

Development induced involuntary resettlement in Georgia



Green Alternative



Researched and published by Green Alternative under the project “Promoting property rights protection in tourism development zones”. The project is jointly implemented by Green Alternative Association, Georgian Young Lawyers Association, Transparency International – Georgia, Georgian Regional Media Association with financial support from the Open Society – Georgia Foundation.

Green Alternative gratefully acknowledges the financial assistance of the Open Society – Georgia Foundation.

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Executive summary

A range of large scale infrastructure, energy and tourism development projects have been implemented in Georgia recently. Alongside with their positive effect often they were accompanied with involuntary displacement of project affected individuals (involuntary displacement, as a rule, is associated with loss of houses, shelter, income, land, habitat, property and access to resources and services).

As Georgia has not yet developed national policies and legislation for regulating development induced involuntary resettlement, the practices applied also vary. The approach usually depends on whether the international financial institutions are involved in the development projects or not. International financial institutions are usually bound by their operational policies, which define the approaches, rules and procedures to be applied in case involuntary resettlement is considered indispensable. Thus, the projects with the involvement of these institutions are implemented in compliance with their safeguard policies.

When the project is initiated by the Georgian President/Government and no international financial institution is involved, the complexity of involuntary displacement is usually disregarded. The impact of displacement on local communities is not properly assessed and the resettlement process is not well planned; As a result, numerous problems have their effect on the process. The cases investigated by the Georgian non-governmental organizations in the Georgian regions testify violations of land tenure rights. The tenure rights are often violated under the pretext of supporting unfounded projects with doubtful economic benefits. Regrettably, the state institutions, profiting by imperfect legislative and institutional frameworks, try to simply seize the land and other property, ignoring communities' interests and violating their tenure rights. The practice testifies that courts in such cases do not turn out to be an efficient mechanism to restore the infringed rights.

To help to improve situation, Green Alternative has undertaken a study in the area of development induced involuntary resettlement. The study reviews the Georgian policies, legislation and institutional framework for regulation of development induced involuntary resettlement, describes practices, as well as includes a number of recommendations for future actions.

Based on the analysis of the policies, legal and institutional framework, as well as practices applied so far, following **conclusions** were made:

1. Georgia does not have a national policy specifically for development induced involuntary resettlement; neither has it have general policy defining approaches to displacement associated with natural disasters, conflicts and development projects.
2. The legal and institutional framework is extremely fragmented; it does not cover the aspects which should necessarily be regulated / managed under the international agreements to which Georgia is a party. The safeguards provided under the Georgian legislation are far from those of the international financial institutions that support projects implemented in Georgia for more than two decades now.
3. The Georgian legislation does not envisage assessment of need and impact of displacement during project planning, neither has it consider involvement of affected parties in the planning and decision-making processes.
4. The Georgian legislation does not require preparation of resettlement plans which would include the results of the displacement impact assessment, propose compensation and mitigation measures. Consequently, there are no requirements in the legislation for formal approval of such plans.
5. While according to international approaches, all the displaced people are entitled to receive compensation regardless of whether or not they hold formal titles to their land or property, the Georgian legislation requires payment of compensation only in case the property rights are registered in the Public Registry.
6. The Georgian legislation does not envisage compensation of non-material losses and costs.
7. The Georgian legislation does not envisage provision of assistance to project affected communities during resettlement, as well as during transition period.

8. There are no designated institution(s) in Georgia that would have been responsible for development of national policies and legislation regulating issues related to development induced involuntary displacement, monitoring of resettlement processes and assessment of situation in this area, keeping and updating databases of the projects that involved (and/or would likely involve) forced displacement, as well as providing public access to such information.

9. Information on projects that involved or will likely involve involuntary resettlement is chaotic and incomplete. Information about displaced persons/communities is practically unavailable when international financial institutions are not involved in the development projects.

10. Eminent domain law, as well as practice of property expropriation, requires significant improvements.

The situation in Georgia in the area of development induced involuntary resettlement is complex and many-sided. It will require the activity and efforts of many stakeholders to improve the situation. Below are some **recommendations** on necessary measures to be taken in future.

Measures to be undertaken by Georgian Government

Proceeding from topicality of the issue there is an urgent need of development of national policy for development induced involuntary displacement. The policy shall be in conformity with pledges that Georgia has committed to in the area of human rights protection.

Similarly, it is necessary to improve of institutional structure and to strengthen governmental agencies to undertake state control of development induced involuntary displacement. Strengthening governmental agencies implies both, empowerment and providing with financial, human and technical resources.

It is necessary to establish legal decision-making procedures on development induced involuntary displacement which shall ensure informed and grounded decisions by decision-makers. Participation of the public, especially project-affected individuals/communities in decision-making process is equally essential.

It is impossible to separate decision-making process on involuntary displacement from general decision-making procedure on development project; procedures for granting construction and environmental permits for implementation of development projects cannot ensure consideration of involuntary displacement issues; permit-granting agencies are not competent in making such decisions. Thus, integrated approach to consent by the State (e.g. government) should be considered in order that all the aspects of the project, i.e. economic feasibility, impact on social and natural environment, inevitability of involuntary displacement, etc. are considered.

Activities to be undertaken by international financial institutions

Involvement of international financial institution in development projects is to a certain degree a guarantee of higher standards set by Georgian Law being observed, since the development projects in this case governed by these institutions' policies. However, it does not rule out the instances of violation of this policy and of international standards of human rights.

Undoubtedly, international financial institutions set higher standards when involuntary displacement is concerned, however these standards are applied only during implementation of specific projects and do not influence other projects implemented without their participation, and they do not entail positive changes in the policy and approaches of the country. As a result, individuals/communities resettled within the projects without the involvement of international financial institutions are discriminated since lower standards are applied to them.

International financial institutions may help Georgian authorities – they have expertise, experience and capacity to help the Government in reviewing and strengthening the policies, legislation and institutional structure related to involuntary displacement. They may also help in applying best practices “out” of their projects. This would support the protection of the rights of all Georgian citizens, regardless of whether or not the project involves an international financial institution.

Activities to be undertaken by companies implementing investment projects

The companies need to distance themselves from the government as much as possible and to avoid enjoying its support when acquiring right to land. They should make their objectives clear to the population from the very beginning and establish good relationships with project affected communities; it is in consultations and with agreement of these communities that the companies shall implement their projects. Otherwise the relationship with local population may grow into confrontation and conflict, which in its turn, may slowdown the project and undermine the company's reputation; it may also threaten stability on a local, and possibly, national levels.

Activities to be undertaken by NGOs

It is important that NGOs continue their support to people in registering land and other property rights at Public Registry. Obviously, when property is officially registered, the risk of violation of land tenure rights reduces, and the opportunities of restoration of infringed rights increases. At the same time it should be mentioned that involuntary displacement is a complex phenomenon, comprising not only the right to land but also other human rights related issues, as provided in international human rights agreements.

Proceeding from the above it is important that NGOs increase their efforts towards improving the situation in the area of development induced involuntary displacement at all levels. This implies advocacy for developing efficient policies and legal regulation in this area, as well as monitoring of specific projects that may cause and/or have caused involuntary displacements; supporting people and communities, affected by these projects so that their rights and interests are protected (including by raising awareness of local communities, conducting trainings, providing legal advice, participating in negotiations with the investors/projects' proponents, making inventory of resources and infrastructure local communities depend on, etc.).

Introduction

Background information

A range of large scale infrastructure, energy and tourism development projects have been implemented in Georgia recently. Alongside with their positive effect often they were accompanied with involuntary displacement of project affected individuals. Involuntary displacement, as a rule, is associated with loss of houses, shelter, income, land, habitat, property and access to resources and services. Resettlement is the process of providing assistance to involuntarily displaced persons so that they may regain the lost social, economic and cultural benefits. Involuntary displacement usually entails break down of local production system, loss of work and income, weakening of community structure and social network; individuals may find themselves in the environment where less resources are available or where their social and productive skills are less applicable. Involuntary displacement affects not only displaced individuals/communities but also the left behind population (a group of people, who were not displaced but are affected due to loss of access to their neighbors and resources), as well as host population (individuals/communities, who host the displaced persons, which may impact them either positively or negatively). Hence, when implementation of development project may cause involuntary displacement, it is important that the need for displacement is established on an early stage and the resettlement process is planned and further monitored so that the need for displacement is minimized and displaced persons recover the losses incurred as a result of displacement.

As Georgia has not yet developed national policy for development induced involuntary, the practices applied also vary. The approach usually depends on whether a project involves the international financial institutions or not. International financial institutions are usually bound by their operational policies, which define the approaches, rules and procedures to be applied in case of involuntary resettlement. As a result, the projects with participation of these institutions, should be implemented in compliance with the requirements of their policies. When the project is initiated by Georgian President/Government and no international financial institution is involved, the complexity of involuntary displacement is usually disregarded. The impact of displacement on local communities is not properly assessed and the resettlement process is not well planned. As a result, several problems have their effect on the process; often human rights violations occur too.

The aim of this study is to show the shortcomings of existing in Georgia system, based on the analysis of the policies, legislation, institutional structure and practices applied in the area of development induced involuntary displacement and to develop recommendations to improve the situation.

Methodology

During the study many different documents, related to involuntary displacement related to development projects were found and analyzed. Among them are international legal instrument, guideline documents of international organizations, analytical studies, policy-defining document in the area of involuntary displacement in Georgia and the legislation, regulating this area. The report is grounded on analyzes of different documents, as well as on Green Alternative's years of experience of monitoring implementation of development projects that resulted in involuntary displacement of communities and financed by international financial institutions.

Besides, field studies in different regions of Georgia were carried out with financial support of Open Society Georgia Foundation within the project "Facilitation of Protection of Property Rights in New Tourist Areas" in order to reveal the facts of encroachment on property. On the basis of meetings and interviews with the affected population, as well as with local authorities three reports were published: "Problems with property rights protection by the example of Gonio village" (March 2011), "Problems with property rights protection by the example of Mestia" (July 2011) and "Unprotected property right in Georgia: third report" (March 2012). Hence, the section of this report, describing land tenure rights violations is partly based on the information and conclusions provided in above reports and partly – on the cases covered in the Georgian media.

The structure of the report

In the first chapter the national policy, legal framework and institutional structure for development induced involuntary displacement is reviewed. The next chapter presents practices applied in Georgia where development projects involve involuntary displacement. First - the development projects with the involvement of international financial institutions are reviewed, then – those without participation of these institutions. In the same chapter the cases of property expropriation for public need are viewed, and in the end of the chapter – examples of violation of land tenure rights are presented. Final chapter offers recommendations on necessary arrangements to be carried out by Georgian Government, international financial institutions, companies implementing investment projects and NGOs.

1. Involuntary resettlement in Georgia: policy, legislation and institutional framework

1.1 Involuntary resettlement policy

Involuntary displacement is a serious problem in Georgia. According to the Internal Displacement Monitoring Centre (IDMC) data, by June 2012, in the country with about 4,5 million population¹ there have been about 256 thousand people displaced from Georgia's occupied territories to undisputed territories (about 236 thousand – from the 1990s conflict, 17 thousand – from the 2008 conflict and 3 thousand – who had been displaced more than once). As of the beginning of 2011, natural disasters had also displaced 116 thousand people. Note should be taken of the fact, that it was not clear whether any displaced by natural disasters had also been displaced by conflict². Whereas the registration of IDPs as a result of conflicts and disasters is more or less well organized³, there is no single system of data collection about the development projects that entailed resettlement; hence there are no reliable data about people/communities, who suffered physical or economic resettlement.

There are no single or thematic (by causes – conflicts, natural disasters, development projects) national policy documents in Georgia for prevention of involuntary displacement. There are, though, thematic strategy documents and action plans for those, who have already been displaced.

For example, in 2007 the Government of Georgia approved National Strategy for Internally Displaced Persons, IDPs (from the occupied territories)⁴, which sets forth Georgian government's approach towards the IDPs, describes main objectives, and sets general principles for the activities to be implemented to reach the objectives. It should be noted that the strategy maintains return as a settlement option for IDPs, but it also supports their local integration in their places of refuge. Although it adopted it in 2007, the government only showed genuine will to implement this strategy after the 2008 war with Russia when return became a distant prospect⁵. After adoption of the strategy in 2009, action plan for 2009-2012 was adopted⁶. In 2011 the development of next 2012-2014 action plan began⁷.

Though natural disaster induced resettlement is a long-standing problem to Georgia, the government policy in this areas is less structured and mainly involves response to specific disasters and providing compensations. Still some progress can be observed recently in terms of taking integrated approach to addressing the problem, which can partly be attributed to the donors' increased interest in this area. For instance, in 2006 Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia initiated the programme that aimed at establishing the database of households affected by natural disasters, as well as those in need of urgent resettlement.⁸

As for development induced involuntary resettlement, there is no government attempt to plan or develop policy in this area. Moreover, the impression is that the state institutions see no need of addressing this problem; involuntary displacement under development pretext is not perceived as human rights violation and extreme measure. Analysis of legal and institutional frameworks presented in sub-sections below, as well as Georgian practice of involuntary resettlement covered in chapter 5 reaffirm our opinion.

¹ Visit website of the National Statistics Service of Georgia: <http://geostat.ge/>

² The Internal Displacement Monitoring Centre (IDMC). 21 March, 2012. Country page: Georgia. Georgia: partial progress towards durable solutions for IDPs. <http://www.internal-displacement.org/8025708F004CE90B/%28httpEnvelopes%29/F50D1E30A796C7C1C12579C30051F54D?OpenDocument&count=10000>

³ The Ministry of Internally Displaced Persons from the Occupied Territories, Refugees and Accommodation is the sole collector of national figures on IDPs

⁴ Georgian Government Resolution No.47 of 2 February 2007 "On approval of the National Strategy for involuntarily resettled/displaced persons".

⁵ The Internal Displacement Monitoring Centre (IDMC). 21 March, 2012. Country page: Georgia. Georgia: partial progress towards durable solutions for IDPs

⁶ Resolution # 403 of 28 May 2009 of the Government of Georgia on approval of 2009-2012 action plan to implement National Strategy for IDPs/refugees".

⁷ Radio Freedom, 15 June 2011. "Action Plan for 2012-2014. Available at: <http://www.radiotavisupleba.ge/content/article/24235736.html>

⁸ Green Alternative, 2008, "Natural disasters risk management and migration caused by natural disasters in Georgia. Available at: www.greenalt.org

1.2 Georgian legislation on involuntary resettlement

Legal regulations with regard to the right to adequate housing and involuntary resettlement are dispersed in different laws and by-laws. Below basic legal regulations are briefly reviewed.

The Constitution of Georgia

The Constitution does not contain direct provisions on housing rights or right to adequate housing, though article 7 provides that *“the state shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values”*. At the same time, article further specifies: *“while exercising authority, the people and the state shall be bound by these rights and freedoms as directly acting law”*. It can be assumed that article 7 implies housing and property rights, provided in different international instruments, among them International Covenant on Economic, Social and Cultural Rights, International Covenant on Civic and Political Rights.

With regard to application of international law paragraph 2 of article 6 of the Constitution is noteworthy as it provides that the legislation of Georgia shall correspond to universally recognized principles and regulations of international law. Besides, according to the same article, *“An international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic statutory acts”*.

Article 21 of the Constitution recognizes property and inheritance rights. Paragraph 2 of this article provides for restriction of these rights *“for the purpose of pressing public needs”* and only *“in the cases determined by law and in accordance with a procedure established by law so that the essence of property right is not violated”*.

Paragraph 3 of article 21 of the Constitution determines that property expropriation shall be permissible:

- For the purpose of the pressing public need in the circumstances as expressly determined by law, under a court decision with prior, full and fair compensation;
- For the purpose of the pressing public need in the case of urgent necessity determined by the Organic Law under a court decision with prior, full and fair compensation.

This paragraph also specifies that the compensation shall be tax exempt.

For exercising constitutional norms related to property expropriation and establishing legitimate objectives and specific procedures the **Law on Rules for Expropriation of Property for Urgent Public Necessity (the Eminent Domain Law)** and **Organic Law on Rules for Expropriation of Property for the Public Need in Case of Urgent Necessity (Emergency)** were adopted (the laws to be discussed below). As for the restriction of property right (paragraph 2 of article 21 of the Constitution), there is no specific law to determine legitimate objectives and procedures of restriction as is the case with expropriation; it is possible, though, to come across property rights restriction clauses in various laws⁹.

⁹ e.g. the Constitutional Court, in the case “Danish citizen Heike Chronqvist v Georgian Parliament” concluded that the norm of Para 1 of Article 4 of Georgian Law “On the ownership of agricultural land”, in the essence is property restriction as provided in p. 2 of Article 21 of Georgian Constitution. According to the disputable norm a foreign natural person may obtain agricultural land property right only by inheritance or if he/she, as a Georgian citizen, owned the land lawfully. A foreign natural person should have had alienated agricultural land owned by him to a Georgian citizen, household or/and a legal person registered in Georgia within 6 months after the onset of ownership. Otherwise he/she would be deprived of the land right in favor of the state. Constitutional Court by its 26 June 2012 decision recognized the above norms unconstitutional. “Para 1 of Article 4 of the Law of Georgia on agricultural land ownership” contains similar norms for legal persons registered abroad with only difference, that legal persons registered abroad can receive agricultural land only by inheritance. The above decision of Constitutional Court refers only to foreign natural persons; thus p.1 of Article 4 of the law of Georgia “On agricultural land ownership” provides for the possibility of property right restriction only for legal persons registered abroad.

Civil Code of Georgia

Civil Code of Georgia contains a number of norms related to housing, land and property. Second book of the Code is fully dedicated to property law: section 1 defines the concept and types of property, section 2 – possession, types and different rights and obligations. Section 3 is fully dedicated to property types and covers such issues as the content of the right of ownership, law of neighboring tenements, acquiring and loss of ownership, limited use of property belonging to another person etc.; Section 4 deals with Public Registry – it explains the purpose of Public Registry and also indicates, that a separate law shall govern the procedures for functioning and providing access to the Registry.

Law of Georgia on Agricultural Land Ownership

The law defines the rule for the acquisition and sale of farmland. It was adopted in 1996 and underwent numerous changes; it does not contain half of its original provisions to date.

According to the law, a farmland plot is the land registered as a farmland plot in the Public Registry that is used for production of plant and animal products – with or without premises or ancillary structures thereon. Besides, the law provides that farmland plots are also: (a) family-owned share of the pasturelands, hay lands and forests of a village, community or legal entities; (b) the part of farmland that can be the subject to separate title.

Article 4 defines possible holders of proprietary right to an agricultural land plot. These are: (a) a Georgian citizen, (b) a household, (c) a legal entity registered in Georgia in accordance with the laws of Georgia (d) a foreigner and a legal person registered abroad – only to inherited agricultural land plot¹⁰, (e) a foreigner – only to agricultural land plot, that he/she lawfully owned as a Georgian citizen.

It should be noted that, alongside with private and state ownership, the law recognizes community ownership of agricultural land but only in high mountainous regions (paragraph 3 of article 4). At the same time the law does not explain the concept of community ownership.

Articles 12 and 13 of the law refer to the state's preemptive right. According to the law, the Estate Fund shall be set up with the State Budget of Georgia to regulate the Georgian land market and finance the programs for the use and protection of land and restoration and maintenance of land fertility. It is through this Fund that the State shall have the preemptive right. The existing legislation does not explain in what manner and to what extent shall the State have the preemptive right. The law only provides for the cases when this right shall not be exercised. One of them is when the owner has transferred the agricultural land plot “for the state or public necessities or if the owner was deprived of it”. The law, here, introduces three different notions “alienation for state necessities” “alienation for social necessities” and “deprivation”.

Article 19 of the law prohibits use of agricultural land for non-agricultural purposes, except as provided by law¹¹.

Law of Georgia on Rules for Expropriation of Property for Urgent Public Necessity

(The Eminent Domain Law)

The law passed in 1999 sets the rules for granting the right of expropriation for urgent public necessity and expropriation procedures.

The law explains “the right of expropriation” as a onetime right to deprivation of property for necessary public needs and insuring appropriate compensation. The compensation, according to the law can either be a monetary sum or an offer to the owner of alternative property, both of which such types of compensation must be worth no less than the market value of the property which is being expropriated.

¹⁰ See previous (39th) reference

¹¹ It is noteworthy that the Law “On environmental Permit” (abolished in 2007) required preliminary study in terms of environmental impact and receipt of a permit from authorized institution for the following activities: use of agricultural land plot (30 to 50 ha) for non-agricultural purposes (second category activity as defined by the Law); use of agricultural land plot (20 to 30 ha) for non-agricultural purposes (third category activity as defined by the Law). The acting Law “On Environmental Impact Permit”, which substituted the Law “On Environmental Permit” does not provide for preliminary studies for this type of activity for receiving the permit.

According to the law, the right of expropriation may be granted to: a state agency, local authority, a legal person of public or private law – in their favor.

The law provides exhaustive list of the activities (projects) for which a property can be expropriated. These are:

- Construction of roads and highways;
- Construction of railways;
- Construction of oil, gas and oil products' pipelines;
- Construction of power transmission lines;
- Construction of water supply, sewage and rainfall collector facilities;
- Laying telephone cables;
- Laying television cables;
- Construction of buildings and facilities of public use;
- Works necessary for national defense;
- Mining of minerals.

It is interesting to note, that still another possibility for exercising the right of expropriation is provided by above mentioned Law on Agricultural Land Plot Ownership. According to article 4 of this law the norms under the Eminent Domain Law should be applied if legal entities registered abroad, do not hand over agricultural land plots to a Georgian citizen, a household or/and Georgia-registered legal entity in six months after registration of ownership rights. In this case a foreign-registered legal entity shall be deprived of the land plot in favor of the State. It is worth mentioning that the same rule, until 26 June 2012, applied to foreign natural persons. However, the Constitutional Court of Georgia, by its Decision of 26 June 2012 allowed foreign citizens to buy agricultural land plots in Georgia¹².

The Law on Mobilization also provides for the right to expropriation. In particular, article 13 of the law states that for Georgian armed forces' needs, during mobilization, "military transport obligation" shall be introduced, implying expropriation of transport means from state agencies and organizations – for free, and from natural persons and legal persons of private law – for appropriate compensation after expiration of martial law. The article further specifies that the procedures under Eminent Domain Law shall be applied during expropriation of the property.

With regard to the list above it should be mentioned that initially the law did not envisage property expropriation for mining activities. This amendment was introduced in the law in 2005 to establish favorable conditions for implementation of extractive industry projects. Within the framework of this reform extractive industry projects have also been released of the obligation of undertaking Environmental Impact Assessment and obtaining environmental consent.

Much before the 2005 amendment, 1999 Law on Oil and Gas¹³ provided for possible deprivation of property for public necessity with only difference – this law provides for only temporary deprivation: the first article explains "eminent domain" and states that it is "provisional deprivation of the ownership of land and private property on it on the ground of court decision in case of urgent public necessity with the payment of appropriate compensation". The law further clarifies that eminent domain is exercised in accordance with the Constitution of Georgia and the Law on Oil and Gas.

With regard to the list of activities it should be mentioned that the criteria for selecting the activities (the criteria of proving public necessity) and thresholds are not set by the law – it is not clear, for instance, what is the length and capacity of the pipeline that shall prove its need, what is the meaning of "construction of buildings and facilities of public use" and what kind of buildings and facilities are meant here.

According to the law, the decision on expropriation shall be taken in two stages:

¹² See the Decision No. 3/1/512 of 26 June 2012 on "Danish citizen Heike Qronckvist vs. Georgian Parliament" http://www.constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=692&action=show

¹³ This law separately regulates oil and gas operations related issues, while the issues related to other minerals is regulated by the "Law on minerals" and appropriate by-laws.

On the first stage - Minister of Economy and Sustainable Development shall pass an order proving that expropriation of property for public needs is inevitable. The same order shall identify agency/organization that can be granted the expropriation right.

On second stage – regional (city/municipal) court takes the decision – the court assigns the person authorized of expropriation, describes in detail the property under expropriation and indicates to the necessity of appropriate compensation to the owner. Pursuant to article 5 of the law, the court judgment shall be enforced immediately. The law, on this stage, establishes the list of necessary documents to be presented to the court by the person interested in obtaining the expropriation right.

It is noteworthy that the law does not provide for the character of information (if any) to be presented to Ministry of Economy and Sustainable Development for the first stage. Neither does the law provide for an obligatory study/assessment of inevitability of expropriation, prior to the Ministry (Minister's) decision; likewise, the law does not provide for any form of informing/consulting the owners at early stage of decision-making.

Article 4 of the law is dedicated to publishing information. Pursuant to this article the property owners shall be notified twice about the planned expropriation:

For the first time – via media, after the conclusion of the first stage of decision-making. The law obliges party interested in obtaining the right to expropriation to publish in “central and respective local media” the following information: short description of the project and terms of its implementation, short description of the territory and property subject to alleged expropriation. Noteworthy is the fact that the law provides for only one form of informing the property owners – publication in media.

For the second time – prior to the second stage of decision-making. Article 4 provides for an obligation of informing the property owners about the date of applying to the court and the date of court hearings. Nothing is said about who and how should fulfill this obligation (e.g. publication in the media, or informing each owner in person).

It is worth noting that at none of the stages the law sets the time of publishing the above information – what are the timeframes for publishing the information after the Ministry decision and/or prior to the second stage (before applying to court).

Articles 6 and 7 of the law touch upon the stage after the court decision – i.e., when the interested party has already been granted the expropriation right.

Pursuant to the law it is on this stage that the expropriator shall evaluate the property and start negotiations with the property owner on compensation forms and amount. For the evaluation of the property and establishing the form and amount of compensation the expropriator shall invite an independent expert at his own expense. The property owner also has the right to call an independent expert, but then he/she will have to pay the expenses. Along with other details, the law specifies that the monetary amount must include an amount of compensation for property which is not being expropriated if that property, even if it is worth little by itself, is connected with the property being expropriated and would be rendered useless without the expropriated property. The expropriator, under the law, is obliged to present assessment of the amount of compensation to the owner in writing. The law also sets (article 7) the list of necessary documents to be presented to the property owner prior to expropriation.

In case the agreement between the owner and the expropriator has been reached they sign a contract on compensation of the property under expropriation. In case of disagreement the sides may apply to court.

The court can assign an independent expert for the assessment of property under expropriation. On the basis of the expert's conclusion and the evidences, presented by the sides, the court will make the final assessment. Besides, the court has the right to determine the type of compensation on the basis of a reasoned petition of one of the sides.

One of the final articles of the law concerns the issue of assessing and fixing the price of the land plot to be expropriated. In particular, the law explains that the price of the crops, as well as the income, the owner would get from current year's harvest, should also be taken into account while assessing agricultural land plot. If the agricultural land plot was cultivated after the assessment, price of the crop shall not be taken into account.

That is the only provision with regard to the land and compensation in the law. Compensation of the damage occurred to the owner due to expropriation is touched upon in another law to be discussed below.

Finally, it should be mentioned that the decision-making procedures on property expropriation underwent several changes over the years. For example, from the very beginning (1999) the law provided for decision-making in two stages, however in contrast to the present one, the decision on the first stage would be taken not by the Minister of Economy and Sustainable Development but by the President (changed as a result of 15 October 2010 amendments).

1999 version of the law provided for another procedure for the second stage too; on this stage the decision would be made by circuit court. As a result of 2006 amendments the circuit court had been replaced by regional (city) courts. This happened due to reorganization of judiciary system, but note should be taken of the fact that collective decision of the court (consisting of three judges) had been substituted by the sole decision of a regional (municipal) judge¹⁴.

Alongside with the above change, a significant addition was introduced in the law - it is that the regional (city) court decision should be enforced immediately. According to Georgian Young Lawyers' Association this means that the appeal against the city court decision will not hamper the execution of expropriation. If the higher court changes or annuls the decision of the lower court it will be difficult to recover the original status quo. This will entail illegitimate restriction of the property owner's constitutional rights (e.g. if as a result of expropriation the owner's premises were destroyed, or his/her land plot became unsuitable for agricultural activities)¹⁵.

Speaking about the Eminent Domain Law we should remember the 1999 **Law on Oil and Gas**, which also sets certain procedures of property expropriation for conducting oil and gas operation (article 20 of the law is dedicated to this issue). According the law, if the land required for oil and gas operations is owned by a natural or a legal person (not the State), the investor shall receive an exclusive right to the land from the landowner (for the term of duration of the oil and gas contract) prior to signing the contract with the State. If, within a certain time, the investor does not reach agreement with the landowner on the use of the land for oil and gas operations, the investor has the right to apply to the Agency of Natural Resources – a legal person of public law under the Ministry of Energy and Natural Resources - for initiation of eminent domain procedures. The law entitles the agency to initiate eminent domain procedures through filing an application to the court. The investor shall cover all the costs and expenses required for eminent domain procedures, including the compensation amount prescribed by court in favor of the landowner.

The Law of Georgia on Compensation of Cultivation Costs of Compensatory Land and Damage Incurred as a Result of Allocation of Agricultural Land for Non-Agricultural Purposes

The law defines compensations to the private landowners or land leasers for limiting their ownership rights or for worsening the land plot quality and productivity. According to the law, when changing the land category from agricultural into non-agricultural both, the losses due to deprivation or temporary occupation and the compensatory land cultivation expenses should be compensated. The law also defines the list of objects to be reimbursed. In particular the law provides that the price of constructions should be reimbursed as well as the cost of their removal to another site; besides, the cost of perennial plants, land productivity, unfinished production (plowing, seeding, fertilizing etc.), crops, lost profits and other damages occurred due to land property acquisition shall be reimbursed to landowner. (Article 6) The attachments to the law provide pricelist by Georgia's regions.

Organic Law of Georgia on Deprivation of Property for Public Necessity in Case of Urgent Need

As mentioned above, the Georgian Constitution allows for deprivation of property for in the case of urgent need as determined by Organic Law with advance, full and fair compensation. The above law was passed in 1997 to ensure compliance with this Constitutional requirement. The law is supposed to describe the deprivation procedure in detail, but in reality it is very general, containing only 6 articles, and raises many questions.

According to article 2 of the law "urgent need" occurs when lives and health of people, state or public security are endangered due to environmental disasters, natural calamities, epidemic and epizootic.

Article 3 explains that the decision on deprivation of property in such situations shall be made by the President of Georgia, governmental agency of executive body, governmental body of Autonomous Republic or local governmental body. The law does not specify who is responsible for which case, as well as the procedure of making such decision. Article 5 partly, and very vaguely, gives some explanation by stating, that in the event of emergency situation or martial law the decision shall be made in accordance with appropriate legislation for emergency situation and martial law (to date the legislation does not define this regulation). The final article of the Law further specifies that the decision on "appropriate compensation" for the damage due to deprivation of property may be appealed in the court after the situation under article 2 stops to exist.

¹⁴ Georgian Young Lawyers' Association, 2007. Property right in Georgia.

¹⁵ Georgian Young Lawyers' Association, 2007. Property right in Georgia.

As for the compensation, the law uses several notions in this regard. In one of the Articles it is “appropriate compensation”, in another – “recover damages”, as for Article 4, it provides for the assessment of property by market price and further specifies that the owner should be given the compensation sum prior to deprivation.

Summarizing the above mentioned one may conclude, that the organic law is very general and vague. There have been introduced no changes into it since the adoption, whereas the Law “On regulations of deprivation of property for necessary public need” was amended three times (2005, 2006 and 2010) to bring it in conformity with the latest government priorities and institutional changes. The later has been applied in practice several times in contrast with organic law, which, evidently is outdated and irrelevant and its application may cause controversial situations.

Law of Georgia on Public Registry

The law determines rights and duties of National Agency of Public Registry, legal entity of public law under the Ministry of Justice of Georgia. It was passed in the end for 2008 and before its enforcement the issues, related to registration of real estate property rights were governed by two documents – Law of Georgia on Registration of Real Estate Property Rights (2005) and the Law on the Costs of Services of National Agency of Public Registry (2004).

Without going into the law details we will draw the attention to legislative definition of “**lawful owner**” as provided in the law - we deem it important for the purposes of present study. According to the law, lawful owner is “an interested person, whose registration document, generating his right to demand registration of property rights has been issued, received or drawn up before the registration of seize or prohibition to dispose of the property in question. Also, if the registration document has been issued, passed or drawn up before the enforcement of this law or, regardless the seize of property or prohibition of disposal, the issuance, passing of drawing up of the document is immediately determined by Georgian legislation; and, also a person who is the owner’s assignee”.

Law of Georgia on Recognition of Title to the Land Plots Possessed (Used) by Individuals and Legal Entities under Public Law

The law was passed in 2007 and aims to foster development of land resources and land market by means of recognition of property rights to lawfully owned (used), as well as willfully occupied state land. The law defines national bodies authorized to recognize the property rights, the regulations and special procedures for both cases. It also stipulates the exceptions – the cases when property right shall not be recognized. Proceeding from the importance of this law for our study, we intend to view it briefly below.

The law defines the notions of “lawful ownership” and “willful occupation” as well as the procedures to obtain property rights to these land plots. In particular, according to the law:

State owned land plot will be considered **lawfully owned (used)** if:

- the land is an agricultural or non agricultural plot; there are or are not already constructed, under construction and destroyed buildings and facilities; and the person’s lawful right was formed prior to enforcement of this law; or
- The land plot had been registered in technical inventory archives as willfully occupied before 1994.

In order to obtain the property right to the land in lawful ownership (use) a person must apply to the authorized body – National Agency of Public Registry – and file the application there; attached to it should be documents, including the one confirming lawful ownership (use) of the land and the measurement drawing of the land cadastre.

Willfully occupied land shall be, before the law enforcement:

- State owned agricultural or non-agricultural land plot, with built on or destroyed living or non-living premises; or
- Willfully owned land plot (with or without any premises) adjacent to the land, lawfully owned or used by the physical person concerned. The acreage of willfully owned one shall be less than that of the lawfully owned; or
- Willfully owned land plot with a non-living premises on, adjacent to the land, which is the property of a legal person of private law or is lawfully owned by him. The acreage of willfully owned one shall be less than that

of the lawfully owned and shall not be run by the state by the moment when property right is requested to be recognized.

For obtaining the recognition of property right on willfully occupied land plot, person in question shall apply to an authorized body – in this case to property right recognition commission of appropriate local governance body¹⁶ - and file there the application and attached to it documents, including the one confirming willful occupation of the land or/ and proof of witness, and the measurement drawing of the land cadastre

It is interesting, that the law obliges the authorized body, while considering the application on recognition of property right to willfully occupied land, to take note of its compliance with “terms of spatial planning and strategic plan to dispose of land”. This requirement, to our mind, is impracticable on this stage, since Georgia’s built-up areas, except for the capital and Batumi city, have no special development plans (if any, they are developed during Soviet period and are not relevant now); besides, there are no strategic plans to dispose of land in Georgia on National or local levels.

Presidential Resolution of 15 September 2007 – a bylaw – supplements the issues governed by the law by its two regulations: **“Regulation of recognizing property right to the land, owned (used) by natural persons and legal persons of private law”** and **“Form of certificates of property rights”**.

It should be mentioned that often bylaws (in particular the above regulation) duplicate the provisions of the law, but at the same time clarify some issues. In our case the bylaw gives detailed characteristics of the certificate of property rights. Besides, the bylaw in fact defines the regulations for the functioning of the commission on recognizing the property right. As mentioned above, only these commissions are authorized to consider and decide on recognition of property right to willfully occupied land.

General Administrative Code

The General Administrative Code was adopted in 1999 and underwent several amendments since. The Code sets the requirements for freedom of information and defines the procedures for passing administrative and legal acts. The Code provides for three different types of administrative proceedings: simple administrative proceedings, formal administrative proceedings and public administrative proceedings. The Code also defines the options for information availability and the stakeholders’ participation with respect to each type of proceedings, as well as general procedures. Commitment to the use of a procedure is determined by sectoral laws.

It is noteworthy that only public administrative proceedings envisage informing and participation of the public in decision-making process. However, it should be mentioned that the cases of applying public administrative proceedings¹⁷ (when passing administrative and legal acts) have significantly decreased recently.

The Law of Georgia on Environmental Impact Permit

The law was passed in the end of 2007. The issues, governed by this law were previously governed by the Law on Environmental Permit of 1996. The law defines list of activities, which may extremely negatively impact natural environment, human health and security, as well as cultural and material values, and the obligation of holding environmental impact assessment (EIA) prior to planning them. The law also sets the regulations of issuing environmental impact permit by the authorized body.

The list of activities – The law provides an exhaustive list of activities, requiring EIA procedure; but in contrast with its predecessor (Law on Environmental Permit) the list is shorter and does not comprise such activities as, e.g. mining (except for oil and gas production), construction of nuclear reactors and nuclear power, agricultural and food industry enterprises, timber, paper, leather and weaving industries, some of infrastructural projects, sectoral plans and programs etc. This list does not comply with the list of activities provided in Annex 1 of Aarhus Convention¹⁸.

¹⁶ In case of recreation territories the President of Georgia may appoint another authorized body for the recognition of property right to willfully occupied land

¹⁷ One of the recent step back is, e.g. 2009 amendment to the General Administrative Code, which cancels the articles of the Code providing for application of public administrative proceedings while adopting administrative-legal acts by administrative bodies. Public administrative proceedings shall be applied only with regard to statutory acts of corporate bodies. The fact is that even when in force those, cancelled in 2009 provisions were seldom applied in practice by administrative bodies.

¹⁸ Aarhus Convention – the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Entered in force in Georgia 30 October 2001.

Note should be taken of the fact, that the list defined by the law covers the activities, implementation of which may cause property expropriation need in compliance with the Eminent Domain Law. In particular:

- Construction of main oil and gas pipelines;
- Construction of highways and railways of international and internal importance;
- Construction of high voltage (35 kw and more) overhead and cable power lines;
- Installation of wastewater treatment plants (with a capacity exceeding 1000m³ per day) and trunk sewer.

As mentioned above the initial list contained the mining too but it had been removed approximately at the same time when it was added to the list defined by the Eminent Domain Law.

One important circumstance is worth mentioning – until 2005 any activity listed in the law was subject to EIA procedure regardless the initiator of this activity – the State or a private person. Since 2005 only the activity, initiated by a private person is subject to EIA; when the activity is planned by a state body it is released from obligation of holding EIA (article one of the Law on Licenses and Permits. 30 June 2006 **Law on State Facilitation of Investments** goes further in allowing the exceptions. This law allows any investor to start the activity without holding EIA and receiving the permit provided he/she meets this legal requirement later¹⁹.

Environmental Impact Assessment (EIA) – in compliance with Regulations “On Assessing Environmental Impact”²⁰ (Article 3) “Environmental Impact Assessment Procedure is the creation of supporting documents on the activities listed in the law and establishing the character and the source of any possible environmental impact in the process of obtaining environmental impact permit/environmental assessment decision; it is integrated assessment of environmental, social and economic outcomes”.

So, it is clear that EIA examines not only the impact on the environment and its elements but also assesses “environmental, social and economic outcome” of the activity. Similar wording is often used in the Regulations, e.g. para 3 of article 3 states that direct and indirect impact on “social and economic” factors should also be examined while holding EIA. Article 6 mentions possible impact of the project on “social and economic situation of the society and the development trends”.

This document, as one can see, does not directly provide for obligatory examination of the planned activities’ impact on the land and other property, land tenure rights. However, occasionally, in EIA reports we come across scarce information about the households/communities and natural resources in their ownership or use (including the land plots) which fall under the impact of the planned activities/projects. We will come back to this issue in the next chapter.

Granting of permit and participation of the public in decision-making process – in 1997-2005 the permit was granted in keeping with public administrative proceedings. This regulation, as already mentioned, makes possible public participation in decision making process. Public participation at that period was ensured as follows: in ten days after receipt of application (with attached EIA report) the permit issuing agency (Ministry of Environmental Protection and Natural Resources) was obliged to: (1) publish the information in media on time and venue of public discussion; (2) insure the EIA report accessibility for the public during the whole period of discussion (3 months); (3) in 45 days after publishing the information start receiving and review of comments in writing; (4) not later than 2 months after receipt of application hold public discussion.

In accordance with the permission system in force in Georgia the permit is issued in keeping with simple administrative proceedings – this regulation does not envisage public participation in decision-making process. Ministry of Environmental protection is neither obliged nor authorized to ensure public participation in decision-making process. After receiving the application the Ministry is not obliged to: (1) publish the information in media on public discussion time and venue; (2) insure the EIA report accessibility for the public during the whole period of discussion (3 months); (3) receive and review comments in writing (in case the public still learns about ongoing administrative procedure); (4) hold public discussion; (5) Publish the decision.

Thus the State has relieved itself of responsibility for public participation in decision making process. Instead, the legislation obliges the activity initiator (investor), to inform the public on the planned activities and ensure consultations with the public in preparing EIA report, i.e. before granting the permit administrative proceedings begins. At the same time the Ministry is authorized to grant the permit even when the investor ignores the public’s comments and ideas.

¹⁹ Green Alternative, 2001 Implementation of Aarhus Convention in Georgia. Alternative report available at www.greenalt.org

²⁰ The Regulations were approved by Order #14 of 4 October 2011 of Minister of Environmental Protection. Regulations with the same title (and almost the same contents) existed before too. It just had been reapproved several times.

Waiver of the EIA – In compliance with the Law on Environment Impact Permit “an activity may be exempt from mandatory EIA when national interests require immediate start of work and timely decision on it”. The law does not comment on what is implied under national interests; it does not provide any criteria for establishing such interests either. This does not prevent the government to release of the EIA some of the activities/projects.

22 projects/activities had been released of EIA during the period from 2005 to April 2011 under “national interests” pretext, of which: 16 were related to construction and rehabilitation of roads and the related infrastructure, 4 - installation, rehabilitation or reconstruction of certain segments of gas-main pipeline, one – construction of hydropower and still one – construction of asphalt refinery.

All the above decisions on the release of EIA had been taken by Georgian Government resolutions. It is quite possible that the above figures are not complete due to the fact that, regrettably not all resolutions by Georgian Government are being published recently. The reason to it is not clear.

1.3 Institutional framework

There is no official body in Georgia, immediately responsible for the involuntary resettlement due to development projects; no wonder! When the importance of the issue is not realized the need for a responsible body is not understood either. As is evident from the above policy and legislation review, involuntary resettlement due to the development projects is not considered as the area requiring state policy or specific standards; the crux of the problem comes to simple property expropriation. Still, on the bases of existing legislation and the practices, it is possible to identify the bodies that have, or may have some role in the regulation of involuntary resettlement.

Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia

According to the Ministry Regulations²¹ “*The Ministry is in charge of regulation of state policies on refugees and asylum seekers, internally displaced persons, repatriates, victims of natural disasters, their accommodation and migration control in the country*”.

As is evident from this excerpt and other provisions of the Regulations the focus is on only displaced as a result of conflicts, not those affected by or displaced due to development projects. At the same time, keeping in mind that the Ministry, in general, is in charge of resettlement it would be logical to conclude that involuntary displacement linked to development projects²² should be the Ministry’s competence too; however the Regulations do not clearly provide for it. Below are some excerpts from the Ministry Regulations in order to highlight possible link with the subject under review.

In article 2 of the Regulation on functions and objectives of the Ministry the following is provided:

- setting the system of migration control and activities within its competence, concerted with other executive bodies in this area;
- regulation of the migration flows of IDPs, refugees, asylum seekers, repatriates, caused by emergency situations (natural disasters, epidemics, etc.), their temporary or permanent settlement, creation of conditions for adaptation and integration and social protection;
- establishment of migrants’ categories;
- registration, management and control of migration flows;
- together with executive and local government bodies, receipt and accommodation of migrants, providing first aid, finding jobs and helping in adaptation/integration

²¹ Resolution No. 34 of 22 February 2008 of the Government of Georgia “On approval of Regulations of Ministry of IDPs from occupied territories, accommodation and refugees of Georgia”.

²² It is noteworthy that the Ministry’s title in English on its official webpage is “Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia” i.e. Georgian word for “resettlement” is translated as “accommodation”. See <http://mra.gov.ge/main/ENG#section/16>

The Department for migration, repatriation and refugees' issues of the Ministry is in charge of (provision 7):

- developing effective system of eco-migration process control and facilitation of its implementation; monitoring, within its competence, of migration processes in Georgia;
- forecasting possible migration from disaster-dangerous territories and implementation of eco-migrants' resettlement programs; resettlement of eco-migrants; development of programs of their adaptation/integration in new habitats and facilitation of their implementation; creation of eco-migrants' data base.

Two units are part of this department - refugees and repatriation division and migration management division, whose competence might include the issue of involuntary resettlement caused by development projects.

Ministry of Justice of Georgia

As is evident from legislation analysis, within this Ministry is the **National Agency of Public Registry** – a legal person of public law. In compliance with the Law on Public Registry, the Agency consists of the following four registers: real estate property rights register, register of public law restrictions, mortgage register and register of rights to intangible property. Pursuant to the same law the Agency exercises its rights directly or through its territorial services or authorized persons. Besides, an administrative body may exercise these functions on the bases of an agreement with the Agency or the Ministry of Justice legal act.

As mentioned in previous chapter, according to the Law of Georgia on Recognition of Title to the Land Plots Possessed (Used) by Individuals and Legal Entities under Public Law, the national Agency of Public Registry is authorized to take the decision on recognition of property right to the land plots in lawful possession (use).

Besides, National Agency of Public Registry (its register of property right to real estate) is authorized, as a result of 24 June 2011 amendments to the Law on Public Registry, to take the decision on changing the status of the land plot from agricultural to non-agricultural. Terms and rules of taking such a decision, according to the law (article 15) shall be established by special instruction.

Another legal person of public law under the Ministry of Justice is **Civil Registry Agency**. Among the functions of this Agency is maintenance of a uniform register for Georgian citizens and foreigners temporarily residing in Georgia; still another function is establishment of informational-migration bank. According to July 2010 information, officially placed on the Agency website²³ "At present Georgia does not have the technical possibility of grouping and relevant analyses of internal and external migration statistics existing in different state institutions". Evidently, with financing of Italian Government and IOM support the Agency in June 2010 began to create electronic system of processing, analyzing and forecasting statistical data on internal and external migration.

Ministry of Economy and Sustainable Development

According to the Ministry Regulations²⁴, main areas of the Ministry's activity are: economic policy, trade and investments, tourism, management and disposal of state assets, urban development and spatial and territorial structure, construction, electronic communications, IT, post, transport.

According to the Regulations the Ministry develops and implements main course of state policy in these areas; besides, the Ministry provides methodological guidance e.g. in the area of spatial planning. Also, the Ministry develops resettlement system and regional planning schemes for the country, short-, mid- and long-term strategies of physical development and spatial planning of the country's territory. In the construction field the Ministry sets design rules, standards and regulations; grants construction permits for certain category projects (various large-scale construction projects).

As is evident from the legislation overview, Ministry of Economy and Sustainable Development participates in property expropriation decision-making process, in particular it is Head of this Ministry to pass the legal act, which defines, in the case of a development project, inevitability of property expropriation for public necessity and the actor, who may be granted the expropriation right.

²³ Civil Registry Agency, 10 June 2010, "Migration statistical data handling system will be established" http://www.passport.gov.ge/index.php?lang_id=GEO&sec_id=44&info_id=1308

²⁴ Resolution No.77 of 10 September 2007 of the Government of Georgia "On approval of Ministry of Economy and Sustainable Development Regulations".

In this context it should be noted that in certain cases Ministry of Economy and Sustainable development, through subordinate to it legal persons of public law (e.g. National Investments Agency, National Tourism Administration) may turn up the initiator or/and supporter of a development project.

Ministry of Environmental Protection of Georgia

This Ministry has been reorganized several times for recent years; for this study purposes we would like to highlight the following functions of the Ministry:

- monitoring the land, the water (including the Black Sea) and the ambient air biodiversity and natural ionizing radiation background in the environment;
- assessment of the existing and expected hydro-meteorological, geodynamic processes on the river basins and water reservoirs, the Black Sea territorial waters, continental shelf and special economic zone, as well as of geo-ecological state of environment on the territory of Georgia;
- organization of uniform national system of monitoring the environment;
- environmental impact assessment and granting the impact permits;
- monitoring and forecasting natural and anthropogenic disasters (including geological ones), planning appropriate preventive measures and coordination of their implementation; planning the arrangements for mitigation of desertification and the land degradation processes, caused by climatic and anthropogenic factors on the territory of Georgia and coordination of their implementation.

Ministry of Regional Development and Infrastructure of Georgia

According to its Regulations²⁵ the Ministry is in charge of regional development policy, improving water supply systems in Georgia, development of international and national highway system, developing national policy for design and implementation of scientific and technical progress.

The following specific functions of the Ministry are worth mentioning:

- coordination of developing and implementation of regional plans and programs of social and economic development;
- ensuring the implementation and coordination of water supply systems in Georgia, introduction and facilitation of public water supply projects;
- coordination of locally and internationally financed regional programs and projects and performance evaluation within its competence;
- coordination of construction/rehabilitation of infrastructural projects, implemented under Georgian Government's decision;
- implementation of national policy for design and construction of international and national highway systems, application of scientific and technological progress in this matter.

Ministry of Regional Development and Infrastructure, through its subordinate bodies – Department of Highways of Georgia²⁶, and legal persons of public law: Municipal Development Foundation of Georgia²⁷ and the Eurasia Transport Corridor Investment Center²⁸ may turn up the initiator, supporter or/and performer of development projects that may entail involuntary resettlement²⁹.

²⁵ Georgian Government Resolution No. 10 of 30 January 2009 "On Approval of Ministry of Regional Development and Infrastructure Regulations".

²⁶ Visit: <http://www.georoad.ge/>

²⁷ Visit: <http://mdf.ge/geo/>

²⁸ Visit: http://www.mrdi.gov.ge/index.php?option=com_content&view=article&id=724&Itemid=0&lang=ge

²⁹ Visit: http://www.mrdi.gov.ge/index.php?option=com_igallery&view=igcategory&id=1&Itemid=64&lang=ge

In this regard the following entities deserve attention: (a) 100% state-funded “**State Construction Company**” Ltd, whose state partnership authority is placed upon Ministry of Regional Development and Infrastructure, and which, alongside with other activities, is busy in highways construction and rehabilitation works; (b) “**United Water Supply Company of Georgia**” Ltd, which carries out water supply and drainage system services for urban settlements throughout Georgia, except for Tbilisi, Mtskheta, Rustavi and Ajar Autonomous Republic. The state owns 100% shares of the Company, who, alongside with other activities, is busy in infrastructural rehabilitation and construction.

Ministry of Energy and Natural Resources of Georgia

As a result of March 2011 institutional changes this Ministry is in charge of implementation of natural resources management State policy. The following functions, related the management of natural resource could be identified from The Ministry Regulations³⁰:

- participation in the development and implementation of State policy in the area of management and use of natural resources;
- identification and implementation of priority directions of use of natural resources;
- making state investments within its competence;
- facilitation to: extension of search for new resources, priority development of renewable and alternative energy sources, implementation of energy efficiency projects;
- development of standards on the use of natural resources;
- issuance of licenses for the use of natural resources (within its competence), control and monitoring of compliance with the license terms.

These functions in the area of management of natural resources are carried out by Natural Resources Agency – a legal person of public law within the Ministry system. It should be noted that, here too, the Ministry may turn up the initiator, supporter or/and executor of energy projects that may entail involuntary resettlement.

The Governmental Committee on Migration Issues

The Governmental Committee on Migration Issues was established by Government decision in 2010³¹. According to its regulations the Committee aims at development of uniform migration policy and improvement of migration management in the country.

The Committee functions include: (a) drafting recommendations for development of internal and external migration uniform policy and improvement of migration management system; (b) making proposals for reintegration of Georgian citizens, returning from emigration. (c) proceeding from ENP Action Plan, development of appropriate proposals for necessary migration arrangements.

The objectives and authorities of the Committee, as well as its composition (the Committee does not include representatives of, e.g. Ministry of Energy and Natural Resources, Ministry of Environmental Protection, Ministry of Regional Development and Infrastructure) allow to assume that the Committee will be focused on external migration. The Committee is headed by Deputy Justice Minister.

Local Self-government Bodies

In compliance with the Law of Georgia on Local Self-government (article 16), among exclusive authorities of the self-governing unit are:

- management and disposal of the land resources under the ownership of the self-governing unit;
- spatial-territorial arrangement of the self-governing unit and land-use planning

³⁰ Georgian Government Resolution No.133 of 16 March 2011 “On approval of Ministry of Energy and Natural Resources Regulations”.

³¹ Georgian Government Resolution No. 314 of 13 October 2010 “On Establishing the Government Committee on Migration Issues and Approval of its Regulations”.

- management of forest and water resources of local importance;
- issuance of permits on constructions within their competence;
- maintenance, construction and development of the roads of local importance.

As mentioned in previous chapter, under the Law on Recognition of Title to the Land Plots Possessed (Used) by Individuals and Legal Entities under Public Law, local self-government bodies, in particular commissions for recognition of property rights with these bodies, are authorized to take the decision on granting the property right to willfully owned land plots.

General Courts

According to the Eminent Domain Law, regional (municipal) courts are empowered to decide on property expropriation. When the owner does not agree to regional (municipal) court decision, he/she may appeal it in the court of higher resort. This allows concluding, that courts of highest resort also participate in decision making on expropriation.

1.4 Conclusion

As is clear from the above review there is no state policy in the country on involuntary resettlement, specifically the resettlements induced by development projects; neither is there a uniform policy to define the government's approach to involuntary resettlement, caused by conflicts, natural disasters and development projects.

Georgian legislation in the area of involuntary resettlement, as well as its institutional structure, is fragmented and fails to ensure application/management of all the aspects, provided in international agreements, which Georgia is a party to. Requirements of Georgian law are quite far from guiding principles of the international financial institutions that have been financing a range of different projects in Georgia recently. For Example:

- Georgian law does not provide for the need of assessing possible resettlement and its impact when developing new projects, as well as public participation, in particular participation of those affected by the project, in decision making on resettlement
- Georgian law does not require preparation of necessary documents, including those containing the results of resettlement impact assessment, compensation and mitigation arrangements. Consequently, there are no requirements of formal approval of these documents;
- Georgian legislation provides for compensations only to those individuals, whose property rights had been registered in Public Registry, while normally all the resettled families shall be compensated for the lost or damaged property, whether or no official ownership;
- Georgian law does not provide for compensation of intangible costs and losses caused by resettlement;
- Georgian law does not provide for assistance to project affected people in the process of resettlement and transition period;
- Institutional set-up in resettlement area is beyond any criticism – there is no agency (or agencies) in Georgia in charge of developing policy and legislation with regard to involuntary resettlement linked to development projects, monitoring and periodic assessment of resettlement process, insuring information updating and its accessibility.

These and other shortcomings of policy, legislation and institutional set-up are conditional to the existing resettlement practice, reviewed in the next chapter, as well as recent incidents of violation of land tenure rights.

2. Development induced involuntary resettlement practices in Georgia

2.1 Involuntary resettlement

As it was mentioned in the previous chapter, Georgian law does not provide for preparation of appropriate documents for involuntary resettlement when implementing development projects. Documents regarding involuntary resettlement were developed in Georgia only within the framework of development projects, financed (or deemed to be financed) by international financial institutions and respectively, framework documents and resettlement action plans were also developed on the basis of policies and requirements of appropriate financial institutions. When no international institution is involved, the existing legal framework is applied, which, as already mentioned in previous chapter, is very limited. Below is a brief review of the projects, with and without international involvement, which entailed involuntary resettlement in Georgia.

Baku-Tbilisi-Ceyhan oil export pipeline and South Caucasus gas pipeline construction project (Azerbaijan-Georgia-Turkey pipeline system) was one of the first large-scale projects implemented in Georgia within which resettlement action plan was developed. The project envisaged crude oil and gas transportation from Azerbaijan to Turkey via Georgia. The project was headed by an international consortium - Baku-Tbilisi-Ceyhan Pipeline Company, where British Petroleum Amoco was a leading actor. About 70 percent of project costs were defrayed by international financial institutions (International Finance Corporation and European Bank for Reconstruction and Development) as well as export credit agencies of different countries.

Such a large-scale project should undoubtedly have an impact on people's/households' tenure rights. Respectively, the Pipeline Company, in order to meet the requirements of the World Bank involuntary resettlement policy, developed resettlement action plan. The document aimed to mitigate or avoid negative impact caused by deprivation of land and related to it activities and to ensure compensations; still, in the process of project implementation quite serious problems were revealed both, by expert group assessing the resettlement action plan implementation and by Green Alternative, who was monitoring the project from the very beginning. The problems were related to such issues, as: inadequate consultations with affected communities, improper inventory of property and rights, improper/incomplete compensation, starting construction works without prior compensation, uncompensated damage to privately owned and public infrastructure, etc. These and other violations were subject of litigation in Georgian courts as well as in International Financial Institutions' independent recourse mechanisms (IFC CAO³², EBRD IRM³³).

The present report does not allow for detailed review of resettlement problems within the pipeline project³⁴, but there is one aspect, we would like to highlight, since it links the pipeline project with the cases reviewed in the next sub-chapters³⁵. BTC Pipeline Company purchased the land in the pipeline corridor on the agreement basis from the land-owners. In the negotiation process there were land-owners who, for different reasons, did not agree to property alienation. There the Company was supposed to apply the procedures, provided for in the Eminent Domain Law and acquire the land property right through expropriation. Instead, the Company appealed to court claiming to apply the Neighboring Tenements Law, provided by Civil Code of Georgia i.e. Necessary Right of Way³⁶. The Company claimed Necessary Right of Way³⁷ for construction of oil and gas pipelines and, at the same time, agreed to pay the owner the purchase price instead of compensation for material and intangible damages. Regardless the absurdness of the claim and misapplication of legal norm, all the courts satisfied the claim, thus depriving the landowners of their property right without compensation.

As was mentioned above, the pipeline project was one of the first large-scale projects, funded by international financial institutions, for which the resettlement plan was developed (2002). Later, several other projects were planned and implemented (or are being planned and implemented) with international financial institutions' participation, for which resettlement plans were also drafted. Below is a short review of some of them³⁸.

³² Visit: http://www.cao-ombudsman.org/cases/default.aspx?region_id=2

³³ Visit: <http://www.ebrd.com/pages/project/pcm/irmregister.shtml>

³⁴ Detailed information available at www.greenalt.org

³⁵ Detailed information available at Green Alternative "BTC pipeline – an IFI receipt for increasing poverty", 2005 www.greenalt.org

³⁶ To Green Alternative's information by 2005 such lawsuits were filed against 31 landowner in Rustavi and 3 in Akhalkikhe region. It was alleged, though, that the number of such landowners was much higher as the similar mechanism was applied to landowners not living in Georgia by then. In these cases the court passed default judgment

³⁷ Pursuant to Article 180 of Civil Code of Georgia, an individual may demand necessary right of way if "If a tract of land lacks the access to public roads, electricity, oil, gas and water supply lines that are necessary for its adequate use, then the owner may claim from a neighbor to tolerate the use of his tract by the owner for the purpose of providing the necessary access. In this case an individual (landowner) shall request the neighbor to tolerate the necessary right of way. According to the same Article The neighbors on whose tracts the necessary right of way or transmission line passes shall be given monetary compensation

³⁸ Unfortunately there is no data base of the projects that entailed resettlement. The information may be accessed on websites of funding institutions or the implementing state agency website. In the later case it is much more complicated and the information is incomplete.

Since 2004 one of Georgian government's priorities is rehabilitation of transport infrastructure. The funding for these projects is allotted from state budget, but foreign donors account for large share of financing. From 2004 to date the World Bank, Asian Development Bank, Japanese Bank for International Cooperation, Japanese International Cooperation Agency and other donors participated in financing transport infrastructure rehabilitation-upgrading projects. Respectively, the projects shall be designed and implemented in compliance with the policies of these institutions. The projects are usually designed by Georgian Highways Department³⁹ on the basis of Agreement between Georgian government and respective international institutions. Resettlement documents, if the need arises, are prepared by foreign or/and Georgian consultant companies or their consortiums. Below is the table to demonstrate the information on some of the projects, within the framework of which resettlement documents were drafted⁴⁰.

Table 1. Some of transport infrastructure rehabilitation-upgrading projects financed by international financial institutions

#	Project title/resettlement document	International Financial Institution	Project affected population and property
1	Road Corridor Investment Program Kobuleti Bypass Road, Kobuleti-Batumi Section and Batumi Bypass Road Design Project: Section 2 – Kobuleti Bypass Road (km 12+400 – km 31+259) ¹ The Project EIA report is on the webpage, which goes that land acquisition and resettlement plan have been developed and presented as an independent report. But this independent report cannot be found on the webpage. EIA report contains short description of the projects affected population and property.	Asian Development Bank	700 land plots, 19 living houses, and 245 households – 1248 individuals. (for more about the types of impacts see EIA report)
2	Detailed project and tender documentation – E-60 highway Ruisi-Rikoti section (km. 95 – km 143 – reconstruction. Section 1. Ruisi-Agara (km.0.0 – km. 19.0) Resettlement Action Plan RAP-1 (draft) ² (July 2001)	The World Bank, and, presumably Asian Development Bank	237 land plots, 195 households – 759 individuals. (See the plan for information on types of impact)
3	Third East-West highway improvement project, Sveneti-Rikoti section of E-60 highway upgrading/construction. Resettlement Policy Framework (RPF) (December 2011) ³	The World Bank	The document defines land acquisition principles and procedures
4.	Environmental Impact Assessment (January 2012) of works for upgrading E-60 East-West Highway section between Ruisi and Agara West (km 95 to km 114). Protocol of EIA report and resettlement action plan public consultation meeting. Resettlement action plan is not put on the webpage ⁴	The World Bank	237 land plots, 195 households – 858 individuals (See the plan for information on types of impact)
5	Secondary and local roads project - SLRP II The resettlement policy framework (January 2010) ⁵	The World Bank	The document defines land acquisition principles and procedure
6	East-West (E-60) highway upgrading/reconstruction project Kutaisi bypass road Resettlement action plan (March 2011) ⁶	Japanese International Cooperation Agency	423 land plots, 340 households, 2 enterprises

³⁹ The department was for some time part of Ministry of Economy and Sustainable Development. It is subordinates to the Ministry of Regional Development and Infrastructure.

⁴⁰ There were about 15 resettlement projects by 20 June 2012 on the Department website (resettlement policy framework document or resettlement action plan), though extremely disorganized.

Resettlement framework document⁴¹ and resettlement action plan⁴² were developed in 2009 within **Tbilisi bypass railway project**. Georgian Railway Ltd, the project executor, tried to receive funding from European Bank for Reconstruction and Development (EBRD) and European Investment Bank (EIB), so appropriate documents to meet the requirements of these banks were developed. The project⁴³ envisages the transfer of railway infrastructure from the center of Tbilisi to the North. The project is underway and several resettlement problems have already emerged. One of the problems is improper assessment of resettlement needs and inadequate compensation⁴⁴. It is noteworthy that this was the only case when resettlement framework document, as one of the attachments to EIA report, was presented to the Ministry of Environmental Protection for obtaining the permit⁴⁵.

It is important to note that in case of involvement of international financial institutions, internal (within the financial institution) discussion and approval/disapproval, as well as implementation monitoring is carried out in compliance with financial institution procedures. As for the Georgian side, the document discussion-approval procedures, as well as responsible for performance control agency is absolutely unclear. In fact, there are some discussion/approval practices, but they are vague and not based on officially approved procedures. Below are the examples, illustrating such practices.

“Urban Services Improvement Investment Program – Project 1” provides for implementation of **Mestia Water Supply Headwork’s subproject**. The project implementing agencies are Georgian Ministry of Regional Development and Infrastructure and “Georgian United Water Supply Company”. Mestia water supply system upgrading sub-project envisages resettlement so, in compliance with Asian Development Bank requirements, land acquisition and resettlement plan was developed⁴⁶. English version of the plan is available on Asian Development Bank webpage. The plan is preceded by letter No. 1623 of 26 July 2011, signed by Deputy Minister of Regional Development and Infrastructure (see supplementary sheet 1), informing the Asian Development Bank urban development expert, that the Ministry approves/ratifies land acquisition and resettlement plan and notifying that Georgian Government had also approved the Plan by its July 2011 Resolution No.1462. The Resolution itself is not attached. It is not available at Georgian Legal Herald or the Government official website.

⁴¹ Visit: http://aarhus.ge/uploaded_files/0a041cd29d504680083180ad6bf2ff22.pdf

⁴² Visit: http://www.railway.ge/files/Proeqtebi/bypass/rap_geo.pdf

⁴³ Visit: http://www.greenalt.org/Transparent_Aid/index.php?page=tbilisi&lng=ge

⁴⁴ See “dissatisfied landowners and contented railway-men” “Rezonansi” Newspaper 29 January 2011; “Tbilisi bypass railway: what will happen to already disrepair house, when 70-80 ton trains pass by”; “Rezonansi” Newspaper – whole week, 4 January 2012

⁴⁵ Visit: <http://aarhus.ge/index.php?page=106&lang=geo#tbilisi2009>.

⁴⁶ Visit: http://www.adb.org/Documents/Resettlement_Plans/GEO/43405/43405-01-geo-rp-01.pdf

Illustration 1. Letter No.1623 of 26 July 2011, signed by Deputy Minister of Urban Development and Infrastructure to urban development expert of Asian Development Bank Central and West Asia Department



საქართველოს რეგიონული განვითარებისა და
ინფრასტრუქტურის სამინისტრო

MINISTRY OF REGIONAL DEVELOPMENT AND
INFRASTRUCTURE OF GEORGIA

№1623.....

..26 ..07.....2011 წ.

To: Mr. Vijay Padmanabhan
Urban Development Specialist
Central and West Asia Department
Asian Development Bank

Subject: Loan No. 2749
Land Acquisition and Resettlement Plan for Mestia Water Supply Headworks

Dear Mr. Padmanabhan,

Please be informed that the Government of Georgia approved Land Acquisition and Resettlement Plan (LARP) prepared for the Mestia water supply headworks project by its Decree #1462 issued on July 20, 2011.

Herewith, the Ministry of Regional Development and Infrastructure of Georgia endorses the above mentioned LARP.

Attachment: Land Acquisition and Resettlement Plan (LARP)

Sincerely yours,

Deputy Minister

Lasha Mgeladze

საქართველო, თბილისი, 0160, აღ.კახაბეგის გამზ. №12. ტელ.: (+995 32) 251-06-11; ფაქსი: (+995 32) 251-06-11
12, Al. Kazbegi ave. 0160 Tbilisi, Georgia. Tel.: (+995 32) 251-06-11; Fax: (+995 32) 251-06-11

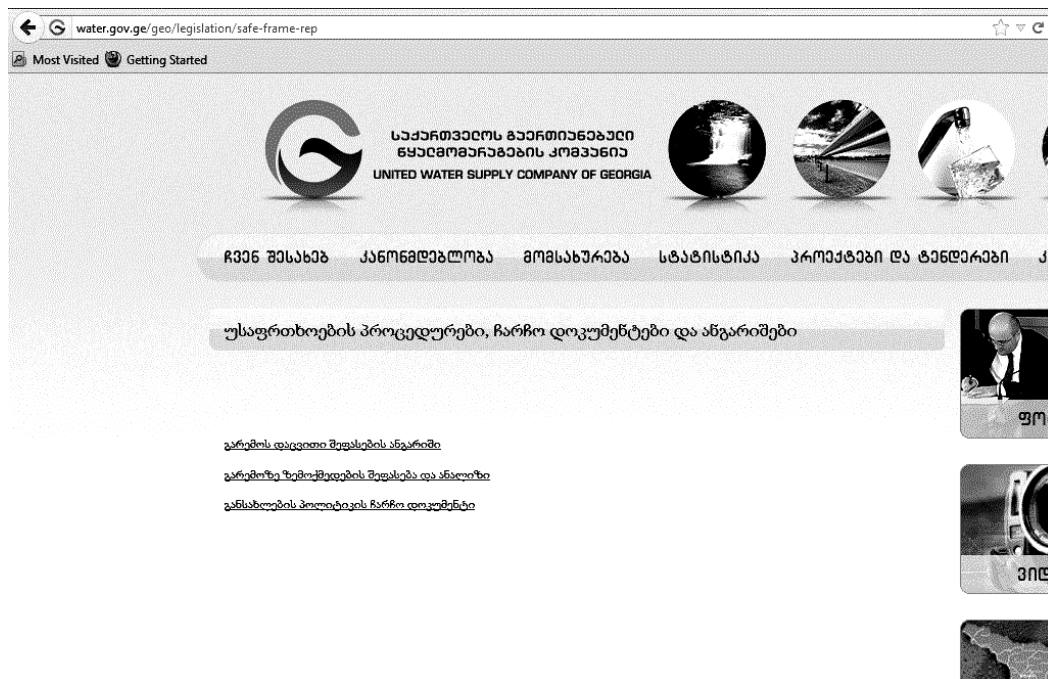
Source: Asian Development Bank, Land Acquisition and Resettlement Plan for Mestia Water Supply Headworks Project, 2011.

Land acquisition and resettlement plan states that the document in Georgian shall be put on “United Water Supply Company of Georgia” official website. To date no such document is available on the mentioned website. As it stays by 20 June 2012 only resettlement policy framework document within **Urban Services Improvement Investment Program** (November 2010)⁴⁷ is available on United Water Supply Company of Georgia” website. English version of the same document is also available on Asian Development Bank website⁴⁸.

⁴⁷ Visit: <http://water.gov.ge/uploads/safeguards/safage/gansaxleba.pdf>

⁴⁸ Visit: http://www2.adb.org/Documents/Resettlement_Plans/GEO/43405/43405-01-geo-rfab.pdf

Illustration 2. United Water Supply Company of Georgia, resettlement policy framework document



It is interesting, that according to resettlement policy framework document, it had been developed by “United Water Supply Company of Georgia” (in the capacity of program implementing agency) and approved by Ministry of Regional Development and Infrastructure” (in the capacity of the investment program executing agency). No legal document confirming the approval of the project is available on websites of the Georgian Legal Herald, “United Water Supply Company of Georgia” or Ministry of Regional Development and Infrastructure.

Another resettlement document, developed within Asian Development Bank supported Urban Transport Sustainable Development Program proves the existence of resettlement documents’ review/approval/endorsement practice. According to land acquisition and resettlement framework⁴⁹, the document it was prepared by Municipal Development Fund of Georgia and approved/endorsed by Georgian Government (“fully endorsed by the Government of Georgia”). It should be noted that Asian Development Bank regards preparation of land acquisition and resettlement framework document and its further endorsement by Government of Georgia as an instrument to bridge the gap between Georgian legislation and the Bank requirements in resettlement area. It is also noteworthy that English version of the document is placed on the Bank website, and the Georgian one is no available on any website (by 20 June 2012)⁵⁰.

Thus, the existing practice shows that resettlement policy framework documents and resettlement action plans are prepared only on the basis of and in compliance with the requirements of international financial institutions. In other cases, when international financial institutions are not involved in the project, resettlement documents are not developed. At the same time in some instances, though very seldom, the resettlement issues are raised in the EIA reports, submitted to Ministry of Environmental Protection for obtaining the impact permit/EIA decision. One of such documents has already been mentioned above – **Tbilisi Bypass Railway Project**. Below are two more cases when resettlement issues are shortly reviewed in EIA report itself.

Roads Department plans to implement **Mestia bypass road and bridge construction project**. In the EIA report (June, 2011)⁵¹ a small sub-chapter is dedicated to land acquisition and resettlement issues. It states that 13 land plots will be affected by the project, of which 10 are privately- and 3 state-owned. Compensation for damages mechanisms are also there.

⁴⁹ Visit: http://www2.adb.org/Documents/Resettlement_Plans/GEO/42414/42414-01-geo-rp.pdf.

⁵⁰ It should be mentioned that Municipal Development Fund of Georgia is implementing many projects entailing resettlement, but respective documents available on their web-page is poorly organized. For more details see <http://mdf.ge/geo/>

⁵¹ http://aarhus.ge/uploaded_files/32c82c04880f47b13e048c581092ea3a873ff4e982f552924781e978a0673c7e.pdf

In EIA report, prepared by Roads Department for **Anaklia-Ganmukhuri motorway and the bridge over Enguri River project** (2010)⁵² a chapter is also dedicated to the impact on social environment and the methodology of social impact assessment, affected property (e.g. it is stated that 21 households will be affected by the project) and compensation mechanisms are described in general,

Overall, it should be mentioned, that there is no state control over execution of resettlement and other social obligations (e.g. employment) under EIA reports. Control over meeting pledges under EIA report and the EIA conclusion is within the competence of Ministry of Environmental Protection and, as a result of Spring 2011 institutional reform, Ministry of Energy and Natural Resources; but these agencies, within their competence, monitor only issues related to protection and disposal of environment and natural resources; property and social issues are left beyond their control.

2.2 Expropriation

As mentioned above when the agreement with land owner on property alienation cannot be reached and, at the same time, there is public necessity for project implementation, the Eminent Domain Law provides for property expropriation and defines expropriation rules. Below is a short review of expropriation instances from the entry of the law into force to date. The review is based on the analyses of legal and administrative acts, published on the Georgian Legal Herald website.

Table 2 below contains the list of the acts passed/available on the Georgian Legal Herald website. Presumably, it is not an exhaustive list. Regrettably recent practices (not backed by any legal provisions) is such that not all the acts passed by President, Government, or a Minister are officially published in printed or electronic media; the selection principle is absolutely unclear. The table below contains an act, not published on the Georgian Legal Herald website, but the fact of its issuance is confirmed by another source.

⁵² <http://www.georoad.ge/uploads/GanmukhuriEIA.pdf>

Table 2. Legal acts on property expropriation

#	The Name of the Instrument (Legal Act)	Expropriator	Project, for which the expropriation was carried out	Number of those affected, expropriated property
1	Resolution No.116 of 20 March 2001 of President of Georgia "On ensuring construction of Batumi-Kobuleti automobile road and the tunnel"	Council of Ministers of Ajar Autonomous Republic	Construction of automobile road and the tunnel at Batumi-Kobuleti road section	Not specified
2	Resolution No.263 of 26 May 2002 of President of Georgia "On handing over to Georgian Patriarchate of the land lot, intended for building "Tsmionda Sameba" Cagherdral and urgent arrangements related to it	Not clear	Construction of "Tsminda Sameba" (Holly Trinity Cathedral at Elia mount in Tbilisi.	Two natural persons, Living apartments ⁷
3	Resolution No.588 of 17 October 2007 of President of Georgia "On Granting Expropriation Right for Public Necessity"	Roads Department of Georgia – subordinate to Ministry of Economic Development Agency	Reconstruction/upgrading of 27-43 km section (Natakhtari-Agaiani) of Tbilisi-Senaki-Leselidze highway (construction)	One natural person Land plot, a building under construction, perennial crops and other real estate
4	Resolution No.455 of 30 July 2007 of President of Georgia "On granting to Tbilisi Mayor's Office the Expropriation Right for Public Necessity"	Tbilisi Mayor's Office	Use the territory between Saakadze Sq. and 7, Shartava St. as transport parking lot. (To settle the traffic problem caused by the moving of Tbilisi Mayor's office to the building at 7, Shartava St.)	1 natural person Land plot
5	Resolution No.917 of 9 December 2009 "On Granting to Ministry of Economic Development Expropriation Right for Public Necessity "	Ministry of Economic Development of Georgia	Samtskhe-Javakheti road rehabilitation project	4 natural persons Land plot, perennial crops, other real estate
6	Order No. 1-1/769 of 20 May 2011 by Minister of Economy and Sustainable Development of Georgia "On Granting to Batumi Mayor's Office the Expropriation Right for Public Necessity"	Batumi Mayor's Office	Batumi automobile road extension/expansion project	70 natural persons 3 legal persons The land plot and buildings/facilities
7	Order No. 1-1/309 of 28 February 2011 by Minister of Economy and Sustainable Development of Georgia "On Granting to Batumi Mayor's Office the Expropriation Right for Public Necessity"	Batumi Mayor's Office	Batumi automobile road extension/expansion project	Unknown – neither persons, nor the property are listed in the Order. The Order does not have any annex either. Presumably 2 or more natural persons and 1 or more legal person ⁸
8	Resolution No. 778 of 24 September 2010 of the President of Georgia "On Granting to Batumi Mayor's Office the Expropriation Right for Public Necessity"	Batumi Mayor's Office	Extention/expansion of automobile road in Batumi, on the territory between Agmashenebeli St. and the Aripport passing through Bagrationi St.	12 natural persons 1 legal person Land plot and perennial crops

#	The Name of the Instrument (Legal Act)	Expropriator	Project, for which the expropriation was carried out	Number of those affected, expropriated property
9	Resolution No. 253 of 26 April 2010 of the President of Georgia "On Granting to Batumi Mayor's Office the Expropriation Right for Public Necessity"	Batumi Mayor's Office	Building of motorway in Batumi, Sheriff Khimshiashvili street.	80 natural persons Land plot, buildings/ facilities and perennial crops
10	Resolution No. 45 of 22 January 2010 of the President of Georgia "On Introducing Changes and Amendments to the Resolution No 921 of 14 December 2009 of the President of Georgia "On Granting to Batumi Mayor's Office the Expropriation Right for Public Necessity"	Batumi Mayor's Office	Building of motorway in Batumi, Sheriff Khimshiashvili street.	16 natural persons Land plot, buildings/ facilities and perennial crops.
11	Resolution No. 28 of 15 January 2010 of the President of Georgia "On Granting to Batumi Mayor's Office the Expropriation Right for Public Necessity"	Batumi Mayor's Office	Building of motorway in Batumi, Sheriff Khimshiashvili street.	74 natural persons Land plot, buildings/ facilities and perennial crops.
12	Resolution No. 921 of 14 December 2009 of the President of Georgia "On Granting to Batumi Mayor's Office the Expropriation Right for Public Necessity"	Batumi Mayor's Office	Building of motorway in Batumi, Sheriff Khimshiashvili street.	102 natural persons Land plot, buildings/ facilities and perennial crops.
13	Order No. 1-1/1035 of 21 June 2011 by Minister of Economy and Sustainable Development of Georgia "On Granting to "Georgian Railway" Ltd the Expropriation Right for Public Necessity"	"Georgian Railway" Ltd	Tbilisi railway bypass construction project	Unknown – the Order contains no list, neither is there any Annex to it.
14	Order No. 1-1/928 of 15 June 2011 by Minister of Economy and Sustainable Development of Georgia "On Granting to "Georgian Railway" Ltd the Expropriation Right for Public Necessity"	"Georgian Railway" Ltd	Tbilisi bypass railway construction project	Unknown – the Order contains no list, neither is there any Annex to it.
15	Order No. 1-1/327 of 1 March 2011 by Minister of Economy and Sustainable Development of Georgia "On Granting to "Georgian Railway" Ltd the Expropriation Right for Public Necessity"	"Georgian Railway" Ltd	Tbilisi railway bypass construction project	Unknown – the Order contains no list, neither is there any Annex to it. 68 natural persons, land plot, buildings, perennial crops ⁹ .
16	Order No. 1-1/38 of 18 January 2011 ¹⁰ by Minister of Economy and Sustainable Development of Georgia	"Georgian Railway" Ltd	Tbilisi railway bypass construction project	41 natural persons, buildings, perennial crops.
17	Order No. 1-1/1910 of 6 December 2010 by Minister of Economy and Sustainable Development of Georgia "On Granting to "Georgian Railway" Ltd the Expropriation Right for Public Necessity"	"Georgian Railway" Ltd	Tbilisi railway bypass construction project	Unknown – the Order contains no list, neither is there any Annex to it. Though from the text it is clear that there is an Annex to the Order.

#	The Name of the Instrument (Legal Act)	Expropriator	Project, for which the expropriation was carried out	Number of those affected, expropriated property
18	Order No. 1-1/194 of 23 January 2012 by Minister of Economy and Sustainable Development of Georgia "On Granting to Ministry of Economy and Sustainable Development of Georgia the expropriation right for public necessity"	Ministry of Economy and Sustainable Development of Georgia	Karsi-Akhalkalaki railway construction project	1 natural person Land plot
19	Order No. 1-1/1849 of 22 September 2011 by Minister of Economy and Sustainable Development of Georgia "On Granting to Ministry of Economy and Sustainable Development of Georgia the expropriation right for public necessity"	Ministry of Economy and Sustainable Development of Georgia	Karsi-Akhalkalaki railway construction project	1 natural person Land plot
20	Order No. 1-1/323 of 1 March 2012 by Minister of Economy and Sustainable Development of Georgia "On Granting to Ministry of Economy and Sustainable Development of Georgia the expropriation right for public necessity"	Ministry of Economy and Sustainable Development of Georgia	Karsi-Akhalkalaki railway construction project	1 natural person Land plot
21	Order No. 1-1/1901 of 5 December 2010 by Minister of Economy and Sustainable Development of Georgia "On Granting to Ministry of Economy and Sustainable Development of Georgia the expropriation right for public necessity"	Ministry of Economy and Sustainable Development of Georgia	Karsi-Akhalkalaki railway construction project	2 natural person Land plot

The information contained in the table demonstrates that practically all except one expropriation instances are linked to transport infrastructure projects; the exception is Resolution No.263 of 27 May 2002 of the President of Georgia on building Sameba Cathedral. While automobile or rail roads construction is included in the list of activities (works), defined by law, it is debatable whether religious construction could be considered necessary public need.

The same table also demonstrates that most damages are caused by transport infrastructural projects, implemented in urban areas (Batumi and Tbilisi). Out of the listed 21 projects the most – 7 are for construction of automobile road in Batumi, 5 – Tbilisi bypass railway and 4 – Karsi-Akhalkalaki railway construction.

When viewing the instruments (legal acts) referred to in Table 2, one should keep in mind that pursuant to the Eminent Domain Law the decision on expropriation shall be made in two stages: on the first stage Minister of Economy and Sustainable Development issues the Order on inevitability of expropriation for public necessity and appointing the entity, which shall have the right of expropriation. Final decision on inevitability of expropriation and the entity to carry out the expropriation shall be passed by regional (municipal) court. All the instruments in Table 2, except the first two (which are generally very vague), directly grant expropriation right to one or another body/organization thus conflicting with the Eminent Doman Law. Besides, the role of courts in decision-making is diminished; it turns out that courts only confirm resolutions by the President or the Minister of Economy and Sustainable Development.

As for establishing inevitability of expropriation, all the instruments in Table 2 practically ignore this requirement and provide no proof of inevitability. Large number of Acts regarding one and the same project also demonstrates, that the necessity is not examined appropriately at the initial stage of the project, leave alone finding alternative options in order to avoid expropriation

In this regard it is worth mentioning that in four cases (Karsi-Akhalkalaki railway construction project) Ministry of Economy and Sustainable Development of Georgia grants expropriation right to itself. Also, no Order with regard to Tbilisi bypass railway project contains the list of property under expropriation and names of the owners (as is in other cases). Presumably, these acts have annexes, which are not available on the Georgian Legal Herald website.

2.3 Violation of land tenure rights

Tourism and tourism development infrastructure are among Georgian Government's top priorities in recent years. The President and Government of Georgia have initiated a number of large-scale projects. Planned and underway are large-scale infrastructural and tourism investment projects on the territories, declared so called free tourism zones (Anaklia-Zugdidi, Kobuleti) and tourist attractions (Mestia, Gonio, Sairme, Bakhmaro).

It should be taken into consideration that practically there is no planning in tourism sector – though tourism is considered a priority, no tourism development national strategy or national, regional and local plans exist in the country. Usually it is the President and Georgian Government who are the initiators of certain projects. Governmental agencies then try to implement these projects or attract private investments for that purpose; they even make a “facilitating” arrangement. Implementation of tourism infrastructural projects undoubtedly requires land, which in many cases is in private ownership or use. Often land owners and land users, owing to different reasons (including optional rule of property registration in Public Registry and limited access to registration services) have not registered their property rights with Public Registry. Besides, as was illustrated above, legislative and institutional framework in the area of involuntary resettlement is fragmentary and not insuring observation of citizens' rights and interests. As a result, violation of citizens' rights when planning and implementing tourism facilitating projects (and development projects in general) recently occurs more and more frequently. Below is a review of 2010-2012 instances⁵³, recorded and studied by NGOs and covered in Georgian media. They clearly indicate to the need to develop policies and standards in conformity with international human rights protection standards.

Violation of the traditional ownership right in Mestia⁵⁴

Following the President's statements on huge tourist potential of Upper Svaneti and, specifically Mestia, Ministry of Economy and Sustainable Development announced about tourism infrastructure development in Upper Svaneti in 2010 and the Government started implementation of different projects – new airport and runway were constructed in Mestia, 8 km road leading to Hatsvali skiing lodge was laid, 1400 m ski-track and lift were built, Mestia center was rehabilitated, Zugdidi-Jvari-Mestia-Lasdili highway construction started, etc. The Government believes that development and upgrading of basic infrastructure will attract tourists to Svaneti.

It should be noted that basic source of income in uppers Svaneti is agriculture, in particular livestock and farming; due to shortage of arable, the population is fully depended on the land. In Svaneti, likewise other mountainous regions of Georgia, land plots have practically never been registered. Local population owned and disposed land plots (and often timberland) for centuries on the basis of the ancestors' oral agreement. It was mostly on those, traditionally owned land plots (mainly pastures and plough-land) that infrastructural projects were implemented without any prior information, agreement or compensation to the owners and users.

Though most of Mestia population is confident in lawfulness of traditional ownership, many of them still decided to register the land plots in public registry, where they ran into administrative and artificial barriers.

It turned out that none of the two reasons for the legalization of property – “willful occupation” and “lawful ownership” – fit in popular in Svaneti form of ownership – traditional ownership. Where it was possible to legalize the property on the basis of “lawful ownership” public registry refused to register the property right and requested electronic measurement drawings, though the law does not provide for obligatory presentation of electronic measurement drawings. Some of the locals could afford the measurement expenses and repeatedly applied to public registry for property legalization, but this time another pretext for refusing was adduced – certain territory could not be registered (the locals call this area “on that side of the water”) as did not fall within “electronic network”. It is noteworthy, that some of Mestia inhabitants managed to circumvent these “prohibitions”, which, according to the locals, could be explained by nepotism.

Thus, tourism infrastructural projects in Mestia were implemented in gross violation of human rights. People have in fact been deprived of land tenure rights for the sake of development projects. State agencies, instead of being the warrants of human rights protection turned up the infringers. With the help and advocacy of human rights NGOs part of the affected population received compensations only for the land lost, but not full and fair compensation, as provided by international regulations in involuntary resettlement area.

⁵³ In 2011 “Facilitation of Property Right Protection in New Tourist Zones” started at the initiative and financial support of “Open Society Georgia” foundation. Four NGOs were implementing the project: “Green Alternative” Association, “International Transparency – Georgia”, Georgian Young Lawyers Association” and “Georgian Regional Media Association”. Three reports have been published within the project by now.

⁵⁴ For more details see “property protection problem by the example of Mestia”, July 2011

Property rights violation in Gonio⁵⁵

In 2007-2010, at the decision of Khelvachauri Municipality Commission for recognition of property rights, Gonio village population was granted the land plots they owned for years. On the bases of certificates issued by the Commission they registered the property in public registry. In the end of 2010 the same Commission, unexpectedly canceled (declared invalid) the certificates of 271 Gonio inhabitants under the pretext of absence of necessary evidences. That way 271 people were deprived of property right without any compensation.

The Commission explained simultaneous cancellation of 271 certificates by different arguments: in some cases it was that land plots were within protection of cultural heritage zone, in other cases – the need for observation of “conditional regulations for infrastructural development”. In one case the Commission grounded its decision as follows – the land plots taken from the population are “uncultivated free territory and are on high flank of Gonio hill, next to the territory, acquired by so called sheikhs”. According to local people “sheikhs” are Arab investors, who acquired lands in Ajara for implementation of tourism development infrastructure projects.

Not one family in Gonio suffered from cancellation of property right: they lost their income source. Besides, some had even sold their old houses hoping to build new ones on legalized land and to attract tourists, some even sold just legalized land plots, new owners of which had already built houses there and then had to dismantle them at the demand of architectural service, expenses incurred first to recognize property right and then to register property certificate in public registry were never compensated. By nullifying property right many families lost livelihoods and housing.

Almost half of affected population did not appeal the Commission decision in court due to lack of financial means, on the one hand and legal illiteracy – on the other. Those who took it in court timely are now waiting for their cases to be heard in court⁵⁶.

Abandoning the property and granting it to the State⁵⁷

After 2011 it often happens so that shortly prior to the beginning or right after the beginning of tourism development infrastructure projects people abandon property and give it to the State. This happened in Sairme (Imereti) and Bakhmaro (Guria).

In Sairme, in the period between 13 and 23 December 20 cases of giving property to the state and two of abandoning real estate were registered. State ownership of many other land plots in Sairme was also registered. Later, the State handed most of them over to “Sairme Development Company” Ltd.

In Bakhmaro resort 79 facts of abandonment were established. It again took only 10 days (13-25 January 2011) for Public registry to legalize State ownership of these lands. It is noteworthy that prior to abandonment many of these people passed through a lot of property registration procedures: applied to the Commission for recognition of property rights, collected and presented the documents certifying the ownership, made land measurement drawings, notarized witness statements, paid the fee, took property certificate, applied to public registry and again paid property registration services fees, and after all these procedures and expenses they still abandoned their property in the State’s favor⁵⁸.

Gift of property (including to the State) and abandonment is allowed by Georgian legislation. But in the above cases voluntary nature of these actions is in doubt. Neither the donators, nor the abandoners speak about any pressures or threats⁵⁹, but there are circumstances, give rise to the suspicion on the existence of a pressure. In particular:

⁵⁵ See additional information “Property protection problem by the example of Gonio”, March 2011

⁵⁶ Similar to Gonio case is described at humanrights.ge. According to the source on 12 April 2007 in Signaghi (Kakheti), 5 ha forest area next to Bodbe nunnery was acquired by Goderdzi Gordeziani in observation of all legal procedures. On 30 April 2007 Head of Kakheti regional department of Ministry of Economy issued an order which nullified the previous resolution on conferring the land on Goderdzi Gordeziani. Thus Gordeziani was deprived of the land and in June 2009, at the President’s Resolution, it was handed over to Bodbe nunnery for a symbolic price of 1 GEL. 16.09.2009 “The Land and Justice”. <http://www.humanrights.ge/index.php?a=main&pid=7822&lang=geo>

⁵⁷ For further details see “Unprotected property right in Georgia” Third report, March 2012

⁵⁸ The facts of land abandonment in Bakhmaro, and other cases of land abandonment are touched upon in “Gurianews” newspaper of 3 September 2011. See for more details: http://gurianews.com/index.php?option=com_content&view=article&id=1891%3A2011-09-03-09-03-28&catid=89%3A2010-12-03-19-54-53&Itemid=139

⁵⁹ Badri Kutalashvili, inhabitant of Lanchkhuti region states about the pressure attempt in his interview to “Gurianews” newspaper. (“Gurianews”, 20 December 2011) http://www.gurianews.com/index.php?option=com_content&view=article&id=2697:q-----q&catid=74:2010-11-26-08-07-22&Itemid=125

- Most of the donators are natural persons whose other property, except that donated to the State, is not legalized. Besides, the donated property is within tourist regions and, if desired, the owners would not have any problem to sell it for high price;
- Facts of donation/abandonment took place in one specific geographic area at one and the same time (within 1-2 weeks interval);
- The donated property was registered in the owner's name, and the registration itself is associated with expenses (minimum – registration fee, cadastral measurement drawing, preparation of property certificate etc.). Besides, several cases of donation took place shortly after the property registration and the expenses incurred;
- The facts of donation and abandonment are concentrated in the areas, declared as new priority regions of economic development.

It is noteworthy that land is often abandoned not only by private owners but also by local governmental bodies. For example, "tspress.ge" internet-portal reported that Poti Sakrebulo (city council) twice abandoned land plot in the State's favor – first it abandoned 20.200 m² by its 1 December 2011 Decision, for the second time – 1501 m² on 17 January 2012.

The reason for the first instance was explained by Chairman of Poti Sakrebulo as follows: *"We took the land up for auction, but failed to sell it. Therefore we gave it to Ministry of Economy, who has more contacts and better leverage to the auction. This is the planned budget replenishment"*⁶⁰. On 28 December 2011 Ministry of Economy and Sustainable Development again requested Poti Sakrebulo to abandon the land. According to the same Chairman of Poti Sakrebulo Water supply service center was planned to be built on that territory⁶¹.

In 2010-2011 Ozurgeti Sakrebulo also abandoned land in the State's favor; similar to Poti case, it was at the request of Ministry of Economy and Sustainable Development. According to "Gurianews" newspaper⁶² Ozurgeti Sakrebulo abandoned its owned pipelines in September 2010, and in August 2011 it abandoned water-distribution plant and high-pressure pipeline.

Registration of property, already registered as private ownership, to the State⁶³

The law in force provides for several mechanisms of protection of property rights. Still, it often happens that land plots, already registered in public registry on the basis of cadastral measurement drawing, is re-registered to other persons. In most of these cases new owner is the State. This usually happens in the areas, declared tourist places by the State. Below are two examples of such practices.

In 2009 Zugdidi registration service of Public Registry, registered 150 land plots in Anaklia (Samegrelo) to Ministry of Economy at the request of the latter. Among these land plots was one belonging to Soso Aqubardia, which he owned lawfully since 2007 as registered in Public Registry. Courts of the first and second instance dismissed the property restitution claim of Aqubardia; As for Supreme Court, it just refused to take up the case. Currently Aqubardia case is presented to European Court of Human Rights.

In 2011 Grigoleti (Guria) inhabitant Marina Meqvabishvili filed an application with Lanchkhuti registration service of Public Registry to register the changes on the land plot, lawfully owned by her since 2004. The registration service halted registration proceedings with regard to Meqvabishvili's application under the pretext, that the land in question overlapped the state-owned land⁶⁴.

In both cases the individuals faced with one and the same problem – Public Registry fails to compare electronic and paper copies of measurement drawings (both allowed by Georgian Law) and thus re-registers already registered property to another owner – the State. Unfortunately, in such cases, courts do not protect the rights of those affected.

⁶⁰ tspress.ge Internet-portal, 2 December 2011 "Unlawful deal between Ministry of Economy and Poti Self-government" <http://tinyurl.com/cvgowkq>

⁶¹ tspress.ge Internet-portal, 17 January 2012 "Poti Sakrebulo to serve Ministry of Economy" <http://tinyurl.com/ccy7zwf>

⁶² "Gurianews" 26 August 2011 "Ozurgeti Sakrebulo complied with the request of the Minister of Economy" http://www.gurianews.com/index.php?option=com_content&view=article&id=1838:2011-08-26-04-52-18&catid=66:2010-11-25-16-47-31&Itemid=111

⁶³ For further details see "Unprotected property right in Georgia" Third report, March 2012

⁶⁴ See more in "Gurianews" newspaper "Supsa port reality for dreamers of Lazika" (20 January 2012) http://gurianews.com/index.php?option=com_content&view=article&id=2866%3A2012-01-20-06-43-15&catid=89%3A2010-12-03-19-54-53&Itemid=139

It is noteworthy that lands, registered as state-owned, eventually turn out to be in the hands of private companies. In the first case the land was acquired from the State by Anaklia Port company, in the second case – Black Sea Product company. Later, both owners sold their property to companies registered in offshore zones. Notable is the fact, that after sales the new owners were represented in Georgia by old holders of these companies.

Other cases of violation of land tenure rights

In 1998 the State recognized property right to land, houses and other facilities of 170 **nomad households living at Goderdzi Pass** and owning this property for centuries. These people were handed over appropriate documents. In contrast with Soso Aqubardia and Marina Meqvabishvili, Goderdzi Pass inhabitants did not have their property registered in Public Registry due to financial shortage and legal illiteracy. On 21 October 2011 Georgian Government passed the Resolution on registering Goderdzi Pass territory as State property. Later it was passed over to Ajar Autonomous Republic government regardless the fact that this territory included houses and land plots of tens of families. The affected people tried to restore their property rights but in vein – the property already belonged to the State.⁶⁵ As in many previously described cases, Goderdzi Pass inhabitants' property rights also fall prey to tourist infrastructure⁶⁶.

Likewise in previous case, 5 inhabitants of **Akhaldaba village of Gori Region** – Nino Zarkhozashvili, Bezhan Giorgashvili, Olia Papuashvili, Mevlud Papuashvili and David Rostomashvili – were given the land in ownership in 1990-ies; they also have appropriate papers certifying their property right, though the property registered in Public Registry. In November 2010 about 10 ha of land, belonging to these people, was fenced in and prohibited the use or entry there by Ministry of Defense. After several attempts to look into the situation, the affected people learned from local governmental bodies that the land is on Ministry of Economy and Sustainable development balance; the later readdressed them to Ministry of Defense. The affected people state that the harvest from the lost land was basic source of their income. They have not received any compensation for the land lost and damages incurred⁶⁷.

“Kartlis Khma” internet-portal dedicates several articles to land tenure rights issues. The portal describes the grave situation of a number of Shida Kartli inhabitants since Ministry of Economy and Sustainable Development sold the land and pastures in their use without prior information of the users. For example, the 20 September 2011 article “How the land plots of Kartli villages are sold” states that the land plots in **Bebnisi and Mokhisi villages of Kareli Region and Kheltubani village of Gori Region** are being sold so that the users are not even notified about the auction⁶⁸ (the land plots are first registered as Ministry of Economy property and then are sold through electronic auction).

In 12 September 2011 article⁶⁹ the portal describes the incident when the land of about 1.5 million m² was sold by Ministry of Economy and Sustainable Development without informing the users (tenants) and creating priority acquisition conditions for them. The sold territory, according to “Kartlis Khma”, includes agricultural lands owned **by two villages of Kareli Region – Dzlevijvari and Dirbi**. The buyer is Ace Holding Company, run by an Indian citizen and registered in Georgia the same year. The Company's main activity is production and selling of food products.

The same portal in 11 September 2011 article⁷⁰ describes another similar case. This time Ministry of Economy and Sustainable Development sold about 900 thousand m² land (mainly pastures) of **Ruisi, Ptsa and Agara villages of Kareli Region** to Dutch Organic Farm Company. The Company's basic activity is production, distribution and selling of food products.

⁶⁵ NDI Press-release 14.06.2012 <http://www.iod.ge/?mod=release&id=61>; INFO 9 Information Agency 17.06.2012 <http://info9.ge/?l=G&m=1000&id=384>; INFO 9 Information Agency 08.07.2012 <http://info9.ge/?l=G&m=1000&id=984>

⁶⁶ Recently Ministry of Finances of Georgia signed export credit agreement with “Unicredit Bank Austria” on financing ski lift and gondola installation. (Parliament of Georgia ratified the Agreement on 22 June 2012 by Resolution No.6552-Is.

⁶⁷ <http://tinyurl.com/8y7uups>; also Georgian Association of Regional Broadcasters “Polyhedron” 17 September 2011 <http://www.palitrav.ge/akhali-ambebi/sazogadoeba/8812-akhaldabis-mosakhleoba-mitsis-nakvethetbis-chamorthmevas-aprotesteben.html>

⁶⁸ “Kartlis Khma” internet portal, 20 September 2011 “How are the land plots sold in Kartli villages. <http://tinyurl.com/88lgiur>

⁶⁹ “Kartlis Khma” 12 September 2011 “What is going on in Dzlevijvari around 1mln 521 747 m² land sold to an Indian citizen” <http://tinyurl.com/6ogxy4e>

⁷⁰ <http://tinyurl.com/capgzfy>

Alienation of commonly used pastures have put local communities in grave situation; inhabitants of Zeghduleti village of Gori Region⁷¹, Tsitskanaantseri and Kuchatani villages of Kvareli Region⁷², Tsikhesulori, saniasouli and Zeda Vani villages of Vani Region⁷³, Kolagi village of Gurjaani Region⁷⁴, Chobalauri village of Kaspi Region⁷⁵ and Itkhvisi village of Chiatura Region⁷⁶ are facing problems related to alienation of pastures and the loss of livelihood.

With regard to privatization of pastures in common use it should be mentioned that Georgian Law prohibited privatization of pastures – pursuant to the Law of Georgia of 8 July 2005 on Privatization of State Owned Agricultural Land⁷⁷ it was impermissible to privatize state-owned pastures. In the end of 2006 an amendment was introduced to this law, allowing privatization of pastures, which were leasehold before the law entered in force. Also allowed was privatization of the pastures linked, under appropriate instrument (legal act), to built on them houses and facilities in private ownership of natural or legal persons or/and State owned buildings/facilities. Opponents to this amendment alleged that pheasants and small farmers would never afford to privatize the pastures and they would finally pass into the hands of large landowners and agro-industrial firms. And the supporters claimed that the amendment would not limit the pheasants' access to pastures⁷⁸. As became evident in practice this legal amendment in fact limited the access of local communities to pastures.

Finally, we would like to draw the attention to the opportunity of foreign natural persons and legal persons, registered abroad to buy agricultural land in Georgia. As was mentioned while reviewing Georgian legislation in previous chapter, legal persons, registered abroad (and until 29 June 2012 – foreign natural persons) were not entitled to acquire agricultural land in Georgia⁷⁹. Still, as can be seen from the above facts, foreigners somehow manage to buy agricultural land in Georgia. The thing is that when a legal person is registered in compliance with Georgian legislation, it may acquire agricultural land in Georgia even if its 100% share is owned by a foreigner. Alternatively, a foreigner or a legal person registered abroad may change the category of agricultural land, as provided by the Law on the Cost of Development of Agricultural Land and Compensation for Damage and use it for other purposes; in this case the land plot in question will undoubtedly fall out of agricultural use.

2.4 Conclusion

The review of Georgian practices shows that, when development projects result in involuntary displacement, resettlement documents (resettlement policies framework document, resettlement action plan) are developed only when the project is financed (or is planned to be financed) by an international financial institution. When no international financial institution is involved, Georgian legal framework is applied, which is very incomplete.

When international financial institutions are involved, the internal review and approval/endorsement of resettlement documents and performance monitoring are carried out in compliance with the procedures of these institutions. As for the Georgian side, the discussion/approval procedure is not clear as is no agency, responsible for monitoring and control of compliance with the commitments under resettlement document. The analyses showed the presence of discussion/approval practices at state institutions, though it is vague and not based on formally established procedures.

⁷¹ "Palitra TV: 16-04-2011 "Pastures will be returned to Zeghdudleti population. Land owner will receive alternative space" <http://www.palitratv.ge/akhali-ambebi/sazogadoeba/3568-zeghdulethis-mosakhleobas-sadzovrebi-daubrundeba-mitsis-mesakuthre-alternatiul-farthobs-miighebs.html>

⁷² Kakheti Information Center 21 April 2011 <http://ick.ge/ka/videogallery/5678-2011-04-21-11-39-13.html>

⁷³ Internet portal www.Newpress.ge. 9 May 2012 http://newpress.ge/index.php?page=4&staties_id=67&rub_param=8

⁷⁴ "Maestro" TV 31 August 2011 <http://www.youtube.com/watch?v=s2meD11y84A>

⁷⁵ Shida Kartli Information Center 28 May 2012 <http://qartli.ge/web/5466>

⁷⁶ Information Agency INFO 9, 28 June 2012 http://www.youtube.com/watch?v=FenDhG9vxiA&feature=player_embedded

⁷⁷ The Law "On Privatization of State Owned Agricultural Land Plots" not in force presently. The law became invalid with the enactment of 21 July 2010 Law "On State Property".

⁷⁸ Humanrights.ge web-portal on Human Rights 27 December 2006, visit: <http://www.humanrights.ge/index.php?a=main&pid=6379&lang=geo>

⁷⁹ A representative of Georgian Parliament, in Constitutional claim "Danish Citizen Heike Kronqvist against Georgian Parliament" grounded this prohibition as follows: "The main point of prohibiting alienation of the land to foreign citizens is to avoid acquisition of a cheap land by citizens of richer countries, which may negatively impact the State's economic security, environmental protection and general security. The risk of massive land sales is driven by the lack of land market".

Information on projects implemented in Georgia causing or presumably causing involuntary displacement is jumbled and incomplete. Where international financial institutions are involved the resettlement documents in English are available on their websites. Georgian translation of these documents is not always available and those accessible are placed disorderly.

The situation is much more complicated when international financial institutions are not involved in the projects. Information on communities/individuals affected by and involuntarily displaced due to these projects is practically unavailable. Some idea of these projects can be obtained from EIA reports (if any), but these are exceptional cases. Another way of obtaining the information is administrative acts on property expropriation, but, as is clear from the above analyses, these acts are not always published, or if published, contain no (or incomplete) information about those affected. Besides, in these cases it remains unclear how many individuals agreed to involuntary displacement (expropriation, as a rule, is carried out when an individual does not agree to abandoning the property) and how many underwent economic resettlement due to development projects.

As for property expropriation, the practices applied in such cases needs further investigation; however, present analyses makes it clear, that both, the legislation on expropriation and the practices, as part of involuntary displacement, need significant improvement.

Finally, examples in the last chapter testify to the absence of policy, standards and procedures in the area of involuntary displacement linked to development projects. Because decision-making on development projects is not transparent, frequently there are cases of land tenure rights violation. Especially outrageous is when property right is violated under the pretext of supporting unfounded projects with doubtful economic benefits. Regrettably, some state institutions, profiting by imperfect legislative and institutional frameworks, try to simply seize the land and other property, ignoring people's interests and violating their land tenure rights. In practice, courts in such cases do not turn out to be an efficient mechanism to restore the infringed rights.

Recommendations

The situation in Georgia in the area of development induced involuntary resettlement is complex and many-sided. It will require the activity and efforts of many stakeholders to improve the situation. Below are some recommendations on necessary measures to be taken in future.

Measures to be undertaken by Georgian Government

Proceeding from topicality of the issue there is an urgent need of development of national policy for development induced involuntary displacement. The policy shall be in conformity with pledges that Georgia has committed to in the area of human rights protection.

Similarly, it is necessary to improve of institutional structure and to strengthen governmental agencies to undertake state control of development induced involuntary displacement. Strengthening governmental agencies implies both, empowerment and providing with financial, human and technical resources.

It is necessary to establish legal decision-making procedures on development induced involuntary displacement which shall ensure informed and grounded decisions by decision-makers. Participation of the public, especially project-affected individuals/communities in decision-making process is equally essential.

It is impossible to separate decision-making process on involuntary displacement from general decision-making procedure on development project; procedures for granting construction and environmental permits for implementation of development projects cannot ensure consideration of involuntary displacement issues; permit-granting agencies are not competent in making such decisions. Thus, integrated approach to consent by the State (e.g. government) should be considered in order that all the aspects of the project, i.e. economic feasibility, impact on social and natural environment, inevitability of involuntary displacement, etc. are considered.

Activities to be undertaken by International Financial Institutions

Involvement of international financial institution in development projects is to a certain degree a guarantee of higher standards set by Georgian Law being observed, since the development projects in this case governed by these institutions' policies. However, it does not rule out the instances of violation of this policy and of international standards of human rights.

Undoubtedly, international financial institutions set higher standards when involuntary displacement is concerned, however these standards are applied only during implementation of specific projects and do not influence other projects implemented without their participation, and they do not entail positive changes in the policy and approaches of the country. As a result, individuals/communities resettled within the projects without the involvement of international financial institutions are discriminated since lower standards are applied to them.

International financial institutions may help Georgian authorities – they have expertise, experience and capacity to help the Government in reviewing and strengthening the policies, legislation and institutional structure related to involuntary displacement. They may also help in applying best practices “out” of their projects. This would support the protection of the rights of all Georgian citizens, regardless of whether or not the project involves an international financial institution.

Activities to be undertaken by project implementing companies

The companies need to distance themselves from the government as much as possible and to avoid enjoying its support when acquiring right to land. They should make their objectives clear to the population from the very beginning and establish good relationships with project affected communities; it is in consultations and with agreement of these communities that the companies shall implement their projects. Otherwise the relationship with local population may grow into confrontation and conflict, which in its turn, may slowdown the project and undermine the company's reputation; it may also threaten stability on a local, and possibly, national levels.

Activities to be undertaken by NGOs

It is important that NGOs continue their support to people in registering land and other property rights at Public Registry. Obviously, when property is officially registered, the risk of violation of land tenure rights reduces, and the opportunities of restoration of infringed rights increases. At the same time it should be mentioned that involuntary displacement is a complex phenomenon, comprising not only the right to land but also other human rights related issues, as provided in international human rights agreements.

Proceeding from the above it is important that NGOs increase their efforts towards improving the situation in the area of development induced involuntary displacement at all levels. This implies advocacy for developing efficient policies and legal regulation in this area, as well as monitoring of specific projects that may cause and/or have caused involuntary displacements; supporting people and communities, affected by these projects so that their rights and interests are protected (including by raising awareness of local communities, conducting trainings, providing legal advice, participating in negotiations with the investors/projects' proponents, making inventory of resources and infrastructure local communities depend on, etc.).



Association Green Alternative is a non-governmental, non-profit organization founded in 2000. The mission of Green Alternative is to protect the environment, biological and cultural heritage of Georgia through promoting economically sound and socially acceptable alternatives, establishing the principles of environmental and social justice and upholding public access to information and decision-making processes.

We organize our work around six thematic and five cross-cutting areas. Thematic priority areas include: energy – extractive industry – climate change; transport sector and environment; privatization and environment; biodiversity conservation; waste management; water management. Cross-cutting priority areas include: environmental governance; public access to information, decision-making and justice; instruments for environmental management and sustainable development; European Neighbourhood Policy, monitoring of the lending of the international financial institutions and international financial flow in Georgia.

Green Alternative cooperates with non-governmental organizations both inside and outside Georgia. In 2001 Green Alternative, along with other local and international non-governmental organizations, founded a network of observers devoted to monitoring of development of a poverty reduction strategy in Georgia. Since 2002 Green Alternative has been monitoring implementation of the Baku-Tbilisi-Ceyhan oil pipeline project, its compliance with the policies and guidelines of the international financial institutions, the project's impacts on the local population and the environment. Since 2005 the organization has been a member of the Monitoring Coalition of the ENP (European Neighbourhood Policy) Action Plan. In 2006 Green Alternative founded an independent forest monitoring network. Since establishment Green Alternative is a member of CEE Bankwatch Network - one of the strongest networks of environmental NGOs in Central and Eastern Europe. Green Alternative closely cooperates with various international and national organizations and networks working on environmental, social and human rights issues; Green Alternative is a member of the Coalition Transparent Foreign Aid to Georgia founded in 2008. In 2010 Georgian Green Network was established on the initiative of Green Alternative. This is informal association of civil society organizations and experts dedicated to protecting environment, promoting sustainable development and fostering principles of environmental and social justice in Georgia.

In 2004 Green Alternative received the Goldman Environmental Prize as the recognition of organization's incredible work for environmental protection, social justice and equity.

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