

## LEGISLATIVE, REGULATORY AND LEGAL FRAMEWORK

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## **3 LEGISLATIVE, REGULATORY AND LEGAL FRAMEWORK**

### **3.1 INTRODUCTION**

The BTC project in Georgia will be designed, built and operated to comply with the Host Government Agreement (HGA), Georgian national legislation and regulatory standards and relevant international policies and guidelines concerning resettlement, land acquisition and compensation. This chapter outlines Georgian national legislation and the regulatory and legal frameworks that pertain to issues of involuntary resettlement, including land and asset acquisition and compensation. It also summarizes the relevant World Bank/International Finance Corporation (IFC) Operational Directive on Involuntary Resettlement. Similarities and differences between Georgian laws and regulations on land acquisition and resettlement and those of the World Bank/IFC will be discussed

The HGA is the main document that governs the land acquisition and resettlement activities of the BTC project in Georgia. The BTC project in Georgia is also subject to a wide range of laws, regulations, standards and guidelines, including existing national laws and regulations, each of which has undergone amendments, sometimes substantial in nature. The HGA prevails only when there may be inconsistencies between the HGA and national legislation. Beyond Georgian legislative and regulatory requirements, the project will be implemented in accordance with the highest corporate standards, as well as the relevant policies and guidelines of the World Bank/IFC.<sup>1</sup>

This chapter outlines the regulatory framework as it refers to the RAP and discusses the following categories of legislation and policy:

- Host Government Agreement;
- National legislation;
- Land ownership and property rights;
- Power of eminent domain;
- Project measures to ensure compliance with World Bank/IFC resettlement requirements stated in OD 4.30.

The descriptions of the HGA, Georgian legislation and the Georgian Constitution, 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 agreement, laws and policy themselves.

The chapter will also show the differences between the existing legislative framework and OD 4.30, as in the IFC “Handbook for Preparing a Resettlement Action Plan” (2002).

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<sup>1</sup> BTC agreed to comply with the social and environmental policies and guidelines of the World Bank and IFC as a condition to the financing of the project.

### **3.2 HGA PROVISIONS IN RESPECT TO LAND ACQUISITION AND COMPENSATION**

The overall framework governing the granting of land rights by the Government of Georgia to the BTC Co. is contained in Articles 4 and 7, and appendix 2 of the HGA. Section 4.1 of the HGA grants BTC Co. among other things:

- The exclusive and unrestricted rights to land in respect to State land;
- Subject to private arrangements entered into by the BTC Co., the exclusive and unrestricted property right to use, possess, control and construct upon Permanent Land; and
- The status and powers of taking, compulsory acquisition, eminent domain, expropriation, or other similar delegated powers for the duration of the project to secure, maintain and pay reasonable compensation to affected persons for all rights to land.

Appendix 2 of the HGA further governs the right of the BTC Co. to land by providing, among other things, that:

- Subject to any private arrangements entered into by the BTC Co., the rights to land granted to or obtained by the BTC Co. shall be enforceable by the BTC Co. against all State Authorities and against all third parties;
- Except for State Land, the BTC Co. shall exercise its powers, granted to it in the HGA, to obtain the Construction Corridor and to obtain and maintain the Permanent Land as necessary, and shall compensate all landowners and occupiers of such lands which are a part of the Construction Corridor or become part of the Permanent Land in accordance with such grant and applicable Georgian Law; and
- The BTC Co. shall have no obligation to pay the State Authorities any compensation, other than reimbursements of actual verifiable costs, in respect to any land or Rights to Land. However, BTC Co. shall compensate the State for any State Land that was used for agricultural purposes but, as a result of becoming a part of the Construction Corridor and/or Permanent Land, was disabled from agricultural use. The Law of Georgia ‘On Compensation of Compensatory Land Cultivation Costs and Sustained Damages in case of Allocation of Agricultural Land for Non-agricultural Purposes’ shall govern any such payment.

Table 3.1 elaborates on the three key sections of the HGA governing land acquisition and resettlement.

**Table 3.1 Key HGA References Governing Land Acquisition and Resettlement Issues**

Relevant Section	Content
Clause 5.1 (Appendix 3)	In conducting project activities, BTC Co. shall use best endeavours to minimise potential disturbances to surrounding communities and the property of the inhabitants.
Clause 5.3 (Appendix 3)	Prior to the selection of the general location of facilities, complete a general review of social conditions in the applicable areas, consisting of a scoping study and a risk assessment. These will together form the basis of the content and structure for a social impact assessment of project activities and associated operations to be conducted by the BTC Co. with respect to social impacts to the Territory.
Clause 5.4 (Appendix 3)	During the course of project activities, BTC Co. shall from time to time, to confer with State Authorities as to the impact of ongoing project activities in light of the social impact assessments <sup>2</sup> .
Section 12.3	To take all action necessary to remedy any loss or damage to land and other property that results from an adverse environmental, health or safety event and to restore them, to the maximum extent possible, to their prior condition, regardless of fault or causation. In doing this, the BTC Co. will incur all associated expenses necessary to remedy the harm. If it is not possible to restore land/property, the BTC Co. will pay full, adequate and fair compensation in respect of any unremedied harm.
Article 1.3 (Appendix 2)	The BTC Co. will be responsible for compensating all landowners and occupiers of lands that are part of the Construction Corridor or become part of the Permanent Land.
Article 7.4 (Appendix 2)	Maintain necessary means of access and construct temporary crossings that may be reasonably required by affected landowners and occupiers. Following construction and to the extent reasonably practicable, private roads and footpaths will be reinstated to their original condition, and made available to landowners pursuant to terms agreed with the landowners and occupiers, but consistent with the need to maintain the security of project facilities and conduct project activities.

### 3.3 HGA ON SOCIAL DEVELOPMENT CONSIDERATIONS

In addition to the above regulatory framework pertaining directly to land acquisition, the HGA requires an assessment of the social impacts of the BTC project. Compensation, procurement and employment regulations are set out in the following key articles:

- Article 12 references Appendix 3 which outlines the standards and principles for social impact assessment (“SIA”); and

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<sup>2</sup> This may include sharing of monitoring reports; responding to government requests for information in their regulatory monitoring function, requests for assistance from government on particular issues, requests from government for particular information, etc.

- Article 4.1 references Appendix 2 that governs land acquisition and compensations issues.

In particular, Article 12 and Appendix 3 require the BTC Co. to:

- Use best endeavours to minimise potential disturbances to surrounding communities and the property of the inhabitants thereof (Clause 5.1 of Appendix 3);
- Complete a general review of social conditions in the general location of the pipeline and associated infrastructure, consisting of a study and a risk assessment. These together will form the basis of the content and structure for a SIA of project activities and associated operations, to be conducted by the BTC Co. (Clause 5.3 of Appendix 3);
- During the course of project activities, from time to time, to confer with State Authorities as to the impacts of ongoing project activities in light of the SIA (Clause 5.4 of Appendix 3).
- Take all action necessary to remedy any loss or damage to land and other property and to restore them, as far as possible, to their prior condition. In doing this, the BTC Co. will incur all associated expenses. If it is not possible to restore land/property, the BTC Co. will pay full, adequate and fair compensation in respect of any unremedied harm (Section 12.3 of the HGA).

Article 4.1 references Appendix 2, which sets out further key requirements regarding compensation, including:

- The BTC Co. “shall be responsible for *compensating all landowners and occupiers* of such lands which are part of the Construction Corridor or become part of the Permanent Land in accordance with such grants and applicable Georgian Law” (Clause 1.3 of Appendix 2); and
- Maintain reasonably necessary means of access and construct such suitable agreed temporary crossings that may be reasonably required by affected landowners and occupiers. Following construction, private roads and footpaths will be reinstated to their original condition, and made available to landowners (subject to agreed terms consistent with the need to maintain the security of project facilities and conduct project activities) (Clause 7.4 of Appendix 2).

Article 18 of the Georgian HGA details certain employment and procurement practices. The key aspects include:

- The BTC Co. and any contractor may select and determine the number of employees to be hired in connection with the project. All citizens of the State hired with respect to the project shall be hired under written employment contracts that specify the hours of work required of the employees, the compensation and benefits to be paid and other material terms of employment. All employment practices applicable to citizens of the State working on the project in Georgia must be at least as stringent as the requirements provided for in Georgian labour legislation (provided that the requirements do not (i) exceed those international labour standards or practices which are customary in international petroleum transportation projects or (ii) contrary to the goal of promoting an efficient and motivated workforce). These requirements include hours of work, leave, remuneration, fringe benefits and occupational health and safety standards (Section 18.2); and

- For procurement of services, equipment, materials, machinery and tools, vehicles, spare parts, goods and supplies necessary for the proper conduct and achievement of project activities, the BTC Co. and any contractor (including any operating company) shall give preference to Georgian suppliers in those cases in which such Georgian suppliers are, in all material respects, competitive in price, quality and availability with those available from other sources (HGA Section 18.3).

### **3.4 RETURNING LAND TO OWNERS FOR USE AFTER CONSTRUCTION**

BTC Co is initially purchasing the 44m wide construction corridor from private owners affected by the pipeline route. This approach has been adopted due to the absence of a legal framework within Georgian Statute to permit less than ownership rights which would confer the degree of protection required by BTC Co for safe pipeline operation and maintenance. Alterations to Georgian Law are currently being pursued which would confer the necessary degree of operational control, while permitting the ownership and use of the land to be handed back to the original owners. BTC Co does not wish to become a long-term landowner in Georgia and as soon as the legal mechanisms are in place, legally binding Servitudes or Easements will be negotiated with the former owners. The timescale for this process is dependent upon Georgian Parliament but is not expected to be longer than the three year period of occupation for construction purposes.

Upon completion of construction and reinstatement of the construction corridor, BTC Co will enter into contractual agreement with previous owners to permit them to use the land again, with some restrictions. If amendments to existing laws fail or are not sufficient for BTC Co use, then BTC Co would retain ownership but would maintain a contractual agreement to let previous owners use the land. The aim is to write the contract in such a way as to ensure that it is fully transferable and fully inheritable. Therefore, the best case will be, subject to pending legislation, to return the ownership right to the original owner subject to restrictions. The worst case will be that BTC Co. retains ownership but allows previous owners use rights, in addition to having been paid in full for the land. This message is being conveyed through the land teams and through the local NGO, APLR.

### **3.5 NATIONAL LEGISLATIVE FRAMEWORK**

The laws identified below are key pieces of legislation that have direct and significant implications for the BTC project. They are analyzed in greater detail below:

- The Constitution of Georgia, 1995, as amended;
- The Law of Georgia on the Rule for Expropriation of Ownership for Urgent Public Necessity (Eminent Domain Law), 1999;
- The Law of Georgia on Compensation of Compensatory Land Cultivation Costs and Sustained Damage in Case of Allocation of Agricultural Land for Non- Agricultural Purposes, 2<sup>nd</sup> October 1997;
- The Law of Georgia on the Management and Alienation of State-Owned Non-agricultural Land, 1998, as amended;
- The Law of Georgia on Ownership of Agricultural Land, 1996, as amended;

- The Law of Georgia on Land Registration, 1996, as amended;
- The Law of Georgia on Oil and Gas, 1999, as amended;
- The Labor Code of Georgia, 1973, as amended;
- The Civil Code of Georgia, 1997, as amended;
- The Civil Procedural Code of Georgia, 1997, as amended.

### **3.5.1 The Constitution of Georgia, 1995 (as amended)<sup>3</sup>**

The Constitution lays out the legal framework on land and asset acquisition and compensation, and guarantees public access to information. The regulatory powers of the Georgian Constitution provide the overall framework under which laws governing land use and expropriation and related issues are enacted. The State of Georgia has the constitutional power to seize any property by means of expropriation, with the payment of due compensation (Article 21). As detailed further in the Eminent Domain Law, the right to expropriate for reason of urgent public necessity can be granted to a state body or a legal entity of public or private legal status. The decision on granting the right to expropriate is made by the Regional Court on the basis of the Presidential Decree on expropriation, which justifies existence of urgent public necessity for expropriation.

Table 3.2 list sections of the Constitution that have direct relevance to involuntary resettlement activities associated with the BTC project. These include State expropriation of land for urgent public necessity by power of eminent domain, information disclosure and public consultation, protection of cultural property, and grievance resulting from land acquisition and economic displacement of the population. The Constitution allows the HGA to have precedence over national legislation provided that the HGA does not contradict the Constitution (Article 6).

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<sup>3</sup> Georgia is a Democratic Republic with the Parliament as the highest representative body at the national level. The country is divided into 67 Districts and 1, 032 Sakrebulo. District governments (Sakrebulo and Gamgeobas) are responsible for the enforcement of national laws and regulation of the activities of enterprises of local significance and subordinate government authorities.

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**Table 3.2 The Georgian Constitution as it Relates to Resettlement Issues**

Relevant Section	Jurisdiction	Resettlement Issues
Article 6	<ul style="list-style-type: none"> <li>• Affirms that the legislation of Georgia corresponds with universally recognized norms and principles of international law.</li> <li>• Allows precedence of international agreements / treaties over national legislation where such international agreements/treaties do not contradict the Constitution.</li> </ul>	Legal Status of the HGA
Article 21	<ul style="list-style-type: none"> <li>• Recognizes and guarantees the right to inherit and own property.</li> <li>• Allows restrictions on the above rights for ‘urgent public necessity’ e.g. expropriation but only if adequate compensation is available.</li> </ul>	Eminent Domain
Article 34	<ul style="list-style-type: none"> <li>• Affirms the obligation of the State to protect cultural heritage through legislation.</li> <li>• Requires each citizen to care for, protect and preserve cultural heritage.</li> </ul>	Protection of Cultural Property
Article 37	<ul style="list-style-type: none"> <li>• Affirms the rights of citizens to live in a healthy environment.</li> <li>• Guarantees State protection and rational use of nature for a healthy environment and sustainable development.</li> <li>• Affirms the right of citizens to complete, objective and timely information regarding their working and living conditions.</li> </ul>	Disclosure of Information and Public Consultations
Article 41	<ul style="list-style-type: none"> <li>• Affirms the rights of citizens to access information about themselves as long as it is not confidential information of the State, or of professional or commercial importance.</li> </ul>	Disclosure of Information and Public Consultations
Article 42	<ul style="list-style-type: none"> <li>• Protects the rights of citizens to appeal to the courts to uphold rights and freedoms as provided for under the Constitution</li> </ul>	Grievance

### **3.5.2 The Law on Compensation of Compensatory Land Cultivation Costs and Sustained Damage in Case of Allocation of Agricultural Land for Non- Agricultural Purposes, 2<sup>nd</sup> October 1997**

This Law describes the issue of land compensation in greater depth and specifies the types of compensations to be provided. The first type of compensation is paid to the government as the cost of cultivation of a replacement parcel of agricultural land, the amount of which is fixed by the Law. The second is paid to the private landowner (user) as compensation for damage to the property. This Law requires that agricultural land taken out of agricultural use be replaced with a land plot of corresponding size and quality. The Law specifies the price of land replacement in each district, which varies according to the district and to the quality of land available.

#### *Scope of Law*

The Law covers agricultural lands currently in use, land potentially fit for agricultural purposes (although currently not in use as such) as well as land not fit for agricultural use but located outside populated areas. Under the Law, the damage caused by the allocation or temporary occupation of agricultural land for non-agricultural purposes shall be indemnified by the physical or legal person who is the recipient of the allocated land.

#### *Use restrictions and compensation for reduced productivity of land: (Article 5)*

Damage caused by restriction of the land user's rights or deterioration of agricultural land quality in the course of its allocation for non-agricultural purposes are to be identified by the land management assessment drawn up by the State Department for Land Management in conjunction with local bodies of self-governance. This gives the State Department of Land Management the right to monitor reinstatement along the pipeline corridor in terms of land use. This is part of the government regulatory monitoring function. The assessment shall include the following data:

- Location of the plot and object under construction;
- Plot area, arable land composition;
- Terms and conditions of damaged production rehabilitation;
- Terms and conditions of removal, maintenance and use of the damaged topsoil;
- Terms and conditions of land re-cultivation;
- Terms and conditions of land allocation, handling and use;
- Size of damage; and
- Replacement land development costs.

In the event of temporary allocation of the plot (up to three years) the amount of damages shall be specified in the Plot Transfer Act (the document which certifies conditions of the plot at the moment of transfer). The factual damages, on the other hand, will be specified upon expiration

of the plot usage terms by the application of prices and standards in effect on the date of drawing up the Plot Return Act (the document which certifies the condition of the plot at the time of its return).

*Facilities Subject to Indemnification of Damages: (Article 6)*

If agricultural plots are allocated for non-agricultural purposes, or temporary occupation, compensation is provided for the following:

- Cost of the facilities or those connected with their relocation;
- The value of perennial plants and the cost of soil productivity restoration;
- Suspended production (sowing, planting, fertiliser spreading and other work) costs;
- Harvest cost;
- Lost profit; and
- Damages inflicted upon the landowner during the period of temporary occupation.

*Specifying the Damages: (Article 7)*

The damages caused by allocation for non-agricultural purposes or by temporary use are determined through consideration of a number of factors, including:

- Facilities located on the land;
- Incurred costs of the landowner moving to new land;
- Loss of fruit from perennial plants;
- Incomplete production;
- Damages due to water resource utilisation;
- Loss from the land lying idle; and
- Rehabilitation required for restoring land and productivity.

*Setting the Replacement Costs (Article 9)*

The nominal amount of compensation for disabling agricultural land from agricultural use, deemed to be the cost of cultivation of a replacement parcel of land, payable to the State prior to allocation of land for non-agricultural use, is set at 14,286 GEL (approximately US\$7,150). This figure is adjusted to specific sites and land plots based on a number of territorial and quality adjustment coefficients.

*Transfer of Compensation: (Article 13 and 14)*

The physical or juridical person receiving the benefit of the land (e.g. BTC Co.) will transfer the compensation amount to the treasury account of the State Department of Land Management of Georgia. This will be used to fund new land development and land management measures. Costs incurred by the damage as a result of allocating non-agricultural use for land should be transferred to the account of the landowner.

### **3.5.3 Law of Georgia on Oil and Gas, 1999 (as amended)**

Law of Georgia on Oil and Gas was established to govern activities relating to the exploration and production of oil and gas on the territory of Georgia, and regulates only upstream activities. This law contains no rules of general applicability, which would set forth a legal regime for the main oil and gas pipelines passing through the territory of Georgia. Instead, midstream oil and gas activities are largely governed by special intergovernmental agreements and presidential decrees. Key principles for the BTC project are set out in the BTC Inter-Governmental Agreement (IGA) and HGA that constitute Georgia's international agreement; as noted above, these agreements take precedence over Georgian domestic statutes (including the Law of Georgia on Oil and Gas).

### **3.5.4 Labor Code, June 1973 (as amended)**

The Labor Code regulates labor relations between all workers and employers working in Georgia in all enterprises, institutions and organizations, regardless of their ownership and organizational form. This Code supports human rights, fair terms and conditions of employment and the creation of a safe and healthy working environment. Although the Code does not specifically relate to land acquisition and resettlement issues, it is nevertheless worthy of mention as some of the funds allocated by the project will be used to employ local people. Also, local people may work in sub-projects that provide the goods/services needed by the PAPs and that are funded by the project. According to the Labor Code of Georgia, the duration of the working period is:

- Normally, 41 hours per week, with five or six working days a week;
- 36 hours per week, in certain dangerous or unhealthy activities or jobs; and
- 31 hours per week, for employees from 16 to 18 years of age.

Work on weekends and public holidays, and overtime work is permitted only under exceptional circumstances as enlisted under the Labour Code. The minimum working age is 16 years. Persons from 14 to 16 years of age may be employed only in exceptional circumstances. The minimum paid annual leave is a total of 24 working days.

### **3.5.5 The Law of Georgia on Employment, 2001**

The Law of Georgia on Employment sets out the general employment policy, including the economic, social, organisational and legal fundamentals for protecting the unemployed. The Law extends to all citizens of Georgia and to stateless persons, who are deemed to be on an equal footing with citizens of foreign states in obtaining a job in Georgia. Under the Law, State authorities are to establish employment programs (special, local, regional and national), which will give priority to 'less competitive human resources' (including the unemployed, large

families and single parents). The Law sets forth the policy on the free choice of work regardless of colour, race, sex, religion, and political and social status.

### **3.5.6 Legislation on Public Participation and Consultations**

The primary legislation that relates to the public participation and consultation process required for projects that involve resettlement, land acquisition, and compensation is defined in the Constitution of Georgia and the Law of Georgia in the Rule for Expropriation of Ownership for Urgent Public Necessity, 23 July 1999. The following sections of the Constitution define the fundamental principles ensuring appropriate public consultation<sup>4</sup>:

- Article 37, Part 5 states that “an individual has the right to obtain full, unbiased and timely information regarding his working and living environment.”
- Article 41, Part 1 states that “a citizen of Georgia is entitled to access information on (the) citizen as well as official documents available in State Institutions provided it does not contain confidential information of State, professional or commercial importance, in accordance with the applicable rules.”
- Article 4 of the Law of Georgia on the Rule for Expropriation of Ownership for Urgent Public Necessity requires that property owners whose property is to be expropriated be kept fully informed throughout the process. This information needs to be delivered to all affected owners and published in central and local newspapers, and should include a brief description of the project scope and its implementation, the territory and the property to be expropriated. Property owners should also be informed of: 1) the date for the filing of the application for the grant of the expropriation right to the Regional Court<sup>5</sup>; and 2) the date of consideration of the application by the Regional Court. In addition, the expropriator has to provide a certificate to the court that the information about the expropriation has been published, and should make an effort to acquire the property by negotiation.

### **3.5.7 Law of Georgia on the Protection of Cultural Heritage, 1999 (as amended)**

In addition to the Constitution of Georgia affirming the state’s obligation to protect cultural heritage and requiring each citizen to care for, protect and preserve cultural heritage (see Table 2.1 above), the Law of Georgia on Protection of Cultural Heritage sets forth the legal regime applicable to cultural sites in Georgia.

According to the Law, the State Department for Protection of Cultural Sites is tasked with defining the protection zones for each cultural site, which are subsequently approved jointly by the Ministry of Culture, the State Department for Protection of Cultural Sites, and the Ministry of Urbanization and Construction. As a general rule, any activities within such protection zones that may damage or destroy the site or its environment, or deteriorate its perception, are not permitted and can be specifically restricted or prohibited by the Ministry of Culture (Article 32.5 and 32.6). In addition, the Ministry of Culture has the right to request the President to

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<sup>4</sup> The relevant principles have also been discussed in the IFC’s “Doing Better Business through Effective Public Consultation and Disclosure,” (1999). These have been incorporated into the project’s consultation and disclosure practices as detailed in Chapter 7.

<sup>5</sup> The Regional Court considers the application for granting the right of expropriation by original jurisdiction.

suspend, restrict or prohibit activities outside the territory of the protection zones, which nevertheless pose danger to the site (Article 32.7).

In accordance with World Bank Policy OP 11.03 on Cultural Property, the project has designed measures to prevent significant damage to important archaeological and cultural sites<sup>6</sup>.

### **3.5.8 Land Ownership and Property Rights in Georgia under the Civil Code, 1997 (as amended)**

The Civil Code of Georgia is a principal piece of Georgian legislation regulating private civil relationships, and it contains property law, the law of obligations, family law and the law of inheritance. To the BTC project, the Civil Code is particularly relevant in the property law section where the ownership, construction and servitude rights are discussed.

#### *Ownership Rights*

The ownership right<sup>7</sup> denotes the absolute title and entitles its beneficiary to freely possess and use property and prohibits its use by other persons provided, of course, that any limits imposed by law or contract are observed and the exercise of these rights is not to the detriment of third persons. The Georgian Constitution<sup>8</sup> specifically defends and guarantees the ownership right and forbids cancellation or limitation of the rights to own and to acquire or alienate ownership other than in cases of expropriation due to public necessity. In the case of ownership of a land plot, the presumption is that the absolute title allows the landowner's full discretion to build on the land plot, unless the presumption is rebutted contractually or by law.

#### *Construction Right*

The construction right is the first priority property right to land among all non-ownership property rights under the Civil Code<sup>9</sup>. This right allows for a transfer of the land plot by the owner to another person in temporary usage (not to exceed 59 years) for charge or free of charge. The transferee obtains the right to build a building/construction on or under the land plot, as well as to assign and transfer this right under inheritance or tenancy. The construction right may cover such part of a land plot that is not necessary for the actual construction but allows a better use of the facility constructed on the basis of the construction right. Termination of the construction right requires consent from the landowner and does not cease as a result of demolition of the respective building/construction.

With respect to the BTC project, the terms of transfer of the construction right will need to be reflected for each parcel of land in a notarized and registered contract between the landowner and the beneficiary of the construction right.

#### *Right of Servitude*

The property right of servitude according to the Civil Code of Georgia is an encumbrance on a land plot or other immovable property in favour of the owner (the "beneficiary") of another land plot or immovable property. The beneficiary is given the right to use the encumbered land plot

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<sup>6</sup> BTC project ESIA includes a detailed summary of project Cultural Heritage Management Plan designed for mitigation of impacts.

<sup>7</sup> Article 170, the Civil Code.

<sup>8</sup> Article 21. The supreme law of the land was adopted by the Parliament on August 24, 1995.

<sup>9</sup> Articles 233-241, the Civil Code.

on certain occasions and/or prohibits certain activities on the encumbered land plot or the exercise of certain rights by the owner of the encumbered land plot.<sup>10</sup>

“Immovable Property” is defined under Georgian law to include land plots, plants on the land plot, as well as buildings-constructions firmly attached to the land<sup>11</sup>. For the purposes of the BTC project, the construction of the pipeline, as firmly fixed to the land, would qualify as immovable property under this definition. Therefore, it is believed that the above definition of servitude right would allow the owner of the pipeline to be a beneficiary of servitude right on land plots adjacent to the pipeline.<sup>12</sup>

In contrast with ownership and construction rights, the servitude right cannot provide “exclusive use, possession and control” rights - the rights that the HGA expressly grants BTC Co. over the permanent land in the post-construction phase.<sup>13</sup>

#### *Building Rights on Agricultural Land*

All private agricultural land parcels have some form of building rights associated with them. The Georgian construction laws and regulations do not appear to prohibit the erection of non-habitable agricultural buildings on agricultural land parcels. Permits are required for buildings higher than 4m.

All agricultural land parcels have associated rights for the construction of a habitable building. The right to build more than one habitable building was restricted by Article 2, Resolution No. 290 of the Cabinet of Ministers of the Republic of Georgia, March 10 1992. There is now some legal doubt as to the strength of these restrictions, as this resolution was suspended by Article 8, Resolution No. 815 of the Cabinet Ministers of the Republic of Georgia, November 29 1994, pending the formulation of a new law “*On Land Usage*”. Although a law with such name was never developed, legal commentators believe that the restriction in the Resolution 290 resumed its legal force upon the adoption of the *Law on Ownership of Agricultural Land* in 1996.

Hence, it is possible to build a dwelling on most agricultural land parcels, but with the restriction of one per parcel. The initial dwelling should be able to be constructed without the owners being compelled to alienate the dwelling land area for non-agricultural land use (and hence pay the State Land Replacement Fee<sup>14</sup> for the dwelling area).

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<sup>10</sup> Article 247, the Civil Code.

<sup>11</sup> Article 149, the Civil Code.

<sup>12</sup> Notwithstanding this belief, the Civil Code leaves certain room for argument that the above “ordinary” servitude may exist only where its beneficiary is itself a landowner. Even if the project was disallowed to hold the ordinary servitude for not owning land, however, Georgian law would nonetheless recognize another type of servitude (called “personal” servitude) – the only tangible difference from the ordinary servitude discussed above being that the personal servitude is not transferable.

<sup>13</sup> Article 4.1, Appendix 2.

<sup>14</sup> The State Land Replacement Fee (SLRF) is a valuation method the State uses to calculate the fee a landowner is required to pay the State to convert agricultural land into non-agricultural land use. In practice, it is the highest price paid for land in recent years.

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### **3.5.9 The Law of Georgia on Land Registration, 1996 (as amended)**

The Law of Georgia on Land Registration requires “mandatory State registration of rights to land and its associated real estate” in order to validate holding such rights (Article 2.4). Land registration is an official recognition or confirmation of the origin, transfer, restriction or suspension of rights to a land plot and other immovable property. Article 2.3 allows both Georgian and foreign citizens and legal persons as well as international organizations to register their ownership title or other immovable property rights with the State Land Management Department (SLMD), which has the exclusive right to register the land.

### **3.5.10 Power of Eminent Domain**

“The Law of Georgia on the Rule for Expropriation of Ownership for Urgent Public Necessity” (July 23, 1999) provides the mechanism for granting the right of expropriation of private property (including privately owned land) for urgent public necessity and the procedure for enforcing the expropriation right. The scope of the law appears to be limited to the expropriation of ownership rights only and, in particular, does not extend to cover expropriation of rights in other (lesser) rights, such as lease rights. In addition, the law does not address the possibility of merely limiting private ownership rights for urgent public necessity (e.g. compelling a private owner to grant a construction right over the private land) without their full and unconditional expropriation.

Expropriation of ownership, which can serve a number of uses in Georgia, including the construction of oil pipelines, must be granted by a Regional Court decision made on the basis of a Presidential Decree.

Eminent domain will be activated for the project only under exceptional circumstances (Section 5.6.3). That is, only if every effort to negotiate sale prices for land and other affected assets fails and local pipeline re-route is impossible, will the project resort to Eminent Domain. Also, if all efforts to contact the absentee owners fail, eminent domain may also be used, with compensation held in an account for the owner when he or she can be located. Consultation with affected people indicate, however, that they will accept the high values offered both for land, assets and crops and use of eminent domain is not expected.

#### *Grounds for Acquiring the Right of Expropriation (Article 3)*

The State of Georgia has the constitutional power to seize any property by means of expropriation, with the payment of due compensation (Article 21 of the Georgian Constitution). The right to expropriate for reason of urgent public necessity can be granted to a State body or a legal entity of public or private law. The decision to grant the right to expropriate is made by the Regional Court on the basis of the Presidential Decree on Expropriation (Article 3.1).

Prior to applying to the Regional Court with a request for a grant of the expropriation right, the expropriating entity (the “expropriator”) should obtain a Presidential Decree, which must justify the “inevitable nature” of the expropriation for urgent public necessity, and name the expropriator who seeks the granted for the right to expropriate.

#### *Regional Court Decision on Granting the Expropriation Right (Articles 3 and 5)*

The Regional Court is a second instance court (i.e. a higher instance than first instance district courts), which will consider the application on granting the right of expropriation by original

jurisdiction. There are two Regional Courts in Georgia: the Tbilisi Regional Court and the Kutaisi Regional Court. The application submitted to the Regional Court be attached with the following documents:

- Detailed description of the project for which the expropriation right is requested;
- Relevant Presidential Decree;
- Detailed description of the property to be expropriated; and
- A certificate demonstrating that information on expropriation has been published in local and central newspapers.

A Regional Court's decision on granting the right to expropriate must include a detailed description of the property to be expropriated, an instruction on the necessity to pay due compensation, and the identity of the expropriator that is granted such right.

*Pre-requisites to Expropriation: (Article 6)*

An expropriator may reach an agreement with the property owner on the compensation amount in advance. The expropriator shall make every reasonable effort to acquire the property by negotiation. Before negotiations, the expropriator will, at its expense, ensure that the property is valued (with the participation of an independent expert) to determine the approximate amount for compensation in accordance with fair market value.

Prior to property purchase negotiations, the expropriator approaches the owner with an offer to acquire the property, and present a written assessment showing how the proposed compensation amount was determined. The offered compensation amount may not be less than the assessment amount. The expropriator may not disrupt negotiations or coerce the owner.

*Proceedings prior to Expropriation Action: (Article 7)*

The expropriator, or its independent agent, has - with the agreement of the owner - the right to survey the property, take soil samples and other actions in order to appraise the property. Before the actual expropriation, the expropriator submits a document to the owner with:

- Proof for the existence of public necessity mandating the expropriation of the property with reference to the relevant Presidential Decree and Regional Court decision;
- Proof that the use of the property is for public necessity purposes; and
- A detailed description of the property subject to expropriation and the value for which the property is assessed and compensation is offered.

*Dispute on the Amount of Fair Market Value and Compensation (Article 8)*

If the expropriator and the property owner fail to reach an agreement on property market value and compensation, either party may file an application to the court having jurisdiction over the dispute in accordance with the civil procedure code. The expropriator's application must include:

- A detailed description of the property to be expropriated;

- An excerpt from the public registry on ownership;
- Documents concerning the project to be implemented due to the public necessity; and
- The regional court decision on granting the expropriation right.

*Court Decision on Property Value (Article 9)*

The court is authorised to appoint an independent expert to evaluate the property and submit a conclusion on the property's market value to the court within a set time frame. Based on the independent expert's conclusion and evidence presented by both parties, the court will make a final decision on the amount of compensation for the property subject to expropriation.

*Responsibilities of the Expropriator (Article 10)*

The expropriator is responsible for reimbursing all costs incurred by the parties, including procedural costs such as court costs in case of a dispute, and costs associated with the evaluation and transfer of the property.

*Valuation of Agricultural Land (Article 11)*

In the case of agricultural land, compensation for the loss of sale of crops in the current fiscal year from the land will be included. Crops planted after the valuation will not be included in the compensation amount.

**Table 3.3 The Law on the Rule for Expropriation of Ownership for Urgent Public Necessity**

Relevant Section	Jurisdiction	Application
<b>Article 2&amp;3</b>	<ul style="list-style-type: none"> <li>• Provides for land expropriation rights to be granted to a State body or a private or public entity for public use including construction of an oil or gas pipeline.</li> <li>• Provides for all expropriated landowners to be adequately compensated.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires Presidential Decree on existence of urgent public necessity and Regional Court decision on granting the expropriation rights</li> </ul>
<b>Article 4&amp;5</b>	<ul style="list-style-type: none"> <li>• Permits the Regional Courts to grant expropriation rights.</li> <li>• Requires that, following the publication of the Presidential Decree, all property owners must be kept informed throughout the process (including via publication in central and local newspapers) about the project, the territory and the property to be acquired, as well as the proceedings in the regional court.</li> </ul>	<ul style="list-style-type: none"> <li>• Applications by interested parties to include detailed descriptions of the property to be expropriated and of the project for which the land is to be acquired, and a certificate demonstrating that information has been published.</li> </ul>
<b>Article 6</b>	<ul style="list-style-type: none"> <li>• Requires the expropriator to use its best efforts acquire land through negotiations with owners.</li> <li>• Requires the expropriator to employ independent experts for land valuation in accordance with fair market value and to meet all costs incurred during this process.</li> <li>• Requires compensation to include loss of sale of crops in the current fiscal year.</li> </ul>	<ul style="list-style-type: none"> <li>• The expropriator must submit to the owner an offer to acquire the property and pay compensation.</li> <li>• All property must be compensated irrespective of property size, shape or condition.</li> <li>• The offer must be accompanied by a written assessment explaining how the compensation was calculated.</li> <li>• The expropriator may not defer negotiations or act in a coercive manner during the negotiation process.</li> </ul>
<b>Article 8</b>	<ul style="list-style-type: none"> <li>• Permits appeals to be filed in court by both parties where a valuation is not mutually acceptable.</li> <li>• Requires the expropriator to meet all costs incurred by the parties including procedural costs such as the court costs in case of a dispute and costs associated with the valuation and transfer of property.</li> </ul>	<ul style="list-style-type: none"> <li>• The court will appoint independent experts as valuers and make a final decision on the value of the property and the compensation to be paid.</li> <li>• The expropriator must meet all costs incurred during this process.</li> </ul>

The HGA for the BTC project in Georgia gives the BTC Co. project the power of eminent domain, if necessary, to enable it to compulsorily acquire all private land required by the project. The Law on the Rule for Expropriation of Ownership for Urgent Public Necessity (the Law on Eminent Domain) is a recent law in Georgia and has not yet been applied in the country. One of the major shortcomings of the Law concerns the expropriation process, which does not appear executable within a reasonable time limit. Another issue concerns the rights of landowners to appeal, and the possibility that disputes over compensation will hinder access to

property subject to expropriation. Amendments to the Law on Eminent Domain, as well as other legislative acts, have been drafted with the aim of rectifying these and other shortcomings by streamlining the entire expropriation procedure and introducing a mechanism for expropriating less-than-ownership rights. It is hoped that this draft legislation will be considered in the Georgian Parliament by the end of 2002. At present, however, the expropriation of ownership rights in accordance with the Law on Eminent Domain remains the only mechanism that could be used to obtain the construction corridor against the wishes of a private landowner.

### **3.6 CONSISTENCY OF LOCAL LEGISLATION AND THE INTERNATIONAL POLICIES RELATING TO LAND ACQUISITION AND INVOLUNTARY RESETTLEMENT**

Although there is no specific resettlement law in Georgia, two laws, the Compensation Law (*“The Law of Georgia on Compensation of Compensatory Land Cultivation Costs and Sustained Damages in Case of Allocation of Agricultural Land for Non-Agricultural Purposes”*) and the Law on Eminent Domain (*“The Law of Georgia on the Rule for Expropriation of Ownership for Urgent Public Necessity”*) govern procedures for compensation for physical dislocation and loss of assets resulting from the expropriation or allocation of agricultural land for non-agricultural purposes. The Law on Eminent Domain also outlines the appeals process to obtain a right to expropriate land for public necessity, and requires disclosure of information as one of the key elements of the expropriation process.

As noted above, the Law on Eminent Domain states that adequate compensation must be offered for expropriated land. This sentiment is reiterated in both the HGA and the World Bank Group OD 4.30 (Operational Directive) on Involuntary Resettlement; the OD4.30 requires the compensation to be at least equal to current replacement cost. This is indeed the approach adopted by the project. But, failing to reach agreements, the HGA also allows the project BTC Co. to use the principles of expropriation (or eminent domain) established in the relevant laws.

The Compensation Law outlines key requirements on compensation for loss or damages to land and assets, as well as income disturbances from loss of access to land. The law defines the scope of damages and defines specific compensation measures including replacement, reconstruction and relocation costs. The law does not enumerate every conceivable item for which compensation is payable, although the overriding understanding of “fair compensation” is assumed. This law gives a basis upon which compensation payments can be calculated and made to affected property owners, to the extent it does not conflict with the Law on Eminent Domain (which is believed to prevail over the Compensation Law). The Compensation Law also specifies fees payable to the state for cultivation of replacement agricultural land.

The BTC project’s land acquisition strategy is in accord with the national compensation law and the policies of the World Bank/IFC as stated in OD 4.30 on Involuntary Resettlement. Specifically,

- The World Bank/IFC guidelines require viable alternative project designs, if possible to avoid resettlement. This has been done during the process of narrowing the pipeline corridor. It will also be done through the process of negotiated land purchases outlined in chapter 5.
- The World Bank/IFC OD 4.30 requires resettlement planners to consider, conceive of, and execute resettlement activities as development programs, providing resettlers sufficient investment resources to share in project benefits. This, too, will be assured through a special RAP Fund and complemented by the Community Investment Program

(see Chapter 6 for details) established for the project. The RAP Fund (Section 5.9 and Table 9.1) will ensure that a) cash compensations received by the affected populations can be used in productive ways; b) incomes are restored and improved; and c) losses suffered as a result of constrained access to community assets such as pastures and forests are compensated for.

- OD 4.30 emphasizes the importance of the involvement of affected people in resettlement planning and compensation decisions. The scope and quality of consultations at large will be discussed further in Chapter 7. Project affected people will be consulted in calculating compensation values and the project will negotiate compensation on a plot-by-plot basis with each affected owner in order to reach a negotiated agreement. Repeated consultations with the people, as well as systematic representative surveys, clearly show that people are eager to sell their land, whether its use is given back to them or not.
- The World Bank/IFC guidelines require that appropriate mitigation measures for compensation are carefully planned and fully carried out throughout the project via the preparation of a Resettlement Action Plan. This document provides such a Plan.

### **3.7 PROJECT MEASURES TO ENSURE COMPLIANCE WITH WORLD BANK/IFC REQUIREMENTS**

There are specific issues to be addressed by BTC Co. to ensure compliance with World Bank/IFC requirements including the following:

- A detailed, accurate census of owners, tenant farmers and informal users of State land to identify all types and categories of affected populations that are eligible for compensation and assistance has been completed. Legal tenants of State lands have been identified. There are some State lands leased to enterprises, the majority of which (if not all) are no longer functioning. These will be surveyed ahead of construction commencement to confirm that no workers will be affected.<sup>15</sup>
- A socio-economic survey of affected populations is also a requirement and has been completed. Such a survey was carried out in early 2002. Because of subsequent changes in the corridor alignment, the socio-economic survey was re-implemented with a larger project affected population sample. The findings are presented in Chapter 4. This survey showed that a large number of absentee owners exist whose addresses need to be secured so that they can be invited to sell their land. This work is currently underway.
- OD 4.30 specifies that special attention should be given to identifying vulnerable groups (i.e., ethnic minorities, the landless, semi-landless, and women). The vulnerabilities of such persons with respect to ownership and tenancy have been adequately established, both through qualitative and quantitative surveys. The elderly women, concentrated in some segments of the corridor, have been identified as particularly vulnerable (see Chapter 4).<sup>16</sup> During the process of land acquisition,

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<sup>15</sup> The pipeline corridor and its above ground facilities do not go through any enterprise facilities, but through the lands that belong to such enterprises. Most, if not all, of these enterprises have long been closed down. Nevertheless, an effort is underway to ensure that no persons in enterprises will be impacted by the project.

<sup>16</sup> Elderly men are also vulnerable if they are unable to avail themselves of project benefits such as job opportunities, and have no employable family members in their households due to age considerations.

owners who are both elderly and vulnerable will be identified on a plot-by-plot basis. Initial mitigation measures have been formulated for this group so that they can benefit from the advisory services included in the RAP Fund (see Chapter 6). Further consultations will be carried out during RAP implementation to assess the needs of this particular group in greater detail and to formulate adequate responses. This activity will be completed in early 2003.

- Another requirement concerns the agreements between the BTC Co., on the one hand, and the landowners or land users, on the other. These must be based on fair and transparent negotiation processes. How the BTC project will proceed to achieve this is outlined in Chapter 5. This activity is ongoing and will be completed when land acquisition is completed.
- OD 4.30 invites negotiations on compensation levels. This will be achieved through the process of presenting an offer and then meeting with the affected person at their home or another mutually agreed location to discuss the offer and attempt to reach an agreement. Local land advocacy rights NGO, APLR, will observe this meeting as a third party. This activity will proceed in line with the land acquisition process as outlined in Chapter 5.
- That people are fully informed of their rights under the laws and appreciate that their rights will not be jeopardised is another requirement of OD 4.30. This will be achieved primarily through preparation and distribution of reader friendly summaries of the relevant laws to both resident and absentee owners. A Guide to Land Acquisition and Compensation has been printed which details the entitlements, and valuation and compensation methodologies and principles (see Annex 1). APLR will take this document to community meetings and discuss the content of the document in detail with the affected people. Every effort will be made to ensure its receipt by project affected people, including absentee owners. The disclosure process is underway (Chapter 7).
- OD 4.30 also requires arrangement of implementation and monitoring arrangements. The land acquisition arrangements are in place and a large Land Team, consisting of both international and local experts, is completing the inventory of all affected assets. This document summarises the work carried out by the Land Team. The Land Team's planning and land acquisition efforts are complemented by the work of a specialised NGO, as detailed in Chapters 5 and 7. Proposed external independent and internal monitoring arrangements are underway and presented in Chapter 8. Additional work will be carried out during the early stages of RAP implementation to test the monitoring indicators and determine procedures for gathering the required data. These will be initiated in early 2003.