only compensate for loss of assets, but to re-establish the economic base and livelihood of affected people as part of the resettlement process. For people displaced from agricultural settings, the policy recommends that land-based strategies are the preferred basis for compensation, or if suitable land is unavailable, strategies should be developed around opportunities for employment or self-employment.

OD 4.30 establishes the requirement to prepare a RAP for any project with significant resettlement, and the content of that plan is specified.

3.3.2 IFC Good Practice Manual on Public Consultation and Disclosure

The IFC has published guidelines for private sector developers on disclosing information and consulting with the public. Key principles established by the guidelines include:

- Information about the project should be disclosed as early as possible
- Disclosure of project environmental and social information should be an integral part of the public consultation process, with information being provided about both benefits and disadvantages of the project
- Information should be clearly presented in appropriate local languages and dialects and in modes that are sensitive to local communities
- Information should be disclosed in locations that are open to the public and that are readily accessible to project affected people.

BTC Co. has used the IFC *Good Practice Manual on Public Consultation and Disclosure* as a key resource in formulating consultation and disclosure strategies for the ESIA and this RAP (see Chapter 7).

3.4 PROJECT AGREEMENTS

3.4.1 BTC Intergovernmental Agreement (IGA)

The Intergovernmental Agreement between the Governments of the Republic of Azerbaijan, Georgia and the Republic Of Turkey was signed on 18 November 1999. The IGA establishes the basis for the transport of petroleum from the Caspian Sea, through the territories of Azerbaijan, Georgia, and Turkey, through realization of an export pipeline. It confers on the legal and commercial terms of the project the status of international law.

3.4.2 BTC Host Government Agreement (HGA)

The unexecuted form of the HGA was approved by the Azerbaijan Parliament in May 2000 as an integral part of the IGA, and thereby became a part of the Azeri legal system prevailing over any domestic law other than the Constitution, and acts adopted by referenda. The HGA is also a contract that governs the conduct of both the Government of Azerbaijan and BTC Co. The HGA sets out the specific procedures and requirements to be followed during project implementation and as such establishes the legal regime for the project.

Under the HGA, State Authorities have responsibility for acquisition of land and granting of rights to BTC Co. to enable it to construct and operate the pipeline. “Rights to Land” are described in Appendix 2 of the HGA. The State Authorities also have responsibility for identifying all persons or enterprises “...claiming any form of ownership or other property, occupancy construction or possessory interest...” that may be “...terminated, conditioned, limited or affected...” by grant of rights to BTC Co. (HGA, article 7.2(vii)(2)).

BTC Co. is not required to pay for rights or ownership title for state or municipal land. With respect to private land, it is to be acquired by the State Authorities at the “lowest reasonable cost” consistent with the standards and procedures set forth in the *Land Code*, the *Law on Land Market* and related implementing decrees, and with the international standards required by the HGA. The *Land Code* requires that compensation be based on “market price” (*Land Code*, article 96)³, so “lowest reasonable price” referred to in the HGA must be based on

³ See also Section 5.3 Valuation Method

“market price”. BTC Co. will subsequently reimburse the State Authorities for private land (HGA, article 7.2(vii)(5)). BTC Co. will be involved in verifying all payments to project affected people.

The HGA also sets forth codes of practice to cover project activities, including social impact. Generally, BTC Co. is required to “...comply with good International Petroleum industry standards and practice...” as observed by the international community with respect to pipeline projects (HGA, Appendix 3, article 2.1 (i)). The HGA also specifies that BTC Co. shall use best endeavours to “... minimise potential disturbances to surrounding communities and property of the inhabitants thereof...”

Because the BTC Project does not involve any physical displacement of people, the principal impact of OD 4.30 is with respect to procedures for development of the RAP and standards for compensation for lost land, assets and economic displacement.

3.5 COMPARISON OF AZERBAIJAN LEGISLATION RELATING TO INVOLUNTARY RESETTLEMENT AND OD 4.30

3.5.1 General

Many of the key precepts of *OD 4.30* are covered in full or in part by current Azerbaijan law. These include the requirement to pay compensation in advance where land is compulsorily acquired (*Land Code*, article 70.5); the need to compensate based on full market value, or through grant of another land plot or building of equal quality, size and value (*Land Code* (articles 8 and 70.5)); the need to avoid, wherever possible, impacts on agricultural land and forests (*Cabinet of Minister’s Decree No. 42*, Section I, article 2); the requirement to compensate for losses (whether temporary or permanent) in production or damage to productive assets and crops (*Cabinet of Minister’s Decree No. 42*, Sections I and II); and provision for pre-judicial and judicial avenues for resolution of disputes and rights of appeal.

The *OD 4.30* principle of avoidance or minimization or resettlement is addressed in Article 70.4 of the *Land Code* which stipulates that lands can be withdrawn only for location of state, municipal or public facilities of high importance. Under Article 22 of the *Land Code*, the state is required to establish protection zones with special (restrictive) regime for the purposes of construction and operation of industrial facilities. Of relevance to the BTC Pipeline, the law requires that land owners, users and lessees shall not lose their rights of access and use of such lands, other than in cases which require full withdrawal of land (*Land Code*, article 22.3).

There are, however, three broad areas where the sponsor’s obligations under *OD 4.30* extend beyond those required under Azerbaijan legislation. These areas are as follows:

- Resettlement planning procedural and documentation requirements
- Categories of people eligible for compensation
- Extent of compensation and types of assistance to be offered

3.5.2 Resettlement Planning and Procedural Requirements

There is presently no requirement to prepare a formal resettlement action plan under Azerbaijan law, nor to undertake such associated activities as a ‘census’, ‘socio-economic survey’, ‘consultation’ with project affected people, ‘monitoring’ or ‘reporting’. There are no specific references in the legislation to “involuntary resettlement”.

Core World Bank resettlement planning requirements such as the need for community participation in the resettlement planning process, and the requirement to improve or enhance project affected people's living standards and income and production levels, are also not explicitly addressed in current legislation.

While Azerbaijan legislation is silent on involuntary resettlement, the HGA does oblige BTC Co. to "...comply with good international petroleum industry standards and practice as generally observed by the international community with respect to pipeline projects..." (HGA, Appendix 3, article 2.1 (i)).

3.5.3 Compensation Eligibility in Azerbaijan

The categories of people who must be compensated under Azerbaijan legislation are narrower than those defined under *OD 4.30*. Under the legislation, the only people and entities entitled to compensation are those with registered property rights i.e. registered landowners, leaseholders, users and those with registered third party rights, or those who have legally obtained the right to register their title but whom, for some reason, have not completed registration. This potentially precludes many categories of affected people that would be entitled to compensation under World Bank Group policies. Some categories encountered in Azerbaijan include:

- Users who use land on the basis of an informal agreement, often with a relative or extended family member (share croppers, tenant farmers)
- Owners who occupy land that was transferred by informal agreement from another owner
- Owners who have not registered a change in ownership following a family death, marriage annulment or the like.
- IDPs (who have no rights to land)
- People who make use of communal resources to which they have no formal title
- Informal dwellers

OD 4.30 indicates that land, housing, infrastructure and other forms of compensation should be provided to the "...adversely affected population, indigenous groups, ethnic minorities, and pastoralists who may have customary rights to the land or other resources..." *OD 4.30* goes on to specifically state that "...the absence of legal title to land by such groups should not be a bar to compensation..."(Clause 3(e)). Under the World Bank policy, the basic criterion for eligibility is to be adversely affected (physically or economically) by the project. In practice, the compensation entitlements of different classes of project-affected people will vary, but lack of a legal title in-itself must not preclude any person experiencing losses as a result of a project receiving some form of compensation.

The World Bank policy also singles out as requiring particular attention what the policy terms "vulnerable groups" which are at particular risk in the resettlement process. Vulnerable groups may include not only indigenous people and ethnic minorities but also the elderly, very poor, landless and semi-landless, and households headed by females (see also the IFC definition of vulnerable groups in Part A of this RAP).

3.5.4 Extent of Compensation and Resettlement Assistance

Under current legislation of the Azerbaijan Republic, compensation is payable for loss of land, buildings, crops, assets, profit and other damages arising from the acquisition of land for a project.

In addition to compensation for losses of land and productive assets, *OD 4.30* requires that (i) resettled people should be assisted with their move and supported during their transition period at the resettlement site; and, (ii) assisted in their efforts to improve their former living standards, income earning capacity, and production levels, or at least to restore them. The World Bank policy notes that cash compensation alone may not be adequate to restore lost production.

Other types of loss that are recognized under the World Bank Group policy as needing to be addressed are loss of access to (i) public services; (ii) customers and suppliers; and, (iii) fishing, grazing, and forest areas. The policy recognizes that such losses cannot be easily evaluated or compensated in monetary terms, but emphasises the requirement for attempts to be made to establish access to equivalent resources.

3.6 PROJECT MEASURES RELATING TO COMPLIANCE WITH WORLD BANK/IFC REQUIREMENTS

Specific project measures relating to World Bank Group requirements are summarised in Table 3.3.

3.7 LEGAL ASSISTANCE TO PROJECT AFFECTED PEOPLE

BTC Co. will retain the services of a national legal NGO to assist project affected land owners throughout the land acquisition, negotiation and agreement signing phases of the project. The role of the legal NGO will include:

- Prior to signing of agreements, the legal NGO will assist project affected land owners and users with special legal requirements to get their land ownership papers in order, or to initiate procedures necessary for appointment of an administrator (for a missing land owner, see Section 5.2.3.4) or establish a power of attorney for some one to act on behalf of an absentee (see Section 5.2.3.3).
- Prior to negotiations and signing of agreements, to prepare a plain language explanation of land agreements for affected land owners and users, together with information on the rights and obligations arising there from.
- During negotiations and signing of agreements, to act as a third party to provide advice to project affected people
- During and after negotiations, to assist project affected people, as a third party, for dispute resolution or with any other project-related legal matters that might arise.

Table 3.3 Project Measures Relating to Compliance with WB/IFC Requirements in Azerbaijan

World Bank Group Requirement	Project Commitment
Requirement for preparation of a RAP	BTC Co. is carrying out resettlement planning activities and has prepared a RAP in accordance with the policies and guidelines as set out in <i>OD 4.30</i> .
World Bank requirement for avoidance/minimization of resettlement	BTC Co. has thoroughly explored alternative options for the pipeline routing and siting of the facilities and has avoided the need for any physical displacement of people or dwellings. More than 11 iterations have been made to the 442 km long pipeline alignment to reduce impacts. A pump station was re-sited to avoid productive private land. Owners will be able to resume use (with some restrictions) of the pipeline corridor following construction. Permanent land acquisition has been kept to less than 26 hectares.
Compensation at full replacement cost	BTC Co. expects to compensate at equivalent to or generally above government or normative rates for land, trees, crops and assets. Project offered rates will cover full replacement cost.
Assist in efforts to improve (or at least restore) living standards and livelihood	BTC Co. has adopted this as a core goal of the project RAP. In all cases, affected people will be assisted with livelihood restoration. Specific measures are described in Chapter 6. Monitoring for effective livelihood restoration will be conducted for 36 months following full reinstatement of the pipeline corridor.
Absence of legal title to land should not be a bar to compensation	All users of land (including those with legal documents, those without, & informal dwellers), subject to reasonable substantiation of historical use, will be entitled to compensation for loss of land attachments, structures, crops and livelihood based on the triangulation principle (see Section 5.2.3.2). Where a transaction involves an owner and user, the two will agree a split of compensation based on the historical arrangements between them.
Compensation for people or entities without registered title to land or immovable assets	BTC Co. will assist any project affected landowner, user, leaseholder or those with third party rights with the required ownership documents to register their titles in order to formalise their right to compensation as part of the compensation process. Leaseholders and users (with legal agreements or not) will be entitled to compensation subject to reasonable substantiation that they have been using the land for two years or more.
Special attention to vulnerable groups	Through the census and preliminary MOUs, BTC Co. has identified project affected vulnerable people and groups. Focus group & in-depth discussions have been conducted to further assess project impacts & gather feedback on compensation entitlements from vulnerable people. Special arrangements will be made for compensation disbursement for those unable to travel to payment locations. Ongoing monitoring will be undertaken to check for any cases of hardship arising from the project.