



Technical Assistance Consultant's Report

Project Number: 43288
November 2014

REG: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region

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Asian Development Bank

AZERBAIJAN

Project Number: 43288 – 01

Regional Technical Assistance (RETA) – 7433: Mainstreaming Land Acquisition and Resettlement Safeguards in Central and West Asia Region

Country Assessment on Land Acquisition and Resettlement

ACCEPTED BY RETA WORKING GROUP: 21 MAY 2014

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Abbreviations and Acronyms

ADB	Asian Development Bank
AP	Affected Person
CA	Central Asia Regional Economic Cooperation
CCO	Chief Compliance Officer
CPS	Country Partnership Strategy
CRP	Compliance Review Panel
CSO	Civil Society Organization
DP	Displaced Person
DMC	Developing Member Country
EA	Executing Agency
FS	Feasibility Study
GRM	Grievance Redress Mechanism
IFI	International Financial Institution
IPSA	Initial Poverty and Social Assessment
IR	Involuntary Resettlement
KPI	Key Performance Indicator
FA	Financing Agreement
LAR	Land acquisition and resettlement
LARF	Land Acquisition and Resettlement Framework
LARP	Land Acquisition and Resettlement Plan
MFF	Multi Tranche Financial Facility
M&E	Monitoring and Evaluation
MRM	Management Review Meeting
NGO	Non- government Organization
PAM	Project Administration Manual
PCP	Public Communication Policy
PIU	Project Implementation Unit
PPTA	Project Preparation Technical Assistance
PTL	Project Team Leader
RETA	Regional Technical Assistance
SIA	Social Impact Assessment
SPS	Safeguards Policy Statement 2009

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CHAPTER 1

INTRODUCTION

1.1. Goal and Objectives

1. This Country Assessment (CA) for Azerbaijan is prepared under the ADB Regional Technical Assistance (RETA) 7433: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region. The RETA objective is to foster more effective infrastructure development in the region through the improvement of land acquisition and resettlement (LAR) practices. This objective includes the following outcomes:

- a. increased understanding amongst the governments and civil society organizations (CSO) about LAR, as defined in the 2009 ADB Safeguard Policy Statement (ADB Policy) and about the improvements needed for effective LAR implementation in each participating country;
- b. improved country ownership of appropriate LAR practices;
- c. closer alignment between ADB Policy and local practice; and
- d. improved procedures/technical tools to prepare and execute resettlement plans.

2. The above outcomes are pursued in each country by implementing four RETA components:

- a. preparation of a LAR Country Assessment (CA);
- b. establishments of a LAR Capacity Building Plan (CBP);
- c. implementation of the LAR CBP, focusing on regulatory changes or technical standards that do not require formal legal reform; and
- d. provision of on-the-job coaching for Executing Agencies (EA) on LAR preparation/implementation for ADB projects.

3. The RETA will be carried out in two phases. Phase one includes the establishment of a RETA working group and CA preparation, phase two includes the preparation of the CBP and then its implementation. On the job-coaching activities are carried out in both phases. Based on lessons learned from previous similar ADB programmes, the RETA will focus only on improvements obtainable under existing laws through by-laws or technical regulations. The RETA however will not engage in legal reform although could help preparing an agenda for legislative changes if this is requested by a participating Government.

1.2. Scope of the Country Assessment

4. This CA entailed an analysis of project documents, a review of national legislation and questionnaires/interviews with representatives of state agencies, and LAR-affected communities. These efforts were then complemented with in-depth studies of actual LAR cases. These studies allowed the identification of LAR planning and implementation constraints emerging within a practical context¹.

5. The identification of policy reconciliation and LAR preparation/implementation issues in the country was based on an analysis of both the Country and the ADB system/procedures. The evidence gathered in this fashion was then followed by a comparative effort juxtaposing Azerbaijan and ADB LAR requirements/practice which had the objective to identify critical differences requiring reconciliation and propose the needed reconciliation measures of LAR implementation improvements.

¹ Note on case studies.

6. The comparison of formal ADB Policy requirements/policy application with pertinent laws/implementing regulations and related policy reconciliation issues is elaborated in Chapter 2. The comparison of ADB and Azerbaijan processes for LAR and the definition of alignments needed are provided in Chapter 3. Chapter 4 focuses on overarching institutional and technical improvements needed to close the gaps between the application of ADB Policy principles and national law. Finally Chapter 5 summarizes the issues to be addressed by the CBP.

7. The Azerbaijan Government officially established a Working Group (Focal Agency (MoF) informed ADB AZRM with the official letter dated 21 September 2012, number DX-03/05-03-903). Appendix 4 provides the working regulations and detailed composition of the working group. The country assessment was carried out for the most part between October 2012 and March 2013.

1.3. Overview of Land Management in Independent Azerbaijan

1.3.1 Land in Soviet Azerbaijan

8. Azerbaijan having an area of 86,600 km² is the largest country in the Caucasus region located at the crossroads of Western Asia and Eastern Europe. It is bounded by the Caspian Sea to the east, Russia to the north, Georgia to the northwest, Armenia to the west and Iran to the south. The exclave of Nakhchivan bounded by Armenia to the north and east, Iran to the south and west, while having a short borderline with Turkey to the northwest. The total population is estimated at about 9,3 mln (as per official statistics of 2013), 47.1% of which is rural. Azerbaijan is home to a vast variety of landscapes. Over half of Azerbaijan's land mass consists of mountain areas. The rest of Azerbaijan's terrain consists of plains and lowlands. The total land area is 82,629 km² subdivided as follows: 3,971 km² water bodies. 47,565 sq.km agricultural land (18,540 sq.km arable); 26,778 km² meadows or pastures; forest 9,360 km² · 2,247 km² under permanent crops and 25,704 km² other land types including urban and residential areas.

9. The economy of the Soviet Union Republics was based on a system of State ownership of all lands and means of production and was managed under a centralized administrative and planning system. Under this overall system, productive land was subdivided in three types: a) *sovkhoz*; b) *kolkhoz* and c) *auxiliary individual plots*.

10. A **sovkhoz** was a large state-owned farm. The soykozoes were gradually established starting from the early 1920s, their total number in 1991 was 820. Sovkhozoes were headed by a state-appointed director, operated with capital investment from the state budget and relied on salaried workers recruited from the landless. The role of state farms in Soviet agriculture grew steadily during the Soviet era. This expansion resulted partly from state policy—the amalgamation and conversion of collective farms to state farms—and partly from the use of state farms in special programs expanding the area under cultivation

11. A **Kolkhoz** was a collective farm, in 1991 their number reached 983. Kolkhozoes were initially envisioned as a farmers' cooperative created by combining in a common structures many small individual farms allocated to individual users by the State based on a 99 years lease. The kolkhozoes members (kolkhoznika) were paid a share of the overall farm's product/profit in accordance to the number of days worked. According to the law, the kolkhozoes were to be managed according to the principles of socialist self-management, democracy, and openness, with active participation of the members in decisions concerning all aspects of internal life". In practice, however, the collective farms that emerged after Stalin's collectivization campaign did not have many characteristics of a true cooperative. The faint dividing lines between collective and state farms were finally nearly obliterated in the late 1960s, when Khrushchev's administration authorized a guaranteed wage to kolkhoz members. With this move the Kolkhoznika status was de facto transformed into that of salaried workers. The guaranteed wage provision was incorporated in the 1969 version of the Standard Charter.

12. **Auxiliary plots.** Rural and urban households were also allocated small independent land plots to grow food for family consumption and supplement family income. These plots were allocated to their users by the State on a permanent use term and could be passed to heirs. Although auxiliary plots were not

under the direct administration of the State planning system and at times they were referred to as “private plots” they were still under State property. The auxiliary plots remained for several decades a secondary semi-informal feature of the land administration system. However, given the post-world War II economic difficulties, in the 1950s the Soviet leadership had to put pragmatism above ideology and permit auxiliary plots to exist. Only with the coming to power of Mikhail Gorbachev the auxiliary plots received a full formal status under lease agreements. In February 1990, the USSR Law on Land was amended so as to legalize the leasing of crop land. Prior to this law, people could only lease lands for pasture purposes.

13. Finally, a part from land, also houses and buildings were under State property. They were allocated to their users only in terms of permanent occupancy use to be attested by a certificate attesting their legal residence in the premises.

1.3.2 Land Privatization

14. Soon after gaining its independence (October 1991) from the Soviet Union, Azerbaijan took several important steps towards agricultural reform. The new Constitution of the Azerbaijan Republic provided for private land ownership (Article 29) and was adopted by a National Referendum on 12 November 1995. During the few years since independence, important legislation and bills were approved. The entire agricultural sector shifted to individual production since 1992 and the large collective and state farms ceased to exist.

15. Over 52 decrees were issued by the Government for land reforms in Azerbaijan till 2003, including the following:

- Law of the Republic of Azerbaijan ‘On land reforms’ of July 16, 1996,
- Law of the Republic of Azerbaijan ‘On state land cadastre, land monitoring and structure’ of December 22, 1998,
- Law of the Republic of Azerbaijan ‘On land rent’ of March 12, 1999,
- Law of the Republic of Azerbaijan ‘On land market’ May 7, 1999,
- Land Code of the Republic of Azerbaijan approved by Law of the Republic of Azerbaijan of June 25, 1999
- Decree 534 of January 10, 1997 of President of the Republic of Azerbaijan ‘On approval of some legal documents assuring implementation of agrarian reforms’.

16. The land reform in Azerbaijan entailed the privatization of most arable cropland to private owners, as well as the allocation of significant tracts of pasture and infertile cropland (mostly rain-fed or salinized) to municipalities. State land was kept as a reserve fund, and municipalities were given the right to lease their land holdings, as well as to collect the land tax (from which most farms are presently exempt).

17. The dimensions of the privatized plots depended on the land resources of a village and could vary from 0, 1-0,5 ha in districts with limited land to several hectares like along the banks of the Kur-Aras river or in north Shirvan. A 1998 survey found that the average farm size was 1.99 hectares with about 58% of farms between 0.5 to 2.5 hectares and a median farm size of 1.5 hectares. The land distribution was carried out through a lottery method. The citizens entitled to participate in the lottery were all permanent residents of a district born on August 2, 1996 or before. Several surveys (e.g the Social Assessment Working Paper, prepared in 1998 by the World Bank for the Azerbaijan Agricultural development and Credit Project) confirmed the qualitative assessment that the lottery method of land distribution was considered to be fair in most areas.

18. The privatization reforms were implemented based on 3 main principles:
- First, lands were freely given to citizens in Azerbaijan;
 - Second, the lands to be privatized were the most suitable. In other words, a citizen was not given unusable or poorly productive plots of former state and collective farms;
 - Third, all citizens, irrespective of place of residence, were entitled to use, lease, purchase or sale land.

19. **First Land Reform Phase (1995-2000).** Immediately after independence the preconditions for a land reform were established with the founding of a new State Land Committee (established on 17 July 1992) and a new State Geodesy and Cartography Committee (established on 28 December 1991)². Actual reform was initiated by the Presidential decree of March 2, 1995, No. 155-IQ establishing a State Agrarian Reform Commission (SARC). For that purpose, a Law on "Land Reform" was issued on 16 July 1996 reflecting responsibilities and procedures for land reform. Based on the law (article 20) SARC was the main responsible agency together with its representative in each rayon, the Rayon Agrarian Reform Commission (RARC). The RARC was headed by the head of Executive Power of the appropriate district and was composed by officers from the Rayon Executive Power, State Land Committee and independent specialists.

20. The reform was initially carried out through a pilot project in two rayons (Zagatala and Khizi). Then the experience was transferred to all other rayons. Based on the pilot project, model plot privatization was informed by RARC data and was executed by the State Land Committee through a State Act. The State Act granted property rights to the plot users and specified the plots characteristics (area, coordinates, neighbourhood, the basic fertility parameters, and normative values) and allocating property rights to

21. During this phase of the reform, over 2,032 state and collective farms were annulled and their fruitful lands were given in private property to citizens under an official title. By the end of this phase the state or collective farm land privatized amounted to 1,695,123 ha. Or 19.6% of the national land surface which were given to 869,268 families (the 99.5% of the total 873,618 families entitled.) In addition also all auxiliary plots were privatized and allocated under a title to their occupants. The remaining land in the country was subdivided in State land (8,641,506) hectares and Municipal Land (2,032,744 hectares)³.

22. To support the development of private entrepreneurship and agriculture, the state started to create credit opportunities for agricultural producers and for the acquisition of agricultural inputs and equipment. A presidential decree dated March 22, 1999 granted to agricultural producers a five years land tax exemption. On November 27, 2001, the law on "term tax incentives for agricultural producers" granted to agricultural firms an additional three years exemption covering corporate profit taxes, value added taxes, simplified taxes and property taxes for assets and implements used in the productive process. The same law also granted individual farmers an exemption from value added and property taxes. The law was later extended to January 1, 2014.

23. **Second Land reform phase** (year 2000 onward). This phase continued the privatization of agricultural lands adding another 2,324,000 ha of privatized plots and expanded the privatization process to the assets (including land) of large scale state manufacture units. Most importantly, this phase launched an intense overhaul program to develop more effective means to regulate land relations and better manage the land administration system. This program was necessary to cope with the formidable changes occurred in the previous decade.

² These two agencies were then united in 18 April 2001 with the purpose of establishment of State Land and Cartography Committee.

³ It is to be noted that before privatization there were two types of workers in collective and state farms. The first type consisted of workers or technical experts involved in agricultural production, the second comprised administrative personnel. Privatization usually had a positive effect on the former group as they received land to cultivate or could work as paid operators of agricultural machines or technicians in the land of others. The latter group, instead, lost their salaries and having no previous cultivation experience could not make a living with the allocation of a plot.

24. By the turn of the millennium a number of fundamental new laws were promulgated: These were: the Land Code (25 June 1999), the Civil Code (28 December 1999), the Law on Land Market (7 May 1999 № 665-IQ) and the Law on Municipality Area and Lands (07 December 1999, № 771-IQ). The Improvement of the land administration system was sought for through the establishment of new more functional institutions. A Presidential Decree dated September 16, 2005, established the State Committee for Management of State Property⁴. In addition two major initiatives financed by international donors focusing on capacity building for the land management sector were initiated and are still continuing now-a-days. These were:

- a. The provision by the European Community and the Swedish Mapping Cadastral and Land Registration Authority of capacity building support to the State Committee for Land and Cartography. The objective of this initiative was the development of modern land registration mechanisms and improved cadastre databases based on land evaluation and economic assessment rules fitting the EU evaluation standards.
- b. The State Real Estate Registration Project financed by the World Bank. The objective of the project is to develop a reliable, transparent and efficient real estate registration system supporting real property markets and suitable to the management and use of state-owned immovable property.

1.4. The Current land Administration system

25. The Constitution of the Republic of Azerbaijan (article 13) stipulates that there are three type of property ownership (State ownership, Municipal ownership and Private ownership) and that the State protects the ownership rights of everyone.

26. **State lands:** The State holds the largest land share in the country (59.9%). This land includes the premises of Government and State Enterprises buildings. The land reform provided the State with new opportunities for privatization and effective property management. These required the establishment of the State Committee for Management of State Property through a Presidential Decree of 16 September 2005. However, effective asset management practices have not yet been developed, and currently major attention is being given to selling land plots of former State enterprises to private entrepreneurs. Since 2009, a new regulation stipulates that State and municipal land can only be privatized through open auction, which may eventually make the system more transparent.

27. **Municipal lands:** Municipalities are responsible for managing the use of their land⁵ which overall represent the 23.7% of the national soil. In reality, both rural and urban local governance structures lack sufficient capacity to make effective decisions, acquire proper knowledge of land tools (zoning, subdivision, negotiation, and taxation) and summon the financial resources for strategic organization and systematic control of their land resources. Several state programs are being implemented in order to develop capacity of municipalities.

28. **Private lands:** Private plots constitute the 19.4% of the overall country surface. Private plots can be their owners have rights to use, lease or own lands in Azerbaijan. Those rights are registered in State Real Estate Registration Service of the State Committee on Property Issues. People holding these rights are obliged to pay land taxes⁶ annually. State and municipal lands also can be leased by an individual person or an entity. Table 1 shows percentage of Private Farms according to size:

⁴ It was restructured to State Committee on Property Issues on 19 May 2009.

⁵ Use of municipal lands are regulated by the Law of Azerbaijan Republic on "municipality area and lands" (07 December 1999, No: 771-IQ) and Law on "management of municipality lands" (29 June 2001, No: 160-IIQ).

⁶ This tax is regulated by the Tax Code and have different degrees for urban and rural areas, as well as it changes according to type of use.

Table 1: Percentage of Private Farms in Various Size Categories in Azerbaijan, 2001⁷

0<1 ha	1<2 ha	2<5 ha	5<10 ha	10<20 ha	20<50 ha	50<100 ha	>100 ha
20.6	11.4	39.1	10.1	2.5	1.2	0.4	0.3

29. In order to develop land and territorial management, the establishment of a Residence Registry has been given top priority by the Government. Following a Presidential decree of 27 November 2008, a national Address Registry will be developed. It will support public and private activities such as territorial management, land development and land use planning, operation of public services based on infrastructure networks (e.g. electricity, gas, water and sewage), maintenance of roads, public transportation, post/mail distribution and related logistics, police operations, efficient responses to emergency calls, and preparation of the population register and relevant statistics.

1.4.1 Land Administration Agencies in Azerbaijan

30. The land management in the Azerbaijan Republic is carried out to comply with adopted Codes, Laws, Decrees of the President of the Republic, Resolutions of the Cabinet of Ministers. These documents stipulate the responsibilities of state and private sectors and determine their role in the process of territorial management. The main institutions superseding to land administration and management are the following:

- **The State Land Committee** was established on July 17, 1992 upon Presidential Decree №54. And in 2001 it was merged with the State Committee on Geodesy and Cartography to form the State Land and Cartography Committee (SLCC). SLCC is the central executive body responsible for all land management and development in the country. SLCC is composed of several subordinate institutions (the State Land Structure Project Institute, the State Land Cadastre, the Monitoring Scientific Production Center, the State Aero geodesy Institution, the Baku Mapping Factory and the district land departments).
- **The State Committee on Property Issues (former State Committee for the Management of State Property)** was established in 19 May 2009 upon Presidential Decree №2883. The Committee (SCPI) mandate is to contribute in the formulation of policies on property matters and supersede on all matters related to property management, privatization and registration. The SCPI is composed of several subordinate institutions (State Real Estate Registration Service, Center for Cadastre of Immovable Assets and Technical Inventory, Center for Management of Auctions) and regional local departments.
- **The Rayon Executive Powers** are responsible for the local management of state lands within the Rayons territories, and for the supervision of municipal land management.

1.5. Development of Land Markets

31. The “Land reform” law of July 16, 1996 laid the foundation for the development of land markets. According to the article 19 of the Law, land owned by citizens of the Azerbaijan Republic or juridical persons, privatizable municipal reserve land, and as less usable/unusable agricultural land can be bought and sold. When private property is sold the transaction is to be carried out by a notarized contract. The principles set up by the 1996 law were then expanded by the Law on Land Markets of 7 May 1999, which elaborates on various aspects of the way land transactions are to be conceived and carried out. The law specifically states that legal entities and Azerbaijan citizens can participate in the land market as owners,

⁷ Source: Republic of Azerbaijan, State Statistical Committee, 2002, Water Supply of the Population and Agriculture in Azerbaijan (On the Base of Simultaneous Thematic Survey Materials, pp. 402-05).

users, mortgage lenders, leasers and borrowers. The law also establishes that land sales are to be based on market prices rather than fixed prices.

32. The above initiatives spurred an intense albeit uneven development of land markets in the Country. Since 1996, in Baku and other major cities land transactions have multiplied, in rural areas and minor towns, however, land market development has been slower and minimal in peripheral areas. Pushed by this uneven process land prices have grown differently across the country reaching very high levels in major urban areas but remaining rather low in rural areas. In Baku for instance the average residential land price in district 1 and 2 was 171,075 AZN/sqm and 96,114 AZN/sqm respectively but, based on a recent study of the World Bank⁸ remained relatively low in the rural districts studied where the value of residential land varies between 4,000 – 8,000 AZN/ha. According to the same study the agricultural land values in the areas considered vary between 320 and 1,600 AZN/ha with 90% of the plots having a median value of 800 AZN/ha

1.6. Property Valuation Issues

33. In general, valuation activities both for the private and the public sector are regulated by the Law on Valuation Activity, which was adopted in 25 June 1998 and Cabinet of Ministers decree on "Standards, norms on valuation and rules for preparation of professional valuers" (dated 27 June 2000, No 107), as well as National Valuation Standards (NVS) approved by the State Committee for Standardization, Metrology and Patent (10 January 2010). The NVS sets out the following:

- Professional ethics of valuers (AZS 395.1-2009);
- General concept and principles of valuation (AZS 395.2-2009);
- Market price as a basis of valuation (AZS 395.3-2009);
- Valuation bases other than market price (AZS 395.4-2009);
- Composition of a valuation report (AZS 395.5-2009);
- Valuation of intangible assets (AZS 395.6-2009);
- Valuation of means of production, machinery and equipments (AZS 395.7-2009);
- Valuation for financial and accounting reports (AZS 395.8-2009);
- Valuation of loans, mortgages and debts (AZS 395.9-2009).

34. Overall supervision on valuers is carried by the Ministry of Economic Development and State Committee on Property Issues⁹. The Law implies that a valuator may not do valuation if they have any extra-contractual obligations concerning the valuation object or have any material interest in the results of the valuation. In addition, the valuator has obligation to present, upon the customer's request, the proof of educational qualifications required to do valuation.

35. Although valuation is not a licensed activity the Society of Appraisers (ASA) can certify valuers based on need. General valuation methodologies are defined by the above mentioned laws and standards. Article 18 of the Law of Azerbaijan Republic on "Land reform" and Article 7 of the "Guidelines on land purchase and sale", mandate that when land is purchased, mortgaged or inherited the price is to be defined based on market price as long as it is not lower than the normative price (see below para....). The laws and regulations mentioned above, however do not clearly elaborate a clear methodology to set market values.

36. In actual practice market values are assessed through various applications of the comparative method which requires that the value of a specific plot is ascertained based on the average sale value of a pool of comparable plots sold in the same within a given period before the valuation. Land transaction prices are registered by the Real Estate Registration Service of the State Committee on Property Issues.

⁸ Azerbaijan Rural Investment Project (2010) which provides data on the value of agricultural land in Salyan-Mugan area (Aran Economic Region)

⁹ *Presidential Decree on Implementation of the Law on Valuation Activity (28 September 1998 No: 774) and Article 14 of the Law*

This agency maintains a land sale data-base and can (if requested by an investor) provide information on land market values in a specific location based on recent transactions. As it happens in many other countries, however, these valuations are approximate and under-represent market values as buyers and sellers may under-declare the actual prices paid to limit tax, registration fee and bank costs. In addition, as most of the land transactions are mainly carried out in the capital or other big cities, it is difficult to define market prices of lands in rayon centers and rural areas.

37. In Baku and some other area, there are also several NGOs (e.g. Public Union of Participants of Property Market) working in the land valuation field. They are carrying out investigations and prepare reports (mainly quarterly) describing the situation in real estate market. Moreover, there are several real estate companies that deal with sale and purchase of agricultural land, leasing of agricultural land, and valuation of property.

38. Beside market valuation, there are two other types of valuation related to land in the country. These are valuation at normative (cadastral) prices used today essentially for transactions within the Government and the valuation of land taxes:

- **Normative prices.** The methodology to establish normative prices is defined by several official instructions¹⁰. Normative land prices change for districts and land category and have not been updated since 1998. Normative land prices are not used when private lands are purchased or sold but only to define the initial auction prices of municipal and state lands and to determine the compensation amounts for those type of lands in case of compulsory acquisition.
- **Land Tax values.** The land tax unit value is defined based on established coefficients relative to for 4 zones types and 3 types of land use. These values have not been updated since 2009. The case is different for the tax rates used for buildings which at least formally have to be updated every 3 to 5 years. Also in this case however this does not happen systematically.

1.7. Valuation for land acquisition under the right of Eminent Domain

39. In case of state needs, real estate valuation of private assets is to be carried out based on replacement cost (for land this understood as the current market price plus value of land improvements without deduction of transaction costs). According to the Land Acquisition Law land market prices are to be determined based on the average value of the top 3 (three) sale prices of plots comparable for location and land classification. The comparator plots' sale price needs to have been registered by a notary within three months before the valuation date. Preferentially the comparator plots need to be within an area of 100 meters from the acquired land. If no appropriate comparator plot is available within that distance the selection will be done within a distance of 250 meters which may be extended to 500 meters if needed. In absence of proper comparator plots within these ranges are may be extended further so as to comprise the whole administrative district. The Valuation Commission and the Acquiring Agency (by its own staff and independent valuator) are responsible for collecting, analyzing and determination of land market sales.

40. The replacement price of houses or structures is the price calculated by summing up of all expenses to build and register a house (structure) with the same sizes and quality including materials costs, construction costs. Asset depreciation is not considered.

1.8. ADB experience in managing projects with LAR in the AZE

41. ADB operations in Azerbaijan started in November 2004. For the first year the projects considered for financing in the country by ADB did not entail land acquisition and only very minimally affected other assets. These were urban water resource projects or road improvement projects. It was only in 2006 that the issue of Land Acquisition and Involuntary resettlement became an actuality to be considered in project

¹⁰ These instructions are contained in the Resolution of the Cabinet of Ministers on "Setting new normative land prices in the Republic of Azerbaijan" of July 23, 1998, no. 158).

preparation. That was the year in which ADB began processing activities for the first loan with extensive LAR components: the MFF-Road Network Development Program which was approved in 2007 (see case Study) and entailed the construction of a 4-lane expressway between Masalli and Astara and of a 2-lane motorway between Ganja and Gazakh. LAR work for the first two tranches of the Masalli-Astara road was difficult and entailed several delays and complications. In the process, however, that work provided both to the EA and ADB a fundamental understanding on how to implement the ADB IR policy in Azerbaijan. The experience with the Masalli-Astara road and other similar projects financed by other IFIs in that period also increased the Government's attention to LAR issues and led to the promulgation of the Current Expropriation law which incorporates many policy requirements of several international donors. On the score of these developments it is expected that in the future LAR activities with EAs as MOT that have already partnered with ADB will be much simpler than in the past. With other EAs however LAR for projects with intensive LAR may be more difficult.

CHAPTER 2

ALIGNMENT BETWEEN AZERBAIJAN LAR LEGISLATION AND THE ADB'S SPS

2.1 Key Legislation and Regulation on LAR of the Republic of AZERBAIJAN

42. Key legislative and regulatory texts addressing land acquisition and resettlement include:

- The Constitution of the Republic of Azerbaijan (Adopted on 12 November 1995, revisions were made on 18 March 2009)
- The Land Code (Adopted on 25 June 1999, last revisions were made on 20 April 2012)
- The Civil Code (Adopted on 28 December 1999, last revisions were made on 20 April 2012)
- The Flat Code (Adopted on 15 November 2011, last revisions were made on 20 April 2012)
- The Land Acquisition Law (April 2010)
- Law on valuation activity (25 June 1998, last revisions were made on 20 April 2012)
- Law on "Land Lease" (11 December 1998, № 587-IQ)
- Decree of the President on additional activities regarding to implementation of the Law on "Acquisition of Lands for State Needs" (15 February 2011)
- Decree of the President on ensuring the execution of the law No. 506-3 QD dated 7 December 2007 on "Amendments and Additions to the Civil Code of the Azerbaijan Republic" (26 December 2007)
- Resolution of the Cabinet of Ministers on approving of guidelines for preparation of Resettlement Plan and Resettlement Guideline No. 45 dated 24 February 2012
- Resolution of the Cabinet of Ministers on approving the guidelines for selection of a person or entity to prepare Resettlement Plan or Resettlement Guideline No. 55 (21 April 2011)
- Resolution of the Cabinet of Ministers No. 110 (28 June 1999)
- Resolution of the Cabinet of Ministers No. 42 On Some Normative and Legal Acts Relating to the Land Code (15 March 2000)

43. In addition to these key legislative acts, a number of texts addressing specific issues are also applicable and were reviewed. The list of these regulations is presented in Appendix 2.

2.1.1 Overview of Key Legislation

44. **The Constitution.** Recognizes the citizens' right to own, use and dispose property. It also recognizes three type of property ownership in Azerbaijan - state, municipal and private (Article 13). It guarantees that no one will be dispossessed of their property without their consent or decision by the court of law and that alienation of private property for state needs will be allowed only after payment of fair compensation to the owner (Article 29).

45. **The Land Code.** Article 101 states that, all damages caused by acquisition of land (compulsory purchase) or temporary detention, as well as limiting the rights of owners, users and lessees or deterioration of the quality of soil should be fully paid to land owners or users. In addition, costs derived from early termination of its obligations against third parties should also be paid to the affected person. Disputes relating to compensation, is being considered in a court in accordance with the procedure established by the legislation. Articles 110 and 111 describe willful occupation of land plots, implementation of illegal construction on land plots as violations of the land legislation, and state that these are prohibited acts. Such land plots will be returned to the relevant authorities without reimbursement of the expenses incurred during the illegal utilization. Rehabilitation of the lands should also be carried out by the illegal occupants, at their own expense.

46. **The Civil Code.** Articles 246, 247, 248 and 249 state that, provisions for acquisition of lands for state needs. The Code requires the Decree on acquisition of lands for state needs should be registered in state real estate registration. It also states that Executive Agency should; a) send official notifications to all affected persons about land acquisition; b) pay full compensation to the affected persons within 90 days

after the transaction agreement made; c) assist relocated people; and d) pay compensation for affected assets on the market rates (in case it is not possible to identify market rates, replacement prices is used).

47. The Civil Code states that affected person can select one or more type of compensations which are in the following forms:

- 1.4.1.1.1 new land parcel by equal or comparative land quality, size and production capacity with the affected one;
- 1.4.1.1.2 residential area or building to be comparable to the affected structure by a quality, size and area;
- 1.4.1.1.3 in case agricultural lands are being acquired, plants and seeds for agricultural use in addition to the land considered by the Land Acquisition Law;
- 1.4.1.1.4 provisions of Land Acquisition Law for lands of common use;
- 1.4.1.1.5 lump sum cash payment for loss of land and other capital assets;
- 1.4.1.1.6 payment for lost or reduced income for a certain period;
- 1.4.1.1.7 a regular supply of food for a certain period of time for losses from the soil, or that have been used previously to obtain food products such as lost income;
- 1.4.1.1.8 Provision of a training related to a new job opportunities in order to replace the jobs lost as a result of a relocation;
- 1.4.1.1.9 other forms of compensation agreed between Executive Agency and the affected person;

48. It also states that any rights to real estate must be registered with the State, and that land may be acquired from owners for state needs as approved by the relevant courts. The legality of ownership is established through the registration certificate issued by the Real Estate Land Registry Service based on the cadastral information (survey numbers) obtained from the State Land and Cartography Committee (SLCC) where the land is located.

49. **The Flat Code.** The Code states that acquisition of residential lands and residential building on the land should be acquired by the provisions of the Land Acquisition Law.

50. **The Land Acquisition Law or LAL (See Appendix 1):** Specifically address matters related to involuntary resettlement (IR), including the process and institutional arrangement for land acquisition, compensation and valuation, consultation requirements, entitlements of various categories of displaced persons and grievance mechanism. The law considers various categories of displaced persons, including those without state registration, renters, non-formal long-term users of land, and persons who have no legal rights on the land that they live in. The law entitles persons who have no legal rights on the land to resettlement assistance and compensation for their non-land assets. It includes provision of compensation for loss of business/income, transition allowance and transportation support, and compensation for loss assets based on replacement cost.

51. **Law on Land Lease:** The law states that (Article 16) when the leased land is acquired for state needs, another land plot having a same size and a same quality can be provided to lessee. Losses incurred in this land shall be paid in accordance with the legislation.

52. **Law on valuation activity:** The law states that valuation of the real estate is mandatory in the cases of land acquisition for state needs and the results of the valuation are to be reflected in a valuation report.

53. Decree of the President on additional activities regarding to implementation of the Law on "Acquisition of Lands for State Needs" of 15 February 2011 (See appendix 2): The Decree stipulates additional provisions for the implementation of the Land Acquisition Law. It also assigns government agencies for each case of relevant executive body.

54. **Decree of the President No. 506-3 QD dated 7 December 2007:** It requires the provision of 20% additional compensation to the calculated market price of the acquired property.

55. **Cabinet of Ministers' Resolution No.45 24 February 2012:** It stipulates guidelines for preparation of resettlement plan, as well as shows sample content of a resettlement plan and resettlement guideline.

57. **Cabinet of Ministers' Resolution No. 55 21 April 2011):** It reflects guidelines and criteria for the selection of a planner (person or entity who prepares resettlement plan or guideline).

58. **Cabinet of Ministers' Resolution No.110 28 June 1999**): It outlines procedures for acquisition and compensation valuation for affected buildings and immovable properties. It refers to the standard code No. 58 for making valuations of land and property to be acquired. These valuations are made on the basis of standard unit rates for different types of construction in different regions of Azerbaijan.

59. **Cabinet of Ministers' Resolution No. 42 15 March 2000**): It outlines procedures for the compulsory acquisition of land for state needs.

2.1.2 Institutions and agencies involved in LAR

60. Several institutions, agencies and ad hoc **organizations** are involved in the supervision, management and execution of LAR tasks in Azerbaijan. These are detailed and described below:

- **Land Acquisition Inspectorate (LAI)**. The LAI was established as a standing entity under the supervision of MOF by Presidential Decree on 15 February 2011. So far, the LAI is a key institution with both general and specific functions regarding to LAR. The general functions include the overall supervision and monitoring of all LAR preparation and implementation activities for a project. Its specific functions are:
 - prepare reports for the Cabinet on land acquisition proposals when requested to do so;
 - exercise a supervisory role on acquisition procedures by an acquiring authority;
 - conduct a continuous review of land acquisition procedures with a view to assessing whether they provide value for money and propose changes aimed at ensuring greater efficiency;
 - monitor the public meetings on acquisition proposals and processes and prepare reports on objections and representations made at all such meetings;
 - review the valuations made by a Commission;
 - ensure compensation is paid or resettlement has taken place in accordance with the Code before possession of the land of a project affected person may proceed;
 - consider and investigate any grievance made to it by any project affected person either in person or by a representative on any aspect of the process of acquisition and make a report with recommendations on any such grievance to the acquiring authority;
 - prepare reports for a court in connection with a court's roles in acquisition.

61. **Ministry of Finance**. The Ministry of Finance is designated as supervision agency over land acquisition and resettlement activities in Azerbaijan by the Presidential decree (15 February 2012, № 382). The State Financial Supervision Service (SFSS) of the Ministry of Finance (MoF) is appointed as the supervision body by the Minister. SFSS was established by the Presidential decree dated 09 February 2009 as a sub-body under MoF. It has head office and 10 regional financial controller departments. In general, SFSS is composed of specialists with background in financial and economic studies. Since the main function is to control budget expenditures, there are not many specialists with experience in LAR activities. However, SFSS had chance to supervise several projects having land impacts since 2009. Therefore, some specialists gained few experience on the related field. Moreover, it has law specialists who are familiar with legislative requirements of LAR procedures. During discussions within the RETA, it was expressed by SFSS staff that it would be useful to train them on international requirements for involuntary resettlement.

62. **State Committee on Property Issues**. Within the process of acquisition of lands for state needs the State Committee on Property Issues (SCPI) is responsible for providing list of owners of affected land, structure and other immovable assets, as well as providing data on the legal status of affected properties. Cadastral maps within its area of competence and responsibility. Within SCPI the main departments responsible for LAR activities are as follows:

- State Real Estate Registration Service (SRERS). This is the governmental agency responsible for the data base of all owners, leaseholders and users of land and structures. It registers all land and structure transaction agreements and gives land title document. In addition, it has data base of land transaction prices (market prices).

- Center for Cadastre of Immovable Assets and Technical Inventory (CCIATI). CCIATI is responsible for inventory of affected structures and lands and preparation of cadastral maps. CCIATI has experience in IFI funded and Government funded Projects. Amelioration and Water Farm OJSC and Azersu OJSC had several co operations with CCIATI in preparation of cadastral maps and list of APs within IFI funded projects.
- Department for Provision of State Needs and Organization of Valuation (DPSNOV); DPSNOV is the main department of SCPI in coordination and management of LAR issues which are related to SCPI's responsibility area. Several changes have happened in the direction of department's activities after the new law on land acquisition came onto power in 2010 to meet requirement of the law. However, excluding a little cooperation, SCPI has not managed or supervised yet involuntary resettlement activities.

63. **State Land and Cartography Committee.** Within the process of acquisition of lands for stat needs the State Land and Cartography Committee (SLCC) is responsible for cadastral mapping and inventory of impacts within its responsibility frame. Within the SLCC the State Land Surveying and Project Institute (LSPI) does delimitation of boundaries' of administrative territories and makes inventory of lands. It prepares cadastral maps based on the project design. Finally the Department on Land structure, land reform and Work with regions under SLCC is responsible for coordination of LAR works with executive agencies. **LAR Group:** Main functions are to:

- deliver and explain the notification to the DPs;
 - meet with DPs to explain about the compensation entitlements, valuation methods and compensation process;
 - receive and refer complaints to the grievance redress commission;
 - assist in the preparation of the LARP; and
 - collect necessary documents from the DPs
- **Valuation Commission:** The valuation Commission is an ad hoc entity established by Decree by the Council of Ministers for each project requiring LAR. Its main functions are to (a) compute the compensation based on replacement cost; (b) assists in the negotiation; (c) seek input from independent evaluators; and (d) confirms the LARP budget.
 - **Resettlement Commission:** The Resettlement Commission is an ad hoc entity established by an EA for the preparation/implementation of specific LAR tasks for a given project. It is composed of 3-20 representatives from DPs, the RC is involved in the preparation of the LARP, public consultations and refers complaints from DPs to LAG.
 - **Grievance Redress Commission(s) (GRCs):** The rayon executive power will create the GRC to receive and resolve complaints from DPs and other stakeholders. If the complaint is not resolved, the GRC refers the complaint to the MoF.
 - **Local Governments.** Local governments agencies involved in LARP preparation are the rayon executive authorities, and municipalities. Local governments (a) provide detailed information on current land use and land users of the affected land, (b) identify unregistered/informal DPs, and (c) participate in the relevant commissions to be formed for the project.
 - **Line Agencies.** Several line agencies have been already involved in LAR and have developed specific units to manage LAR tasks. These are:
 - **Azer Road Service OJSC.** ARS has wide experience in implementing land acquisition and involuntary resettlement tasks as it implemented numerous projects, involving involuntary resettlement, financed by IFIs and National Budget¹¹. Based on this experience and in

¹¹ The major projects implemented by ARS are listed in the table below

Project	Year	Funded by
Tovuz Bypass road	2004-2006	World Bank
Baku-Russian border motorway	2006-2010	EBRD, GoAZ

anticipation of the LAR needs entailed by the construction of major roads. ARS created in July 2005, the Land Acquisition Division (LAD). LAD is primarily responsible for the coordination of various undertakings related to LAR planning and implementation including liaison with relevant ministries and agencies, hiring consultants and engaging in consultation and information disclosure. The organization is manned by a Chief and staffed by 12 engineers and two technical assistants who carry out their day-to-day activities. The LAD is also responsible for ensuring that all APs are duly compensated and that mitigating measures are instituted by the Civil Work Contractor as a result of temporary impacts.

- **Azersu OJSC.** Azersu has implemented several LAR tasks through its Project Management Unit (PMU) and international relations department. It does not have specific sector or group responsible for management and implementation of LAR activities. However, after implementation of number of projects (Urban Water Supply and Sanitation Project, National Water Supply and Sewerage Service Project, Provincial Cities Water Supply and Sewerage Project, Oguz-Gabala-Baku water pipeline Project), Azersu gained a few experience in implementation of land acquisition and resettlement activities. But, gained experience is not well enough to implement Projects on time.
- **Azerenergy OJSC.** Azerenerji organization structure includes an Ecology Department (ED) responsible for management of the environmental and social aspects associated with development of power sector projects. Ecology Department is headed by Director. ED has three separate divisions each for Ecology and Environment Protection, CDM and PoA Projects Development, and Quality and Environment Management Sector. Among these divisions, the Ecology and Environment Protection Division is responsible for environment and social management. There is a specialist who is responsible for all LAR related issues in ED.

2.1.3 Land acquisition for state needs

64. Existence of state needs is defined by the Cabinet of Ministers in consequence of EA's request¹². According to the LAL, lands can be acquired for the following cases (projects):

- Construction of roads and other communication lines of state importance (main oil and gas pipes, sewerage lines, high voltage electric lines and hydraulic facilities);
- Provision of ensuring protection of state boundary in borderland;
- Construction of units which are important in terms of defensive and safety;
- Construction of mining industry units of state importance.

2.1.4 The exercise of the right of Eminent Domain

65. The definition of a Project as a Public Purpose project triggering the right of Eminent Domain is contingent on the promulgation of a Land Acquisition Decree (for additional detail see Chap. 3 para 81). The preliminary work instructing the decree is coordinated by the EA and is carried out by the appropriate State Agencies. This work entails: a) the gathering of preliminary information on impacts, APs number and LAR costs based on cadastral data and existing public records; b) the notification of state needs for land

Baku-Alat Motorway	2008-2009	GoAZ, ING
Hajiqabul-Kurdamir Motorway	2005-2007	EBRD, GoAZ
Kurdamir-Ujar Motorway	2008	World Bank
Ganja Bypass	2009	ADB
Alat-Masalli	2005-2009	World Bank
Masalli- Astara	2006-2012	ADB

¹² Article 6 of the LAL

acquisition to the APs and c) initial public consultations. After completion of these tasks the EA gathers the needed reports/documentation in a Land Acquisition proposal which is submitted to the Cabinet of Ministers which after due review promulgates the Decree. Beside proclaiming Eminent Domain rights for the project, the Decree officially nominates the Acquiring Agency (usually the EA), establishes the Valuation Commission, and authorizes the execution of field surveys and detailed LAR studies (by establishing Eminent Domain the Decree also gives to surveyors permit to enter the affected plots).

2.1.5 Expropriation Issues

66. Under current legislation the exercise of Eminent Domain is exercised either through amicable agreement with the APs or (if the APs do not agree) through expropriation. The State is first obliged to use its best endeavor to acquire the land by agreement. Expropriation will be pursued only in extreme cases when no agreement between APs and Acquiring Agency is reached and no alternative land choice to implement a project is found. When acquisition by Expropriation is needed the Acquiring Agency will submit the case to the appropriate court which will initiate expropriation proceedings. Land acquisition under eminent domain can be executed only after the agreeing APs are duly paid or the Court emits an expropriation order for the non-agreeing APs.

67. Based on the Land Acquisition Law (Chapter VI), the procedures to be followed to initiate land acquisition are as follows:

- The Acquiring Agency should serve a possession notice to the affected person within 7 (seven) days of the staking out of the certified land. The above mentioned possession notice shall include a) surname, name, patronymic and address of the AP; b) willingness to pay compensation for acquired land; c) type and amount of payable compensation; d) data of the application to be sent to court; and e) short summary of procedures to be complied with in connection with the determination of compensation.
- The APs will have to claim for the compensation or the resettlement provisions offered to them by submitting an application to the Acquiring Authority within 30 days from the date of receipt of notice on possession. If needed, the Acquiring Agency will assist the APs in preparing their claim and will ensure free-of-charge service in case further consultation or assessment or valuation is needed to obtain the AP agreement. The acquiring authority may refuse fully or partially of notice on claim submitted by the affected person.
- If the APs do not agree to the compensation offered by the Acquiring Authority, this latter will submit an application to the appropriate court of law for approval of the following: a) compliance of the Acquiring Agency in applying the land acquisition requirements of the law for the acquisition of the relevant plot; b) execution of land acquisition under the expropriation modality as specified by the Law; c) type and amount of compensation to be paid to persons affected by acquisition. If the court approves the Acquiring Authority application an AP who has objections may initiate a court case.
- The Acquiring Agency shall take possession of affected lands only after the effective decision of the court.

2.2. ADB's Requirements

2.2.1 ADB's Requirements

68. The current ADB policy on involuntary resettlement is elaborated in the ADB's Safeguard Policy Statement of 2009 (SPS) and specifically in Appendix 2 "Safeguard Requirements 2: Involuntary Resettlement" (see Appendix 3.)

2.2.2 The SPS Key Principles and its Structure

69. The overarching objectives of the SPS are “avoid involuntary resettlement wherever possible; minimize involuntary resettlement by exploring project and design alternatives; enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and improve the standards of living of the displaced poor and other vulnerable groups.”

70. The scope of the SPS includes all projects entailing physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary.

71. The implementation of SPS requirements is required for all projects as long as there is either physical or economic displacement or both. The requirements apply regardless of the numbers of affected parties involved and of whether losses are full or partial, permanent or temporary¹³. The SPS also covers “involuntary resettlement actions conducted by the borrower/client in anticipation of ADB support”.

72. The SPS includes 12 key policy principles for IR. These can be summarized as follows:

- i. Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.
- ii. Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous People, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons’ concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.
- iii. Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.
- iv. Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.
- v. Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with

¹³A benchmark of 200 severely affected individuals (losing more than 10% of their income or to be relocated) is however considered to define the impacts significance of a project. When the severely affected individuals are less than 200 the project is classified as “B” for impacts severity, when they are more than 200 the project will be classified as “A” for impacts severity. Independent monitoring of LARP implementation is compulsory for “A” projects.

- legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.
- vi. Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.
 - vii. Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.
 - viii. Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.
 - ix. Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.
 - x. Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.
 - xi. Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.
 - xii. Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.

73. The SPS distinguishes three categories of affected persons (AP), with variable compensation entitlements:

- (i) **Legal APs:** APs with formal legal rights to land lost in its entirety or in part;
- (ii) **Legalizable APs:** APs without formal legal rights to land lost in its entirety or part but who have claims to such lands that are recognized or are recognizable under national law; and
- (iii) **Non-legal APs:** APs who have neither formal legal rights nor recognized/recognizable claims to land lost in its entirety or in part.

74. For categories (i) and (ii) above, borrowers are expected to provide compensation at full replacement cost for lost land, structures, land improvements and relocation assistance. For APs in category (iii) (informal settlers), the borrower/client is expected to compensate all assets other than land (i.e. buildings, trees, crops, businesses) at full replacement cost. The risk of opportunistic encroachment on land designated for acquisition by the project is managed through a cut-off date.

75. Compensation for lost land may be in form of replacement land (preferable if feasible) or in cash. When "land for land" compensation is not feasible cash compensation can be valued based on market rates or, in absence of land markets, through other methods (i.e. land productivity or reproduction costs)¹⁴. Independently from the valuation method used compensation is to be provided at "full replacement cost". This includes:

- (i) transaction costs,
- (ii) interest accrued,

¹⁴ Based on the SPS (Appendix 2, para 10) in absence of well established land markets land compensation will be provided based on a thorough study of the land transaction, use, cultivation and productivity patterns in project areas. One method accepted by ADB in such a situations would be to provide land compensation based on land productivity or land reproduction costs."

- (iii) transitional and restoration costs, and
- (iv) other applicable payments, if any.

76. Compensation for all other assets is to be provided in cash at replacement cost without deductions for amortization, salvaged materials and transaction costs.

77. The SPS importantly establishes that where land acquisition is achieved without the exercise of the right of Eminent Domain through negotiated settlements (sale based on free buyer and free seller conditions) SR2 does not apply. In such cases, ADB requires, however, that negotiation be properly documented by an independent third party.

2.2.3 Resettlement Planning and Documentation

78. The IR policy defined by the SPS envisions the following sequence of activities:

- Preparation of a Social Impact Assessment (SIA) involving: a) a detailed measurement survey of all impacts; b) a detailed Census of all affected parties and affected persons and; c) a socio-economic surveys to be based on a statistical sample of the APs detailing the livelihood situation in project affected areas;
- A review of the local laws and regulations and an assessment of the impacts and risks against these laws and regulations.
- Preparation of a Resettlement Plan¹⁵ addressing all SPS requirements. Based on the SIA and on consultation with affected persons, the RP should provide:
 - An executive summary;
 - A Project description;
 - A precise assessment of land acquisition and resettlement;
 - A detailed census of the affected parties and persons;
 - A socio-economic profile of the affected population;
 - A clear asset valuation methodology;
 - The results of information disclosure and consultation;
 - A description of the grievance redress mechanism;
 - A description of the administrative organization and responsibilities for LAR;
 - A description of the local legal framework and an analysis of gaps against key ADB requirements;
 - A description of entitlements, including an entitlement matrix;
 - A description of proposed measures for relocation of settlements and housing if needed;
 - A description of proposed measures for livelihood restoration;
 - The budget and funding plan, implementation arrangements and schedule,
 - A description of monitoring and reporting provisions;

79. For Multi-tranche Financial Facilities (MFF) loans and for sector investment loans (loans with multiple sub-projects) involving resettlement impacts, the borrower/client is expected to agree with ADB before project approval on a Resettlement Framework¹⁶ (RF) to guide subproject selection, screening and categorization, social and environmental assessment, and preparation and implementation of Resettlement Plans for subprojects that may require them.

¹⁵ To avoid misunderstandings in the Central Asia Region the document is called Land Acquisition and Resettlement Plan (LARP)

¹⁶ Or Land Acquisition and Resettlement Framework (LARF)

2.2.4 Resettlement Plan Preparation Loan Approval and Project implementation

80. The Preparation of a Resettlement Plan approved by the Borrower and disclosed to the APs is a condition for loan appraisal (in case of single project loans) or for the approval of a project tranche (in case of MFFs). Ideally, a Resettlement Plan meeting for loan/MFF tranche requirements should be a fully finalized document. However when due to specific project circumstances the document is not final (i.e. when the project design has allowed only a preliminary definition of the project impacts footprint) loan appraisal or MFF tranches can be approved by ADB based on an acceptable Draft Resettlement Plan¹⁷. The final “implementation-ready” Resettlement Plan will be completed and later implemented during the early loan administration phases and in any event prior to land taking and the start of civil works. Based on the practice of the Central and Western Asia Regional Department an acceptable draft is a document based on actual DMS surveys on the ground of all impacts expected based on the available design.

2.2.5 ADB’s Public Communications Policy

81. The ADB’s Public Communications Policy (PCP 2011) is relevant to land acquisition and resettlement issues in so far as it establishes principles applicable to disclosure of information, and specifically to disclosure of resettlement planning documentation. These principles apply to both the borrower and the ADB itself and are the following:

- ADB shall post (PCP, para. 52) on its website the following documents submitted by the borrower and/or client:
 - a draft resettlement plan and/or resettlement framework, endorsed by the borrower and/or client before appraisal;
 - the final resettlement plan endorsed by the borrower and/or client after the census of affected persons has been completed;
 - a new or updated resettlement plan, and a corrective action plan, if any, prepared during project implementation, upon receipt by ADB; and
 - the resettlement monitoring reports, upon receipt by ADB.

82. In practice, clients are expected to disclose documentation locally (PCP, para. 47 and 129), in the local language and in a culturally appropriate manner (which may require tools other than the sheer disclosure of reports). The full ADB Public Communications Policy is available at www.adb.org/sites/default/files/pcp-2011.pdf.

2.2.6 Due Diligence for Multi Tranche Financial Facilities

83. One lending instrument widely used by ADB is the Multi-tranche Financing Facility, in addition to usual Project finance. For these financial instruments, the requirements include the establishment of a Resettlement Framework and are as follows:

- A Resettlement Framework for the project as a whole, including an outline of the social impact assessment and census methodologies, to be agreed between borrower/client and ADB before loan appraisal
- At least acceptable Resettlement Plans drafts for tranche 1 subprojects prepared and submitted by the borrower/client and reviewed by ADB prior to loan appraisal
- At least acceptable Resettlement Plans for the subsequent tranches before tranche approval.

¹⁷ It is assumed that to be acceptable a draft resettlement plan tentative as it may be needs to quantify all impacts and AP knowable on the score of the level of design available at the time of its preparation and based on field surveys and AP consultation. An acceptable draft also needs to provide at least a realistic assessment of the compensation budget based on replacement cost/market rates. Finally an acceptable draft will also have to clearly identify in its text the improvements needed to fully meet the SPs requirements and to ensure the final implementability of the LARP compensation and rehabilitation program.

2.3 Gap Analysis

84. The comparison between the country system rules on LAR and the ADB policy was carried out principally based on the provisions of the LAL which is the most important and extensive body of law related to LAR. Compared with previous laws the LAL has dramatically advanced the agenda in the direction of the IFIs and other international standards. This notwithstanding, a number of gaps between the LAL and the ADB policy continue to exist. This so because the law is not yet supported by systematic implementation rules and still leaves the definition of some entitlements at a too general level to clearly indicate how the principles of the law are to be applied. In particular the LAL still focuses mostly on real estate properties leaving the rules for the compensation of unmovable or immaterial impacts under determined. For instance the need to provide trees and crops compensation is mentioned only by passing by a bullet in Section III, 20 and the need to provide income losses refers.

85. This section identifies the gaps between the IR requirements of the SPS and of Azerbaijan law and regulations through a direct comparison. The exercise takes into consideration both formal provisions applied by ADB and the Government (principles) and how these provisions are applied (application) and proposes the action needed to reconcile the gaps separating ADB policy and national law/law application.

2.3.1 Livelihood Rehabilitation Standards

86. Azerbaijan law does define compensation as targeting the rehabilitation of the APs livelihood (para. 35.1). This fits with ADB policy requirements.

Reconciliation needs. *No principle or application reconciliation is needed for what concerns general rehabilitation objectives except for the special case of severely affected and vulnerable APs (see below 2.3.6)*

2.3.2 Entitlement to Compensation

87. Azerbaijan Law and ADB policy are consistent regarding the compensation entitlements of Legal and legalizable APs. Both provide that these APs are to be fully compensated at replacement cost for all their losses. There is no agreement however on the entitlement of non-legal APs. For the ADB policy these APs are to be compensated for all impacts except land. For the Azerbaijan law, instead, non-legal APs are to be given financial assistance for resettlement costs or damages to their personal properties incurred during the resettlement process but are not to be compensated for impacts caused by land acquisition.

Reconciliation needs. *Principle and Application reconciliation needed to allow the compensation of the non-land impacts suffered by non-legal APs. Reconciliation has been already obtained on a project by project basis but needs to be mainstreamed through a Decree for ADB projects.*

2.3.3 Compensation for Affected Assets

88. **Loss of land.** Both ADB policy and Azerbaijan law require that permanent/temporary loss of land is compensated at replacement cost to all legal or legalizable APs either via cash compensation at market rate or replacement land. Azerbaijan law exceed the ADB policy requirements by adding a 20% premium to the valued land compensation plus a 10% premium if the land is acquired through voluntary sale. Therefore there is no conflict in principle or application between the provisions of ADB policy and Azerbaijan law.

Reconciliation needs. *No Principle or Application reconciliation needed.*

89. **Loss of Land leases.** Both ADB policy and Azerbaijan law require that affected land leases are to be compensated. ADB Policy provides that compensation for this item is to be given at replacement cost. Such a requirement is practically implemented either through the provision of another comparable leased plot or of the expected net income of the leased plot lost for the number of years remaining before the expiration of the original lease. Azerbaijan law instead does not clearly specify how leases are to be compensated in cash.

Reconciliation needs. Application reconciliation is needed to clarify how lost leases are to be compensated. Although reconciliation has been already achieved in the case of previous ADB projects the technical aspects of lease compensation will have to be improved. It is expected that this can be addressed through the emanation of an ad hoc Decree for ADB projects.

90. **Loss of indirectly affected parts of an asset.** ADB Policy requires that indirectly affected assets that become unusable after impact are to be compensated as direct impacts. Azerbaijan law provides the same and on this is more extensive than ADB policy.

Reconciliation needs. No principle or application reconciliation needed.

91. **Loss of structures/buildings.** Both ADB policy and Azerbaijan law require the compensation of affected buildings at full replacement cost without deductions for depreciation, salvaged materials or transaction costs. In this sense Azerbaijan law exceeds the ADB requirements by adding a 20% premium plus 5-10% based on years of residence in the house (5% for more than 5 years with a 1% increment up to 10 years).

Reconciliation needs. No principle or application reconciliation needed.

92. **Loss of business.** ADB policy requires the compensation of business losses. Azerbaijan legislation mandates that all business losses and business re-establishment costs are to be reimbursed to the (56.1.6) ADB practice is to compensate legal business losses based on the income stated in the tax declaration or equivalent documents and non-legal business losses based on maximum non-taxable income. The compensation is to be provided for the period of business stoppage up to 12 months which is the benchmark for permanent impacts). Azerbaijan law is instead silent on how to provide business losses compensation.

Reconciliation needs. No reconciliation for principle is needed. Application reconciliation has been already achieved on a project to project basis for previous ADB-financed projects but a mainstreamed application mechanism is yet to be agreed to define how non-legal business and permanently affected business are to be compensated. This can be elaborated in an ad hoc Decree for ADB projects.

93. **Loss of trees.** The ADB policy requires that trees are compensated at replacement cost through market value compensation of the wood (for non-productive trees) or compensation of the income lost (for productive trees.) In this last case ADB practice is to provide as compensation the lost tree income for the number of years needed to re-grow it at productive stage or for the remaining productive years of the tree. Azerbaijan law also provides for the compensation of trees (plants). This is implicit in the principle that land compensation includes also compensation for land improvements (1.1.1) and loss of income (63,65,67) and it is reinforced by direct references to plants compensation (21.1.15/65.1.3) The Azerbaijan law, however, does not specify clearly how tree compensation is to be provided.

Reconciliation needs. No reconciliation for principle is needed. Application Reconciliation has been already achieved on a project to project basis for previous ADB-financed project but a mainstreamed application mechanism on how to compensated wood versus productive trees is still needed. This can be elaborated in an ad hoc Decree for ADB projects.

94. **Loss of crops.** ADB policy mandates the compensation at market of crops cultivated in affected land by default whether they will be harvested before impact or not¹⁸. Azerbaijan law also provides for the compensation of trees (plants). This is implicit in the principle that land compensation includes also compensation for land improvements (1.1.1) and loss of income (63,65,67) and it is reinforced by direct

¹⁸ This provision is motivated by the need to delink as much as possible project implementation schedules from compensation and thus facilitate project implementation.

references to crop compensation (21.1.15/65.1.3) The Azerbaijan law, however, is not clear on how crop compensation is to be provided.

Reconciliation needs. *No reconciliation for principle is needed. Application reconciliation has been already achieved on a project to project basis for previous ADB-financed project but a mainstreamed application mechanism is yet to be agreed. This can be elaborated in an ad hoc a Decree for ADB projects.*

95. **Loss of income or jobs.** ADB policy and Azerbaijan law principles for compensating employment are consistent. The former mandates that sufficient reparation is to be provided to employees affected by the forced acquisition of a plot of land so as to ensure their economic rehabilitation. Usually this principle is applied in practice by providing as compensation 1 month of salary up to 12 months in case of permanent loss. In the case of non-registered jobs the same approach is followed but the amount to be compensated is computed based on minimum salary. Azerbaijan law parallels ADB policy by mandating that an AP who has lost a job is compensated for the income lost and for the period of impact. The law however does not indicate what is to be done to set a compensation measure for cases of permanent job losses.

Reconciliation needs. *No principle or application reconciliation is needed. However, to facilitate the implementation of ADB projects technical instructions on how to set a ceiling compensation for permanent job losses and to compensate permanent informal employees is to be developed. Reconciliation has been already achieved on a case by case basis for previous projects but needs to be mainstreamed through a Decree for ADB projects.*

2.3.4 Resettlement Planning and Identification of Project Impacts

96. **LARP Preparation.** ADB requires a broad LAR planning process with early scoping of LAR impacts and timely preparation of a LARP for all projects disregarding the number of APs. The LARP is comprehensive document providing a thorough impact assessment based on: a) a detailed measurement survey in the field of all affected assets; b) an AP census identifying all affected parties and individuals in the field including severely affected and vulnerable APs; c) a socio-economic survey elaborating on the livelihood conditions of the affected population; and d) a detailed plan for the full rehabilitation of the APs. The LARP also identifies LAR budgets and provides background information on compensation entitlements, income/livelihood restoration strategies, institutional arrangements, implementation schedules, LAR budgets, monitoring schemes, public consultation activities and complaints and grievances mechanisms.

97. Azerbaijan law and practice also requires surveys similar to those required by ADB and a stand-alone Resettlement Plan. The law, however, clarifies the level of specification of the surveys only for land and buildings (during the preliminary phase these are first carried out based on existing records and then are further verified through field measurements during the detailed preparation phase). How and when trees, crops, businesses or job losses and impacts to AP with hardship (vulnerable and severely affected APs) are to be assessed is defined only generically. Finally the law requires the preparation of a Resettlement Plan only when the Affected Parties are more than 200¹⁹ and only to cover “land for land compensation” or matters pertaining to the rehabilitation of relocating APs. The law does not require the preparation of a socio-economic survey to be included in the Resettlement Plan.

Reconciliation needs. *No principle reconciliation is needed, as both ADB and the National legislation require a full survey of all impacts but application reconciliation is needed. LAR preparation documents and surveys fitting ADB requirements have been already agreed with the EAs on a case to case basis for previous ADB projects. However, this needs to be mainstreamed*

¹⁹ On this the law is unclear whether the 200 APs are juridical Persons or individuals.

through an *ad hoc* Decree for ADB-financed projects standardizing the implementation of surveys and the preparation of Resettlement Plans fitting SPS requirements.

2.3.5 Due-diligence Implementation Support Mechanisms

98. **Information disclosure and Public consultation.** Azerbaijan law specifically provides that the various documents prepared to prepare a LAR case and the protocols detailing the impacts in each affected plot are disclosed to the APs. Regarding public consultation the law mandates an intensive program involving the APs and the preparation of public consultation reports reflecting their reactions and inputs to the proposed LAR programs. Regarding this point Azerbaijan law and ADB policy are fully consistent with each other.

Reconciliation needs No principle or application reconciliation is needed.

99. **Grievance Redress Mechanism.** Like ADB policy also the Azerbaijan law envisages a grievance (75) redress mechanism which aims at resolving complaints before impacts occur and before they are brought to the attention of a court. The implementation of such a mechanism is supported by the establishment of a Land Acquisition committee composed by members of the AP community.

Reconciliation needs. No principle or application reconciliation is needed.

100. **Payment of compensation prior to property acquisition.** As with ADB Policy, Azerbaijan law specifically states that AP compensation is to be paid in full or expropriated before an affected property is acquired for a project. The occupation of the acquired plots can occur only 60 days after compensation or expropriation notices have been delivered to the APs

Reconciliation needs. No principle or application reconciliation is needed.

2.3.6 Special Assistance to Vulnerable and Severely Affected APs

101. ADB Policy requires special assistance to vulnerable, severely affected and relocating APs, Azerbaijan law does not provide for entitlements for specific APs such as vulnerable and severely affected APs.

Reconciliation needs. *The requirements of ADB policy have been already reconciled on a project to project basis in previous ADB-financed projects. However both principle and application reconciliation is needed through a decision to mainstream the relevant rehabilitation measures. This could be achieved through a decree for ADB projects.*

2.3.7 Chapter Summary and Conclusion

102. All issues signaled in the above analysis and requiring reconciliation of policy or policy application listed in this chapter have been already reconciled on a project by project basis in previous ADB Projects. It is thus expected that the mainstreaming of the ADB policy requirements may not require legal reform and may be dealt with decrees. To simplify Government approval of mainstreamed provisions it is recommended that these are not approved one by one but through the wholesale approval of an integrated framework gathering all of them (see chapter 4 section on the Country Land Acquisition and Resettlement Framework. Table 2.1 schematizes the findings of this chapter's analysis. In the table the SPS policy principles are accompanied by the way they are actually applied in Azerbaijan in the course of ADB projects.

Table 2.1 Comparison of LAR provisions of ADB Policy and national legislation impacts

Issues	ADB SPS (2009) and ADB practice for application *	Azerbaijan law	Reconciliation Needs
1. Livelihood rehabilitation	ADB Policy requires rehabilitation/improvement of AP livelihood standards.	Notion of livelihood rehabilitation is also sanctioned by national law.	No principle or application reconciliation needed..

Issues	ADB SPS (2009) and ADB practice for application *	Azerbaijan law	Reconciliation Needs
2. Compensation entitlements	<p>A. Legal and legalizable APs are to be compensated for lost land/other assets.</p> <p>B. Non-legal APs are to be compensated for non-land assets lost.</p>	<p>A. Legal and legalizable APs are to be compensated for lost land/other assets.</p> <p>B. Non-legal APs receive resettlement allowances but are not compensated for real estate losses.</p>	<p>A. Same in principle/ application for legal and legalizable APs.</p> <p>B. Different both in principle and application for non-legal APs. Reconciliation already obtained in previous projects but <i>to be mainstreamed through a Decree for ADB projects.</i></p>
3. Compensation	<p>A. Loss of land. Replacement land as preferred option or cash compensation at full market rate for legal/legalizable APs.</p> <p>B. Replacement of leased land. Based on replacement of lost income through cash compensation of gross income x the remaining lease years or a replacement lease</p> <p>C. Loss of structures/ buildings. Cash compensation at replacement cost for lost item free of depreciation, transaction costs, other deductions</p> <p>D. Loss of indirectly affected items. Non affected parts of an asset not usable after impact is to be compensated as well.</p> <p>E. Loss of business. Compensation up to 12 months based on tax declaration. In absence of tax declaration compensation based on mechanisms agreed with the borrower (usually maximum non-taxable salary).</p> <p>F. Loss of trees. Irrespective of legal land occupancy status compensation at replacement cost based on tree type/ wood volume for wood trees and lost income (x tree type x 1 year income x production years lost) for productive trees.</p> <p>I. Loss of crops. Compensation of crop in cash at market price.</p> <p>J. Loss of jobs. Indemnity ensuring AP rehabilitation. Arrangements to be agreed with EAs but usually based on salary x months of stoppage up to 6-12 months.</p>	<p>A. Loss of land. Cash compensation in cash at market rate +20% or replacement land for legal/legalizable APs. An additional 10% premium for voluntary sale.</p> <p>B. Replacement of leased land. Based on cash or lease replacement of lost income for remaining lease years or through a replacement lease.</p> <p>C. Loss of structures/ buildings. Cash compensation at replacement cost for lost item free of depreciation, transaction costs, other deductions +20%</p> <p>D. Loss of indirectly affected assets. The law prescribe their compensation if so requested by APs.</p> <p>E. Loss of business. Indirectly provided as compensation for lost income. Compensation methodology not specified.</p> <p>F. Loss of trees. Indirectly provided as compensation for lost income. Compensation methodology not specified.</p> <p>I. Loss of crops. Mandate by the law as well but application not clearly defined.</p> <p>J. Loss of jobs. Compensated based on job income lost.</p>	<p>A. Same in principle/ application. No reconciliation needed.</p> <p>B. Same in principle and application. <i>No reconciliation needed.</i> Technical improvement of valuation mechanisms needed.</p> <p>C. Same in principle and application. <i>No reconciliation needed.</i></p> <p>D. Same in principle and application. <i>No reconciliation needed.</i></p> <p>E. Same in principle non specified in application. <i>Application already agreed for previous projects but to be mainstreamed through a decree for ADB projects.</i></p> <p>F. Same in principle non specified in application. <i>Application already agreed for previous projects but to be mainstreamed through a decree for ADB projects.</i></p> <p>I. Same in principle non specified in application. <i>Application already agreed for previous projects but to be mainstreamed through a decree for ADB projects.</i></p> <p>J. Same in principle and application. No principle or application reconciliation needed. However, technical instructions for ADB projects are to be developed to set the compensation for permanent job losses.</p>

Issues	ADB SPS (2009) and ADB practice for application *	Azerbaijan law	Reconciliation Needs
4. LAR planning, assessment and impacts valuation	<p>Preparation of a comprehensive LARP for all projects disregarding number of AP. LARP includes: a) detailed impacts measurement survey (DMS)/AP census; b) Socio-economic survey; c) entitlements definition, d) income/livelihood provisions, e) AP consultation results; f) grievance procedures, g) execution arrangements; h) monitoring schemes; and i) budget and implementation schedule.</p> <p>i. Measurement survey. Measures in trough a DMS all affected items.</p> <p>ii. AP Census. Identifies all APs and establishes legitimate beneficiaries based on legal status.</p> <p>iii. Socio-economic survey. Provides background information on AP' socio-economic features.</p> <p>iv. Valuation survey. a) Land: If land market exist based on a survey of recent transactions; without land market based on land productivity income. b) Buildings/structures. Based on replacement cost of materials, labour, transport and special construction features without discounting depreciation, salvaged materials or transaction costs. c) Trees/crops. Based on the methodology detailed in section 2. d) Business losses. Based on methodology detailed in section 2. e) Job Loss. Based on methodology detailed in section 2</p>	<p>Comprehensive surveys needed but DMS specified only for land and houses. Other impacts are assessed but DMS is not clearly required. A Resettlement Plan is carried out only if there are more than 200 APs and includes only items related to relocation.</p> <p>i. Measurement survey. Land and buildings clearly assessed through a DMS in the field. Other impacts also assessed but the surveying methodology is unspecified.</p> <p>ii. APs Identification. Same.</p> <p>iii. Socio-economic survey. No comparable requirements exist.</p> <p>iv. Valuation survey. a) Land: valued at market rate based on a transactions survey. Valuation includes transaction costs/third party liabilities. b) Buildings/structures. Same. c) Trees/crops. Valuation methodology not specified. d) Business losses. Valuation methodology to be specified. e) Job Loss. Valuation methodology to be specified.</p>	<p>Similar in principle but application reconciliation is needed. The ADB approach has been already applied in previous ADB projects. Still, clear instructions for ADB projects on: a) detailed measurement of all impacts; b) counting of all AP and c): Resettlement plan format are needed. Instructions to be mainstreamed though a Decree for SADB projects or through technical instructions.</p> <p>i. Detailed Measurement Surveys to be mainstreamed for all impacts.</p> <p>ii. Non-legal APs are to be included in the tallies.</p> <p>iii. The execution of the survey is to be mainstreamed.</p> <p>iv. Valuation survey. a) No action needed. b) No action needed. c) Methodology to be defined and mainstreamed. d) Methodology to be defined and mainstreamed. e). Methodology to be defined and mainstreamed.</p>
5. Due-Diligence support mechanisms	<p>A. Information disclosure. LAR-related documents to be timely disclosed in the AP language.</p> <p>B. Public consultation. Meaningful public consultations to be held with the APs. APs to be informed on entitlements and options, as well as resettlement alternatives.</p> <p>C. Grievance procedure. A</p>	<p>A. Information disclosure. LAR documents/ impact assessment protocols to be disclosed.</p> <p>B. Public consultation. Matters of local importance to be publicly discussed with local authorities. But no requirement to consult directly the APs.</p> <p>C. Grievance Procedures. A grievance redress mechanisms</p>	<p>A. Same in principle and Application. <i>No reconciliation needed.</i></p> <p>B. Same in principle and application. <i>No reconciliation needed.</i></p> <p>C. Same in principle and application. <i>No reconciliation needed.</i></p>

Issues	ADB SPS (2009) and ADB practice for application *	Azerbaijan law	Reconciliation Needs
	<p>Grievance Redress Mechanism (GRM) is to be established for each project. Information on GRM to be communicated to the APs</p> <p>D. Asset acquisition conditions. Property acquired only after full payment of compensation to APs</p>	<p>supported by a LA committee composed by APs is established.</p> <p>D. Asset acquisition conditions. Property to be acquired only after full payment of compensation to APs.</p>	<p>D. Same in principle and application. <i>No reconciliation needed.</i></p>
<p>6. Assistance to vulnerable and severely affected AP</p>	<p>These APs are to be identified and special assistance is provided to restore/ improve their pre-project level of livelihoods.</p>	<p>No special consideration is given to these APs.</p>	<p>Critically different in principle/ application. Already reconciled for ADB projects but <i>permanent reconciliation through a decree for ADB projects needed.</i></p>

CHAPTER 3

COMPARATIVE ANALYSIS OF ADB AND AZERBAIJAN LAR PROCESSES

103 This chapter contrasts LAR processing tasks under the usual ADB project preparation cycle with those under the standard Azerbaijan project preparation cycle. This comparison reveals procedural contradictions and capacity gaps within and across the ADB and the Azerbaijan system. The analysis then highlights points where greater cross-system coordination or enhancing action is needed proposing ad hoc recommendations to improve processing efficiency and time frames. Tables 3.1 and 3.2 below outline the main stepping stones of the ADB and of the Azerbaijan LAR planning/implementation systems.

3.1 The ADB project preparation/implementation Cycle

104 The provision of an ADB single-project or Multi-Tranche Financial Facility (MFF) loan to a borrower is usually preceded by a Project Preparation Technical Assistance (PPTA) which is financed by an ADB grant supporting the main preparation activities for the project or the Tranche 1 projects²⁰. These activities include engineering design, economic analysis, environmental studies and LARP preparation.

105 The preparation/implementation of a Loan or of tranche 1 of an MFF is divided in two main phases: a) Loan/tranche processing and b) loan/tranche administration and proceeds as detailed below:

a) **Loan/tranche 1 processing.** This phase unfolds in three successive steps:

- i. *Concept paper/PPTA preparation* entailing the project concept paper preparation and approval, PPTA planning and the consultants hiring ;
- ii. *PPTA implementation* entailing actual project design and related tasks and the elaboration of final or draft project designs and LARP(s). If these are approved as acceptable at the Management Review Meeting (MRM) recommendation is made to proceed with loan preparation.
- iii. *Loan preparation proper* entailing the planning/structuring of the loan. This step is concluded with loan negotiations and then loan approval.

b) **Loan Administration.** This phase entails the actual implementation of the project. It includes the bidding process for hiring the contractors and then civil works. However, as often detailed project design and LARP preparation are not fully finished at the time of loan approval, this phase may also start with project design and LARP finalization. When this is the case design and LARP preparation will continue under loan finances and the physical implementation of the project(s) will start only once design and the other preparatory activities (including LARP implementation) are completed.

106 The process detailed above applies in particular to the preparation of projects under a single project loan or under the first tranche of an MFF. For MFF tranches after the first, the process is slightly different as those tranches are technically under the MFF Administration phase and thus are prepared from the start with loan finances without an initial PPTA by the MFF consultants. The structure of the process is however similar and is marked by a preparation and an implementation phase. The first entails the preparation of the tranche project(s) and relative LARP(s) and their approval by ADB as a condition to sign the Periodic Financial Request (PFR) for the tranche. The second entails the implementation of the LARP(s) and then of the project(s) civil works. Also in this case if the PFR was approved based on draft designs and LARP(s) the implementation phase will start with project design and LARP finalization.

107 Independently from the loan type or MFF tranche number considered the significant points of the ADB project cycle pertaining to LAR are that: i) project design and LAR planning are carried out in parallel;

²⁰ The projects under second or third MFF tranches are prepared by consultants hired under the loan.

ii) effective LAR planning and approval of at least of an acceptable draft LARP based on field surveys (see footnote 11) is a condition to loan appraisal and; iii) the finalization of an implementation-ready LARP and its full execution is a condition to start physical civil works (at least in the project areas with impacts.) The above is synthesized in table 3.1 below.

Table 3.1 The ADB process for LAR Planning/Implementation

Steps	Main LAR tasks
1. Loan Processing Project Concept/PPTA preparation:	- Project Concept approved - TOR for project design/ LAR are prepared - Consultants are hired.
2. Loan Processing : PPTA Implementation/Project Preparation	- Engineering design, - Detailed LAR impact/assessment, AP Census; Socio-economic survey -valuation survey, - LARP drafting and finalization.
3. Management Review Meeting (MRM)	- LARP approved as a final document or at least as an advanced draft.
4. Loan Processing : Loan Processing Proper	- If funds are available Draft LARP finalization continues. If finalized at this stage the LARP is approved by loan negotiations/approval.
5. Loan Approval	- The loan is approved
6. Loan Administration	- If LARP was not finalized earlier its finalization continues under loan funds. - LARP implementation is carried out.
7. Civil works implementation	- LAR implementation due diligence After the successful implementation of the LARP civil works can start

3.2 The Azerbaijan project preparation/implementation cycle

108 The thorough review of the country LAR processing system carried for this CA was principally based on the provisions of the LAL. This analysis has posed particular challenges as the LAL is not yet supported by systematic implementation rules clearly listing in an ordered sequence all actions required by the LAR process, integrating its provisions with other pertinent laws or administrative rules of the Azerbaijan Government, and relating the LAR process to technical issues which are outside the LAR scope but directly related to it²¹. Also regarding sequence, the LAL does not address the logical relation between project design and impact surveys, does not clearly distinguish between LAR preparation and LAR implementation phase and does not indicate when the LAR budgets are to be allocated by MOF. Related to this and to the lack of integration of the Law within the broader National Legal universe, the LAL does not envision the promulgation of a Decree or at least of an official approval of the final surveys or budgets prepared in the detailed phase of LAR preparation²². Finally the LAL is unclear on the technical features of the surveys to be made for unmovable property items. Although the need to compensate trees, crops, and income from business and job losses is mentioned by passing in the text (see chapter 2 above) the LAL does not specify that the impacts surveys have to cover also these items.

²¹ The status of project design, the technical capacity or the availability of budgets needed to undertake the actions provided by the law.

²² This is regularly done for projects financed by Multilateral financial agencies and most likely is a mandatory or standard step under National budget allocation rules or practices,

109 In this situation the identification of a National project/LAR process had to be partly elaborated by filling the gaps in the LAL by bringing into the picture relevant provisions in other laws or regulations, by logically connecting LAL compensation provisions with the way the surveys have to be technically carried out and affected items have to be accounted for. Such analysis relied also on the observation of practices followed by on-going projects and on interviews with representatives of EAs or other state agencies. Through these investigations a model scheme finally emerged. This model scheme is presented below:

a. Preliminary Project Planning

- Establishment of a project decree which slates a planned project for implementation, establishes the EA and approves the execution of a Feasibility study and relative disbursement.

b. Feasibility Study

- The FS explores different project alternatives and provides technical-economical information needed for selecting the preferred option to be used as a basis for preparing Detailed Design. Each proposed alternative includes the definition of routes and layouts for the planned infrastructure and a general scoping of potential LAR impacts which will be considered in the choice of the final project alternative.
- The feasibility study is reviewed by appropriate agencies and then is approved by a Cabinet of Ministers Decree. The Decree launches the detailed design funds and approves relative budgets.

c. Preliminary LAR Preparation LAR preparation is launched by a Cabinet of Ministers Decree approving the feasibility design

- The EA prepares a LAR proposal for the project based on preliminary investigations carried out through existing records (i.e. cadastral and public register data). These include:
 - Preliminary assessment of impacts (essentially land and houses)
 - Preliminary identification of the APs and of the legal status of their affected properties
 - Preliminary assessment of LAR costs based on cadastral values
 - Execution of public consultation through meetings involving the AP and preparation of a Public consultation report
 - Preparation of a preliminary schedule for LAR execution.
- The LAR proposal with these data is reviewed by the appropriate ministries and agencies including the LAI and possibly the Ministry of Justice.

d. Approval of Preliminary studies The Cabinet of Ministers promulgates a LAR Decree approving the LAR proposal, establishing public purpose and the right of Eminent Domain for the project, nominating the Acquiring Agency (usually the EA) and launching detailed LAR preparation. The Decree also establishes an impacts cut-off date and a Valuation commission for the project. The Decree may include, if feasible, a recommendation to the MOF to disburse to the EA the needed LAR funds (LAL 19.4).²³

e. Detailed Design and Detailed LAR Studies

e.1. Basic Approach. Used for all cases

- The EA establishes two teams for the management and supervision of the final LAR tasks. These are:
 - i. A LAR team (LAR Group) involving (MOF, Properties Commission, Land Commission and EA) which will manage all activities connected to impact assessment and AP identification, and
 - ii. A Resettlement Commission involving from 3 to 20 representatives of the APs which will facilitate communication with the affected populations and assist during public consultation, disclosure and complaints resolution tasks.

²³ The final LAR budget may not be known in this phase of LAR preparation as the surveys and valuation carried out in the next phases may require substantial budget revisions.

- Once the teams are established the collection of detailed LAR information start and will involve:
 - iii. Marking and surveying in the field all affected properties.
 - iv. Carry out through the services of an accredited valuator a full evaluation at market or replacement cost rates of affected land, buildings and, at least for Multi-lateral Lending Agency projects movable properties (trees, crops, businesses and job losses)
 - v. Evaluate if needed each AP hardship costs
 - vi. Carry out additional consultation in the field
 - vii. Address complaints and grievances.
- e.2. Resettlement Plan Approach.** If the number of Affected Persons is more than 200²⁴ This information will be presented in form of a Resettlement Plan which beside the above survey activities will:
 - i. Identify and plan the preparation of relocation areas if compensation kind is provided
 - ii. Assess income losses impacts or post-resettlement rehabilitation provisions and relative Affected persons,
 - iii. Additional development assistance to ensure the rehabilitation of the APs (provision of credit facilities, training or job substitution)
 - iv. Plan the provision of assistance to the APs for physical relocation in form of provision of trucks²⁵
 - v. Based on the above the LARP will include a final LAR budget (compensation assessment) and a schedule action plan for its implementation (this is not stated in the LAL but is implied by logic).
- f. Final Approval of LAR studies and plans** (grey area but logically necessary)
 - The final impacts assessment, the valuation report and/or the Resettlement Plan will be reviewed by the LAI and if acceptable will be approved.
 - If this was not done before, the Valuation Commissions will approve the final budget and endorse its disbursement by MOF. This approval corresponds to an approval of the LAR studies.
- g. LAR implementation**
 - AP information (all APs are notified of their impacts and given notice of possession)
 - The compensation finances are allocated by the Ministry of Finance (MoF)
 - Compensation award notices are prepared and then sent to each AP for signature²⁶.
 - APs who have signed the awards are compensated within 20 days by check/bank transfer.
 - APs who have not signed the contracts are slated for expropriation. In this case expropriation proceedings are initiated and the compensation amounts due to the APs will be deposited at the relevant court.
- h. Start of Civil Works**

²⁴ The Land Acquisition Law does not provide a definition of Affected Persons and therefore on this point is ambiguous as it is not clear whether the 200 Affected Persons are juridical persons (households, firms, corporate entities) or individuals (physical persons). In preparing LARPs for its projects ADB distinguishes between juridical persons (which are the recipients of compensation) and individuals (which are counted to determine impacts severity). Based on the ADB policy severe impacts on 200 individuals or more is the benchmark to classify a project under category A for Involuntary Resettlement. If instead the severely affected individuals are less than 200 the project will be classified instead as B. In both cases however a Resettlement plan is needed.

²⁵ To simplify logistically the matter ADP practice is instead to directly provide the APs with allowances in cash to rent a truck.

²⁶ In this occasion the contracts will be discussed with the APs and to reach an agreement some minor modification of the compensation due may be negotiated

- After sixty days the APs are compensated or expropriation is approved by the court the land can be taken and civil works can begin.

110 The basic feature of the local LAR processing system synthesized above and schematized in table 3.2 below, is that LAR planning is carried out as a subsidiary task only after project design tasks are performed. It is also to be noted that now-a-days this approach to LAR processing is rarely if never followed in the preparation of complex infrastructure projects with significant LAR impacts which are financed through Multilateral or bilateral loans.

Table 3.2 The AZERBARJAN Process for LAR Planning/implementation

Steps	Main LAR Tasks
Preliminary tasks	Decree Establishing Project (and by default its public purpose), EA and project preparation funds.
Feasibility Study	identification of Project alternatives and for each alternative definition of: <ul style="list-style-type: none"> • Preliminary alignment • Identification of local governments affected • Desk-LAR studies based on Cadastral records and local public registers • Preliminary LAR costs assessment based on cadastral values Selection of project option Promulgation of Decree approving Feasibility design and Detailed design funds.
Detailed design	Execution of detailed design or at least establishment of Project footprint
Preliminary LAR Preparation	Promulgation of Decree establishing eminent domain and Acquiring Agency (usually the EA). Initiation of preliminary studies involving: <ul style="list-style-type: none"> • Impacts assessment based on Cadastral records and local public registers (it assesses essentially land, building impacts and identifies APs) • Preliminary LAR costs assessment based on cadastral values • Preliminary consultation • Preliminary LAR schedule
Approval of Preliminary LAR preparation	Review and Validation of LAR brief by LAI Promulgation of the LAR Decree approving the preliminary studies and establishing a Valuation Commission and the impacts cut-off date.
Detailed LAR Preparation	EA establishes a LAR team and a LAR Committee. Detailed LAR tasks are started. They entail: <ul style="list-style-type: none"> • DMS verification surveys in the field (these include land, buildings and movable properties such as trees, crops, businesses) • Identification of replacement land and a plan for their preparation/distribution • Detailed Valuation of impacts in the field • Public consultation • Preparation of a final LAR schedule If more than 200 AP are involved this phase includes also the preparation of a Resettlement Plan entailing these additional activities: <ul style="list-style-type: none"> • Identification of replacement land and a plan for their preparation/distribution • Assessment of livelihood impacts and identification of relative APs • Identification of additional rehabilitation provisions • Preparation of a RP implementation action plan inclusive of schedules and budgets.
Approval of detailed LAR Preparation	LAI reviews final impacts assessment, valuation report and Resettlement Plan. The Valuation Commission approves the final budget and endorses its disbursement by MOF ²⁷ .

²⁷ it is expected that the chief of the Valuation Commission shall be from the Cabinet of Ministers and approves the final budget on behalf of the Government.

LAR implementation	Allocation of LAR finances Compensation award notices preparation and signing Identification and initiation of expropriation cases through deposit of relative compensation funds to the courts. Payment of compensation to the APs Expropriation approved by the court
Civil Works implementation	

3.3 Comparative analysis

111 The short outline of the ADB and Azerbaijan LAR processing steps detailed above shows a fundamental disconnect between the ADB and national practice. The Azerbaijan system is structured on a paradigm of postponing LAR tasks to the completion of project design. The ADB system, instead, envisions LAR preparation and project design as parallel tasks. If matched for comparison purposes against each other the two systems are translatable into each-other only with difficulty. For this a compromised processing system new for the country was required. This compromised approach has already informally emerged in the preparation of ADB-financed projects through a reorganization of the various steps implied by the national system into the structure of action predicated by the ADB system. This new system however, still requires fine-tuning, codification in national instructions and broad mainstreaming.

112 It is important to note that the new LAR processing system has matured through a difficult process of adaptation involving mistakes, task implementation delays and substantial misunderstandings between ADB and EAs officers. The new scheme was formally adopted by ADB and Government during PPTA negotiations without a clear understanding of its consequences for the implementation of specific tasks mandated by the Country system. Without this prior understanding, the initial execution of the new scheme clashed with un-reflected assumptions of ADB and EA officers, the former tending to take for granted the ADB approach and discounting its novelty for the EAs and the latter instinctively orienting their action based on known national practices and struggling to make the adaptations needed. This situation was complicated by the fact that the LAL is relatively new, has been applied so far only in few occasions and is not yet accompanied by well integrated implementation rules

113 The above situation is rather usual in situations where real change requires not only formal but also practice modification. While formal change can be obtained by changing regulations and instructions, practical change requires instead a trial- and- error process taking place as things unfold. Many issues detailed in this section have now been solved for EAs which have already prepared ADB loans. The same issues, however, can repeat with new EAs partnering with ADB anew. In these cases, the repetition of the situation described above may be partly avoided if there is more consciousness of the various issues entailed by the merging of the ADB and national LAR planning systems.

3.4 General Issues

3.4.1 Project Design Level and options for LARP preparation

114 The possibility to prepare a LARP and in particular initiate the impacts surveys is logically contingent on the prior availability of a project design identifying the impacts area (at least a tentative project alignment for linear projects, or a tentative location of basic project components for non linear projects). The level of detail of the prior design is directly correlated with the level of detail that can be achieved for the LARP prepared during a PPTA as a condition to project appraisal. Based on the overall ADB experience and on the assumption that the average time for a PPTA is six months the situation is as follows:

- i. In the very rare case of a PPTAs starting with a fully finished detailed design (this so far has never occurred in Azerbaijan) it may be expected that the LARP presented at MRM is a final document. Such a document will require only the allocation of compensation budget and other pre-implementation actions to be implementation-ready.

- ii. In case a PPTA starts with a finished Feasibility Study/preliminary design it may be expected that the LARP prepared for MRM appraisal can be at least an advanced draft document based on a sufficiently detailed design to mark the final project footprint. Such a LARP may include all the basic impacts and APs information but may require better specification in the baseline, some fine-tuning of the compensation delivery modalities and minor changes in the impacts/AP baseline due to adaptations in the final project footprint elaborated during the execution of detailed design.
- iii. In case a PPTA starts without a prior Feasibility study it may be expected that the LARP prepared for MRM will be only a very initial document based on a tentative project footprint that may substantially change after detailed design is finished. Most often such a draft LARP will be based on a combination of desk and field data may omit some basic information and will require extensive rewriting and modifications before it is finalized.

115 Leaving alone case one which has never occurred in Azerbaijan, it is important to elaborate on the specific LAR preparation predicaments of case two and three. Based on experience, for case two the delivery of an advanced draft LARP within a period of six months will require very intense efforts but it may be assumed as achievable at least with EAs who have already prepared ADB-financed projects. This is possible as long as: i) the Feasibility study/preliminary design is approved by the Government before the consultants are fielded (if this happens before it may be difficult for them to enter the properties to be surveyed or engage local governments; ii) the work to be done and the compensation policy expectations are clear to EA and consultants, and; iii) design and LARP preparation tasks are properly coordinated (for possible improvements on this see para. 91 below).

116 Case three is instead much more complex and entails substantial challenges even when a project involves an EA with experience on the preparation of ADB projects. As most of the standard PPTA period is likely to be used to select the final project option and prepare the preliminary design limited time will be left for field surveys and for the analysis of the impacts/AP baseline. Due to time compression the LARPs presented for appraisal may barely meet the minimal approval conditions for project appraisal and at times may require that approval is granted conditionally to basic improvements in the text and to the execution of final tasks such as Government Approval or disclosure. To avoid these situations ADB and the Government may want to carefully consider the possibility to extend the PPTA period of two to three months. Crucially important will also be to avoid time wastes by ensuring quick Government approval of the Feasibility Study and by fielding the bulk²⁸ of the consultants' LAR team after that is done²⁹.

3.4.2 Finalization of a Draft LARP.

117 As noted in section 3.1, the draft LARPs prepared for project appraisal purposes are usually finalized after Loan approval under Loan funds (this would be scenario B in table 3.3). This practice entails complications and leads to delays in LARP finalization between 1.5 and 2 years which exceed the time of work interruption between appraisal and Loan administration and the time to technically finish the work. Additional time is in fact spent for consultants hiring and mobilization, EA and consultant training (during the interval between appraisal and loan administration several members of the EA team may have changed and the consultants team will be a new one) and to restart anew many interrupted tasks. This could be avoided if it was possible to rely on the experience built by the original EA team and by the PPTA consultants and to maintain the early PPTA momentum (this would be scenario A in table 3.3). It is thus advisable that at the time of PPTA preparation ADB considers the option of financing PPTAs covering the

²⁸ Minimal LAR capacity may have to be fielded during the preparation of the Feasibility study when LARF preparation is needed or to provide assistance during project identification and during the early cadastral surveys carried out by the Government

²⁹ It is worth to note that some agencies are well aware of the project preparation issues and complications of cases where the a PPTA includes also a feasibility study. For instance, in several occasions Azerroads has proposed as a solution that the Government request to ADB financing for a project only after a locally developed Feasibility Study is ready and the preliminary LAR studies are completed.

entire period between PPTA inception and Loan approval. This would substantially increase the possibility that by Loan approval a LARP is fully finalized.

3.5 Step by step issues along the LAR implementation process for ADB-financed projects

118 The following section provides a comparative analysis of the practical merging of ADB and Azerbaijan LAR processing systems in the preparation of projects in Azerbaijan. This exercise highlights coordination gaps and improvement needs and recommends solutions. The results of the analysis are summarized in Table 3.3 at the end of the chapter.

3.5.1 PPTA Processing Issues

119 **Inadequate LAR planning, resource assessment and scheduling work.** Usually, during this phase no dedicated LAR preparation activity is carried out by ADB in the field. Beside a few inputs from the Resettlement specialists at headquarters, the PPTA paper and the consultants TOR are elaborated based on generic models/schedules without basic knowledge of the specific LAR situation of the project to come.

- a) **Proposed action:** *To properly launch project preparation activities it is recommended that: The ADB Safeguards Team (ST) either from headquarters or Resident Mission is fielded at Reconnaissance Mission as a standard procedure. During the mission the ST specialist will: i.) visit project areas; ii.) based on SPS requirements and in consultation with the EA, assess the likely impacts magnitude; iii.) identify major LARP preparation issues and approaches needed; d) based on an analysis of the information available (including whether a Feasibility study is available or not) prepare a preliminary LARP preparation scenario and a schedule inclusive of Government tasks (see para.73 below), and; e) Coach the EA on the ADB LAR requirements and agree on a LAR processing plan to be adopted so as to fit both ADB and national requirements and ensure its smooth execution. The above will be summarized in a LAR planning brief which will inform the preparation of PPTA paper, consultants TOR and borrower agreement. For difficult cases as projects implemented by an EA new to ADB procedures, ADB may also hire a staff consultant to advise the EA and the Project Team during the PPTA processing phase.*
- b) *Given the difficulty to finalize a LARP within the PPTA period, the PPTA Paper and the consultants TOR include financial and schedule provisions fitting cases where the PPTA covers also Feasibility Study preparation and, if possible, extending the consultants work up to loan negotiations or Loan approval (see para. 88 below for more detail).*

3.5.2 PPTA Implementation Issues

120 **Lack of experience of EAs with ADB requirements and PPTA consultants with Azerbaijan practice.** Given the novelty of the LAL and the lack of clear implementing rules and regulation the EAs may not be well acquainted with the amended national requirements for LAR. The same is true for the consultants which may have scarce experience with LAR practice in the country. Given the key roles of EAs and consultants, this reciprocal lack of experience may result in serious complications during LAR preparation and implementation.

121 It is also to be noted that the LAL establishes strict schedules for the implementation of the preparation and implementation of a Land acquisition process. These schedule provisions are implementable if it is assumed that LAR preparation follows a final project design. They, however, become unrealistic in the case of ADB-financed projects which, as noted above, entail parallel design and LAR processes and for this reason require adaptations in the LAR preparation/implementation schedules mandated by the LAR.

Proposed Action. *It is recommended that during the Inception Mission and before the beginning of field surveys and other core LAR activities the following takes place:*

- a. Clear implementing rules and regulations for the LAL are prepared by the Government and if requested with ADB assistance
- b. EA and consultants plan the action to come together and are well couched both on SPS/national LAR provisions and on LAR planning mechanisms for ADB projects.
- c. EA, consultants and ADB agree on a scheduled LAR preparation plan reflecting both ADB and Government requirements and detailing the action to be carried out with each concerned local government, and;
- d. Local Governments are informed of the plan.
- e. To carry out this work the Safeguards Team specialists at ADB headquarters or at least the LAR consultants at RM will have to be mobilized to assist. The scheduled action plan will be prepared by the PPTA consultants and included in the inception report.

122 **Planning and Coordination of design and LAR tasks.** The execution of effective LAR impacts and valuation surveys necessarily follows the prior definition of a final project alignment and the identification of a well defined impacts corridor. To avoid that design excessively delays LAR surveys, the former is to be planned as much as possible in function of the latter and what is to be taken as the impact area is to be clearly defined³⁰. For instance in this initial project preparation phase, design plans should selectively focus on the essential investigations needed to establish a clear project footprint (other dimensions of design work may follow later the LAR surveys are concluded). In parallel it would be important to agree from the start on whether the corridor of impacts is to be taken as the entire project right-of way or only as the area directly affected by civil works.

123 In addition, to make the best use of PPTA time, design tasks may need to be planned first in areas with impacts and may need to be coordinated with LAR activities based on a staggered process. This staggered process would involve the completion of design in small batches and the execution of LAR surveys for each batch immediately thereafter. Further time saving can be obtained if the design and LAR work is simultaneously carried out in different project sections by different teams of surveyors.

Proposed Action. *The scheduled Action Plan proposed in para 75 above should:*

- a. Define area of impacts and design level needed to fix the alignment;
- b. Phase project schedules in two phases one in areas without and with LAR and prioritize design work to be done in these latter;
- c. Subdivide design work in batches finalizable in 2 weeks;
- d. Identify the optimal number of design and LAR team needed, and;
- e. Schedule LAR surveys in each batch immediately after design is finished.

3.5.3 Loan Processing Issues

124 **Establishment of additional capacity and finances for a rapid finalization of the LARP during the Loan Processing phase.** Based on the general ADB project preparation experience the time and financial allocation for PPTA studies is often insufficient to fully finalize the LARP by the PPTA's end and by the Management Review Meeting (MRM). When this happens, SPS requirements for MRM approval are satisfied by using a preliminary LARP draft. The draft LARP will then be finalized later under Project finances after the loan is approved and before the start of land acquisition and civil works. This scheduling format is required to expedite Loan Approval but leads to a time-gap in project preparation activities that causes very significant delays to the overall completion of project preparation.

Proposed Action. *These delays could be avoided if the period between MRM and Loan Approval (usually about 6 months) could be utilized to further LARP preparation and, if possible, finalize it by Loan Approval. As already flagged in para 72, it is thus recommended that the PPTA Paper and the consultants TOR prepare during the PPTA processing phase include financial and schedule provisions for possible extensions of the consultants work up to loan negotiations or Loan Approval.*

³⁰ i.e. whether the impacts area is the whole right-of-way or only the corridor of impacts.

To ensure continuity with the project preparation activities prepared during the PPT Administration phase it is also recommended that the Government keeps mobilized the EA LAR team, the LAR Commission and the concerned local governments.

3.5.4 Loan Administration Issues

125 **Eventual Continuation of LAR Preparation during Loan Administration.** In case the LARP has not been finalized in the preceding phases, LAR preparation will continue in this phase through capacity (often provided by the Project Supervision Consultants team) financed under Loan proceedings. Experience indicates that the transfer of LAR preparation tasks from one consultant to another is particularly delicate and needs careful preparation to avoid delays and complications.

Proposed Action. To launch the work of the new consultants and ensure continuity it is recommended that ADB takes action similar those taken during PPTA processing and administration. In particular it is recommended that:

- a. Before the consultants are hired the ST reviews the LAR preparation status for the project, prepares detailed TOR for the resettlement specialist and assists in the preparation of the contract as needed. In doing so the ST will have to ensure that the LAR capacity in the consultants team is sufficient and available when needed.
- b. After the consultants are mobilized the ST carries a mission to visit field sites and review with the consultants, to brief the new team on priorities and modalities of work and to ensure good understanding between them and the EA.
- c. Before initiating their core tasks the consultants include in the inception report an action plan of the work to come detailing tasks, sequences and schedules and modalities of work including if necessary a detailed plan for survey execution.

3.5.5 LARP Implementation Issues

126 **Planning Tasks.** Whether the LARP was finalized by Loan Approval or later during Loan Administration LARP implementation occurs regularly during Loan Administration. Most of the LARP implementation activities pertain to the Government but ADB needs to ensure proper planning and close supervision of the task to avoid delays and complications.

Proposed Action. Before beginning LARP implementation the Supervision Consultants prepare an action plan indicating in detail all tasks to be carried out, relative schedules, implementation issues and specific supporting action needed from EA or ADB.

127 **Finalization of legalization.** Before the start of actual LARP implementation it is common to find that many legalizable APs have not yet taken the administrative action necessary to clear/reconstitute their title on which legalization is predicated. There are several reasons for this: the APs have no money to pay for the land office fees, they do not understand the relevant administrative rules, or simply are too busy with their daily chores to take action. To avoid the significant complications and delays entailed by this situation special measures are needed.

Proposed Action. Although the legalization action is a primary responsibility of the APs, the EA will have to take proactive interest in assisting them. In this respect it is recommended that:

- a. The EA assigns one member of the LAR team to the task to: i) directly contact each AP with pending legalization issues, understand their case and provide advice on what is to be done; and ii) coordinate and intervene with the relevant administrative offices on the solution of the situation of each AP and on its establishment as a priority case.
- b. The EA directly pays the administrative fees for each AP that has failed to do so (the fee will then be recovered from the APs as a deduction from their compensation dues). In case the EA has no finances to advance for this task ADB may want to consider the possibility of an advance from Project finances.

128 **LARP Finances Allocation.** Based on the approval of the Final LAR budget by the Valuation Commission the EAs are authorized to request the LARP compensation funds to the Ministry of Finance (MOF). The actual funds allocation may take 2 months. The process, however, may be much longer and take more than one year if the requests of funds to MOF is made after the cut-off date for budget allocations in October. This bottleneck can be solved by requesting an exception to the rule to be supported by a Decree to be signed by the Prime Minister. This will expedite the delivery of funds but still requires significant time.

***Proposed Action.** In the eventuality that LARP approval is needed several months before the yearly budget allocation it is recommended that the EA includes in the LARP Decree also an authorization for the request of the out-of-budget funds. If this is not possible the EA can alternatively prepare simultaneously two decrees, one for LARP approval and the other for the extra budgetary allocation of money.*

129 **Note on issues relative to LARP preparation under MFF tranches.** The text above applies in general to the LARP preparation situation in MFF tranches following tranche one but with some major adaptation as detailed below:

- i. As these tranches are completely prepared under loan finances by the MFF implementation consultants and do not entail a PPTA, the need to extend the duration PPTA to loan approval does not subsist. What is important in this case is that the borrowers pay the outmost attention to submit the PFR for ADB approval when the LARPs are fully finalized. As per ADB it is recommended that PFR endorsement is granted only when the LARPs are final.
- ii. As in the case of the first tranche, the MFF consultants responsible to prepare the LARPs will have to be thoroughly trained on the local project processing system and on national LAR principles and practice. However, since the consultants may be the same for different tranches the need to train them applies only for the first tranche they prepare. It is assumed that after that experience they will no longer need training. The same logic applies to the EA since it was already exposed to the merged ADB-local project processing system during tranche 1.

130 Table 3.3 next page refers to self-standing project loans or first MFF tranches. It summarizes the above text in reference to self-standing project loans by matching the LAR action required by the ADB and the Azerbaijan system in the way they come together for ADB financed Projects. The table illustrates capacity and coordination issues emerging at each phase and step along the process.

Table 3.3 Comparison of the merged ADB and AZERBAIJAN LAR planning process and related streamlining/improvement needs

ADB			AZE			Streamlining/improvement Needs
Task	Activities	Wks	Tasks	Activities	Wks	
Project concept and PPTA Processing			Launching of Feasibility Study and Detailed Studies			<p>Issues. Poor alignment of ADB/ local process tends to cause delays and often leads to incomplete surveys which will require substantial updates after loan agreement.</p> <p>Proposed GOV Action: For effective PPTA scheduling and implementation, the tasks are to be done before the consultants are fielded.</p> <p>Proposed ADB Action: To speed up PPTA tasks it is recommended that the ST is fielded in this phase. ADB may also consider to:</p> <p>a) hire a LAR consultant (1 month) to assist EA;</p> <p>b) Add 2-3 months to PPTAs covering Feasibility Studies</p> <p>c) Extend PPTA finances/ capacity to Loan approval.</p>
1. Reconnaissance mission	No field activity		Promulgation of LAR Decree.	<ul style="list-style-type: none"> - Preliminary impact assessment (AP census & LAR costs based on cadastral data. - Preliminary AP consultation is carried out Analysis of relevant policy and regulatory frameworks. - Establishment of LAR Group and of, Resettlement and Valuation commission. - Decree is disclosed to APs. 		
2.PPTAconcept paper preparation						
3.PPTAConcept paper review						
4. Consultants TOR/bidding						
5.PPTAApproval						
6. Consultant. Contract signed						
Average Total time A:		12				12
Project Preparation and PPTA implementation			Detailed Studies			<p>Issues: To save time and improve PPTA effectiveness design and surveys need to be expedited and improved by better coordinating and planning design-LAR tasks.</p> <p>Proposed Consultants Action: The consultants prepare an action plan to:</p> <ul style="list-style-type: none"> - define design level needed for alignment; - split project in sections with-without LAR. - Plan more than 1 design team and LAR team working in parallel on different sections - prioritizes design in sections with LAR. <p>Issues. Except for very rare occasions design and surveys are not completed by this phase. MRM is thus approved based on a draft LARP based on field surveys and measurements but yet to be finalized.</p> <p>Proposed Government action. As full GOV approval of a LARP through an official ordinance is time consuming It is recommended that when only a Draft LARP is available, approval is based on simplified and shortened procedures involving only the EA.</p>
1. Consultants mobilization		1	A well-staffed LAR team is fielded.	LAR Group and Valuation committee/ Local GOV mobilized in support to PPTA consultants		
2. Inception Mission	ADB ST fielded - Consultants / EA prepare a time bound LAR Action Plan (APL).	2		EA and LAR group assist Consultants in the preparation of the Action Plan		
3. LARP Preparation	- Project design starts - LARP Policy agreed with EA - LAR surveys done. - AP Consultation - Initial LARP text	16	Detailed LAR studies start	- Detailed LAR surveys. -impacts valuation. - EA team intensively coordinates with local GOV/relevant state agencies and resettlement commission. -additional AP consultation -AP notified and legalization initiated.		
4. Technical review	ADB reviews LARP/ advises consultants	2		EA Team assists Consultants in LARP finalization and review		
5.Final/Draft LARP finalized	- Final/Draft LARP finalized					
6. Final/Draft LARP approval	-ADB approves final/Draft LARP			- LAR surveys/valuation review - If final, LARP and LAR budget Approved -if draft LARP approved by EA only		
7. LARP Disclosure	-Final/Draft LARP disclosed on ADB web			- Final/Draft LARP in Azeri disclosed to the APs		
MRM						
Average Total Time B.		18				18

Loan Processing		Detailed LAR Studies (continuation)		Issues: Experience shows that usually at MRM: (a) design / LARPs are not final, (b) MRM approval is based on draft LARPs, and (c) project preparation is interrupted as PPTA funds are finished. LARP finalization is thus seriously delayed as it is postponed to Loan Administration. Proposed ADB Action. This can be avoided if LARP finalization continues after MRM and ITA funds cover also this period. Based on this conclusion two LARP finalization scenarios are possible: - Scenario A: with PPTA funds up to loan approval - Scenario B: without additional PPTA funds		
SCENARIO A		wks		wks	Issues: Need to simplify the process for the promulgation of Decrees. Proposed GOV Action. The establishment of a shortened process for the preparation and approval of the LARP is needed to maintain the proposed schedule.	
1. Appraisal Mission and Continuation of LARP preparation	- ADB ST fielded Continuation of Design and LAR surveys -if design footprint fixed LARP finalization.	20	Continuation of Project and LAR preparation	Continuation of unfinished LARP finalization tasks		20
2. LARP Review	- LARP reviewed (if final)		LARP reviewed (if final)	EA assists as needed in the review		
3. LARP Approval	- ADB Approves LARP and waits for the Government approval.	6	GOV approval of LARP (if final)	If LARP is final: - LARP surveys/valuation review - LARP and LAR budget Approval		6
4. Loan Negotiations						
5. Advanced procurement of Supervision Consultants						
6. LARP Disclosure	If final LARP in English is disclosed on ADB website	2	EA disclosure	If final LARP/pamphlet in Azeri disclosed to AP		2
6. Board Approval	No LARP activity	1	No LARP activity	No LARP activity		1
7. Loan Signing		1				1
8. Loan Effectiveness		1				1
9. Supervision Consultants hired.		1			1	
Expected average total time			31			31
SCENARIO B		Wks		wks		
1. Appraisal Mission	No field activity or only minor field activity			No field activity or only minor field activity		
• Start of advanced procurement of Supervision consultant						
3. Loan Negotiations						
4. Board approval						
5. Loan signing						
6. Loan effectiveness						
7. Superv. Consultants hired						
Expected Average Total Time		22			22	
Loan Administration		Detailed Studies (continuation)				
Continuation of LARP Preparation(if needed)		Continuation of LARP Preparation (if needed)				
1. Consultants mobilization and coaching. Loan Admin Mission	ADB fields the ST team, coaches the consultants on project issues.	3	Redeployment of EA team, Valuation and Resettlement Commission and loc. Gov.	The EA assists in the coaching of the consultants	3 Issues: As above Proposed GOV Action. As above.	

2. Continuation of project and LARP preparation.	Design/LARP Finalization	18	-Design/LARP finalization.	LARP finalization.	18	
	ADB reviews Final LARP	2		EA assist as needed in the review	2	
3. LARP Approval.	ADB approves Final LARP	6	GOV approval of LARP.	- LARP surveys/valuation review - LARP and LAR budget Approval.	6	
LARP Disclosure	LARP disclosed on ADB web	1	EA Disclosure	EA discloses LARP/Pamphlet	1	
Expected Average Total LARP Finalization time		30			30	
LARP Implementation and final Project chores (BOTH SCENARIO A AND B)			Execution of Impacts Compensation			
ADB Mission	Consultants prepare a LARP Implementation plan	2	Preparation of LAR Implementation	EA/resettlement Commission assist with the preparation of the LARP implementation plan.	2	Issues: LARP implementation could be expedited with more proactive engagement of EA and ADB . Proposed GOV Action: a) EA proactively engage in the finalization of AP legalization and possibly advances payment of land registration fees; b) adapt work for the request of LAR funds to the schedule of LARP approval and national budget approval. Proposed ADB Action: a) Provide sufficient ST support in this Project Preparation; phase; b) be prepared to advance finances to EA for land registration fees of legalizable APs and c) Finance the hiring and couch External Monitoring Agency.
Supervise consultants to supervise LARP implementation	Routine supervision of LARP implementation and compensation delivery.	17		AP legalization finalized, contracts signed and eventual expropriation initiated.	2	
				Request of LAR funds to MOF	4	
				Support to External Monitoring agency	3	
				Preparation of compensation		
			Delivery of compensation	Compensation delivery	6	
Compliance report review/ no objection to start civil works.	ADB provides no objection letter.	2	Preparation of LAR Implementation report	EA prepares/submits report to Central Government.	2	
Expected Average Total LARP implementation time		21			21	

CHAPTER 4

OVERARCHING INSTITUTIONAL AND TECHNICAL ISSUES RELATED TO LAR UNDER ADB PROJECTS

131 This chapter looks at overarching LAR issues which require capacity building interventions at the level of the Country system as a whole. Many of these issues have already emerged in Chapter two as gaps between the SPS and the National law, or in Chapter three as factors hindering the LAR preparation and implementation for a project. In those two chapters specific recommendations were provided on how to reconcile each single policy gap and on how to address LAR complications within the project development process. In this chapter these and other issues are taken up at a general country level in view of establishing a systemic mainstreaming action.

4.1 Institutional, Administrative and Technical Capacity

132 The LAL was prepared by taking into consideration the LAR requirements of International Financial Institutions (IFI) and has already achieved a high harmonization level with many ADB (SPS 09) requirements. As illustrated in Chapter 2, however, there are still a few gaps in principle and several gaps in application to be bridged in order to establish standardized mechanisms for LAL implementation. This is true not only for what concerns ADB- financed projects but also for what concerns locally financed projects. The LAL, in fact, is relatively recent, so far has been used only in a few occasions and still is not complemented by implementing rules and regulations. This lack of prior experience and clear implementation guidance leaves several EAs uncertain on how to implement specific steps in the LAR process. For instance, the LAL is at times unclear on the flow of sequential steps in the LAR process and does not specify the methodology to calculate the compensation of leases, trees or crop losses or the incomes of affected businesses to be rehabilitated. The LAL also assumes that all EAs have the needed technical capacity for the proper execution of impact surveys and are well informed on the format of the documents to be presented to the LAI for review³¹. A clear survey methodology leading to the identification of all impacts and APs in the field and improved measurement methods involving a better calibration of GPS data are to be established *requires also is also*

Proposed Mainstreaming Action for ADB Projects. In the future ADB may want to consider the preparation in consultation with a designated panel of National experts of the following:

- *A manual for ADB projects clearly describing the LAR process and detailing specific instructions to improve the coordination between the different agencies involved in the LAR for a project ,the execution of surveys and calculate entitlements in a fashion fitting the SPS requirements. The manual will be distributed to and discussed with EAs, PIUs LAR teams, local Governments and Consultants at the start of preparation of a project and may include among other items:*
 - a) *The definition of a clear survey methodology for the assessment of all impacts in the field;*
 - b) *The elaboration of improved measurement methods involving a better calibration of GPS data;*
 - c) *The preparation of standard formats/forms for impacts surveys, AP census, socio-economic surveys, public consultation reports and AP impact notices/ compensation offers fitting both ADB and Government needs.*

³¹ The need of greater LAL implementation clarity was also noted by the representatives of the Ministry of Finance (Land Acquisition Inspectorate) in the first meeting of the Working Group under the RETA 7433.

General Proposed General Mainstreaming Action. *If requested by the Government ADB may also want to consider the preparation of Implementing Rules and Regulations for the LAL addressing in detail the action and the modalities relative to its implementation for all projects irrespective of donor.*

4.2 Valuation

133 The LAL clearly specifies how affected land and houses are to be valued. The law however is less clear regarding non-real estate impacts (i.e. valuation of trees, crops, business or other income losses.) It is thus expected that the valuers hired by the EAs and supervised by the Valuation Commission may be uncertain on what is to be done in those cases. In addition, valuers are local and may have little experience on how a valuation is to be presented so as to fit international standards and satisfy the understanding requirements of both national and international audiences.

Proposed Mainstreaming Action for ADB Projects. *Principles and procedures for non real estate valuation fitting SPS requirements and specific valuation instructions/valuation formats should be prepared at least for ADB-financed projects. The action recommended covers the following areas:*

- a) **Regulation development** *Develop specific valuation principles for the compensation at replacement cost of non-real estate impacts affected by public projects. These principles will have to include provisions that satisfy the IFIs as these have become a major source of financing for public projects. For this task discussions will have to be initiated with an ad hoc multi-agency working group to review the current situation, identify pertinent issues and the legal level/modality of the action needed for the changes.*
- b) **Guidance note for valuers on how to prepare valuation reports.** *To complement the new valuation instructions ADB may want to assist the designated Government agency in the preparation of guidance notes for valuers. In the meantime while the new regulation is developed ADB may also prepare a guidance note addressing the specific valuation needs and valuation reports standards for ADB-financed projects.*
- c) **Capacity of the valuers to conduct valuation for LAR purposes.** *Once the LAR valuation Instructions are developed, training on their implementation will have to be provided to valuers and concerned State agencies. ADB may assist in the preparation of the training modules and in providing the training at least for ADB-financed projects.*

4.3 Vulnerable Groups

134 It is apparent that the EAs do not necessarily have a clear understanding of the ADB requirement in respect of vulnerable people and of the activities they are expected to plan and implement in this respect. Azerbaijan consultants involved in LAR also requested better guidance in this respect. Specifically, some confusion was observed as to:

- **Identification criteria** – particularly whether the criteria defined by Azerbaijan law (households headed by a person older than 70 or household with a monthly income per capita of 75 Manats or less) **are sufficient or need to be qualified or complemented to comply with ADB policy;**
- **Assistance activities** – what exactly the implementation agency needs to implement, particularly in situations where the target vulnerable group is already receiving assistance from one of the instruments the Azerbaijan government uses for this purpose (for example invalids).

135 Based on the logic of the ADB policy the special allowances for vulnerable people are meant to provide special assistance to parties that given their general socio-economic situation may be exceptionally affected by the LAR process. These allowances do not overlap with allowances vulnerable

people receive as a standard contribution by the state but are provided as an additional form of assistance directly related with their special needs during the relocation process. As such they are to be provided independently from other allowances they receive. These principles have been temporarily accepted for ongoing ADB projects but still need to be formalized in a clear methodological explanation.

136 It is to be noted however, that for what concerns ADB policy the issue is not whether these allowances are to be provided or not, but how and which vulnerable people are to be identified and what allowance amounts are to be given to ensure rehabilitation. The identification issue has been so far temporarily solved for the ongoing ADB projects with an agreement between the ADB project teams, EAs and PIUs that the vulnerable people are: the poor (households below poverty levels) and women headed households. The allowance amounts issue was instead solved by agreeing to give a variable number of months at minimum salary. The model thus established may be acceptable also for future projects but more work is needed to establish a clear method to identify/account for the vulnerable parties and to establish proper allowance amounts.

137 As already mentioned in Azerbaijan the official categories fitting the ADB definition of vulnerable people are households headed by a person at least 70 years old or households whose monthly income per capita is up to 75 Manats. The identification of elder/women headed households (this last category is required by ADB) is automatically derived from the social surveys. However, the same does not apply to the poor. According to Azerbaijan law the identification of a poor household depends on surveys but is ultimately determined by the fact that the household is registered as such in the records of the Ministry of Labor and Social Protection. This approach was accepted by ADB in previous projects but needs to be improved. This is so as the LARP socio-economic survey may indicate that there may be households definable as poor according to the national standards who for some reason are not listed in the Ministry database. To ensure that all poor households affected by a project are included in the LARP vulnerable people tallies a proper and expedite process to update the Ministry database is to be established and mainstreamed.

138 An issue exists also regarding the proper definition of the allowances amounts. This is that so far it is unclear whether the amounts currently provided are sufficient to provide effective rehabilitation. The case should be further studied by the proper expertise agency either to confirm the current practice or modify it.

Proposed Mainstreaming Action for ADB Projects. The proposed action includes:

- *Establishment a process to update the official lists of poor households so as to ensure the rehabilitation of unrecorded but eligible poor households.*
- *Preparation of a short study to establish allowance amounts fitting rehabilitation needs and establish clear principles and procedures for the identification of vulnerable parties. The final allowance amounts and the principles procedures can be detailed in an appendix of the LAR preparation/implementation instructions for ADB projects already recommended above.*
- *Preparation of a guidance note detailing which AP is to be included among the vulnerable people, indicating rehabilitation allowance amounts and explaining how unrecorded eligible households can be included ex-novo in the official lists of poor households. The guidance note can be included in an appendix of the LAR preparation/instructions for ADB projects already recommended in the proposed action for section 4.1.*

4.4 Livelihood Restoration

139 Similarly to vulnerable groups, both EAs and consultants are unclear about what exactly they are expected to plan and implement in terms of livelihood restoration. In actual fact little is done so far to monitor the restoration of livelihoods and/or to take action where livelihoods are affected. The ADB requirement is not necessarily known or understood. This issue should be addressed within the same framework as the following one (Monitoring & Evaluation – see below **Error! Reference source not found.**). However, the LAL considers compensation (articles 44, 56, 63, 65) to be payable to affected person for restoration of income loss, livelihood and housing standards. But, it does not specify tools for determination of and compensation of such impacts.

Proposed Mainstreaming Action for ADB Projects. Carry a short study to prepare guidelines for identification of such impacts and determination of compensation amount which could be enough to restore at least pre project standards. The methodology to be applied in the calculation of indemnities for both registered and non-registered losses will be defined in an appendix of the LAR preparation/implementation instructions for ADB projects already recommended above and will be reflected in the Country LAR Framework (CLARF) to be prepared during the capacity building phase of the RETA (see below).

4.5 Monitoring and Evaluation

140 There is no standardised framework for LAR Monitoring and Evaluation. One Presidential decree³² stipulates rules for monitoring and evaluation of state programs, but does so only for whole projects not just for LAR implementation. This notwithstanding, LAR monitoring has been already done regularly for ADB and other IFI- financed projects although some EAs continue to have little understanding of what is required and expected in this respect. This particularly applies to: a) short-term internal and external monitoring inputs and outputs during LAR implementation; b) long-term internal and external valuation inputs and outputs after LAR implementation and; c) external monitoring/valuation requirements and modalities.

Proposed Mainstreaming Action for ADB Projects. ADB may want to prepare a set of instructions for M&E detailing the activities for short- and long- term tasks. These instructions may be included as an appendix to the LARP preparation/ implementation manual mentioned above.

4.6 Financial facilitation of the reconciliation of Livelihood rehabilitation requirements

141 The SPS includes among its requirements the provision of livelihood rehabilitation allowances to severely affected and vulnerable APs. These provisions are not considered under National law or regulation and therefore do not need reconciliation. However disbursement on the side of the Government of finances for these allowances may encounter resistances as the expenditure may require laborious justifications to be accepted under the rules regulating the use of the national budgets.

Proposed mainstreaming action for ADB Projects. To avoid delays and project planning complications that may be caused by this issue it is recommended that ADB considers the possibility of financing the allowances for severely affected and vulnerable APs under the loan as a standard practice.

4.7 Simplification of the Promulgation Mechanisms for Decrees

142 Based on AZE procedure various steps of the LAR preparation and implementation process require the promulgation and approval of several Governmental decrees. Among others, these are the Project Decree, the Decree confirming existence of state needs for land acquisition and assigning Acquiring Authority³³, the Decree approving land acquisition³⁴, and, the Decree (or other type of approval) approving LARP budget and the allocation of funds for LAR implementation.

143 The Government Decrees are always approved at the highest Government echelons. Decrees entail complicated inter-agency processes and require substantial processing time.

³² Presidential decree on approval of "Rules for preparation, implementation, monitoring and evaluation of State Investment Programs, 17 March 2010, No239

³³ Land Acquisition Law, Article 6

³⁴ After relevant desk studies (or might be general field surveys) and collection of data from several government agencies, including cadastral maps (Land Acquisition Law, article 19

Proposed Mainstreaming Action for ADB Projects. *It is recommended that ADB studies with the appropriate government agency(s) the available options to shorten and simplify the promulgation process of Decrees. The options adopted will be formalized in a working note acceptable to the Government.*

4.8 Grievance Redress Mechanism

144 Requirements for establishment of Grievance Redress Commission (article 75) and Resettlement Commission (article 40) are stated in the LAL. However, non of EAs has implemented such mechanism. To ensure effective application of the GRM at the project level, a more effective coordination between the ad hoc commissions and EA, as well as Land Acquisition Inspectorate for accepting and reviewing complaints or claims has to be developed and mainstreamed into all ADB-funded projects. EAs need to understand the importance of identifying issues at an early stage and taking decisive action to remedy them promptly. Moreover, past experience shows that communities and affected persons do not have proper information about GRM. Therefore, special instructions should be given to EAs and other LAR related agencies in order to be able to identify potential problems or to address specific claims in an efficient and satisfactory manner.

145 As the LAL (articles 8, 22, 75) and other related legislative acts (i.e Civil Code, articles (246-248)) stipulate certain responsibilities and procedures, as well as principles for GRM, the level of intervention would be in application mode. It may include sample of working documents and guidelines for the established ad hoc commissions, A basic information leaflet for the claimant about their general rights and GRM procedures and a guideline for local government and the EA on how process, investigate and make a decision about the claim would also be part of the package. Training programs using the standard materials about GRM should be offered to key ministry, EA and local government staff as well as to relevant civil society groups. The package would also be provided to PPTA and supervision consultants, with a check list about GRM for the authors of the due diligence report.

Proposed Mainstreaming Action for ADB Projects: *A standard package of GRM materials with GRM templates and with appropriate training programs may be developed and approved.*

4.9 Preparation of a Country Land Acquisition and Resettlement Framework

146 Most of the policy gaps analyzed in chapter two have been already harmonized through *ad hoc* expedients during the preparation of specific projects. The same has happened for the identification and solution of the LAR planning challenges identified in chapter three. This piecemeal approach practically solves immediate problems, but is time consuming, requires intensive discussions for each project and leaves ADB teams and EAs uncertain on the final LARP approval of the expertise agencies.

147 Planning as-you-go was inevitable for the first ADB project loans in AZE, when both ADB and EAs were learning about each-other practice and were discovering the complexities caused by their merging. With the progression of ADB lending to AZE, however, more project experience has accumulated and many LAR issues have become better known. Today this offers the possibility to map LAR problems likely to repeat at each project and mainstream the arrangements for their solution into integrated procedures and instructions.

Proposed Mainstreaming action for ADB Projects. *In the current situation a better option for predictable project development and simpler LARP preparation/approval would be to establish a Country Land Acquisition and Resettlement Framework (CLARF) applicable to ADB-financed project. The CLARF will integrate in one document: a) mainstreamed LAR principles/implementation mechanisms fitting both SPS and Country requirements; b), define the institutional and administrative context for LAR in RA, and; c) establish a clear LAR process template indicating actions needed at each step of the process and relative responsibilities. CLARF preparation would require the collaborative effort of ADB and Government which will have to concur on the issues where alignment is needed or not needed, on policy reconciliation measures and on the arrangements to be taken at each step of the LAR process. The CLARF will*

have to be officially approved by Government and ADB as an international agreement. Government approval will also entail a full review process involving validation from the appropriate expertise agencies and ratification at the highest approval level through a Government Decree signed by the Prime Minister.

CHAPTER 5

SUMMARY AND FINAL RECOMMENDATIONS

5.1 Summary of Report Findings and Recommendations.

148 The previous three chapters have identified at different level the main issues complicating the timely and effective planning/execution of LAR tasks for ADB projects in the Azerbaijan. In parallel with this exercise the chapters above have also proposed solutions to be further developed in phase 2 of the RETA entailing the preparation of a capacity building program.

149 Chapter two has focused on the formal/legal alignment of Azerbaijan law/law- application with SPS principles/ADB LAR practice. Two items require both legal and law-application reconciliation, these are a) the eligibility of non-legal APs to compensation for non-land losses and b) the provision of special rehabilitation assistance to vulnerable and severely affected APs; Items requiring only law-application reconciliation are: (a) loss of land leases, (b) loss of trees; (c) loss of crops loss of businesses and (d) loss of jobs. Some gaps do not need legal or law- application reconciliation but require the adoption of instructions sanctioning the legitimacy of SPS requirements and the definition of accepted mechanisms for their application. These are: (a) public consultation; (b) information disclosure; (c) grievance resolution and (d) preparation of LARPs and appropriate measurement and census surveys for all impacts and APs. All gaps will require a reconciliation Decree for ADB Projects except for public consultation; information disclosure, grievance resolution and LARP/surveys preparation which require only technical instructions. The interventions needed to harmonize and fill gaps between ADB Policy and the country system are summarized in table 5.1 below.

Table 5.1 Summary of Policy Reconciliation/action needs

ADB Policy Requirement	Reconciliation/Action needed		
	Policy	Application	Action needed
1 Compensation of non-legal/legalizable APs	<u>Reconciliation needed</u> (non-land losses)	<u>Reconciliation needed</u>	Already reconciled for previous projects but <u>to be mainstreamed by a Decree for ADB Projects.</u>
2 Rehabilitation of severely affected/vulnerable AP	<u>Reconciliation needed</u> (non-land losses)	<u>Reconciliation needed</u>	Already reconciled for previous projects but <u>to be mainstreamed by a Decree for ADB Projects.</u>
3 Loss of trees	<u>No Reconciliation needed</u>	<u>Reconciliation needed</u> To define Valuation method	Already Reconciled for previous projects but <u>to be mainstreamed by a Decree for ADB Projects.</u>
4 Loss of Cops	<u>No Reconciliation needed</u>	<u>Reconciliation needed</u> To define Valuation method	Already Reconciled for previous projects but <u>to be mainstreamed by a Decree for ADB Projects.</u>
5 Loss of Business	<u>No Reconciliation needed</u>	<u>Reconciliation needed</u> to define valuation method	Already Reconciled for previous projects but <u>to be mainstreamed by a Decree for ADB Projects.</u>

6 Loss of Jobs	<u>No Reconciliation Needed</u>	<u>Reconciliation needed</u> to define valuation method	Already Reconciled for previous projects but <u>to be mainstreamed by a Decree for ADB Projects.</u>
10 LAR Planning	<u>No Reconciliation needed</u>	<u>Reconciliation needed</u> (instructions for full impacts measurements surveys and AP censuses to be developed)	Specific approach to be agreed with RETA working Group.

150 Chapter three has focused on the LAR aspects of the ADB and Azerbaijan project cycles and on what happens when the two merge for ADB- financed projects. This analysis identified the need of greater LAR action coordination and several steps in the process requiring better planning, greater technical capacity, or ad hoc time-saving/quality improvement arrangements. Regarding process coordination the ensuing recommendation is that the fielding of PPTA consultants is conditioned to the approval of the Project Decree. As per planning issues the recommendations are: a) fielding of the ADB resettlement specialists during PPTA processing; b) expansion of PPTA finances/schedules to loan approval; and c) preparation of action plans at each significant step in the process including start of PPTA administration; loan processing; loan administration and LARP implementation. Finally, regarding time-saving or efficiency interventions the analysis recommendations are: a) carry design and LAR surveys in accordance to a staggered and time-saving schedule prioritizing project sections with LAR; b) shortened/simplified procedures for Decree/Ordinance promulgation; c) ad hoc arrangements to synchronize the request of LAR implementation funds to the Ministry of Finance with LAR implementation schedules; d) a proactive engagement of the EA in the finalization of AP legalization involving the advance of land registration funds either by the EA or ADB; and e) the hiring of the external Monitoring Agency by ADB. These issues are schematized in table 5.2 below.

Table 5.2 Summary of Recommended Action to facilitate LAR and relative responsibilities

Issues	Action needed	Responsibility
Process Coordination	<ul style="list-style-type: none"> • Project Decree to be promulgated before fielding LAR Consultants in the field • Coordination of request of LAR implementation funds with LAR implementation schedules 	<ul style="list-style-type: none"> - EA/Government - EA/Government
Planning/financing	<ul style="list-style-type: none"> • Extension of PPTA Finances/schedules to loan approval • Fielding ADB resettlement specialists at PPTA processing; • Preparation of action plans at each significant step in the process including start of: a) PPTA administration; b) loan processing; c) loan administration and d) LARP implementation; • Financing the allowances for severely affected and vulnerable APs under the loan 	<ul style="list-style-type: none"> - ADB - ADB - ADB, Consultants, EA, - ADB
Capacity	<ul style="list-style-type: none"> • Training/coaching of EA and consultants • Development 	- ADB
Time-saving/efficiency measures	<ul style="list-style-type: none"> • Design and LAR surveys based on staggered schedules prioritizing work in project sections with LAR.. • Shorten/simplify the Decree/Ordinance promulgation process; • Proactive engagement of EA in the finalization of AP legalization including advancing to the APs the land registration fees; • Hiring of external monitoring Agency by ADB 	<ul style="list-style-type: none"> - ADB, Consultants, EA, Government - EA, Government. - EA, possibly ADB - ADB

151 Chapter four has focused on background institutional and capacity issues to be addressed to improve general LAR performance in the future. The interventions recommended in the chapter are: a) provision of an extensive training program on SPS requirements to EAs, key Government agencies and selected local consulting firms; b) elaboration of valuation instructions fitting SPS provisions and ADB practice to be approved by an appropriate Government agency; and c) development of instructions on how to handle Complaint and Grievances (C&G) fitting the SPS. An additional and key issue signaled in this chapter is the need to carry out the mainstreaming of harmonized LAR policy and practices through an integrated CLARF to be validated and approved by the Government. The issues detailed in chapter four are summarized in table 5.3 below.

Table 5.3 Broad country-wide capacity building Action

Issues	Action needed	Responsibility
Administrative and Technical capacity for LAR preparation under ADB projects	<ul style="list-style-type: none"> • Preparation of a LAR preparation and implementation Manual with instructions on administrative, LAR planning and survey matters. • Preparation of a broad training program/training modules for EAs and local consultants supporting the manual • Possible preparation of Implementing Rules and Regulations for the LAL 	ADB, appropriate Government Agency (T.B.D)
Valuation Capacity for LAR under ADB projects	<ul style="list-style-type: none"> • Update of valuation standards and formats, • Preparation of a valuation manual • Provision of training 	ADB appropriate Government Agency (T.B.D)
Vulnerable/severely AP issues	<ul style="list-style-type: none"> • Preparation of instructions on how to identify these APs and on how to set allowance amounts • Finance the allowances under the loan 	
Business rehabilitation	<ul style="list-style-type: none"> • Preparation of instructions on how on how to set indemnities amounts 	
Simplification of Decree promulgation	<ul style="list-style-type: none"> • Definition of a shortened/simplified process elaborated in a working note. 	
Monitoring and Evaluation	<ul style="list-style-type: none"> • Preparation of instruction detailing short- and long- term tasks and capacity needed 	
C&G handling	<ul style="list-style-type: none"> • Preparation of instruction on C&G organization and handling 	ADB appropriate Government Agency (T.B.D)
LAR Policy/practice mainstreaming	<ul style="list-style-type: none"> • Preparation of a CLARF 	ADB, RETA working group, Expertise agencies, House of Government

5.2 The Next Steps

152 The issues analyzed and the improvement action proposed in this CA will be taken up again during phase two of the RETA which involves the preparation of a National Capacity Building Action Plan (NCBAP). NCBAP preparation will further advance the analysis done in this report in view of laying down a list of selected capacity building interventions and defining in detail type of action/responsibilities for each of them. These tasks will be led by the ADB team and by the RETA working Group and will require intensive consultation with the appropriate State Expertise Agencies. Before being implemented the NCBAP and relative budgets will have to be approved by ADB and the Government. The level of Government approval needed, will be decided as the work for the NCBAP unfolds.

APPENDIX 1

The Land Acquisition Law

LAW OF THE REPUBLIC OF AZERBAIJAN

On: "Acquisition of Lands for State Needs"

This Law regulates the procedures of acquisition of lands for state needs, calculation and payment of compensation in this regard as well as the other relations arising between the parties on this sphere.

CHAPTER I

GENERAL PROVISIONS

Article 1. Definitions

- 1.1. For the purposes of this Law, the following definitions will be used:
 - 1.1.1. Acquisition - acquisition of lands (or its certain part) from owners for state needs in a voluntary or compulsory manner by paying compensation and terminating property, use and rent rights over these lands (or its certain parts) which are in municipal and private ownership including restrictions determined concerning the use of these lands and also taking back state lands in use and (or) rent from renter and user by paying appropriate compensation.
 - 1.1.2. Land - includes land of any tenure, land covered by water, land built upon or over, any buildings on land, any servitude or usufruct, any rights or the land over which the rights are or are to be exercisable and immovable property.
 - 1.1.3. Structure - all properties including buildings, structures, residential and non-residential areas, summer houses, wall, fence, incomplete construction (for which construction is in progress) and such other units which firmly connected to land and it is impossible to change their place without disproportionate damage;
 - 1.1.4. Land affected by acquisition - land parcel determined by acquisition authority for the purpose of inclusion to a land acquisition proposal in accordance with article 18 of this Law;
 - 1.1.5. Acquired land — land parcel considered to be acquired for state needs with the appropriate decree according to the article 19 of this Law;
 - 1.1.6. Compensation – money, property and other substitution provided to persons affected by acquisition associated with acquisition of lands or deprivation of rights in line with this Law;
 - 1.1.7. Census date – is the date of starting of collection of information related to persons and lands affected by acquisition for the purpose of entitlements and for resettlement purposes in compliance with article 11 of this Law;
 - 1.1.8. Claimant – means a person affected by acquisition who makes a claim for compensation;
 - 1.1.9. Disturbance - means any monetary loss or expense, not directly based on the value of land, suffered or incurred by the claimant and fairly attributable to

displacement as a consequence of the compulsory acquisition of the acquired land (includes all reasonable costs incurred in being required to resettle in accordance with a resettlement plan);

- 1.1.10. hardship compensation - means a payment of compensation made under the provisions of article 66;
- 1.1.11. injurious affection means the amount of any reduction in the market or replacement value of any interest of the claimant in retained land or in land adjacent to acquired land attributable to the nature of or associated with implementation of projects including construction of new structure (object) for which land was acquired;
- 1.1.12. Land acquisition group – group established according to the article 22 for carrying out land acquisition process;
- 1.1.13. Market value – price determined according to the article 58 of this Law;
- 1.1.14. Replacement price - price determined according to the article 59 of this Law;
- 1.1.15. Notification of land possession – document provided by acquisition authority according to the article 46 of this Law;
- 1.1.16. Public meeting – meeting considered in article 15 of this Law;
- 1.1.17. State needs for land acquisition – cases for acquisition of lands according to this Law are determined in article 3 of this Law;
- 1.1.18. Transaction notification – document submitted to acquisition authority by claimant regarding to land acquisition request according to article 48 of this Law;
- 1.1.19. Resettlement commission – commission established under article 40 of this Law;
- 1.1.20. Resettlement plan – plan considered in chapter 5 of this Law;
- 1.1.21. Resettlement guideline — guideline provided for by Part V of the;
- 1.1.22. retained land - means that part of a plot of land which is remains in the possession of a person when part only of the land of that person is acquired.

Article 2. Legislation concerning acquisition of lands for state needs

Legislation concerning land acquisition for state needs consists of the Constitution of the Republic of Azerbaijan, Land Code, Civil Code, Flat Code of the Republic of Azerbaijan, the Law and other normative-legal acts and international contracts supported by the Republic of Azerbaijan.

Article 3. State needs that grounds land acquisition

- 3.1. State needs for which land may be acquired under the Law are the followings:
 - 3.1.1. Construction of roads and other communication lines of state importance (main oil and gas pipes, sewerage lines, high voltage electric lines and hydraulic facilities);
 - 3.1.2. Provision of ensuring protection of state boundary in borderland;
 - 3.1.3. Construction of units which are important in terms of defensive and safety;
 - 3.1.4. Construction of mining industry units of state importance.

3.2. Lands can be acquired for state needs only in cases considered in the Law.

Article 4. Main Power of State to acquire land

4.1. Land or an interest(s) in any land required for state needs according to article 3 of this Law can be acquired through agreement or if such agreement is not reached, can be expropriated in a compulsory manner on the basis of legally valid resolution of court by paying compensation by state in conformity with this Law.

4.2. The State shall be under a duty to use its best endeavors to acquire any land that is required for state needs by agreement with the person or persons having an interest in that land and to pay the market price or the replacement cost for that land or interest in that land and shall not resort to the powers of acquisition set out in the Code until it has carried out its duty under this sub-article in good faith.

Article 5. Land that may be acquired

5.1. The following lands may be acquired for state needs according to this Law not depending on the fact that these lands are in use or in rent or some restrictions determined for the use of these lands:

5.1.1. Privately owned lands;

5.1.2. Municipality owned lands.

5.2. Lease and use rights over lands which are owned by the State are taken back for state needs.

Article 6. Acquiring authority that acquires lands for state needs

6.1. Authority which acquires lands (hereinafter called – acquiring authority) for state needs is appointed by a decree as stipulated in article 9.1 of the Law which defines existence of state needs and this authority implements land acquisition for state needs on behalf of the state;

6.2. In determining Acquiring Authority its activities as per the legislation and its overall competence and financial strength in order to implement the Project should be considered.

6.3. The Relevant Authority may impose any conditions directed to ensuring that the provisions of the legislation are complied with by an Acquiring Authority and these conditions may include, but are not limited to:

6.3.1. to conduct a public consultation on the proposed acquisition;

6.3.2. to determine amount or type of compensations to be paid to a claimant over and above proposed compensation;

6.3.3. any plan and any part of the implementation of any plan for acquisition of lands for state needs;

6.3.4. the mode and timing of payment of any compensation.

6.4. An acquiring authority shall have overall responsibility for the carrying out of any land acquisition for which it is the acquiring authority and all other agencies involved in the process of land acquisition shall comply, within the time required, with any requests for taking any actions in connection with the process of land acquisition that shall be made to them by the acquiring authority.

Article 7. Affected Person by an Acquisition

7.1. An affected person by an acquisition is a person who is resettled from his land and/or loses rights to live on it and use the land, becomes incapable to continue its business activity (partially or entirely), loses work place and loses opportunities to get benefit from public areas, undergoes any other losses and depreciation of living facilities as a result of acquisition.

7.2. Persons affected by an acquisition are entitled to get compensation considering the loss and deprivations considered in article 7.1 of this Law in accordance with established procedures of the Law.

7.3. Taking into consideration article 7.1 and article 11 of this Law, the followings are also considered to be persons affected by acquisition:

7.3.1. those who have legal and registered rights to the ownership, lease or use of land, as well as use or rent rights that are not requiring state registration according to the legislation;

7.3.2. those who have legal but unregistered rights to the ownership, lease or use of land at the time of the census which are evidenced by written documents (till this law becomes effective, reception or signing of acts and contracts of state authority and municipality for obtaining property, use or rent rights to the land without meeting the requirements of legislation shall not be the basis to consider the rights of persons illegal);

7.3.3. those who rent out at the second hand (sub-lessee), or who gives to use to third parties or persons who use the land in a short-time period on the basis of agreement confirmed with oral or written evidence;

7.3.4. those who are occupying land on the basis of long user recognised by the law as giving rise to a right to remain on the land;

7.3.5. those who have no legal right to the land they are living.

7.4. Persons considered in articles 7.3.1-7.3.4 are provided with compensation for the land they lose, and other assistance in accordance with the provisions of the Law.

7.5. Persons considered in article 7.3.5 of the Law are provided with compensation for loss of assets other than real estate and, with resettlement assistance, and damage caused to their movable property during the resettlement.

7.6. Family members of any person considered in article 7.1 who live on the land shall be taken to be affected persons by land acquisition.

Article 8. Land Acquisition Inspectorate

8.1. Supervision of the observance of requirements of legislation and review of the complaints during the implementation of acquisition process are to be carried out by the Relevant Authority(hereinafter called – Land Acquisition Inspectorate) .

8.2. The Land Acquisition Inspectorate shall have the following functions:

8.2.1. to prepare reference about proposals regarding the land acquisition process in case it is required;

8.2.2. exercise a supervisory role on acquisition procedures by an acquiring authority;

8.2.3. conduct a continuous review of land acquisition procedures with a view to assessing whether they provide value for money and propose changes aimed at ensuring greater efficiency;

- 8.2.4. monitor the public meetings on acquisition proposals and processes and prepare reports on objections and representations made at all such meetings;
 - 8.2.5. ensure compensation is paid or resettlement has taken place in accordance with the Law before taking possession of the land of an affected person;
 - 8.2.6 consider and investigate any grievance made to it by any affected person by acquisition either in person or by a representative on any aspect of the process of acquisition and make a report with recommendations on any such grievance to the acquiring authority;
 - 8.2.7. prepare reports in connection with acquisition.
- 8.3. In case of needs Land Acquisition Inspectorate may use expert or specialist for the investigation of matters arisen from land acquisition.
- 8.4. Land Acquisition Inspectorate submits proposal and reports, prepared in connection with land acquisition procedures, to the relevant authority.
- 8.5. In the cases when Land Acquisition Inspectorate considers that acquisition process hasn't been implemented according to the requirements of the Law, so in every phase of the acquisition process this authority can give instructions regarding the stoppage of deprivation of rights over land, resettlement of affected persons by acquisition, demolition of existing structures on land, construction works and any other works and activities (the latter is compulsory). Damages caused by not implementing of these instructions are paid by acquiring authority.

CHAPTER II.

PRE-ACQUISITION PROCEDURES

Article 9. Determination of state needs and preparation for issuing a Decree regarding land acquisition

- 9.1. Existence of state needs is defined by the Decree of the Relevant Authority. Acquiring authority is also appointed by this decree and preparatory works shall be started for issuing a Decree regarding the land acquisition.
- 9.2. The followings shall be implemented during the preparation phase for issuing a decree regarding the land acquisition:
- 9.2.1. by ensuring provisions of state needs preparation of cadastral maps (hard and soft copy) which describe the borders of acquisition affected lands, their categories, proper dimensions, types and locations;
 - 9.2.2. determination of category and ownership type of lands which are proposed for the acquisition;
 - 9.2.3. preparation of list of people likely to be affected by the acquisition;
 - 9.2.4. an estimate of the likely costs of the acquisition and their financial source;
 - 9.2.5. such other matters as considered in articles 10-17 of the Law;
 - 9.2.6. additional measures as the relevant authority may require to provide.
- 9.3. Co-ordination of implemented measures in the preparatory period is carried out by acquiring authority.
- 9.4. Relevant authorities propose issue of a decree shown in article 9.1 of the Law.

Article 10. Data collection function of Acquiring Authority

10.1. Acquisition authority shall collect all necessary data as of requirements of this Law during the preparation of proposal for land acquisition.

10.2. For the purpose of collecting information the acquiring authority shall send requests to provide the following information:

10.2.1. with regard to list of persons affected by acquisition — to the relevant authorities and municipalities;

10.2.2. with regard to privately owned lands:

10.2.2.1. data regarding land parcels those are legally owned, leased or used by affected persons — to the relevant authorities;

10.2.2.2. data regarding to existing structures on the land, as well as approved projects intended to be constructed according to the legislation - to relevant executive authorities — to the relevant authorities;

10.2.2.3. data regarding to the preliminary estimate of the value of the land parcel and structures owned by affected persons on the base of legal ownership, lease or use rights. — to the relevant authorities;

10.2.3. with regard to municipality owned lands:

10.2.3.1. data regarding to land plots owned by municipality which is proposed for acquisition and the existing of structures on these lands and nature of tenure over them — to the relevant authorities and municipalities;

10.2.3.2. data regarding to number of affected persons living at municipal lands and their use or nature of tenure over land and/or structure — to the relevant authorities and municipalities;

10.2.3.3. data regarding to municipality lands used by juridical persons and structures and nature of tenure over this land — to the relevant authorities and municipalities;

10.2.3.4. data regarding to the preliminary estimate of the value of the land parcels owned by municipality — to the relevant authorities and municipalities;

10.2.4. with regard to state-owned lands:

10.2.4.1. data regarding to state-owned lands which are proposed for acquisition and existing structures on these lands and nature of their tenure over them — to the relevant authorities;

10.2.4.2. data regarding to a preliminary estimate of the number of project affected persons occupying state land, the nature of their tenure and their use of the land — to the relevant authorities;

10.2.4.3. data regarding to land parcels used by any juridical entity and preliminary estimate of the value of all structures on the lands, as well as the nature of their tenure — to the relevant authorities;

10.2.4.4. data regarding to a preliminary estimate of the value of all the lands proposed to acquisition those are in use — to the relevant authorities;

- 10.2.5. with regard to a preliminary estimate of the numbers of persons occupying land and buildings without any legal title or right to do so and the nature of their occupation and use of the land — to the relevant authorities and municipalities;
 - 10.2.6. a preliminary indication of what land might be made available for resettlement and relocation where that may be necessary and what the land is presently being used for — to the relevant authorities;
 - 10.2.7. Data regarding to social welfare units considered in article 19.5 of this Law - to the relevant authorities;
 - 10.2.8. Other data regarding the persons and lands affected by acquisition if requested— to state and local self-governing authorities.
- 10.3. Relevant Authorities that received requests considered in article 10.2 of the Law should provide full information within the time frame reflected on the request, but not more than sixty days of the request.

Article 11. Census of persons and lands affected by acquisition

11.1. A census to identify affected persons and lands is carried out by the Acquiring Authority based on the information received by requests in accordance with the article 10.2 of the Law. Census is defined according to request date (determined as census date).

11.2. The persons stated below are also considered during the census of persons and lands affected by acquisition:

11.2.1. Born child of person affected by acquisition until census date; child adopted by them according to legislation; child born in period of 6 month following the census date; person appealed for adoption the child according to legislation until census date; child adopted in period of 6 month following census date;

11.2.2. Heirs of died person affected by acquisition.

Article 12. Public notice

12.1. An acquiring authority shall put up a notice (hereinafter – official notice) about the proposal to acquire land after collection of the data shown in article 10.2 of this Law.

12.2. A notice shall contain the following information:

12.2.1. a description of the affected land and its location specifying administrative division (including relevant city, settlement or village, administrative units to which they belong district, city or city district) and its general boundaries and extent, as well as other defined data;

12.2.2. the general nature of the state needs for which the land may be acquired;

12.2.3. the date when a public meeting will take place on or as near as possible to the project affected land to explain the circumstances of the proposal to acquire land and to allow representations to be made about the likely acquisition;

12.2.4. such other matters as the acquiring authority think relevant.

12.3. Official announcement shall be accompanied by cadastral map which is compiled in the determined scale depending on the area of the clear description of land.

12.4. A notice to which this article refers shall be posted on a public notice board at the offices of relevant executive powers or representatives of relevant executive powers and municipalities within whose jurisdiction the affected land is located and in other conspicuous places at or as near as may be to the affected land also disclosed in mass media.

Article 13. Delivery of official notice to the persons affected by acquisition

13.1. The acquiring authority shall take all necessary and appropriate steps to bring to the attention of all owners, leaseholders and users of affected lands and all persons interested in affected lands, and all persons who are known or believed by the acquiring authority to be likely to be entitled to compensation in respect of the acquisition of affected land.

13.2. Without prejudice to the generality of the abovementioned duty, the acquiring authority shall send notification about the essence of the official notice to the persons considered in article 13.1 of this Law in a manner determined in article 77 of this Law;

Article 14. Measures implemented in area shown in official notice

14.1. The following measures may be implemented in the area shown in official notice in accordance with legislation:

14.1.1. to enter upon, survey and take levels of the land;

14.1.2. to dig or bore into the sub-soil of the land;

14.1.3. to set out the boundaries of the land proposed to be taken;

14.1.4. to mark levels and borders shown in articles 14.1.1 and 14.1.3 of the Law.

14.2. Compensation shall be paid to the owners, users or leaseholders of the land that was caused damages as the result of measures considered in article 14.1 of this Law.

Article 15. Public meeting

15.1. The acquiring authority shall hold one or more public meetings in relation to a proposal to acquire land.

15.2. Where the land which it is proposed to acquire is located in more than one administrative unit, a public meeting shall be held in each such administrative unit.

15.3. The purposes of a public meeting are:

15.3.1. to inform the occupiers of project affected land and any persons interested in such land of the project which appears to necessitate the acquisition of the land and of the land which it is proposed to acquire;

15.3.2. to inform the occupiers of the land who will be required to leave the land of the arrangements for the preparation of a resettlement plan for their resettlement and for their participation in the planning and implementation of any such plan;

15.3.3. to inform all occupiers and persons interested of the arrangements for the assessment and payment of compensation;

15.3.4. to inform all occupiers of the arrangements for the receipt of and dealing with grievances connected to the acquisition;

15.3.5. to hear and record any representations or objections that may be made by any occupiers, any persons interested, or any other person or organization into the matters connected with the proposed acquisition;

15.3.6. to consider any alternatives to the acquisition of the land or any part of the land that may be put forward at the public meeting;

15.3.7. to consider any other matter which in the opinion of the person or persons who are conducting the public meeting will assist him or them to form a considered and fair view of the necessity for the acquisition of the declared land or any part of it.

15.4. The acquiring authority shall, in conjunction with the relevant executive authority in which the public meeting is to take place:

15.4.1. determines the date and venue of public meeting to be conducted and places this announcement in the place shown in article 12.4 of this Law and informs Land Acquisition Inspectorate;

15.4.2. provides the participation of its representative in public meeting;

15.4.3. supply it with all relevant information about the acquisition of the land and the reasons for it so as to enable the public meeting to achieve the purposes set out in article 15.3 of the Law;

15.4.4. prepare a full report of the proceedings of the public meeting which will form part of the documentation submitted by the acquiring authority to the Relevant Authority under article 18;

15.4.5. undertake such other functions in relation to the setting up and management of the public meeting as may be necessary or as may be directed by the Land Acquisition Inspectorate.

15.5. A public meeting may not be held unless and until a representative of the Land Acquisition Inspectorate is present.

Article 16. Conduct of the public meeting

16.1. The officer who is responsible for conducting the public meeting (person leading to public meeting) shall be under a duty to ensure that:

16.1.1. the place or places where the public meeting is to take place and all other relevant information about the holding of the public meeting is given wide publicity to all occupiers of project affected land and all other persons who it is reasonable to assume may wish to attend the public meeting;

16.1.2. all persons wishing to make representations at the public meeting are given an opportunity to do so and if necessary are assisted to make those representations;

16.1.3. to ensure fair conduction of public meetings.

16.1.4. to prepare minutes of the public meeting.

16.2. The representative of Land Acquisition Inspectorate in attendance at the public meeting shall be entitled to intervene in the proceedings of the meeting in order to ensure that the provisions of article 16.1 of the Law.

Article 17. Report on the public meeting

17.1. Representative of the Land Acquisition Inspectorate in attendance at the public meeting shall as soon as after the end of the public meeting prepare a report on the public meeting and submit that report to the Inspectorate.

17.2. The report shall:

17.2.1. summarise the case and the supporting arguments of the acquiring authority for the acquisition of the land and for the arrangements being proposed for the

resettlement and compensation of any persons residing on or occupying the land;

17.2.2. set out the representations and objections that have been made on and about the case of the acquiring authority;

17.2.3. analysis, explain and make recommendations about the issues shown in articles 17.2.1-17.2.2 of the Law including about issues discussed in the public meeting.

17.3. Land Acquisition Inspectorate submits this report which is submitted according to article 17.1 of this Law, as well as its notes and recommendations about the issues shown in this report to the Relevant Authority.

Article 18. Proposal for land acquisition

18.1. After carrying out the requirements of article 9.2 of the Law, the Acquisition Authority submits proposal for the land acquisition to the Relevant Authority.

18.2. Proposal for land acquisition shall include the followings:

18.2.1. essence of necessity of land acquisition;

18.2.2. number of persons likely to be affected by land acquisition and explanation of the likely relevant impacts;

18.2.3. cost estimate for acquisition and also for resettlement and financial source;

18.2.4. report of the public meeting, as well as main objections related to acquisition and response of the Acquisition Authority to these objections;

18.2.5. period of time required by the Acquiring Agency for commencement of appropriate project in the acquired land;

18.2.6. period of time required for the preparation of a resettlement plan in case it is necessary;

18.2.7. data related to tenure and ownership status of the land proposed to be acquired;

18.2.8. data regarding the land and present use of that land which can be provided in cases of needs for resettlement and displacement of persons affected by acquisition;

18.2.9. such other matters those are required the Acquiring Authority to implement.

18.3. Land acquisition proposal shall be accompanied by cadastral map which describes the location, area and borders of lands.

18.4. Proposal for land acquisition may be forwarded to the following organization and authorities by the Relevant Authority:

18.4.1. to relevant authorities and state orgsnizations for the purpose of getting opinions in regards to proposal or any part of this proposal on condition that the reply will be provided (submitted) in the date shown in request but not later than 30 days after submission;

18.4.2. to the Land Acquisition Inspectorate for the purpose of preparation of report in regards to proposal or any part of this proposal to be replied in the date shown in request;

18.4.3. to relevant authorities and (or) appropriate organizations for the purpose of confirmation of financial resources on condition that the reply will be provided (submitted) in the date shown in request;

18.4.4. to relevant authorities for giving the proposals in regards to construction of objects or allocation of other relevant buildings for placement of these objects considered in article 19.5 of this Law on condition that the reply will be provided (submitted) in the date shown in request.

18.5. If opinion or report is not submitted to the Relevant Authority in the timeframe determined in articles 18.4.1 and 18.4.3 of the Law and if no appeal is made for the extension of deadline for submission of requested opinion or report or if such appeal is made but it is refused from time extension, then it is considered that land acquisition proposal is not objected.

Article 19. Issue of a decree by the Relevant Authority with respect to proposal for land acquisition

19.1. After considering the proposal submitted by the acquiring authority under article 18 of the Law and other documents related to the proposal, as well as, if any, other documents which are considered applicable to the proposal, relevant authority may issue a decree to approve the acquisition of land by taking into consideration the whole or a part of the proposal to acquire.

19.2. Cadastral map of the acquired area describing location, area and border of affected land should also be attached to the Decree on land acquisition.

19.3. The Relevant Authority establishes Valuation Commission with the decree on land acquisition in order to value acquired land, any part of the land belonging to each owner and other assets that will be acquired together with the land.

19.4. The Relevant Authority may give instruction to a relevant authority to allocate fund for preparation of resettlement plan and payment of compensations, as well as define additional conditions considering the interest of persons affected by acquisition.

19.5. Decree on acquisition of land should include allocation of structures of social services considering this type of services located in state lands and the requirements of people living in area (including health establishments, educational institution, orphanages and kindergartens, libraries, cultural centers, personal service rooms, culture, sport and rest grounds, parks, other objects).

19.6. By issuing of decree on land acquisition under article 19.1 of the Law, the category of land is considered to be changed since the rights over the land passed to the state according to the Law.

Article 20. Legal power of the decree to acquire land

20.1. As from the date of the Decree:

20.1.1. that land shall be known as acquired land;

20.1.2. any person whose details are recorded in the census considered in article 11 of the Law who occupies or uses any part of acquired land shall be known as an affected person;

20.1.3. the acquiring authority shall be under a duty to take the necessary action to acquire the acquired land;

20.1.4. the acquiring authority shall be under a duty to proceed with all due speed to prepare, in close consultation with project affected persons, a resettlement plan or guide where such a plan or guide is required;

- 20.1.5. Acquiring Authority shall be under a duty to assist Valuation Commission to value all acquired land and all buildings, crops, trees, and other natural and built things on the land for the purposes of assessing the compensation payable to project affected persons and any other persons who will suffer loss as a result of the acquisition of the land;
- 20.1.6. the acquiring authority shall be under a duty to pay compensation to all project affected persons and any other persons or organisations who will suffer loss as a result of the acquisition of the land;
- 20.1.7. the acquiring authority shall be under a duty to commence the preparation of the necessary documentation to obtain the moneys to pay the compensation from the relevant authorities in government.
- 20.2. As from the date of issue of the decree, the persons who, immediately prior to that date had interests in private land which has become acquisition land, shall not be legally entitled or empowered to commence or authorise any other person to commence any development on the land, other than essential repairs and maintenance to the home of such persons, and any such development that is commenced on the land shall be illegal and shall not be compensated for.
- 20.3. As from the date of issue of the Decree till immediately prior to that date, all interests of the persons, except ownership and use right, shall be converted to rights to compensation. All rights, except refused cases from acquisition of any land by state according to article 28 and 50.1 of the Law can be legally transfer to other persons.
- 20.4. After the date of issued decree relevant authority may order to stop or to demolish any development commenced on acquired land.
- 20.5. The acquiring authority shall be under a duty to bring to the attention of all project affected persons the decree of relevant authority to acquire land and a summary of the legal power of that decree.

CHAPTER III POWERS AND PROCEDURES OF ACQUISITION

Article 21. Action to be taken after decree to acquire land

- 21.1. After the decree to acquire land, the acquiring authority shall, in conjunction with the relevant authorities, within thirty days prepare:
- 21.1.1. a cadastral plan of the whole area of certified land, showing the particular plots and boundaries, as well as dimensions;
 - 21.1.2. a list of all such plots of land showing:
 - 21.1.2.1. Landowner including person who has legal rights confirmed with written documents in cases envisaged in article 7.3.2 of the Law but without state registration and person who live in this land on the basis of long-term use of land which is recognized by a legislation according to article 7.3.4 of the Law;
 - 21.1.2.2. if known, type of existing rights of any other persons who live in the acquired land or in some part of this land or use this land;
 - 21.1.2.3. Extract from cadastral map envisaged in article 21.1.1 of the Law showing borders and dimensions of acquired land or any part of this land;
 - 21.1.3. Organization of relevant measures envisaged in chapters IV and V of the Law.

Article 22. Appointment of land acquisition group(s)

- 22.1. The acquiring authority shall establish land acquisition group(s) consisting of officers of relevant authorities to carry forward the process of acquisition.
- 22.2. A team may be appointed for the whole of the acquired land or several teams for sections of the acquired land.
- 22.3. Functions of land acquisition group are:
- 22.3.1. to meet with project affected persons, individually or in groups or through their representatives and explain the procedures and timing to be followed in connection with:
 - 22.3.1.1. the valuation of their land and other property;
 - 22.3.1.2. entitlements to the compensation to be paid to them;
 - 22.3.1.3. types of compensation to be paid to them and benefits of various types of compensations;
 - 22.3.1.4. the arrangements for payment of compensation;
 - 22.3.1.5. the arrangements for their relocation and resettlement;
 - 22.3.1.6. taking the possession of their land (taking possession by state).
 - 22.3.2. negotiate with affected persons on all the above matters considered under article 22.3.1;
 - 22.3.3. undertake any necessary surveying, staking out (to put stakes) and valuing of the land of affected persons in connection with the legislation;
 - 22.3.4. keep affected persons informed of all relevant aspects of the process of acquisition;
 - 22.3.5. receive and, so far as is possible, respond and attempt to settle any grievance which any affected persons have and make to the team or any member of the team in connection with the process of acquisition;
 - 22.3.6. to work together with planner and assist to him in preparation of resettlement plan or guideline;
 - 22.3.7. to meet the representatives of government authorities with respect to acquisition of lands of these government authorities;
 - 22.3.8. to meet the representatives of municipalities with respect to acquisition of lands of these municipalities.
- 22.4. The acquiring authority shall appoint one person from the team to be team leader and the team leader shall be responsible for:
- 22.4.1. planning and managing the activities of the team;
 - 22.4.2. ensuring that the members of team carry out their functions expeditiously and fairly;
 - 22.4.3. keeping the acquiring authority fully and regularly informed of the progress of the team in carrying out its functions and in particular of any difficulties that it is meeting in doing so which may affect its ability to complete its functions in the time required;

- 22.4.4. such other functions as may be required of the team leader by the acquiring authority.
- 22.5. Land acquisition group hold meetings with persons affected by acquisition or with their representatives in a time and place determined beforehand for discussion the matters stated in article 22.3 of the Law.
- 22.6. Land acquisition group shall finalize the implementation of activities stated in article 22.3 of the Law within 60 days or in other timeframe agreed with acquiring authority taking into consideration the difficulties encountered during implementation of these functions.
- 22.7. Land acquisition group or any member of this group has the right to enter the land and to carry out other activities on the land as envisaged in the Law during implementation of their activities.
- 22.8. An acquiring authority will be responsible for and will monitor the work of land acquisition group(s).
- 22.9. Land Acquisition Inspectorate shown in article 8 of this Law:
- 22.9.1. must be informed of the appointment of a team and of the team leader;
 - 22.9.2. may attend any meetings which the team has with project affected persons or their representatives;
 - 22.9.3. may offer advice and guidance at any such meetings to all participants at the meetings.

Article 23. Valuation of acquired land

- 23.1. The Valuation Commission, established by the Decree on land acquisition under article 19, in conjunction with acquiring authority and land acquisition group(s) shall perform the following duties within the timeframe defined in the same decree:
- 23.1.1. collect, analyse and record evidence on the market value of acquisition land and land contiguous to acquired land;
 - 23.1.2. collect, analyse and record evidence on the replacement costs of land, buildings and moveable property on acquired land and on land contiguous to acquisition land;
 - 23.1.3. assists in negotiations over the compensation to be paid to persons affected by acquisition;
 - 23.1.4. involves independent valuator by competition held according to the legislation for the purpose of valuation of acquisition land and other properties;
 - 23.1.5. review proposals of independent valuator submitted regarding to the valuation of any acquisition land and other property, proposals of planner with respect to resettlement and opinion of Land Acquisition Inspectorate with regards to these proposals and adopt a resolution on the amounts of compensation to be paid to persons affected by acquisition by indicating separately the market value of each land and other property;
 - 23.1.6. in case of necessity, adopts resolution on changing of compensation amount to be paid to affected person on the basis of received recommendations of Land Acquisition Inspectorate as described in article 75.8;
 - 23.1.7. submits its resolution, on the amount of compensation to be paid to persons affected by acquisition, to the acquiring authority.

23.2. Acquiring authority shall create opportunity to acquaint the affected persons with compensation to be paid and also with resolution of valuation commission on making changes in the amount.

Article 24. Peculiarities of valuation

24.1. Independent valuator shall submit his report to the Valuation Commission and Land Acquisition Inspectorate together with all relevant documents.

24.2. The Land Acquisition Inspectorate shall submit its written opinion to the Valuation Commission on the proposals of independent valuator and submit its justification in case it considers necessity of increasing or decreasing the price of land, part of the land or real estate for the purpose of fitting to market value.

24.3. In conducting any review of a report of an Independent Valuator, the Land Acquisition Inspectorate may:

24.3.1. call for any further information from relevant authorities and acquisition authority, as well as from land acquisition group(s) which shall supply that further information within the time specified by the Land Acquisition Inspectorate;

24.3.2. to meet the persons affected by acquisition including other relevant persons and organization if necessary and enter any part of land for making assessment.

24.4. Acquiring authority shall use the resolution of the valuation commission, which is adopted as a result of review of proposals submitted by the independent valuator for valuation of land and other assets, as well as opinion of the Land Acquisition Inspectorate to this proposal, in providing compensation.

Article 25. The persons affected by acquisition with unidentified place of residence

25.1. In the absence of precise information on place of residence of the person affected by acquisition, the acquiring agency, group or the official involved in acquisition shall contact on all issued related to acquisition of the land with the legitimate heirs of the person affected by acquisition.

25.2. In case of recognition by court of the person affected by acquisition, the missing person, the acquiring agency, group or the official in charge of land acquisition shall contact on all questions with regard to acquisition of this land, his legitimate heirs, and in the absence of legitimate heirs, with the property managing director appointed according to the legislation.

25.3. The persons specified by Articles 25.1-25.2 under the Law for the solution of questions, with regard to payment of compensation for the acquired land and assignment of rights are authorized to make decisions on all questions related with acquisition of the land.

Article 26. Delivery of documents relating to acquired land

26.1. The acquiring authority shall forward a notice on documents certifying the property rights and other rights to persons affected by acquisition who should submit the collected documents to acquiring authority and the person received such notice shall present the acquiring agency the relevant documents or their copies and the acquiring agency shall perform an obligation to provide affected person with the receipt confirming the acceptance of the copies of these documents upon submission of originals of these documents.

26.2. Notification on acquisition of the land specified by Article 26.1 under the Law could be delivered by land acquisition group or the member of group to the person affected by

acquisition. In such cases the affected person shall hand over any reference document specified by this notification to a group on acquisition of the land in exchange for the receipt confirming the adoption of documents and this receipt shall be equal to the receipt of the acquiring authority prescribed by Article 26.1 under this Law.

26.3. The acquiring authority shall present the documents provided by these Article to group on acquisition of the land and Valuation Commission to provide assistance in assessment of acquired land and to conduct the negotiations related to compensation for persons affected by acquisition.

26.4. The acquiring authority shall ensure the security of the provided documents in accordance with this Article.

Article 27. The cases that the land cannot be acquired

27.1. In accordance with this Law, the acquiring only the specific part of the acquired land (the land is acquired completely (entirely) shall not be allowed in the following cases:

27.1.1. In case of reasonable need for the specific (acquired) part of the land for full and integral use of the sole building available on retained (not acquired) part of the land plot (all land, including the specific (acquired) part) owned by person affected by acquisition;

27.1.2. in case of need of simultaneous acquisition of the specific part of the land of the specific part of the separate structure being on the land, and reasonable need for the specific (acquired) part of the building for full and integral use of the retained (not acquired) part of this structure.

27.2. In cases if the implementation of the projects needed for acquisition of lands cause to occurrence of restrictions as specified by the legislation on retained (not acquired) part of the land (all land, including the specific (acquired) part) owned by the person affected by acquisition, then the acquiring of the specific part of the land shall be allowed by the written consent by land owner only.

27.3. In case of dispute over full and integral use of needed part of any land or building on land offered to be acquired, then acquisition procedure shall be determined based on the mutual agreement to be made between owner of building and acquiring authority.

27.4. In the absence of the consent between the parties as prescribed by Article 27.3 under present Law, the acquiring authority shall apply to court for solution of the question and shall have no power to possess property rights on land to be acquired unless conduct of legal proceedings by court.

27.5. Article 27.4 of the Law may not be considered as a case impeding the acquiring authority and owner to apply to land acquisition inspectorate for solution of the problem specified by this Article.

Article 28. Withdrawal from acquisition

28.1. Government may withdraw from the acquisition of any land decided to be acquired for state needs but property rights not yet possessed (not yet transferred to government) with respect to Article 19 under the Law.

28.2. Acquiring authority shall perform the following activities once the decision is made on withdrawal from acquisition with respect to Article 28.2 under this Law:

28.2.1. shall terminate any actions associated with the acquisition of land through delivery of immediate notification on termination of land acquisition procedure to persons affected by acquisition and other interested persons;

28.2.2. if needed, shall submit the proposals on amount for compensation due to damage incurred to land during the acquisition process to evaluation valuation committee;

28.2.3. shall pay for expenses incurred by persons affected by acquisition or interested persons in connection with or as a result of the acquisition process, in addition, shall pay for compensates for damages in cases if such damages are found out to be incurred in connection with or as result of acquiring process.

Article 29. The judicial protection in respect of land acquisition

29.1. The person affected by acquisition who considered to be an affected person as a result of actions of the acquiring authority or land acquisition group or the person who claims for such rights on acquired land or the person already possesses such rights on acquired land may lodge complaint against the relevant acts by acquiring authority or against the actions (inactions) taken by group involved in land acquisition process or against their high ranking officials to higher authorities or may apply to court as prescribed by legislation within 90 days from the date when the person having possessed the rights on acquired land knows and or should know the violation of his/her rights.

29.2. The person affected by acquisition who claims there is no need for acquiring of land or specific part of acquired land for the relevant project, who does not agree with the amount of paid compensation may apply to court as specified by legislation

29.3. No provision under this Article may be considered as a case impeding to reach an agreement on other options for solution of dispute and person affected by acquisition, by a group involved in land acquisition process or other authority participate in land acquiring process may not use the alternate options for solution of dispute or prior to proceeding with an application to court.

CHAPTER IV.

VOUNTARY PURCHASE AND SALE

Article 30. Powers to redemption of acquired land

30.1. The acquiring authority may obtain the rights of persons affected by acquisition as specified by Articles 7.3.1-7.3.4 under the Law, to land to be acquired through conduct of negotiations (voluntary based purchase and sale) in a manner prescribed by this Chapter.

30.2. The persons initiated to implement a voluntary purchase and sale through conduct of negotiations may be either as a purchaser - acquiring authority or a seller - the persons as specified by Articles 7.3.1-7.3.4 under this Law.

Article 31. Notice of consent on redemption of acquired land

31.1. After the adoption of decision specified by Article 19 under the Law, land acquiring authority shall send a notice of consent on redemption of rights to acquired land through conduct of negotiations (voluntary purchase and sale) to the persons prescribed by Articles 7.3.1-7.3.4 under the Law.

31.2. The notice shall describe the consent on acquiring of lands by acquiring authority through conduct of negotiations and short interpretation of the followings alongside with time period as specified by Article 31.3 under the Law:

31.2.1. purpose of land acquisition;

31.2.2. alternative option for acquiring of land as established by the Law in cases redemption of land becomes impossible by negotiations;

31.2.3. rules on sale through voluntary negotiations (required documents, procedures etc.), with inclusive of explanation on possibility to land owner to look for independent consultant for ongoing case.

31.3. In case of the consent by person affected by acquisition on sale of rights to land through conduct of negotiations (voluntary purchase and sale), he/she shall keep acquiring authority informed on such consent in writing within 30 calendar days since the date of receipt of this notice as prescribed by Article 31.1 under the Law.

31.4. The members of land acquisition group that established by Article 22 under the Law shall conduct meetings with all affected land owners, who received notice, for explanation and discussion of delivered notice.

31.5. None of members of land acquisition group shall have right to suggest land owner for redemption of land or to demand land owner to grant permission for redemption of land or to accept an offer from the land owner to sell acquired land to acquiring authority.

Article 32. Delimitation and assessment of acquired land

32.1. In cases when person affected by acquisition informs acquiring authority in writing on consent on transfer of property rights to land through conduct of negotiations (voluntary purchase and sale) with respect to article 31.3 under this Law, then acquiring authority shall ensure the conduct of assessment of lands of land owners.

32.2. Prior to introducing with the offer on redemption of land in accordance with this Chapter, the acquiring authority shall be allowed to enter into the territory of acquired land to assess the quality of acquired land, to take samples and if needed, to provide the delimitation of acquired land in manner as prescribed by legislation as well as to implement a number of actions required for determination of market price or restoration costs of acquired land on the basis of consent by persons affected by acquisition persons agreed to voluntary purchase and sale according to Article 31.3 under present Law.

32.3. The type and content of redemption price of acquired land with respect to this Chapter shall be identical to amount of compensation determined by Chapter VII under present Law, however, in such event, alongside with the redemption of price of acquired land additional payment with 10 percent of redemption price shall be made to seller of acquired land with intent to encourage land owner to sell the acquired land voluntarily.

32.4. The acquiring authority shall determine the type and content of price of acquired land pursuant to this Chapter and it should be determined by support to be lent by specialists assigned by acquiring authority or an invited independent assessor, however, in any case, the type and content of price should be agreed by land acquisition inspectorate before providing any or new offer to seller of acquired land.

Article 33. Offer on redemption of acquired land

33.1. The acquiring authority shall provide persons affected by acquisition who agreed by conducted negotiations to transfer of rights of acquired land (voluntary purchase and sale) pursuant to Article 31.3 under this Law with the written offer on redemption of land that will describe the followings:

33.1.1. the surname, the name, the patronymic and the address of person affected by acquisition (concerning legal entities - the name and the legal address);

33.1.2. description of acquired land, its area and boundaries;

33.1.3. information on offered part (share) of land to be redeemed;

33.1.4. offered price;

- 33.1.5. information describe the persons affected by acquisition shall respond to an offer in written form during the time period not exceeding 30 calendar days;
- 33.1.6. time period describing the period for release of redeemed land by land owner effective from the date of full payment of acquired land;
- 33.1.7. Rights determined by Chapter V under the Law with regard to resettlement with the need for release of acquired land;
- 33.1.8. other information recognized by acquiring authority as reasonable.

33.2. Once the acquiring authority receives an offer on redemption of land, it shall be approved by head of acquiring authority and shall be confirmed by seal of the same authority. The offer should be delivered by officials of acquiring authority to persons affected by acquisition and the persons affected by acquisition or his representative shall confirm its receipt of offer by signature.

Article 34. The negotiations with regard to offer

34.1. Prior to adoption of the offer on the redemption of acquired land, the land owner affected by acquisition may apply to acquiring authority for explanation of conditions or make amendments to offer.

34.2. The acquiring authority shall be allowed to make the relevant amendments to offer on redemption of land provided on condition of non-compliance of requirements specified by legislation and agreeing it with the land acquisition inspectorate in cases amendments is made to suggested price.

34.3. In the event of making the corresponding changes to offer on redemption of land pursuant to Article 34.2 under the Law, the new offer shall be delivered to person affected by acquisition in manner as provided by Article 33 under present Law.

34.4. In instances when consent on new offer is expressed by person affected by acquisition with respect to Article 34.3 under the Law, then landowner should inform acquiring authority on consent in written form within 10 calendar days from the date of receipt of this offer.

Article 35. Adoption of offer on redemption of land and conclusion of an agreement

35.1. Adoption of offer on redemption of land shall be drawn up in writing and shall be signed by owner of redeemed land.

35.2. All conditions shall be clearly expressed by offer on redemption of land once it is accepted.

35.3. The redemption of land shall be authorized by purchase and sale agreement concluded with respect to the existing legislation of Azerbaijan Republic between person affected by acquisition and acquiring authority on behalf of the state on condition of adoption of offer on redemption of land by land owner pursuant to present Law.

Article 36. Actions to be implemented by acquiring authority after adoption of offer on redemption of land

36.1. After conclusion of the purchase and sale agreement on acquired land in accordance with Article 35.3 under present Law, the acquiring authority within 90 calendar days shall perform the following actions:

- 36.1.1. shall make full payment for cost of acquired land to land owner;
- 36.1.2. shall take necessary actions for transfer (transition) of property rights to land to state at own expense;

36.1.3. In accordance with Chapter V under present Law, shall provide assistance to land owner in releasing the acquired land and in moving to new place of residence once it is determined that sold off land is place of residence of land owner and his family members after the cost of acquired land is fully paid to land owner.

6.2. The land owner shall be accountable for providing assistance to acquiring authority by submitting the relevant documents related to property rights to acquired land for implementation of requirements specified by Article 36.1 under present Law.

CHAPTER V. ORGANIZATION OF RESETTLEMENT

Article 37. Duty to resettle

37.1. The duty to resettle requires that an acquiring authority make all necessary arrangements according to a plan in order to provide the followings to resettled persons affected by acquisition:

37.1.1. providing resettled persons with information on selection options and rights to resettlement;

37.1.2. providing consultations with regard to real and possible alternative options for resettlement, suggesting and ensuring the options for resettlement;

37.1.3. providing assistance in resettlement process;

37.1.4. providing with compensation at full replacement cost in accordance with the Law for losses attributable directly to the acquisition of their land.

Article 38. Free expression of will of acceptance of resettlement

38.1. Person affected by acquisition entitled to resettlement with respect to present Law shall be liable for acceptance of resettlement specified by the Law may refuse resettlement and claim for the relevant compensation instead of resettlement.

38.2. The person affected by land acquisition shall be allowed to make decision not to use the option for resettlement at initial stage of preparation for development of resettlement plan or resettlement guideline, at any stage of preparation process including at the stage of its completion in accordance with this Chapter.

38.3. Once the acquiring authority makes sure of person affected by acquisition makes the decision to refuse resettlement process in consideration with the requirements and interests of all family members, it shall make payment for compensation to be paid instead of resettlement on the basis of present Chapter to person affected by land acquisition.

38.4. The amount of compensation paid to person affected by acquisition, instead of resettlement shall be determined by decision of the Valuation Commission based on analysis conducted by acquiring authority with regard to offers with regard to compensation amount inclusive of analysis conducted by Land Acquisition Inspectorate on opinions expressed on these offers.

38.5. Person affected by acquisition who received compensation based on present Article shall sign disclaimer on resettlement with respect to present Chapter from the date of receipt of compensation and forfeits right to resettlement.

Article 39. Circumstances when resettlement plan or guideline required

39.1. When the number of persons who are required to leave acquired lands and to move to a place located at distance more than hundred meters from acquired land exceeds two hundred persons, the acquiring authority shall be under a duty to prepare resettlement plan and in other cases to develop a resettlement guideline with respect to provisions specified by current Chapter.

39.2. In determining the number of affected persons required to leave acquired land, the acquiring authority shall calculate the number taking into account the entirety of the project irrespective of planning at what time of period and stages project is going to be implemented.

Article 40. Resettlement Commission

40.1. The acquiring authority in coordination with the relevant executive authority under the respective administrative unit shall be accountable for establishment of a resettlement commission consisting of not less than three nor more than twenty persons affected by acquisition and assist in implementation of activities by resettlement commission.

40.2. Functions of resettlement commission shall contain the followings:

40.2.1. to be involved in preparation and implementation of resettlement plan or guideline;

40.2.2. to keep informed the acquiring authority, land acquisition group(s) and planners about the issues raised by persons affected by acquisition;

40.2.3. undertake such other activities for protection of interests of persons affected by acquisition.

Article 41. Preparation of resettlement plan or guideline

41.1. The acquiring authority shall commence the preparation of plan or instruction on resettlement in cases it needs to develop such plan or guideline with respect to Article 39 under present Law.

41.2. The resettlement plan or guideline shall be developed by a person or organization (hereinafter referred to as – planner) capable of social and technical knowledge and skills selected by the acquiring authority from public or private organizations, including non-governmental organizations on the basis of competitive bidding in manner as determined by the relevant authority.

41.3. The planner shall perform the following activities:

41.3.1. to prepare this plan within three month from the date of selection for preparation of resettlement plan;

41.3.2. to prepare this guideline within two months from the date of selection for preparation of the resettlement guideline;

41.4. The planner shall conduct a survey of the acquired land, the project affected people and any land which may be used for purposes of resettlement to ascertain the conditions, circumstances and wishes of the persons affected by acquisition and the persons already in occupation of the land which may be used for resettlement in relation to any resettlement.

41.5. The planner shall hold such public meetings with persons affected by acquisition and persons in areas which may be used for resettlement as will in their opinion contribute to their understanding of the circumstances and needs of such persons.

41.6. The results of surveys as specified by Article 41.4 under the Law alongside with developed report on public meetings shall be submitted to resettlement commission for consideration.

41.7. The planner shall develop the draft version of resettlement plan or guideline on the basis of conducted observation, other relevant information, opinions of acquiring authority and notes made during conducted public meetings and remarks by resettlement commission.

41.8. The draft version of resettlement plan or guideline shall be presented to persons affected by acquisition at public meetings for expression of opinions.

41.9. The draft version of resettlement plan or guideline alongside with developed report on public meeting as specified by Article 41.8 under present Law shall be submitted to resettlement commission for consideration.

41.10. The planner shall consider the notes made at public meetings, as well as notes by commission on resettlement, offers on modification of resettlement plan or guideline and shall make the relevant the corresponding changes to the project respectively.

41.11. The planner shall submit the resettlement plan or guideline to Land Acquisition Inspectorate and acquiring authority as well.

41.12. The acquiring authority shall conduct meetings with the resettlement commission, with regard to implementation of resettlement plan or guideline on regular basis.

Article 42. Content of resettlement plan and resettlement guideline

42.1. The actions intend to provide the followings to persons affected by acquisition shall be specified by resettlement plan or instruction:

42.1.1. financial and practical assistance during relocation;

42.1.2. houses, housing sites, agricultural lands or non-residential premises for implementation of business activity at least equal to conditions of places left by persons affected by acquisition;

42.1.3. where necessary, income and other support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living;

42.1.4. if needed, training and other type of development assistance for restoration of means of living and housing standards after resettlement;

42.2. the additional actions to provide assistance for adaptation of persons affected by acquisition on arrival and prevention from falling in unfavorable conditions shall be specified by resettlement plan or guideline in addition to specified by Article 42.1 intends the resettlement of persons affected by acquisition to populated places (areas).

42.3 Resettlement plan and guideline shall include a detailed programme for the phased relocation and resettlement of persons affected by acquisition.

Article 43. The assessment (determination) of cost of resettlement plan or guideline

43.1. The planner shall prepare an estimate of expenses on resettlement plan or instruction recognized as a content of resettlement plan or instruction and it is known as the main document in the assessment (determination) of compensation.

43.2. The following shall be included in assessment (determination) of compensation:

43.2.1. rights to land possessed or claimed by all settlers, including rights and interests to use land in common;

- 43.2.2. the livestock and other moveable property which settlers will be taking with them when they are resettled;
 - 43.2.3. the preferences which settlers have for the nature of the compensation which they may receive;
 - 43.2.4. an estimate of the value of each claim and of the amount of compensation and the nature of the compensation which will be required to meet the claims set out in the assessment;
 - 43.2.5. an estimate of the costs of providing such other services and facilities to provide assistance for relocation and resettlement;
 - 43.2.6. such other matters as in the opinion of the planner should be the subject of a compensation assessment.
- 43.3. The assessment (determination) of expenses related to resettlement plan or guideline shall not affect any claims to compensation made by persons affected by acquisition.
- 43.4. Pursuant to Article 41.11 under present Law, after resettlement plan or guideline is presented, a proposal on estimate of expenses prepared by planner, including opinions by acquiring authority and land acquisition inspectorate on proposal shall be sent by acquiring authority and land acquisition inspectorate to evaluation committee. The estimate of expenses of resettlement plan or instruction shall be approved by evaluation committee based on analysis of proposals of planner alongside with the opinions by acquiring authority and land acquisition inspectorate according on these offerings.

Article 44. Implementation of resettlement plan or guideline

- 44.1. The following actions depending on type of resettlement and number of persons subject to resettlement shall be conducted for implementation of resettlement plan or instruction:
- 44.1.1. Once it is found that there is settled persons (inhabitants) in a place (territory) where persons affected by acquisition to be resettled place, then the resettlement commission shall arrange meetings with persons affected by acquisition on regular basis to solve disputes that may be occurred during and after resettlement and to ensure positive environment there;
 - 44.1.2. The acquiring authority shall provide persons affected by acquisition with the residence, residential area, public utility services (supply with electricity, gas, water and sewerage system, telecommunications and electronic communication, domestic waste disposal services and etc.) including preparation of road/traffic and other infrastructure objects before (to be resettled) resettlement process;
 - 44.1.3. the relevant notice shall be provided to persons affected by acquisition at least 60 days prior to date of resettlement of affected persons to new place of residences;
 - 44.1.4. Persons affected by acquisition shall be provided with support to complete or partial demolition of premise respectively in cases if it needs to construct or reconstruct other premise instead of the existing premise in a new place of residence (territory);
 - 44.1.5. Required number of vehicles should be provided for resettlement of persons affected by land acquisition owned livestock, personal belongings, building & constructional materials, if available on planned date of resettlement without waiting no more than six hours;

- 44.1.6. land acquisition group(s) and other persons shall provide consulting services and support to solution of questions and disputes raised during and after resettlement of persons affected by acquisition to place (territory);
 - 44.1.7. the amount of compensation for resettlement to be paid to persons affected by acquisition shall be paid on lump sum basis during or before resettlement process;
 - 44.1.8. Actions related to any amount of money to be paid as compensation for certain time of period and other expenses on regular basis shall be implemented and explained to persons affected by acquisition;
 - 44.1.9. The acquiring authority shall provide the solution to other questions agreed with the commission on resettlement.
- 44.2. Relocating persons affected by acquisition and demolishing of premises belonging to these persons shall be forbidden without the final effective court judgment on confirmation of issues specified by Article 52.2 under the Law.

Article 45. Supervision on resettlement process

- 45.1. The Land Acquisition Inspectorate shall implement the control on resettlement, preparation and implementation of resettlement plan or guideline.
- 45.2. The land acquisition inspectorate shall have the following powers for purposes specified by Article 45.1 under present Law:
- 45.2.1. to participate at public meetings or meetings held by planner and/or resettlement commission;
 - 45.2.2. to receive, to review the resettlement plan or guideline and to obtain the relevant documents related to preparation and making notes;
 - 45.2.3. to conduct meetings with the acquiring authority or persons affected by acquisition for the purpose of discussion of any questions related to resettlement;
 - 45.2.4. to participate at any stage of implementation of resettlement plan or guideline;
 - 45.2.5. to make the mandatory presentations related to any question or resettlement plan or guideline to acquiring authority needed for implementation of resettlement plan or guideline;
 - 45.2.6. to prepare the report on preparation and implementation of resettlement plan or guideline subject to submission to acquiring authority and development of public disclosure.

CHAPTER VI.

TAKING POSSESSION AND CLAIMING COMPENSATION

Article 46. Provision of possession notice by acquiring authority

- 46.1. The acquiring authority shall, within seven days of the marking out of the certified land under of article 22.3.3 serve a possession notice to below listed persons:
- 46.1.1. to persons affected by acquisition, including all persons affected by acquisition and subject to resettlement based on resettlement plan or instruction;

- 46.1.2. to the relevant municipalities- in case if the acquired land or its specific (acquired) part belongs to municipal property;
- 46.1.3. to governmental organization or legal entity - if acquired land or its specific (acquired) part is under use by governmental organization or legal entity.
- 46.2. The followings shall be specified by acquiring authority on possession notice:
 - 46.2.1. surname, name, patronymic and address of person affected by acquisition as specified by Article 46.1 under present Law or name and address of notice delivered relevant municipality or governmental organization or legal entity ;
 - 46.2.2. willingness to pay compensation for acquired land and rights to it;
 - 46.2.3. type and the amount of payable compensation ;
 - 46.2.4. willingness to move the person affected by acquisition with respect to resettlement plan or guideline;
 - 46.2.5. need to provide an information on type of right to land claimed by person affected by acquisition;
 - 46.2.6. application to court on a date specified by notice to take possession to acquired land;
 - 46.2.7 keep informed persons affected by acquisition on right to enter into acquired land for assessment of claims to compensation and implementation of preparatory works for receipt of ownership to land at least 48 hours before.
- 46.3. The possession notice shall describe the short summary of procedures to be complied with in connection with the assessment (determination) of compensation and options to lodge complaints for persons do not agree with the offered compensation amount.
- 46.4. Copies of a possession notice shall be posted on places as specified by Article 12.4 under present Law for posting the official announcement, for persons claim for compensation but not yet received a notice on ownership from acquiring authority.

Article 47. Claim for compensation

- 47.1. Person (claimant) affected by acquisition and claiming for compensation or resettlement shall be authorized to make a claim for provision of compensation or resettlement by submitting an application to acquiring authority within thirty days from the date of receipt of notice on right of ownership or within a long time of period unless it is determined by land acquisition inspectorate in consideration of circumstances of the each case.
- 47.2. A claim to compensation or resettlement shall contain the followings:
 - 47.2.1. type of right to acquired land subject to compensation;
 - 47.2.2. claimed compensation amount and justification of claimed amount;
 - 47.2.3. type and features of claimed compensation (different types of compensation may be claimed depending on various types of damages);
 - 47.2.4. objections with regard to measurement and delimitation of acquired land (if available);
 - 47.2.5. size of claimed land in the territory of resettlement;
 - 47.2.6. other questions could be established.
- 47.3. The acquiring authority shall be under a duty to assist claimants to prepare a claim for compensation, and shall organize a group for understanding of rules to be applied based on present Law, shall ensure free of charge service for providing consultations to persons wishing

to conduct negotiations with regard to compensation to be paid and independent professional consulting service as well.

47.4. If the person affected by acquisition could not submit an application within the established time due to temporarily being away from acquired land or for other reasonable excuse and declares the reasons for non-submission of application on time to acquiring authority, then acquiring authority may accept the application even after expiry of date specified by present Article.

Article 48. Service of purchase notice by claimant

48.1. The owner or legitimate user of land who suffered or supposed to be suffering from damage as a result of implementation of necessary projects on acquired lands that it could no longer be used based on valid reasons that will cause to occurrence of restrictions as specified by legislation shall be authorized to make a claim with a notice on purchase and sale to acquiring authority for acquisition of the ongoing land.

48.2. When the purchase notice is accepted in whole or in part by the acquiring authority, compensation shall be paid for the acquisition of the land and not with respect to the claim for severance or injurious affection for that land.

48.3. The acquiring authority may refuse fully or partially of notice on purchase and sale, however such refusal may not be applied as a case to avoid from payment to compensation for separation of acquired land or its part known to be a subject of rejected notice on purchase and sale or its exposure to disadvantageous conditions with respect to Article VII under Law.

Article 49. Acquisition of specific part of leased state or municipality owned lands

49.1. In cases when leased state or municipality owned lands (or specific part of these lands) for state needs is acquired, then amount of loss incurred by lessee due to early termination of obligations undertaken before the third parties shall be included in redemption price of land as determined by present Law.

49.2. In case of acquisition of specific part of leased state or municipality owned lands, lease payment to be made by lessee rent shall be reviewed taking into account the reduction of land area and other results of acquisition process and re-delimitation of land to be possessed by lessee and state registration of title in property shall be implemented in accordance with the existing legislation.

Article 50. Service of notice to proceed with or abandon acquisition

50.1. In cases when the decision is made on acquisition of land for state needs as specified by Article 19 under present Law and the acquiring authority has not submitted the possession notice to person affected by acquisition within 120 days, then person affected by acquisition shall be authorized to present a notification claim for refusal of possession notice or acquisition of land to acquiring authority. Non-delivery of notice on ownership to persons affected by acquisition within thirty days after submission of such notice shall be considered as refusal of acquisition of land by acquiring authority in accordance with Article 46 under present Law.

50.2. In cases when abandonment of land acquisition is determined according to Article 50.1 under present Law, then the property rights to acquired land shall be considered to be restored as of proposed date of refusal without any necessary action to be taken by persons who submitted a notice and these persons shall be authorized to live on, use and exercise of rights to this land previously in a manner as it was before acquisition.

50.3. In cases when a abandonment of land acquisition is considered with respect to this Article, then re-acquisition of land known as a subject of abandoned acquisition could not be proceeded within at least three years.

50.4. In circumstances determined by this Article, compensation shall be paid to persons in possession of rights to land with respect Article 28.2.3 under present Law.

Article 51. Delay

51.1. In case if implementation of actions specified by present Law to ensure right of ownership to acquired land is detained by acquiring authority delayed within one calendar year after submission notice on ownership, then the acquisition of that land shall be deemed to have been abandoned. The time flow on delay shall be stopped in cases when complaint against the land acquisition process was lodged to court.

51.2. The provisions of Articles 50.2-50.4 shall be applied in cases specified by Article 51.1 under present Law .

Article 52. Court approval

52.1. A taking of possession of acquired land from a person affected by acquisition shall only take effect after it has been approved by a court.

52.2. The application to appropriate court of the administrative unit of affected land shall be provided by acquiring authority for approval of the following:

52.2.1. compliance of acquisition of land to requirements of Article 3 under the Law;

52.2.2. taking possession of the acquired land with respect to requirements specified by the Law;

52.2.3. type and amount of compensation to be paid to persons affected by acquisition.

52.3. The person affected by acquisition who has objections to acquisition of land or taking possession to acquired land or offered compensation amount may apply to court on the basis of one or a number of reasons listed below :

52.3.1. contradiction of land acquisition with the requirements specified by Article3 under present Law;

52.3.2. land becomes useless for implementation of land acquiring project;

52.3.3. unfair offered compensation;

52.3.4. lack of the relevant powers of acquiring authority ;

52.3.5. non-compliance or wrong and unfair application of procedures determined by present Law.

52.4. All documents submitted to relevant authority with regard to acquiring, cadastral map or the necessary parts of these documents shall be considered by court.

52.5. In cases if parties or their representatives agrees on payment of compensation and if such agreement are developed in written form and signed by all parties, then the signed agreement may be submitted to court for approval at all times since upon its conclusion and signing and in such case, such approval by court for payment of compensation shall be made without any judicial examination.

52.6. The person affected by acquisition may lodge complaint to higher authorities and (or) court against the relevant decisions, the actions (inactions) by acquiring authority or group involved in land acquisition process or their high level officials while granting a right with to

acquired land or with regard to payment of compensation or resettlement related and other issues

52.7. No provision under this Article shall be applied to prevent applicant and acquiring authority from using alternative mechanisms for solution of disputes or reaching an agreement for solution of disputes by other methods.

52.8. No expenses, payments or other financial requirements with regard to any actions necessary for completion of acquiring rights to land shall not be imposed or deducted from person affected by acquisition .

Article 53. Persons refusing to give up possession

The persons refusing to give up possession by not implementing effective court judgment on taking possession of the land after application to acquiring authority in manner as specified by Article 52 under the Law, the relevant provisions on court decisions under the legislation shall be applied to Persons refusing to give up possession

CHAPTER VII. COMPENSATION

Article 54. Compensation to be payable to persons affected by acquisition

54.1. Fair compensation shall be paid to all persons affected by acquisition in respect of the acquisition or for other rights to land with respect to present Law.

54.2. Compensation amount shall be paid to persons affected by acquisition at expense of project require this acquisition.

Article 55. Modes of valuing land for compensation

55.1. The amount of compensation for acquired land shall be calculated by the following methods in accordance with the present Law:

55.1.1. determination of market price of acquired land in accordance with the provisions of Article 58 under the Law;

55.1.2. where there is no market for land or no sufficient market in land in the area where the land is being acquired for any fair assessment to be made of the value of the land by reference to its value in the market, or the land is to be replaced by other land, the replacement value of the land being acquired shall be determined pursuant to Article 59 under the Law.

55.2. in circumstances where both methods of assessment could be applied as specified by Article 55.1 under the Law, then the method offering a higher price for land shall be applied for determination of amount of compensation to be paid,

Article 56. Matters to be considered in determining compensation

56.1. The following matters shall be taken into account during determination of compensation amount for land to be acquired:

56.1.1. the compensation that is payable to claimants shall be based on the principle that all persons suffering losses and inconvenience arising out of and as a consequence of being required to leave their land and to be relocated elsewhere shall have their property, livelihoods, income, living standards and

conditions restored so that within a reasonable time from when they suffered losses and inconveniences, they are no worse off than they were before they were relocated;

- 56.1.2. Current inflation in determining the compensation amount;
- 56.1.3. the market value of land as determined in accordance with Article 58 under the Law;
- 56.1.4. the damage, if any, sustained or likely to be sustained by the person affected by acquisition at the time of the taking possession of detached part from the retained (not acquired) land of the person;
- 56.1.5. the damage which is caused or can be caused to other personal or real estate or real incomes of the person affected by acquisition, as a result of taking possession on the land of this person;
- 56.1.6. if, in consequence of the acquisition, he or she is or will be compelled to relocate his or her residence or place of business activity or work, all the reasonable expenses, if any, incurred in the disturbance and relocation involved in any such change.

Article 57. Matters to be ignored in determining compensation

57.1. In determining the amount of compensation to be awarded for any land acquired with respect to the Law, the following matters shall not be taken into account:

- 57.1.1. degree of urgency of acquiring;
- 57.1.2. the disinclination of any person interested to part with the land;
- 57.1.3. any reduction in the value of the land likely to result from the use to which it will be put;
- 57.1.4. any increase in the value of the land likely to accrue from the use to which it will be put;
- 57.1.5. any costs on additions and improvements to the acquired land which were incurred after the census date, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair and unless, in the case of agricultural land, it is money which has been expended for the continuing cultivation of crops on it.

Article 58. Market price

58.1. The market value of land shall, subject as is provided in this Law, be taken to be the amount which the land might be expected to realise if, in the condition and tenure in which it was on the census date, it was sold in the open market by a willing seller to a willing buyer on that date.

58.2. Market price of the land shall be determined based on the average value of top 3 (three) prices specified in land transactions which were registered in notary within three months prior to census date.

58.3. For determination of land price on the basis of its market price, then market price for acquired land shall be based on price of acquired land with the territory with the coverage of 100 meters from acquired land, in case of absence of land market in this territory - the territory with coverage of 250 meters from acquired land, in case of absence in this territory of land market - in the territory with coverage of 500 meters from acquired land.

58.4. In the absence of land market in the territory with the coverage of 500 meters from the acquired land, then the market price for acquired land shall be based on price of acquired land located in the area, the city or the district of the city in accordance with the respective administrative unit.

Article 59. Replacement cost

59.1. With respect to agricultural land, replacement cost is the pre-project or pre-displacement, whichever is higher, value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any state registration and transfer fees.

59.2. With respect to land in urban areas, replacement cost is the pre-displacement value of land of equal size and use, with similar or improved public infrastructure facilities and services and located in the vicinity of the affected land, plus the cost of any state registration and transfer fees.

59.3. The replacement price of houses and other structures is meant as the price calculated by build of expenses, suffered on acquisition or construction of houses replacing them or the structures having the same sizes and quality or the sizes and which quality not below first, in case of partial damage of houses or structures or acquiring of the specific part of structures, the expenses suffered on purchase at the market price of building timbers, necessary for their recovery, and their delivery to the building site, the expenses suffered in connection with any works or contractors, and also in both events of the expenses suffered in connection with designing and the state registration of the rights.

59.4. In determining the replacement cost, depreciation of the asset and the value of unused materials are not to be taken into account, nor is the value of benefits to be derived from the project deducted from the valuation of an affected asset.

59.5. The replacement cost of any moveable goods and possessions acquired under the Law is the market cost of replacing those goods and possessions.

59.6. In determining the replacement cost of any land, buildings or moveable possessions under this article, regard shall be had to the duty to comply with the provisions of Article 56 under the Law.

Article 60. The special rule on compensation for acquisition of part of land

If a land is divided as a result of part of a plot of land being acquired, then the relevant compensation shall be paid if the retained (not acquired) land is legally used for construction of roads, collector ditches, walls, fences, bridges, underpasses, buildings and other objects.

Article 61. Acquisition of other part of land in cases when high amount is claimed for division of acquired land

61.1. If the acquiring authority considers the claim for compensation made by the claimant while acquiring the specific part of the land, equals to or exceeds the price for acquisition alongside with the price for acquisition of specific part of the land of the retained (not acquired) from the claimant, in such case, acquiring authority shall make a decision at any time in accordance with the established procedure of the acquisition of the retained (not acquired) part of acquired land.

61.2. In cases when decision is made based on Article 61.1 under the Law, delivery of decision in accordance with Article 19 under the Law or notice on possession according to Article 46 under the Law shall not be required, however the acquiring authority:

- 61.2.1. shall submit the copy of decision made to claimant without delay, pursuant to Article 61.1 under the Law;
- 61.2.2. shall start the implementation of powers with regard to offering compensation to claimant with respect to Article 67 under present Law;
- 61.2.3. shall keep informed Land Acquisition Inspectorate immediately on made decision, its reasons and content.

Article 62. Compensation for injurious affection to adjacent lands

A Person affected by acquisition in possession of the appropriate rights to damaged adjacent lands as a result of determination of restriction prescribed by legislation on a land next to acquired land due to construction of premise on acquired land not known as a part of acquired land with respect to present Law and implementation of land acquiring related activities and (or) the purpose of this premise shall be paid compensation for harmful impacts.

Article 63. Compensation for disturbance

63.1. In case of the assessment of compensation for disturbances the followings are considered:

- 63.1.1. the circumstances connected with the claimant;
- 63.1.2. the amount of any legal, surveying, valuation and other professional costs reasonably incurred by the person affected by acquisition in connection with the acquisition of land and the construction of new buildings on that land;
- 63.1.3. the costs of transporting in a safe and secure manner any livestock of the person affected by acquisition from the place where that person kept his or her livestock to the land to which that person has been;
- 63.1.4. any loss of income of the person affected by acquisition, as a result of acquiring or need for providing with its permanent payments till the relocation while the income of this person received from work or the land in the new residence will not be equal to the income received from the land or work on the place from which it is relocated;
- 63.1.5. the costs of any training needed to enable the project affected person to undertake work in his or her new location which is suited to his or her circumstances;
- 63.1.6. where the project affected person provided food from his or her land for some or all of the needs of his or her family, the costs of providing a regular supply of a similar type and amount of food to that person and his or her family until that person is able to provide that food either from his or her land in his or her new location or from an income derived from work in his or her new location;
- 63.1.7. such other matters to be considered to ensure fair compensation.

Article 64. Special rules on compensation for loss of access to communally used land

In cases acquired land is in the territory of land plots of communally use, then the persons entitled to use these lands or make products shall have a right to receive compensation for loss of the right of entry and right to use or right to make products for entry into land plots of communally use.

Article 65. Nature and the type of payable compensation

- 65.1. Compensation may be paid in the following forms:
- 65.1.1. land plot with the quality, size, potential production compared to lost land;
 - 65.1.2. living space or the structure having quality, the sizes and possibilities of use, comparable with the lost living space or the structure;
 - 65.1.3. in case of loss of farmlands, in addition to the land stipulated in Article 65.1.1 the Law, plants and seeds;
 - 65.1.4. the safeguards connected with property of communally use as stipulated in Article 64 presents of the Law;
 - 65.1.5. a lump sum of money in the amount of, established according to provisions of this Chapter, for loss of the land and other capital;
 - 65.1.6. payments during the specific time for providing or replacement of the income which has decreased or lost as a result of moving;
 - 65.1.7. permanent providing with foodstuff during the specific time instead of the foodstuff received on the lost land, or the lost income used earlier for receipt of such foodstuff;
 - 65.1.8. to provide training related to for persons affected by acquisition on new skills to get a job instead of lost jobs as a result of resettlement or to use job opportunities as result of implementation of project on land acquisition;
 - 65.1.9. such other forms of compensation as may be prescribed or as may be agreed between persons, affected to procedure of acquiring, and the acquiring authority.
- 65.2. The person affected by acquisition, can choose one or several types compensations which are subject to payment to it.
- 65.3. The acquiring authority shall make sure the person affected by acquisition is provided with information on types of compensation and the most useful types. On the contrary, the acquiring authority shall provide persons affected by acquisition with detailed information on it.
- 65.4. In cases when acquired land is located in the territory of the cemetery, then acquiring authority shall conduct consultations on exhumation and reburial of buried persons, preferred places for burial with the relatives of persons buried on cemetery and once the decision on exhumation and the reburial is made, then the acquiring authority shall pay expenses related to exhumation and it should also include costs related to all relevant and traditional ceremonies during exhumation and re-burial process.
- 65.5. Where a building used as a community resource is to be acquired, the acquiring authority shall:
- 65.5.1. provide the persons using this building, the building (buildings) for the same purposes (appointment) in the place in which they can use it;
 - 65.5.2. pay replacement costs of this building to the persons affected by acquisition according to Article 59 under the Law.
- 65.6. If resettled persons were provided on the acquired land with the electrical energy, gas, water and the sewerage, telecommunications and electronic communications, and also roads and other similar infrastructure, the acquiring authority shall provide the persons affected by acquisition, in the territory on which they move, the corresponding infrastructure, comparable on quality, convenience and quantity provided that quality, convenience and quantity of infrastructure and structures of the persons who were earlier living in this territory, will not decrease.

Article 66. Compensation for hardships

66.1. In any case where a house has been acquired under the Law, the acquiring authority may make payments, to be known as hardship payments to a claimant additional to those which the project affected person is entitled to.

66.2. Compensation for hardships is paid to the person, plunged to procedure of acquiring, in case of representation of the document confirming living in acquired premises as in the main residence within at least five years by it.

66.3. The person affected by acquisition, can provide to the acquiring authority the requirement about the payment connected with hardships, within one calendar year from the date of emergence of circumstance, the stipulated in Article 66.2 of the Law.

66.4. The amount of the payment for inconveniences shall be determined depending on time of accommodation of the person affected by acquisition, in acquired premises in below listed percent from the general amount of compensation which is subject to payment to the claimant according to this Chapter:

66.4.1. for the term from 5 till 6 years - 5 percent;

66.4.2. for the term from 6 till 7 years - 6 percent;

66.4.3. for the term from 7 till 8 years - 7 percent;

66.4.4. for the term from 8 till 9 years - 8 percent;

66.4.5. for the term from 9 till 10 years - 9 percent;

66.4.4. for the term of over 10 years - 10 percent.

CHAPTER VIII.

PROCEDURES FOR PAYMENT OF COMPENSATION

Article 67. Offer of compensation by acquiring authority

67.1. With respect to Article 47 under the Law , when claimant receives claim of compensation or according to article 48 under present Law , the notice about purchase and sale from persons entitled to submission of notices, then the acquiring authority within no more than 60 days from the date of receipt of the relevant claim or notice or during longer time which can be approved between the acquiring authority and the claimant, however which no longer exceed 30 days to provide to the claimant the offer on provision of compensation, and concerning the notice on the purchase and sale, the Law provided according to Article 48, - the offer on the redemption of the land specified in this notice or the notice on refusal of the redemption.

67.2. The offer provided according to Article 67.1 under present Law, shall in the clear and plain form for the claimant to determine the following:

67.2.1. the amount of compensation provided on different types of compensation;

67.2.2. total sum of general compensation;

67.2.3. nature of provided compensation;

67.2.4. in case of payment of compensation for providing the lost income or providing with foodstuff, the schedule of payment of compensation;

67.2.5. if the paid amount less than the requested compensation amount, the reason of reduction of the amount;

- 67.2.6. if the acquiring authority suggests to perform the powers according to Article 61 under present Law, the complete explanation of the reasons and the bases of it;
- 67.2.7. in case of the direction of the notice on purchase and sale and refusal of the acquiring authority to redeem the land specified in this notice, causes of failure and issues of compensation, which will be paid (if it will be paid) instead of the redemption of the land;
- 67.2.8. the deadline during which the claimant shall report about acceptance of compensation in the established form, in case of complete or partial rejection of compensation - also the reasons of it;
- 67.2.9. available procedures for the claimant, wishing to challenge any question connected with provision of compensation;
- 67.2.10. such other matters as may be prescribed.

Article 68. Acceptance of compensation offer

68.1. The person to whom the offer of the acquiring authority on provision of compensation is addressed, within 40 days after receipt of this offer represents to the acquiring authority information on the following:

- 68.1.1. accepts the award of compensation in whole or in part;
- 68.1.2. accepts the award of compensation in whole or in part under protest;
- 68.1.3. rejects the award of compensation in whole or in part;
- 68.1.4. in case of whole or part rejection of provided compensation, intends to transfer dispute in as specified by Article 75 under the Law the commission on consideration of claims;
- 68.1.5. in case of whole or part rejection of provided compensation, intends to transfer the disputes connected with provision of compensation, in court.

68.2. In case of acceptance of compensation the acquiring authority within 30 days after acceptance of provision of compensation completely pays compensation to the person which has accepted provision of compensation, or if other type of compensation is provided, distinct from one-time payment, starts its payment.

Article 69. Acceptance of compensation

69.1. The acquiring authority for each payment of compensation performed according to the Law, receives the signed receipt from the claimant, thus the claimant shall sign this receipt.

69.2. Any claimant may receive payment of compensation by making an objection to amount or nature of compensation.

69.3. Any claimant who accepted payment to compensation with the statement for objection, shall be entitled to make an objection to compensation or its part irrespective of receipt of such compensation.

69.4. In cases when compensation is received by person with statement of objection, he shall submit a notice on objection to acquiring authority from acceptance date of compensation within 20 days.

Article 70. Payment method of money compensation

70.1. Where an award of compensation is to be paid in money in whole or in part or as a lump sum or over a period shall be paid on the bank account.

70.2. In case of absence at the person affected by acquisition, the bank account, the acquiring authority shall open on own account addressed to the persons affected by acquisition, bank accounts and to assist these persons in use of these accounts.

70.3. In the presence of the bank account at the person affected by acquisition, the monetary compensation is listed on this bank account.

70.4. Person affected by acquisition and being the member of the family, the monetary compensation having the right, can at the expense of own means and by means of the acquiring authority to open on the name the bank account on which compensation will be paid.

70.5. The acquiring authority shall pay within the first year all expenses for use of any bank account to which this Article will be applied.

70.6. In cases if acquired land belongs to common property, then the acquiring authority shall pay money compensation to all owners in proportion to shares of owners and shall require from each owner to sign the receipt during payment process.

Article 71. Transfer of compensation to deposit

71.1. In the following events the acquiring authority may apply to court to make decision to authorize the acquiring authority to transfer the compensation amount to deposit account of person entitled to receive compensation and the court may pass the relevant decision about it:

71.1.1. in the absence of the authorized person or the person for receipt of compensation according to Articles 69-70 under present Law if thus this person or his representative were not found after carrying out necessary check;

71.1.2. in case of disagreement of the person having the right to compensation to accept this payment;

71.1.3. in case of disputes on the following:

71.1.3.1. the right of the person to acceptance of compensation or the document concerning the rights;

71.1.3.2. distribution of compensation between the persons having the right to compensation.

71.2. Any person as specified by Articles 71.1.1 and 71.1.3 under present Law, may apply to court with regard to payment to it from the amount transferred in the deposit, the compensation amount which this person has the right to receive, with representation to court of convincing proofs.

71.3. The person specified in Article 71.1.2 under present Law, can take away at any time without the reference to the court the amount transferred in the deposit.

71.4. If any compensation amount transferred in the deposit according to Article 71.1 under present Law, will not be requested within 10 years from the moment of its transfer to the deposit, it carries over the state.

Article 72. Payment of interest

72.1. Compensation subject to payment according to present Law and any compensation agreed between the acquiring authority and the claimant shall be calculated by interest rate

established by Central Bank of Azerbaijan Republic from date of payment to payment implementation process or to date of transfer to deposit in accordance with Article 71 under present Law percent plus one percent additionally.

72.2. The "payment date" on acquired land specified by Article 72.1 under the Law shall be deemed to be a date on completion of time period of 10 days from the effective date of the relevant court decision on approval of issued prescribed by Article 52.2 under present Law.

Article 73. Erroneous payments

73.1. In case of erroneous payment of compensation amount or certain part of this amount is paid to person who does not have the rights to receive such compensation according to the Law, then this person shall be accountable for pay back the received amount on the basis of request made by acquiring authority or pay to person entitled to receive this amount within 30 days.

73.2. The person received a claim with respect to present Article may lodge complaint to court with objection on this claim or its part.

73.3. If erroneously paid compensation amount or its certain part is not paid to person entitled to receive compensation as specified by Article 73.1 under the Law within the established time of periods, then acquiring authority shall pay the amount in the amount equal to erroneously paid compensation amount or part of this amount to banking account of owned by latter within 15 days and in circumstances as specified by Article 71.1 under present Law, - to transfer it to deposit account of this person.

Article 74. Delaying payment of compensation

In cases if rights of person are violated by delay in payment of compensation amount under the Law, then he may apply to court to achieve the immediate payment of such compensation.

CHAPTER IX. DISPUTE SOLUTION

Article 75. Grievance Redress Commission

75.1. In cases if it is considered necessary by the relevant authority, the relevant executive authority under the respective administrative unit of which acquired land is located subject to resettlement of persons affected by acquisition shall set up a Grievance redress commission comprised of the corresponding persons capable of reviewing, exploring and using all efforts for solution of complaints lodged by persons affected by acquisition due to land acquisition process, with respect to present Law.

75.2. The Grievance Redress Commission shall consist of minimum of three and five people at most, at least one of these persons with the specific knowledge or skills in hearing of cases and implementation of mediation between the sides and at least one shall have the specific knowledge related to territory where dispute occurred.

75.3. The grievance redress commission shall adhere to the following:

75.3.1. to create possibility to all sides of dispute to make the demands;

75.3.2. to invite the sides of dispute to consent concerning performance of the commission on consideration of claims as the intermediary between them for acceptance according to the claim of mutually satisfying decision;

75.3.3. in case of disagreement of the sides or one of them with mediation to prepare recommendations about the claim;

75.3.4. to take other measures recognized by the commission on consideration of claims as effective for finding of the decision on the claim.

75.4. The person affected by acquisition, can submit the claim to grievance redress commission in connection with breaking of its rights, however this circumstance shall not be the condition of submission of the claim to the Resettlement Commission or Land Acquisition Inspectorate.

75.5. The grievance redress commission to which the claim is provided, takes necessary measures for its decision, undertakes attempts to conciliate the side and, if necessary, can make recommendations to the acquiring authority in the direction of adoption of similar decisions.

75.6. The acquiring authority accepts recommendations of the grievance redress commission, except for recommendations about the amount of compensation, and performs adequate measures or sends the claim to land acquisition inspectorate for acceptance concerning the relevant decision. The acquiring authority submits the recommendations of the grievance redress commission on complaints about amount of compensation to land acquisition inspectorate together with its opinions.

75.7. The person affected by acquisition, not agree with the decision of the grievance redress commission, can submit to (send) the claim to land acquisition inspectorate.

75.8. The land acquisition inspectorate sends recommendations of grievance redress commission on complaints received as provided under Article 75.6 of the Law and the opinion of the acquiring authority together with its recommendations to the Valuation Commission.

75.9. The person do not agree with the decision of land acquisition inspectorate may apply to court.

Article 76. Mediation in an offer of compensation

76.1. In case of rejection of offer by claimant on provision of compensation or acceptance of compensation with objection, then claimant may come to an agreement with the acquiring authority to address this issue to grievance redress commission..

76.2. Pursuant to Article 76.1 under the Law, in any cases after addressing claim to the grievance redress commission, the grievance redress commission after hearing of parties shall takes necessary actions for providing assistance in achievement of fair decision by parties on dispute.

CHAPTER X. FINAL PROVISIONS

Article 77. Options on delivery of notices

77.1. The notices to be delivered to any persons with respect to present Law shall be delivered to directly or by mail service. To make sure of timely delivery of notices to relevant persons, deliverer of notice may instruct on implementation of delivery by the following additional methods:

77.1.1. to deliver the notice to one of the adult members of the family living together with this person;

77.1.2. to deliver the notice to the management on place of employment of the owner of the address;

- 77.1.3. to place the copy of the notice in the territory of the arrangement of the land or in the place, being near the parcel of land, on foregrounds of buildings of municipalities and local executive bodies on the territory of the arrangement of the land;
 - 77.1.4. to publish the notice in one or several Azerbaijani Republics published in the territory mass media;
 - 77.1.5. to extend the notice by means of television and radio;
 - 77.1.6. to apply other effective methods of provision to the corresponding persons of information on essence of the notice.
- 77.2. The official notice which is subject to distribution in events of publication of any information based on the Law or their finishing to the cramp of all persons which can undergo to procedure of acquiring:
- 77.2.1. to be posted on the relevant places with possible visible;
 - 77.2.2. it shall be hung out on official boards of local executive bodies on territorial unit of the arrangement of the land, and in other well looked through public places established by this organ;
 - 77.2.3. it shall be orally reported at the meetings organized in these purposes by municipalities or relevant organs of the executive authority with persons, living and working at this territory;
 - 77.2.4. it shall be published in one or several Azerbaijan Republic published in the territory mass media, and also it is widespread means of television and radio.

Article 78. Right of entry

- 78.1. Any person authorised to do so by the acquiring authority shall have power, on the giving of not less than forty-eight hours notice, to enter and inspect at all reasonable times between the hours of 6.00 - 18.00 any land, other than land occupied exclusively as a house, for any purpose connected with the implementation of the Law.
- 78.2. The notice which is required by Article 78.1 under the Law shall specify clearly the purpose for which and the approximate time at which the authorised person will enter the land.
- 78.3. Every person authorised to enter or inspect land under this article shall be furnished with a written authorisation signed by the acquiring authority and if so required by any person having an interest in or occupying the land which he or she enters and inspects, shall produce the same to such person.
- 78.4. Subject to the provisions of article 14, where any person authorised under this article causes any damage to land or anything on the land during his or her entry and inspection, the acquiring authority shall forthwith appoint a person to assess such damage and pay promptly compensation based on that assessment to the person whose land or things on the land have been damaged

Article 79. Call for information

- 79.1. The acquiring authority may request from land owner or user of the land in writing form for implementation of any objects under present Law to submit a copy of information or documents on rights to land and it shall be responded within 20 days from the date of submission (delivery) of request on information.
- 79.2. The inquiry submitted by the acquiring authority shall be developed in clear and plain form.

79.3. If the person who has received such inquiry does not understand information is required to provided, then he shall address to the acquiring authority for explanations within the shortest time if applicable.

79.4. If the person who has received request, does not understand request owing to the age, capabilities or other reasons or cannot answer it in writing, the acquiring authority can confer to other person of power, meet this person and receive at it necessary information in the oral form.

79.5. With respect to Article 79.4 under present Law, the person to power entitled to conduct meetings shall warn with the notice in writing at least in 48 hours and offer to arrange meeting at any convenient time between 8.00-18.00 during the day and such meeting shall be held accordingly.

79.6. Requirements are applied by Article 78.3 and 78.4 under present Law also to the person holding the meeting based on this Article.

79.7. Information to be submitted to acquiring authority according to present Article may be delivered to group involved in land acquisition or the head of group and such delivery shall be equal to sending (delivery) of necessary information to acquiring authority.

Article 80. Person in possession deemed to be person in lawful occupation

80.1. Adoption (development) of documents related to property rights, use rights and right of leases to land by officials of governmental or municipal authorities without compliance of requirements of legislation shall not be basis for rejection of payment of compensation to person. In such case, after payment of compensation, the relevant authority shall apply to appropriate court with lodging a claim for compensation of damage caused to state because of governmental official found to be guilty of breach of requirements specified by legislation during the adoption (development) of above-stated documents.

80.2. In case of questions or disputes by any person with regard to rights to land, the person in possession of right to land or exercise a right to benefit from the land deemed to be the person in lawful occupation of the land until the contrary is proved.

Article 81. Tax exemption, duties and other payments

81.1. No award of compensation made under the Law shall be chargeable with any taxes, duties or fees.

Article 82. Subsequent disposal of acquired land not to invalidate acquisition

82.1. Insulting of any person entitled to enter into acquired land or to implement other actions related to taking possession with respect to the Law, intervention in authorized person's affairs or supporting such actions or compelling someone to do so shall be charged with legal responsibility as prescribed by legislation

Article 83. Transitional provisions

83.1. Any action and procedure implemented for acquisition of land in accordance with the preceding legislation before adoption of present Law in force shall be continued with respect to previous legislation exclusive of issues related to assessment and payment of compensations and resettlement of project affected persons.

Mr.Ilham Aliyev

President of Azerbaijan Republic

APPENDIX 2

Decree of the President of the Republic of Azerbaijan n. 383 of 15/02/11

DECREE OF THE PRESIDENT OF THE REPUBLIC OF AZERBAIJAN n. 383 of 15 FEBRUARY 2011 on additional measures for the application of the Law of the Azerbaijan Republic on “Acquisition of lands for state needs”

Related to the application of the Law of the Republic of Azerbaijan on “Acquisition of lands for state needs” I hereby **resolve as follows**:

1. The followings are defined:
 - 1.1. the Cabinet of Ministers of the Republic of Azerbaijan carries out role of "Relevant Authority" considered in the articles **6.3, 8.4, 9.1, 9.2.6, 15.4.4, 17.3, 18.1, 18.4, 18.5**, name of the **19th** article, **19.1, 19.3, 19.4** (in first case), **41.2, 52.4, 75.1** (in first case);
 - 1.2. Role of "Relevant Authority" considered in the articles **12.4** (in both cases), **15.4, 40.1, 75.1** (in the second case) and articles **10.2.1, 77.2.3, 10.2.3.2** (with regard to initially calculated number of affected person), **10.2.4.2** (with regard to initially calculated number of affected person) is carried out by the Local (rayon, city, city-rayon) Executive Powers;
 - 1.3. Role of "Relevant Authority" considered in the articles **8.1, 18.4.3, 19.4** (in the second case), **20.4, 80.1** is carried out by the Ministry of Finance of the Republic of Azerbaijan;
 - 1.4. Roles of "Relevant Authorities" considered in the articles **9.4, 18.4.1** and **24.3.1** are carried out by the Central Executive Bodies;
 - 1.5. Roles of "Relevant Authorities" considered in the article **10.2.5** are carried out by the State Committee on Deals of Refugees and Internally Displaced Persons and Local (rayon, city, city-rayon) Executive Powers;
 - 1.6. Roles of "Relevant Authorities" considered in the articles **10.2.2.1, 10.2.3.1, 10.2.3.2** (for use of land by the affected persons and ownership status of structures), **10.2.3.3, 10.2.4.1, 10.2.4.2** (with regard to use of land by the affected persons and ownership status of structures) are carried out by the State Committee on Property Issues, State Land and Cartography Committee, as well as for the affected state lands the Ministry of Ecology and Natural Resources and Local (rayon, city, city-rayon) Executive Powers within their responsibility area;
 - 1.7. Roles of "Relevant Authorities" considered in articles **10.2.2.2, 10.2.4.3** are carried out by the State Land and Cartography Committee and Local (rayon, city, city-rayon) Executive Powers within their responsibility area;
 - 1.8. Roles of "Relevant Authorities" considered in the articles **10.2.2.3, 10.2.3.4, 10.2.4.4** are carried out by the Ministry of Agriculture, State Committee on Property Issues, State Land and Cartography Committee and Local (rayon, city, city-rayon) Executive Powers within their responsibility area;
 - 1.9. Roles of "Relevant Authorities" considered in the article **10.2.6** are carried out by the Ministry of Ecology and Natural Resources, State Committee on Property Issues, State Land and Cartography Committee and Local (rayon, city, city-rayon) Executive Powers within their responsibility area;
 - 1.10. Roles of "Relevant Authorities" considered in the articles **10.2.7** and **18.4.4** are carried out with agreement of the State Committee on Property Issues by the Ministry of Health, Ministry of Education, Ministry of Culture and Tourism, Ministry of Youth and Sports and Local (rayon, city, city-rayon) Executive Powers within their responsibility area;

- 1.11. Roles of "Relevant Authorities" considered in the article **21.1** are carried out by the State Committee on Property Issues and State Land and Cartography Committee within their responsibility area;
- 1.12. The Ministry of Finance, State Committee on Property Issues and State Land and Cartography Committee are considered with the definition of "Relevant Authorities" in the article **22.1** of the Law.
2. This Decree shall enter into force on the date of publication.

İlham ALİYEV,

the President of the Republic of Azerbaijan

Baku City, 15 February 2011, № 382

APPENDIX 3

ADB's Safeguards Policy Statement (SPS) of 2009

SAFEGUARD REQUIREMENTS 2: INVOLUNTARY RESETTLEMENT

A. Introduction

1. ADB experience indicates that involuntary resettlement under development projects, if unmitigated, could give rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable, and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. ADB therefore seeks to avoid involuntary resettlement wherever possible; minimize involuntary resettlement by exploring project and design alternatives; enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and improve the standards of living of the affected poor and other vulnerable groups.

2. Safeguard Requirements 2 outlines the requirements that borrowers/clients are required to meet in delivering involuntary resettlement safeguards to projects supported by the Asian Development Bank (ADB). It discusses the objectives, scope of application, and underscores the requirements for undertaking the social impact assessment and resettlement planning process, preparing social impact assessment reports and resettlement planning documents, exploring negotiated land acquisition, disclosing information and engaging in consultations, establishing a grievance mechanism, and resettlement monitoring and reporting.

B. Objectives

3. The objectives are to avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons³⁵ in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.

C. Scope of Application

4. The requirements apply to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects). The requirements also cover involuntary resettlement actions conducted by the borrower/client in anticipation of ADB support.

5. The involuntary resettlement requirements apply to full or partial, permanent or temporary physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) resulting from (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. Resettlement is considered involuntary when displaced individuals or communities do not

³⁵ In the context of involuntary resettlement, displaced persons are those who are physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (loss of land, assets, access to assets, income sources or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.

have the right to refuse land acquisition that results in displacement. This occurs in cases where (i) lands are acquired through expropriation based on eminent domain; and (ii) lands are acquired through negotiated settlements, if expropriation process would have resulted upon the failure of negotiation.

6. If potential adverse economic, social, or environmental impacts from project activities other than land acquisition (including involuntary restrictions on land use, or on access to legally designated parks and protected areas) are identified, such as loss of access to assets or resources or restrictions on land use, they will be avoided, or at least minimized, mitigated, or compensated for, through the environmental assessment process. If these impacts are found to be significantly adverse at any stage of the project, the borrower/client will be required to develop and implement a management plan to restore the livelihood of affected persons to at least pre-project level or better.

A. Requirements

1. Compensation, Assistance and Benefits for Displaced Persons

7. Displaced persons in a project area could be of three types: (i) persons with formal legal rights to land lost in its entirety or in part; (ii) persons who lost the land they occupy in its entirety or in part who have no formal legal rights to such land, but who have claims to such lands that are recognized or recognizable under national laws; and (iii) persons who lost the land they occupy in its entirety or in part who have neither formal legal rights nor recognized or recognizable claims to such land. The involuntary resettlement requirements apply to all three types of displaced persons.

8. The borrower/client will provide adequate and appropriate replacement land and structures or cash compensation at full replacement cost for lost land and structures, adequate compensation for partially damaged structures, and relocation assistance, if applicable, to those persons described in para. 7(i) and 7(ii) prior to their relocation. For those persons described in para. 7(iii), the borrower/client will compensate them for the loss of assets other than land, such as dwellings, and also for other improvements to the land, at full replacement cost. The entitlements of those under para. 7(iii) is given only if they occupied the land or structures in the project area prior to the cut-off date for eligibility for resettlement assistance.

9. Preference will be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based. These strategies may include resettlement on public land, or on private land acquired or purchased for resettlement. Whenever replacement land is offered, displaced persons are provided with land for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken. If land is not the preferred option of the displaced persons, or sufficient land is not available at a reasonable price, non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost. The lack of land will be demonstrated and documented to the satisfaction of ADB.

10. The rate of compensation for acquired housing, land and other assets will be calculated at full replacement costs. The calculation of full replacement cost will be based on the following elements: (i) fair market value; (ii) transaction costs; (iii) interest accrued, (iv) transitional and restoration costs; and (v) other applicable payments, if any. Where market conditions are absent or in a formative stage, the borrower/client will consult with the displaced persons and host populations to obtain adequate information about recent land transactions, land value by types, land titles, land use, cropping patterns and crop production, availability of land in the project area and region, and other related information. The borrower/client will also collect baseline data on housing, house types, and construction materials. Qualified and experienced experts will undertake the valuation of acquired assets. In applying this method of valuation, depreciation of structures and assets should not be taken into account.

11. In the case of physically displaced persons, the borrower/client will provide (i) relocation assistance, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, and civic infrastructure and community services as required; (ii) transitional support and development assistance, such as land development, credit facilities, training, or

employment opportunities; and (iii) opportunities to derive appropriate development benefits from the project.

12. In the case of economically displaced persons, regardless of whether or not they are physically displaced, the borrower/client will promptly compensate for the loss of income or livelihood sources at full replacement cost. The borrower/client will also provide assistance such as credit facilities, training, and employment opportunities so that they can improve, or at least restore, their income-earning capacity, production levels, and standards of living to pre-displacement levels. The borrower/client will also provide opportunities to displaced persons to derive appropriate development benefits from the project. The borrower/client will compensate economically displaced people under paragraph 7(iii) for lost assets such as crops, irrigation infrastructure, and other improvements made to the land (but not for the land) at full replacement cost. In cases where land acquisition affects commercial structures, affected business owners are entitled to (i) the costs of re-establishing commercial activities elsewhere; (ii) the net income lost during the transition period; and (iii) the costs of transferring and reinstalling plant, machinery, or other equipment. Business owners with legal rights or recognized or recognizable claims to land where they carry out commercial activities are entitled to replacement property of equal or greater value or cash compensation at full replacement cost.

13. Involuntary resettlement should be conceived of and executed as part of a development project or program. In this regard, the best strategy is to provide displaced persons with opportunities to share project benefits in addition to providing compensation and resettlement assistance. Such opportunities would help prevent impoverishment among affected persons, and also help meet the ethical demand for development interventions to spread development benefits widely. Therefore borrowers/clients are encouraged to ascertain specific opportunities for engaging affected persons as project beneficiaries and to discuss how to spread such opportunities as widely as possible among affected persons in the resettlement plan.

14. The borrower/client will ensure that no physical displacement or economic displacement will occur until (i) compensation at full replacement cost has been paid to each displaced person for project components or sections that are ready to be constructed; (ii) other entitlements listed in the resettlement plan have been provided to displaced persons; and (iii) a comprehensive income and livelihood rehabilitation program, supported by an adequate budget, is in place to help displaced persons improve, or at least restore, their incomes and livelihoods. While compensation is required to be paid before displacement, full implementation of the resettlement plan might take longer. If project activities restrict land use or access to legally designated parks and protected areas, such restrictions will be imposed in accordance with the timetable outlined in the resettlement plan agreed between the borrower/client and ADB.

2. Social Impact Assessment

15. The borrower/client will conduct socioeconomic survey(s) and a census, with appropriate socioeconomic baseline data to identify all persons who will be displaced by the project and to assess the project's socioeconomic impacts on them. For this purpose, normally a cut-off date will be established by the host government procedures. In the absence of such procedures, the borrower/client will establish a cut-off date for eligibility. Information regarding the cut-off date will be documented and disseminated throughout the project area. The social impact assessment (SIA) report will include (i) identified past, present and future potential social impacts, (ii) an inventory of displaced persons³⁶ and their assets,³⁷ (iii) an assessment of their income and livelihoods, and (iv) gender-disaggregated information pertaining to the economic and sociocultural conditions of displaced persons. The project's potential social impacts and risks

³⁶ A population record of all displaced persons by their residence based on the census. If a census is not conducted prior to project appraisal and the resettlement plan is based on a sample survey, an updated resettlement plan will be prepared based on a census of displaced persons after the detailed measurement survey has been completed but before any land acquisition for the project.

³⁷ the asset inventory is a preliminary record of affected or lost assets at the household, enterprise, or community.

will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to involuntary resettlement matters, including host country obligations under international law.

16. As part of the social impact assessment, the borrower/client will identify individuals and groups who may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status. Where such individuals and groups are identified, the borrower/client will propose and implement targeted measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in relation to sharing the benefits and opportunities resulting from development.

3. Resettlement Planning

17. The borrower/client will prepare a resettlement plan, if the proposed project will have involuntary resettlement impacts. The objective of a resettlement plan is to ensure that livelihoods and standards of living of displaced persons are improved, or at least restored to pre-project (physical and/or economic) levels and that the standards of living of the displaced poor and other vulnerable groups are improved, not merely restored, by providing adequate housing, security of land tenure and steady income and livelihood sources. The resettlement plan will address all relevant requirements specified in Safeguard Requirements 2, and its level of detail and comprehensiveness of the resettlement plan will be commensurate with the significance of involuntary resettlement impacts. An outline of resettlement plan is provided in the annex to this appendix.

18. A resettlement plan will be based on the social impact assessment and through meaningful consultation with the affected persons. A resettlement plan will include measures to ensure that the displaced persons are (i) informed about their options and entitlements pertaining to compensation, relocation, and rehabilitation; (ii) consulted on resettlement options and choices; and (iii) provided with resettlement alternatives. During the identification of the impacts of resettlement and resettlement planning, and implementation, the borrower/client will pay adequate attention to gender concerns, including specific measures addressing the need of female headed households, gender-inclusive consultation, information disclosure, and grievance mechanisms, to ensure that both men and women receive adequate and appropriate compensation for their lost property and resettlement assistance, if required, as well as assistance to restore and improve their incomes and living standards.

19. The borrower/client will analyze and summarize national laws and regulations pertaining to land acquisition, compensation payment, and relocation of affected persons in the resettlement plan. The borrower/client will compare and contrast such laws and regulations with ADB's involuntary resettlement policy principles and requirements. If a gap between the two exists, the borrower/client will propose a suitable gap-filling strategy in the resettlement plan in consultation with ADB.

20. All costs of compensation, relocation, and livelihood rehabilitation will be considered project costs. To ensure timely availability of required resources, land acquisition and resettlement costs may be considered for inclusion in ADB financing. Resettlement expenditure is eligible for ADB financing if incurred in compliance with ADB's safeguard policy statement and with ADB-approved resettlement planning documents. If ADB funds are used for resettlement costs, such expenditure items will be clearly reflected in the resettlement plan.

21. The borrower/client will include detailed measures for income restoration and livelihood improvement of displaced persons in the resettlement plan. Income sources and livelihoods affected by project activities will be restored to pre-project levels, and the borrower/client will make every attempt to improve the incomes of displaced persons so that they can benefit from the project. For vulnerable persons and households affected, the resettlement plan will include measures to provide extra assistance so that they can improve their incomes in comparison with pre-project levels. The resettlement plan will specify the income and livelihoods restoration strategy, the institutional arrangements, the monitoring and reporting framework, the budget, and the time-bound implementation schedule.

22. The information contained in a resettlement plan may be tentative until a census of affected persons has been completed. Soon after the completion of engineering designs, the borrower/client will finalize the resettlement plan by completing the census and inventories of loss of assets. At this stage, changes to the resettlement plan take the form of revising the number of displaced persons, the extent of land acquired, the resettlement budget, and the timetable for implementing the resettlement plan. The entitlement matrix of the resettlement plan may be updated at this stage to reflect the relevant changes but the standards set in the original entitlement matrix cannot be lowered when the resettlement plan is revised and finalized. The borrower/client will ensure that the final resettlement plan: (i) adequately addresses all involuntary resettlement issues pertaining to the project; (ii) describes specific mitigation measures that will be taken to address the issues; and (iii) ensures the availability of sufficient resources to address the issues satisfactorily.

23. Projects with significant involuntary resettlement impacts will need adequate contingency funds to address involuntary resettlement impacts that are identified during project implementation. The borrower/client will ensure that such funds are readily available. Moreover, the borrower/client will consult with displaced persons identified after the formulation of the final resettlement plan and inform them of their entitlements and relocation options. The borrower/client will prepare a supplementary resettlement plan, or a revised resettlement plan, and will submit it to ADB for review before any contracts are awarded.

24. The borrower/client will use qualified and experienced experts to prepare the social impact assessment and the resettlement plan. For highly complex and sensitive projects, independent advisory panels of experts not affiliated with the project will be used during project preparation and implementation.

3. Negotiated Land Acquisition

25. Safeguard Requirements 2 does not apply to negotiated settlements, unless expropriation would result upon the failure of negotiations. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. The borrower/client is encouraged to acquire land and other assets through a negotiated settlement wherever possible, based on meaningful consultation with affected persons, including those without legal title to assets. A negotiated settlement will offer adequate and fair price for land and/or other assets. The borrower/client will ensure that any negotiations with displaced persons openly address the risks of asymmetry of information and bargaining power of the parties involved in such transactions. For this purpose, the borrower/client will engage an independent external party to document the negotiation and settlement processes. The borrower/client will agree with ADB on consultation processes, policies, and laws that are applicable to such transactions; third-party validation; mechanisms for calculating the replacement costs of land and other assets affected; and record-keeping requirements.

4. Information Disclosure

26. The borrower/client will submit the following documents to ADB for disclosure on ADB's website:

- (i) a draft resettlement plan and/or resettlement framework endorsed by the borrower/client before project appraisal;
- (ii) the final resettlement plan endorsed by the borrower/client after the census of affected persons has been completed;
- (iii) a new resettlement plan or an updated resettlement plan, and a corrective action plan prepared during project implementation, if any; and
- (iv) the resettlement monitoring reports.

27. The borrower/client will provide relevant resettlement information, including information from the documents in para. 26 in a timely manner, in an accessible place and in a form and language(s) understandable to affected persons and other stakeholders. For illiterate people, suitable other communication methods will be used.

6. Consultation and Participation

28. The borrower/client will conduct meaningful consultation with affected persons, their host communities, and civil society for every project and subproject identified as having involuntary resettlement impacts. Meaningful consultation is a process that: (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The borrower/client will pay particular attention to the need of disadvantaged or vulnerable groups, especially those below the poverty line, the landless, the elderly, female headed households, women and children, Indigenous Peoples, and those without legal title to land.

7. Grievance Redress Mechanism

29. The borrower/client will establish a mechanism to receive and facilitate the resolution of affected persons' concerns and grievances about physical and economic displacement and other project impacts, paying particular attention to the impacts on vulnerable groups. The grievance redress mechanism should be scaled to the risks and adverse impacts of the project. It should address affected persons' concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and readily accessible to the affected persons at no costs and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The borrower/client will inform affected persons about the mechanism.

8. Monitoring and Reporting

30. The borrower/client will monitor and measure the progress of implementation of the resettlement plan. The extent of monitoring activities will be commensurate with the project's risks and impacts. In addition to recording the progress in compensation payment and other resettlement activities, the borrower/client will prepare monitoring reports to ensure that the implementation of the resettlement plan has produced the desired outcomes. For projects with significant involuntary resettlement impacts, the borrower/client will retain qualified and experienced external experts or qualified NGOs to verify the borrower's/client's monitoring information. The external experts engaged by the borrower/client will advise on safeguard compliance issues, and if any significant involuntary resettlement issues are identified, a corrective action plan will be prepared to address such issues. Until such planning documents are formulated, disclosed and approved, the borrower/client will not proceed with implementing the specific project components for which involuntary resettlement impacts are identified.

31. The borrower/client will prepare semi-annual monitoring reports that describe the progress of the implementation of resettlement activities and any compliance issues and corrective actions. These reports will closely follow the involuntary resettlement monitoring indicators agreed at the time of resettlement plan approval. The costs of internal and external resettlement monitoring requirements will be included in the project budget.

9. Unanticipated Impacts

32. If unanticipated involuntary resettlement impacts are found during project implementation, the borrower/client will conduct a social impact assessment and update the resettlement plan or formulate a new resettlement plan covering all applicable requirements specified in this document.

10. Special Considerations for Indigenous Peoples

33. The borrower/client will explore to the maximum extent possible alternative project designs to avoid physical relocation of Indigenous Peoples that will result in adverse impacts on their identity, culture, and customary livelihoods. If avoidance is impossible, in consultation with ADB, a combined Indigenous Peoples

plan and resettlement plan could be formulated to address both involuntary resettlement and Indigenous Peoples issues. Such a combined plan will also meet all relevant requirements specified under Safeguard Requirements 3.

Annex to Appendix 2

OUTLINE OF A RESETTLEMENT PLAN

This outline is part of the Safeguard Requirements 2. A resettlement plan is required for all projects with involuntary resettlement impacts. Its level of detail and comprehensiveness is commensurate with the significance of potential involuntary resettlement impacts and risks. The substantive aspects of the outline will guide the preparation of the resettlement plans, although not necessarily in the order shown.

A. Executive Summary

This section provides a concise statement of project scope, key survey findings, entitlements and recommended actions.

B. Project Description

This section provides a general description of the project, discusses project components that result in land acquisition, involuntary resettlement, or both and identify the project area. It also describes the alternatives considered to avoid or minimize resettlement. Include a table with quantified data and provide a rationale for the final decision.

C. Scope of Land Acquisition and Resettlement. This section:

- (i) discusses the project's potential impacts, and includes maps of the areas or zone of impact of project components or activities;
- (ii) describes the scope of land acquisition (provide maps) and explains why it is necessary for the main investment project;
- (iii) summarizes the key effects in terms of assets acquired and displaced persons; and
- (iv) provides details of any common property resources that will be acquired.

D. Socioeconomic Information and Profile. This section outlines the results of the social impact assessment, the census survey, and other studies, with information and/or data disaggregated by gender, vulnerability, and other social groupings, including:

- (i) define, identify, and enumerate the people and communities to be affected;
- (ii) describe the likely impacts of land and asset acquisition on the people and communities affected taking social, cultural, and economic parameters into account;
- (iii) discuss the project's impacts on the poor, indigenous and/or ethnic minorities, and other vulnerable groups; and
- (iv) identify gender and resettlement impacts, and the socioeconomic situation, impacts, needs, and priorities of women.

E. Information Disclosure, Consultation, and Participation. This section:

- (i) identify project stakeholders, especially primary stakeholders;
- (ii) describes the consultation and participation mechanisms to be used during the different stages of the project cycle;

- (iii) describes the activities undertaken to disseminate project and resettlement information during project design and preparation for engaging stakeholders;
- (iv) summarizes the results of consultations with affected persons (including host communities), and discusses how concerns raised and recommendations made were addressed in the resettlement plan;
- (v) confirms disclosure of the draft resettlement plan to affected persons and includes arrangements to disclose any subsequent plans; and
- (vi) describes the planned information disclosure measures (including the type of information to be disseminated and the method of dissemination) and the process for consultation with affected persons during project implementation.

F. Grievance Redress Mechanisms. This section describes mechanisms to receive and facilitate the resolution of affected persons' concerns and grievances. It explains how the procedures are accessible to affected persons and gender sensitive.

G. Legal Framework. This section:

- (i) describes national and local laws and regulations that apply to the project and identify gaps between local laws and ADB's policy requirements; and discuss how any gaps will be addressed.
- (ii) describes the legal and policy commitments from the executing agency for all types of displaced persons;
- (iii) outlines the principles and methodologies used for determining valuations and compensation rates at replacement cost for assets, incomes, and livelihoods; and set out the compensation and assistance eligibility criteria and how and when compensation and assistance will be provided.
- (iv) describes the land acquisition process and prepare a schedule for meeting key procedural requirements.

H. Entitlements, Assistance and Benefits. This section:

- (i) defines displaced persons' entitlements and eligibility, and describes all resettlement assistance measures (includes an entitlement matrix);
- (ii) specifies all assistance to vulnerable groups, including women, and other special groups; and.
- (iii) outlines opportunities for affected persons to derive appropriate development benefits from the project.

I. Relocation of Housing and Settlements. This section:

- (i) describes options for relocating housing and other structures, including replacement housing, replacement cash compensation, and/or self-selection (ensure that gender concerns and support to vulnerable groups are identified);
- (ii) describes alternative relocation sites considered; community consultations conducted; and justification for selected sites, including details about location, environmental assessment of sites, and development needs;
- (iii) provides timetables for site preparation and transfer;
- (iv) describes the legal arrangements to regularize tenure and transfer titles to resettled persons;
- (v) outlines measures to assist displaced persons with their transfer and establishment at new sites;

- (vi) describes plans to provide civic infrastructure; and
- (vii) explains how integration with host populations will be carried out.

J. Income Restoration and Rehabilitation. This section:

- (i) identifies livelihood risks and prepare disaggregated tables based on demographic data and livelihood sources;
- (ii) describes income restoration programs, including multiple options for restoring all types of livelihoods (examples include project benefit sharing, revenue sharing arrangements, joint stock for equity contributions such as land, discuss sustainability and safety nets);
- (iii) outlines measures to provide social safety net through social insurance and/or project special funds;
- (iv) describes special measures to support vulnerable groups;
- (v) explains gender considerations; and
- (vi) describes training programs.

K. Resettlement Budget and Financing Plan. This section:

- (i) provides an itemized budget for all resettlement activities, including for the resettlement unit, staff training, monitoring and evaluation, and preparation of resettlement plans during loan implementation.
- (ii) describes the flow of funds (the annual resettlement budget should show the budget-scheduled expenditure for key items).
- (iii) includes a justification for all assumptions made in calculating compensation rates and other cost estimates (taking into account both physical and cost contingencies), plus replacement costs.
- (iv) includes information about the source of funding for the resettlement plan budget.

L. Institutional Arrangements. This section:

- (i) describes institutional arrangement responsibilities and mechanisms for carrying out the measures of the resettlement plan;
- (ii) includes institutional capacity building program, including technical assistance, if required;
- (iii) describes role of NGOs, if involved, and organizations of affected persons in resettlement planning and management; and
- (iv) describes how women's groups will be involved in resettlement planning and management.

M. Implementation Schedule. This section includes a detailed, time bound, implementation schedule for all key resettlement and rehabilitation activities. The implementation schedule should cover all aspects of resettlement activities synchronized with the project schedule of civil works construction, and provide land acquisition process and timeline.

N. Monitoring and Reporting. This section describes the mechanisms and benchmarks appropriate to the project for monitoring and evaluating the implementation of the resettlement plan. It specifies arrangements for participation of affected persons in the monitoring process. This section will also describe reporting procedures.

Appendix 4

Letters on establishment of the RETA Working Group

Azerbaijan Republic Minister of Finance	For the attention of: Mr. Olly Norojono Resident representative of Central and Western Asia Department of Asian Development Bank
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"21" May 2012

No: DX-03/01-03-548-3514

On the coordinating of Working Group under Regional Technical Assistance (TA) on Mainstreaming Land Acquisition and Resettlement Safeguards

We would like to inform you that your recommendation on appointment of the Ministry of Finance as a Focal Agency for implementation of the Technical Assistance to be carried out in Azerbaijan for the purpose of improving a capacity on supervision activities of land acquisition and resettlement for state needs is acceptable for us.

Thereby, we bring to your attention that discussions on the components of the RETA will be carried out by the group of specialists representing State Financial Supervision Service, Department of Financing Infrastructure Projects and Department of Financing Social Projects. The head of the State Financial Supervision Service - Mr. Janashir Yusifov will be the coordinator of the RETA. (Details of coordinator and members of technical group are attached to the e-mail.

Annex: 1 page

Sincerely,
Samir Sharifov

*Annex to the letter of the Ministry of
Finance dated 21 May 2012*

Information on the coordinator and members of the Technical Group for carrying out discussion within the ADB RETA

Coordinator:

Javanshir Yusifov (Head of the State Financial Supervision Service);

Tel: (012) 404 46 99 (410); e-mail: c.yusifov@maliyye.gov.az

Group members:

1- Vakil Ismayilov (Head of Sector for work with projects financed by loans, Social sectors Financing Department);

Tel: (012) 404 46 99 (515); e-mail: v.ismayilov@maliyyev.gov.az

2- Vusal Abbasov (Head Consultant of State Financial Supervision Service);

Tel: (012) 404 46 99 (415); e-mail: v.abbasov@maliyye.gov.az

3- Elshan Aliyev (Head Consultant of Sector on Financing of Transportation, Agrarian, Amelioration and Water Supply Projects, Infrastructure Projects Funding Department);

Tel: (012) 404 46 99 (514); e-mail: e.aliyev@maliyye.gov.az

Azerbaijan Republic
Ministry of Finance
State Financial Supervision Service

For the attention of: Mr. Olly Norojono
Resident representative of Central and Western
Asia Department of Asian Development Bank

"21" September 2012

No: DX-03/05-03-903

On the Working Group under Regional Technical Assistance (TA) on Mainstreaming Land Acquisition and Resettlement Safeguards

Corresponding with your recommendation, related to the Technical Assistance to be carried out in Azerbaijan for the purpose of improving a capacity on supervision activities of land acquisition and resettlement for state needs, letters were sent to the appropriate government organizations and responses were already received for the establishment of the working group and involvement of participants.

We inform you that the first introductory meeting of the Working Group is going to be held at the office of State Financial Supervision Service of the Ministry of Finance on 26 September 2012 at 15:00.

Therefore, we would like to request you to ensure participation of ADB's relevant representative for the RETA in the above mentioned meeting which is going to be held at the below mentioned address. The list of Working Group members is attached to the letter as an annex.

Address: Administrative building of the State Financial Supervision Service of the Ministry of Finance - Room 406, 4th floor, J.Mammadguluzade str. 71, Nasimi rayon, Baku City.

Annex: 1 page

Sincerely,
Head of State Financial Supervision Service,
Coordinator for the RETA

Javanshir Yusifov

Information on members of the Working Group established within the ADB RETA

No	Name, Surname	Agency	Department	Position
1	Zakir Suleymanov	Ministry of Transport	Finance and Investment Department	Head Consultant
2	Salman Gafarov	Ministry of Emergency Situations	Strategic Planning and Infrastructure Development Department	Head Consultant
3	Mubariz Aliyev	Ministry of Ecology and Natural Resources	Expertise Department	Head of Sector
4	Shahin Babayev	Ministry of Agriculture	Department on supervision of land use, amelioration and protection of nature	Head Consultant
5	Azizaga Mammadov	State Committee on Property Issues	Department of Development of State Agencies	Leading advisor
6	Aligulu Jabbarov	State Land and Cartography Committee	Department on Land structure, land reform and Work with regions	Head Consultant
7	Sanan Huseynov	State Committee on Deals of Refugees and IDPs	Department on Settlement, Migration and Employment	Head
8	Rafael Mammadov	Azerbaijan Amelioration and Water Farm JSC	General Department of amelioration and irrigation objects which are under construction	Deputy Director
9	Faig Mammadov	Azerroadservice JSC	Land Acquisition Division	Head
10	Anar Budagov	Azerenergy JSC	Department of Capital Construction	Head
11	Avtandil Bayaramov	Baku Metropolitan Administration under the Cabinet of Ministers	Technical-Industrial Department	Head
12	Tamilla Mehdiyeva	Baku City Executive Power	Economic Committee	Head of Sector

CASE STUDY

Loan 2354: AZE-Road Network Development Program (Tranche 1)

A. Background

1. This case study refers to the LARP prepared and implemented under tranche 1 of the Road Network Development Program (the Program) for section A of the Masalli-Astara highway. The Program is financed by ADB under a Multi-tranche Financial Facility of USD 500 million with Azerroads as the Executing Agency (EA). The tranche initially entailed the construction of a 59 km four lane highway between Masalli and Astara but during PPTA preparation was then limited to section A (km 0-26) of the road. Sections B and C covering the rest of the road are now implemented under tranche three. Among the projects financed by ADB in Azerbaijan this was the first entailing substantive LAR impacts and the first to be classified as category A for involuntary Resettlement³⁸.

2. Tranche 1 preparation started under the PPTA in December 2006. The MFF loan and tranche 1 were approved in September 2007 based on a LARF and the draft LARP for section A. The final LARP for section A was then approved only in November 2009 and was fully implemented by the end of 2010. As at the time of loan approval it was expected to finalize and implement the LARP in one year the above represents a delay of about two years for the tranche 1 LARP (LARP A). The delay was even stiffer for LARP B and C under tranche 3 which were approved only in 2011 and are currently in the final implementation phases.

3. The above delays were partly due to delays in the hiring of the supervision consultants who among other tasks had to finalize the LARP and partly to LAR planning complications typical of the first attempts to implement the ADB policy in new countries. On the one hand the EA was unfamiliar with the policy requirements and ADB and consultants had no prior experience with LAR in Azerbaijan. On the other, the Azeri LAR Country System was at that time still rooted in a project planning approach where LAR preparation followed design and in a legal/administrative framework hardly reconcilable with ADB policy and project processing requirements (at that time the current land acquisition law was yet to be promulgated). An important reason for the delays was also insufficient coordination between the EA and other relevant Government Agencies/

B. LARF and Draft LARP Preparation: lack of prior mainstreaming of the ADB policy requirements

4. PPTA work was dominated by the priority of approving the loan as quickly as possible. To avoid the complication entailed by a full Government review and approval, the LARF was approved pro-forma by the EA without extensive discussions with other Government agencies with responsibility on LAR matters. Without a comprehensive agreement on the LARF provisions from these agencies, LARP preparation was carried out by the consultants with minimal contributions from them and was marred by continuous discussions on entitlements required by ADB policy but not by the local system (i.e. the allowances for vulnerable and severely affected APs). Particularly difficult was the valuation of affected items since, at that time the local LAR system was changing rapidly and at the beginning of LARP preparation there was only a general requirement to compensate land at market/replacement rates but no official methodology and process to do so was in place. For valuation purposes the consultants relied on the Rayon Executive

³⁸ LARP A for tranche 1 affected 605 APs (2,481 individuals). Land losses amounted to 148 ha of which, 88.9 ha were. 19 APs lost also businesses and structures.

Powers³⁹ or directly asked the value of the land to the APs. The unit rates so obtained were then presented to the APs during consultation meetings and then included in the LARP which being a preliminary document was approved only by the EA and not through an official Decree⁴⁰

C. LARP Finalization and LARP Approval: Lack of effective and quick inter-agency coordination

5. Following loan approval LAR Preparation stalled as it took nearly one year to hire the supervision consultants. When the LARP update work finally restarted at the end of 2008 the original document had been already challenged by the Land and Cartography Commission for several format deficiencies including the type of maps used in the document. Then, when finally the surveys based on detailed alignments were finished, the LARP was updated and sent out for official Government approval. In the review process that preceded the promulgation of the Decree, however, the Ministry of Finance (MOF) questioned the validity of the land prices used in the LARP⁴¹ and initiated a review of the valuation. To verify the current land prices in the project area, MOF obtained information on recent land sales from the State Real Estate Registration Agency (SRERA) and fielded staff to conduct informal survey in the project area. In October 2009, the Government endorsed the LARP with lower land compensation rates based on the MOF review, initiated the AP notification process and the compensation to APs who had accepted the new land compensation rates. In doing so the compensation for severe impacts was not delivered as the provision is not included in local laws.

D. Poor AP consultation and complaints management

6. The actions taken by MOF caused a complaint from the APs who objected on the compensation rates reduction. The complaint was filed by a local NGO (Oil Workers Oil Workers' Right Protection Organization) with the ADB Office of the Special Project Facilitator (OSPF).⁴² To solve the issue, an ADB special review mission was fielded in October 2009 to investigate the reasons of the complaint. On the one hand the mission noted that AP consultation had not been effective and that the complaint and grievances management mechanisms required by ADB policy was not in place. On the other it noted gaps and transparency issues in the valuation documentation and lack of a clear methodology justifying the adjusted rates. The final recommendation of the mission was an additional review of the compensation rates and the initiation of a new AP consultation campaign to better inform the AP that the reason of the adjustment of the compensation rates was due to a change in the law not to improper implementation of the LARP. ADB also requested the delivery of the severe impacts allowances. Following the ADB inputs MOF and MOT further reviewed the compensation rates in Masalli district and rectified the gaps in the notification and consultation activities that were at the basis of the complaint by engaging in a new round of consultations. After this action was taken the AP and the NGO accepted the changes in the LARP and withdrew the complaint. In the process however several months were lost due to slow inter-agency coordination and delayed or poor implementation of AP consultation, grievance redress and project implementation monitoring.

7. LARP implementation for Section A was substantially completed by the end of 2010. The only reported pending are cases where APs are out of the country or where there are pending inheritance issues

³⁹ Market prices were determined through field surveys conducted by staff/representatives from the district and municipal governments together with ARS staff without a defined and documented methodology. The Results were discussed in a valuation commission meeting at the district, along with other information gathered from the Real Estate Registration Service and were then endorsed by the commission.

⁴⁰ The announcement of compensation rates to APS prior to completing the review and approval process under the Azerbaijan procedures turned out to be a challenge in raising expectations and generating complaints.

⁴¹ In April 2009, the Cabinet of Ministers' issued decision No 54 which outlines the procedures for calculating the acquisition price of land for public needs, including general methodologies for determining the market price of the acquired property. It also requires the engagement of independent land appraisers and provides guidance on the notification and documentation requirements related to land acquisition. To avoid delays in LARP implementation the EA sought an exemption from the MOF decision, given that the land acquisition activities have started prior to the effectivity of the decision. The exemption however was not granted.

⁴² The same issue was raised in the World Bank-financed section 3 Alat-Masalli Section, which also resulted in delay in the project implementation.

and compensation for municipality-owned lands which have issues related to documentation. For such cases, the amount was kept in an escrow account to enable compensation once the issue has been resolved.