



# **FORESTLAND GOVERNANCE IN GEORGIA ASSESSMENT OF LEGISLATION AND PRACTICE**

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# FORESTLAND GOVERNANCE IN GEORGIA ASSESSMENT OF LEGISLATION AND PRACTICE

## Acronyms

- AFA - Ajara Forestry Agency
- APA - Agency of Protected Areas – a LEPL under the Ministry of Environment
- CITES - Convention on International Trade in Endangered Species of Wild Fauna and Flora
- EIA - Environmental Impact Assessment
- EIP - Environment Impact Permission.
- Gel – Georgial Lari (National currency of Georgia)
- IUCN - International Union on Conservation of Nature
- MoENRP - Ministry of Environment Natural Resources Protection
- NBSAP – National Biodiversity Strategy and Action Plan of Georgia
- NEA - National Environmental Agency
- NFA - National Forestry Agency
- SEA - Strategic Environmental Assessment
- WWF CauPO – WWF Caucasus Program Office
- WWF- World Wildlife Fund

## 1. Introduction

Forestland covers about 40% of Georgian territory. Forests have an exceptional importance at the national, regional and global level: they not only conserve the unique biological diversity, but also ensure continuous delivery of ecosystem services<sup>1</sup> and resources to local communities. The quality of forestland governance is an important determinant of the number and scale of environmental problems. Ecosystem services, such as fuel wood and timber supply, non-timber products and drinking water supply, as well as prevention of erosion, floods and landslides are of high importance for a significant portion of the population. Good environmental governance is key for the protection and sustainable use of natural resources for poverty alleviation, suspension of environmental degradation, and ensuring social and economic development. Vulnerable groups of population are especially affected from bad governance – vital interests of the poor and women are violated and they cannot protect their rights.

One of the determining factors of poor management is the absence of a forest categorization (zoning) system based on modern principles of sustainable management and an ecosystem approach.<sup>2</sup> This has a negative impact on the development of protected areas and on biodiversity conservation in general. Overexploitation of timber resources, uncontrolled pasturing and development of infrastructure projects in vital ecosystems, including protected areas, are among the results of bad governance.

There have been several studies related to forest legislation and forest management in Georgia, including the ones by Green Alternative.<sup>2</sup> Yet there has been no analysis of such a complex issue as is the land use legislation and practices in forest areas. Local civil society groups and NGOs only have limited opportunities

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<sup>1</sup> Ecosystem services -Direct and indirect contributions of ecosystems to human wellbeing (UNEP, 2014).

<sup>2</sup> See [www.greenalt.org](http://www.greenalt.org)

to advocate and participate in related decision-making processes due to the absence of a policy and legislation analysis related to forestland governance.

The present study is an attempt to bridge the gap thus making far as possible input in solving the problems. The research will help to harmonization of allied fields' (forestry, biodiversity protection, agriculture, and economy) policies; uniform approach by different institutions and their coordinated activities; strengthening of advocacy capacity of civic society, private sector and local population will facilitate their better cooperation with central and local governments. This will be a very important step forward to stop land and forest degradation tendencies in the country.

During the study we consulted with the experts, as well as decision makers. The problems raised here and recommendations to address them are consistent with forest and biodiversity management national objectives, as defined in "National Forest Concept" and "National Biodiversity Strategy and Action Plan" (NBSAP). Hence, present study will add to developing new legislation, regulating forest sector, as well as its institutional structure.

## **2. General overview of 2012-2015 situation in forest sector of Georgia**

The Green Alternative study "Forest management in Georgia: problems and challenges" (2012) reviews the situation in Georgian forest sector by September 2012. Most of the protected areas (Strict nature reserves, national parks, nature monuments, and managed reserves) were managed by the Agency of Protected Areas (APA) – a LEPL under the Ministry of Environment. Usable forests were managed by the Agency for Natural Resources – a LEPL under the Ministry of Energy and Natural Resources. The Agency responsibilities included some other features related to management of natural resources (e.g. licensing natural resources, monitoring license and permit terms, illegal extraction of natural resources prevention/control, mineral resources management etc.). "Usable forest fund" on the territory of Abkhaz and Ajara Autonomous Republics was managed by appropriate Abkhaz and Ajara bodies. Forestlands within Tbilisi limits were not part of "National forest fund" and were managed by Tbilisi City Hall.<sup>3</sup>

After 2012 parliamentary elections a range of changes have been introduced in environment protection and natural resources sectors: Ministry of Environment and Natural Resources Protection was founded (restored) and it regained some of its functions from the Ministry of Energy (economic forest management, environmental oversight, license issuing etc.). However, it took the Government more than 8 months to introduce appropriate structural changes. Some of destructive regulatory legal acts were repealed (e.g. related to hunting endangered species listed in the Red List). However, the vicious legal framework governing forest sector and bad-established institutional framework remained untouched, unfortunately (as of 31 January 2016).

In 2013-2015 strategic documents related to forest sector national policy were developed<sup>4</sup>. Ministry of Environment and Natural Resources Protection, with participation of the public concerned, worked out "the National Forest Concept" and the Georgian Parliament adopted it.<sup>5</sup> Development of "National Forest Program" started. It should be stressed that since 1999, different international and national environmental organizations talked about the necessity of developing the document defining forest national policy but none of the previous governments showed any political will to adopt it. At the initiative of the Ministry and with participation of the public concerned updating of Georgian biodiversity strategy and action plan started in 2011. Final document – "Georgian Biodiversity Strategy and Action Plan 2014-2020" was approved by the government in 2014.<sup>6</sup> These strategic documents describe the problems of forest sector and related sectors, as well as ways of their resolution. However, as mentioned above, no real changes took place with regard to legislation and management practices in 2013-2015.

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<sup>3</sup> See Georgian Government Resolution No.1070 (20.08.2010)

<sup>4</sup> TEEB Scoping Study for Georgia: Main Findings and Way-forward, 2013 was published in 2013 [www.teebweb.org](http://www.teebweb.org). This document was shared by the Ministry and included in its 2013-2014 report. One of its chapters is about Georgian forest sector, and important recommendations were included in "National Forest Concept" and "Georgian Biodiversity Strategy and Action plan".

<sup>5</sup> Georgian Parliament Resolution No. 1742-Is, 11.12.2013

<sup>6</sup> Georgian Government Resolution No. 343, 08.05.2014

So, in 2013-2015 all forest management functions were accumulated with Ministry of Environment and Natural resources and its LEPLs. **Forest policy service** was established with the Ministry of Environment and Natural Resources Protection in order to support the development and implementation of forest management national policy. Alongside with other functions, this service is tasked with addressing issues related to correcting forest borders and changing forest status; and submission of forest management plans to the Minister for approval.<sup>7</sup>

Issues related to biodiversity are coordinated by **Biodiversity Protection Service** under the Ministry of Environment and Natural Resources (planning and coordination of the protection of biodiversity components (species, habitats, ecosystems) and the species listed in Georgian “Red List”, management of biological resources (except for woody species), coordination/administration of issues related to species listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>8</sup>

**The function of Environmental Supervision Department** of the Ministry is the enforcement of environmental legislation: prevention, detection and suppression of the cases of illegal use of natural resources; monitoring execution of terms of licenses/permits etc.<sup>9</sup>

**National Environmental Agency (NEA)** – a legal entity of public law (LEPL) under the ministry of Environment and Natural Resources Protection – is in charge of determining quotas on extraction of natural resources and issuing of licenses on use of natural resources.<sup>10</sup>

The bodies, authorized to manage Georgian forest fund are: LEPL **National Forestry Agency (NFA)** under the Ministry of Environment and Natural Resources Protection and LEPL **Agency of Protected Areas** under the Ministry of Environment and Natural Resources Protection. “Forest funds” of Abkhaz Autonomous Republic and Ajara Autonomous Republic are managed by appropriate bodies of these republics (Forest Code, 1999).

LEPL **Ajara Forestry Agency**<sup>11</sup> (AFA) was established to manage forestry on the territory of Ajara Autonomous Republic. State oversight of the activities of this Agency is carried out by **Administration of Environment and Natural Resources under the government of Ajara Autonomous Republic**.<sup>12</sup>

Former “state forest fund” within Tbilisi administrative limits was still managed by Tbilisi Municipality in 2012-2015.

Important issues of forestland (forest and lands in forest territories) - so called “forest fund”- management are within the competence of the state bodies which are not within Ministry of Environment system, such as National Agency of Public Register – LEPL under the Ministry of Justice, and Ministry of Economy and Sustainable Development and its LEPL “National Agency of State Property” (see below).

### 3. The legislation on forestland governance

#### 3.1 Definition of forest and forest lands

Several laws cover institutional and property issues (basics) of forestland management in Georgia. These are: Law of Georgia “On the System of Protected Areas” (1996), Law of Georgia “Georgian Forest Code” (1999), Law of Georgia “On Management of Forest Fund”, Law of Georgia “On State Property” (2010), Organic Law of Georgia “Local Self-government Code” (2014).

According to Georgian Forest Code<sup>13</sup>, forest is “a part of geographical landscape, comprising trees

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<sup>7</sup> Source: Order No.18 by Minister of Environment and Natural Resources (10.05,2013)

<sup>8</sup> Source: Order No.11 by Minister of Environment and Natural Resources (10.05,2013)

<sup>9</sup> Source: Order No.26 by Minister of Environment and Natural Resources (10.05,2013)

<sup>10</sup> Source: Order No.27 by Minister of Environment and Natural Resources (10.05,2013) on “Approval of the regulations on LEPL National Environmental Agency”

<sup>11</sup> Source: Ajara Autonomous Republic government resolution No.55 (07.12.2010) “On Establishment of LEPL Ajara Forestry Agency”

<sup>12</sup> Source: Ajara Autonomous Republic government resolution No.53 (07.12.2010) “On approval of the regulations on LEPL Environment and Natural Resources Administration under the government of Ajara Autonomous Republic”

<sup>13</sup> According to current edition (January, 2016)

attributed to forest by Georgian legislation, land under these trees, as well as shrubs, grass, animals, and other components biologically linked in the process of their development, affecting each other and the environment.” This definition refers both to forests and forest lands and, unfortunately gives no indication as for a stand or an ecosystem implied as an object of management. “Forest” shall be defined in legislation so that it clearly gives quantitative parameters of unity woody plants (stand) (e.g. minimal size, density, coverage, canopy covering, tree height). Such a definition would allow the institutions, responsible for forest management, have forest protection/management specific goal (landmark) when scheduling forest protection and forest use tasks<sup>14</sup>.

The Forest Code (Article 5, Definition of Terms) gives several notions that include/cover forest and forest lands:

- State forest (mentioned 2 times)
- Georgian forest fund (mentioned 19 times)
- State forest fund (mentioned 113 times)
- Usable State forest fund (mentioned 5 times)
- Local forest fund (mentioned 3 times)

“State Forest” is defined as “forest owned by the State”. This definition is quite vague. The difference between “State Forest” and “State Forest Fund”, which is “integrity of State Forests of Georgia, as well as lands and resources attributed to these forests” is not clear either. It should be mentioned that in fact, the term “state forest” is not further used in this law. It is only referred to in Article 120, where it is mentioned that “Section 1, Article 9, of this Forest Code enters into force upon passing a law “On State Forest Privatization in Georgia”. However, the term “Georgian State Forest” is not at all used in Article 9.

“Georgian Forest Fund” is integrity of forests and their resources owned by the “State Forest Fund” and forests under different types of ownership.

According to the Forest Code “Local Forest Fund” is “a part of the Usable State Forest Fund legally regulated by the local governing and self-governing bodies in accordance with this Code and Georgian legislation”. This definition is outdated and legally incorrect. According to current legislation there are no “local governing bodies”, and what is more important, local self-government could not have been “part of the state authorities”.

The definition of “local forest fund” as given in the Forest Code contradicts to Organic law of Georgia “Local Self-government Code”. According to Article 16 of Local Self-government Code (“Own powers of municipality”) the municipality’s own powers include management and disposal of local natural resources, including forest resources. And “own powers of municipality” means that the municipality is entitled to handle forest management exclusively, on its own initiative (as well as any other issues that fall within the scope of its authority) without interference of other governmental institutions, related to forest management. Articles 14 and 16 of the Forest Code, where “Local Forest Fund “is considered a part of the “State Forest” also contradict to the Organic Law.

The term “forest fund” is quite confusing. It can be found only in legislations of Soviet/Post Soviet countries. “Forest Fund” internationally means a fund where financial resources are accumulated for forest management.

It would be much better that “forest” is used instead of “forest fund territories covered with forest” and “forest lands” instead of “forest fund territories not covered with forest”

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<sup>14</sup> For more information about forest definition see articles at UNEP, CBD and FAO web-sites: <http://www.unep.org/vitalforest/Report/VFG-01-Forest-definition-and-extent.pdf>; <https://www.cbd.int/forest/definitions.shtml>; <http://www.fao.org/docrep/005/y4171e/y4171e10.htm>

### 3.2 Forest property rights

In accordance with Article 9 of the Forest Code Property rights to the Georgian Forest Fund may be held by the State, by the Patriarchy of Georgia, by a physical or legal person of the public law. Despite this, all forests are owned by the state (the most part) or local self-governments.

The same Article 9 provides that the Georgian State “Forest Fund” is the State property and its privatization shall be regulated by the law of Georgia “On the Privatization of Georgian Forests”.<sup>15</sup> However, this Law has never been included in the political agenda since the adoption of the Forest Code (1999). In 2005-2011 statements related to forest privatization were made by different libertarian politicians then in power, but they failed to understand the basics of forest management. The discussions on privatization of state forests never went beyond political statements and no real activities have been undertaken.

The first steps towards forest privatization were made on 21 July 2010, when the Law on State Property No.3512-RS was passed.<sup>16</sup> According to this law former “kolkhoz” and “sovkhoz” forests situated within boundaries of settlements are subject to privatization. The forests shall be privatized through auction sale. Only local population can participate in the auction<sup>17</sup>. The term “forest land” is used in the Law but it is not explained. After the privatization the new owner is obliged to use it according to its “intended purpose”, protect species inhabiting the forest and listed in Georgian “Red List”, not restrict other people’s rights to use gifts of forest (berry and other fruit), to use non-wood resources and general water facilities (river, canyon, brook, stream etc.), and to hunt. After the privatization the new owner has the right to alienation. In this case the priority right to buy it belongs to local population. The price of each hectare of the forest land to be sold through the auction is 200 GEL, and funds received from privatization go to the budget of appropriate local self-governing body.

In two months<sup>18</sup> after the enactment of this law Ministry of Economy and Sustainable Development had to approve “the Rules of privatization of forest within territorial boundaries of a settlement” and to design template protocol confirming the purchase of the forest. Besides, Public Register National Agency – a LEPL under the Ministry of Justice – had to identify forest fund lands and former “kolkhoz” and “sovkhoz” forest lands before 1 June 2011; and to prepare appropriate drawings and draft resolution on demarcation of state forest fund to present to the government for approval.

With more than 2 months delay, Minister of Economy and Sustainable Development issued the order No.1-1/1980 of 15 December 2010 “On Approval of the rules of privatization of forests within territorial boundaries of a settlement”. The rules, in fact, reiterate the Law and nothing is said about forestland management and use. It does not answer the key question arising immediately after reading the law: what is the meaning of “*use forest land for its intended purpose*”, which is one of the terms of privatization (the owner’s liability). Neither the law, nor the regulations require from public authorities to inform the public and ensure its participation in decision-making. Moreover, the body carrying out privatization<sup>19</sup> is not obliged to include the institution responsible for forest management (i.e. LEPL National Forest Agency) in decision making process, or inform it about ongoing or already executed privatization.

Proceeding from the Law of Georgia “On State Property” Georgian Government passed Resolution No.299 of 4 August 2011 “On Forest Fund Demarcation”, drafted by LEPL Public Registry National Agency. This Resolution sets the boundaries of state “forest fund” and state “forest fund” plots’ identification data. The requirement of the law, obliging Public Register National Agency to ensure identification of state “forest fund” lands, as well as former “kolkhoz” and “sovkhoz” forest lands, was not met. They only identified and registered outer perimeter of “forest fund”. However, this was done with significant inaccuracies.

Thus, although the law permits privatization of former “kolkhoz” and “sovkhoz” forests within the territorial limits of settlements, we think this cannot be implemented due to the absence of two major prerequisites:

1. Territorial limits (boundaries) of settlements are not determined (only the limits of Tbilisi and some big

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<sup>15</sup> As mentioned above, the law to be passed is titled differently in Article 120 – “On Denationalization of Georgian State Forest”

<sup>16</sup> This law replaced the law of Georgia “on privatization of state property” (No.743, 30.05.1997)

<sup>17</sup> A Georgian citizen or a group of citizens registered in the book of records within the limits of particular settlement

<sup>18</sup> The Law was passed on 09.08.2010 and entered in fore immediately

<sup>19</sup> LEPL “State Property National Agency” under the Ministry of Economy and Sustainable Development

cities have been determined); 2. Former “kolkhoz” and “sovkhoz” forests limits, including those on the territories of settlements, are not determined.

According to representatives of National Forest Agency they have no information whether these articles of the law were applied during privatization of certain lands of the “forest fund”.<sup>20</sup> In order to clarify the issue Green Alternative requested public information from LEPL “National Agency for State Property Management”. In particular, copies of applications for forest privatization, lists of privatized territories and materials of administrative proceedings related to public auction, in accordance with the Law “On State Property” (21.07.2010, No. 3512-RS) and “Regulations of privatization of forests within territorial limits of settlements”.<sup>21</sup>

LEPL “National Agency for State Property Management” replied: applications for privatization of former “kolkhoz” and “sovkhoz” forests cannot be found due to the absence of data-base in the Agency. It was also mentioned there that the Agency never held privatization of former “kolkhoz” and “sovkhoz” forests through a public auction since the date of its foundation (September 2012).

*Deficient information from National Agency for State Property Management left it unclear whether any private person attempted to privatize the forest after the introduction of new regulations, and whether any forest had been privatized in 2010-2012.*

### 3.3 Forest management institutions

Pursuant to Article 14 of the Forest Code the categories of the **state “forest fund” according to the types of institutional governance** are divided into protected areas of the state “forest fund”, and usable state “forest fund”. This Article (equally as the two following ones) contains a lot of legal and substantial discrepancies. In compliance with para “a” of this Article “the protected areas of the state “forest fund”, comprise areas of the state “forest fund” designated for protection and protected areas established in accordance with the law of Georgia “On the System of Protected Areas”. About 75% of protected areas is covered with forest, the rest is occupied with non-covered territories (subalpine, alpine, subnival zones, high-water territories, lakes, rivers, part of the Black Sea water-area etc.). This incorrect phrase<sup>22</sup> probably led to the fact that according to the map, prepared by Public Registry and approved under Georgian Government Resolution No. 299 of 4 August 2011, Javakheti Plateau subalpine meadows, wetlands, lakes, Black Sea part of Kolkheti National park are included in the “forest fund”. According to para “b” of the same Article Usable State Forest Fund includes the Local Forest Fund, which, as mentioned above contradicts to organic law “Local Self-government Code”.

Article 15 of the Forest Code is titled “Governance of the Protected Areas of the State Forest Fund” and it states that “The State Department of Protected Areas, manages the protected areas of the State Forest Fund”. The essence and purpose of this paragraph are absolutely not clear. According to the Law “On the System of Protected Territories” and to other laws, protected territories are managed in accordance with protection categories, governed by the law on creation of specific protected areas and the management plan, no matter what type of ecosystem (forest, semi-desert or swamp) is included in a particular category of protected territory (this issue is closely related to imperfect categorization system).

From Articles 14, 15 and 16 of the Forest Code proceeds that forests in protected landscapes (IUCN V category) and multiple use zones (IUCN VI category) – protected territories defined by the law “On the Systems of Protected Areas” – belong to “usable forest fund”, because they are managed by local self-government bodies, not by the LEPL Agency of Protected Areas, as provided in Article 15 of the Code.

At first sight these three Articles look very simple, but, unfortunately many decision, contradicting to the principles of sustainable development, are made on their basis (transfer of territory to hydro-power stations etc.) This section of the Forest Code allows for different interpretations, including that the system of Georgian protected areas can be considered practically abolished. This is clearly demonstrated below, in the case related to Dariali power plant construction.

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<sup>20</sup> Source: interviews with representatives of National Forest Agency

<sup>21</sup> Order No.1-1/1980 (15.12.2010) by Minister of Economy and Sustainable Development

<sup>22</sup> A word “and” is used instead of a word “inside”

So, pursuant to **institutional state management, forest and forest lands** are, in fact, divided as follows:

#### **State forest**

- 1.1. Forests of protected areas, managed by LEPL Protected Areas Agency (reserve, national park, monument of nature, wildlife sanctuary, and Kintrishi protected landscape) – included protected areas in the territory of Ajara and Abkhaz Autonomous Republics .
- 1.2. Usable forest, managed by LEPL National Forest Agency

#### **2. Local forest**

- 2.1. Forests in protected areas under the jurisdiction of local self-government bodies (Tusheti protected landscape, Pshav-Khevsureti multiple use territory, Javakheti multiple use territory)
  - 2.2. Usable forests owned by local self-governments (e.g. Ambrolauri)
  - 2.3. **Forest owned by local self-government, and enjoying recreation zone status** (e.g. Tbilisi)
3. Forest of Ajara Autonomous Republic (except for forest of protected areas on the territory of Ajara Autonomous Republic), under the jurisdiction of LEPL Ajara Forest Agenc

### **3.4 Designation of forest and forest lands**

The Forest Code allows for “designation” – a form of management, when part of the management rights are granted to some institution for certain period and on certain terms. In previous version of the Code designation issues were regulated by appropriate Presidential Decree<sup>23</sup>. Since 2010 – in compliance with Government Resolution (No.242, 20.08.2010) “On the Rules of Forest Use”, designated areas of the State “Forest Fund”, allocated for a particular need of the State, shall be managed by the Patriarchy of Georgia or a State institution<sup>24</sup> jointly with NFA or APA.

The state “forest fund” may be designated, as defined in the Governmental Resolution No.242 of 20 August 2010, for two purposes: preservation of nature and creation of calm environment for prayers (up to 20 hectares territories adjacent to orthodox churches); or ensuring state security and defense.

Georgian Government allocates designated area of forest and establishes the managing authority. In accordance with the Forest Code justified proposal of an institution interested in designation of forests and/or authorized entities (NFA or APA) serves as a basis for such governmental decision. And, according to Georgian Government Resolution No. 242 of 20 August 2010, Patriarchy of Georgia, Georgian Ministry of Interior and Defense Ministry are authorized to raise the issue of designation.

Forest use and public access may be restricted, or even prohibited in a designated forestland area if it is incompatible with the purpose designation. Using a designated area of the state “forest fund” by a body holding the right to this area is allowed only for carrying out activities compatible with the purpose of designation or aimed at restoring and protecting the state “forest fund”. Other forestry activities in a designated area can be carried out only by the NFA and APA.

“Forest fund” area shall be designated on the basis Georgian Government resolution. On the basis of this resolution an agreement shall be signed between the managing body and the institution interested in designation of the “forest fund” area. The Government Resolution provides that the designation agreement shall contain characteristics of the forest and forest lands (forest area, boundaries, forest and land categories, ecological and economic characteristics), purpose of designation, period of designation, rights and responsibilities of the signing parties (access rights, forest protection, planning and implementation of forestry activities and other issues).

The institution interested in designation shall make an application to forest management body (AFA, NFA or APA), where it shall justify the need of designation, indicate the motivation for designation and the timing. It shall also present the measurement of the area to be designated and the forest taxation data.<sup>25</sup> The management body shall forward this documentation for consideration to other institutions: Ministry of Culture and Monument Protection, Ministry of Interior (if the area is within 5 km State border zone), Ministry of Economy and Sustainable Development, appropriate local self-government body or other

<sup>23</sup> Resolution No.506 (10.12.202) by the President of Georgia

<sup>24</sup> Pursuant to Article 18 of Governmental resolution No.242 of 20.08.2010 these are Ministry of Interior and Ministry of defense

<sup>25</sup> The need for forest inventory is not substantiate.

administrative body, if needed. In the case of positive replies from these bodies, Ministry of Environment and Natural Resources Protection drafts government resolution and presents it to the Government for further consideration after which the government passes appropriate resolution. On the basis of this resolution the agreement between the managing body and the interested institution shall be signed.

The use of designated area is allowed only for designation purposes and within designation agreement. Forest use and forest restoration shall be carried out under the supervision of managing bodies. According to designation regulations, the area designated to the Patriarchy shall be protected by managing body, and the area designated for the purpose of security and defense – by Ministry of Interior or/and Ministry of Defense.

Though the citizens' rights may be violated as a result of designation, the law does not provide for public information or public participation in decision-making process. Public participation is not provided in the process of approval of designated area management plan either. These plans are not publicly disclosed.

To date 65 territories of State Forest Fund are designated and are distributed as follows<sup>26</sup>:

- 15 territories have been designated from the “forest fund” managed APA. 14 of these, occupying 256 hectares, have been designated to the Patriarchy of Georgia, and 1, covering 0.349 hectares has been designated to Georgian Border Police under the Ministry of Interior.
- One designated territory (0,225 hectares) belonging to LEPL Ajara Forest Agency has been designated to the Patriarchy of Georgia.
- 49 territories of usable “forest fund”, managed by NFA have been designated. Out of these one (0, 1 hectares) is designated to Georgian Communications National Commission, and the rest 48 – to the Patriarchy of Georgia. According to official information (source: NFA) 1616.85 hectares of the “forest fund” managed by NFA have been allocated for designation to the Patriarchy of Georgia. 30.45 Ha of this were not listed in the state “forest fund”,<sup>27</sup> when new boundaries of the State “forest fund” were registered by the Public Registry<sup>28</sup>.

Thus, 1873.4686 hectares have been designated as of today, of which very small part had been designated to Ministry of Internal Affairs and Communications National Agency, and the main part of it – 99,98% (1873, 0196 Ha) - to the Patriarchy of Georgia.

This form of forest management gives rise to certain questions: why does forest legislation allow for this form of management only to one religious confession? It should be reminded here that according to Article 9 of the Forest Code “Property rights to the Georgian Forest Fund may be held by the Patriarchy of Georgia”. Do these exceptions meet the provisions of Georgian Constitution? Are they based on “The Constitutional Agreement between the Georgian state and the Apostolic Autocephalous Orthodox Church of Georgia (Concordat)?

Constitutional Agreement between the State and the Georgian Patriarchy was signed in 2002, whereas the privileges related to forest fund management were granted to the Patriarchy in 1999. However, Article 11 of the Constitutional Agreement is based on Resolution No. 183 of 12 April 1999 by Council of Ministers of Georgian SSR, passed much before the adoption of the Forest Code. It is stated there, that “the state reaffirms the fact of material and moral damage caused to the church in XIX-XX cc (especially 1921-90), when Georgia had lost its independence and as a partial owner of what had been confiscated, the State pledges to recompense, at least partially, for the damage”. Before the Soviet rule forests in Georgia belonged to the state, private owners, churches, villages and communities (i.e. families and dynasties). After the introduction of Soviet rule in 1921 the forest was nationalized and Commissariats for Agriculture were charged with responsibilities for them. Hence, designation of forests to the church can be considered a form of partial compensation for the damage.

According to the Government Resolution (No. 242 of 20.08.2010) on “Forest Use Rules” forest area can

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<sup>26</sup> source: matsne.gov.ge; Ministry of Environment and Natural Resources protection

<sup>27</sup> Government decree N299/04.08.2011.

<sup>28</sup> According to the information available at National Forest Agency the area allocated for designation at present makes 1586, 4 Ha and comprises 45 territories designated to Patriarchy of Georgia.

be designated for the period of 20 years (the timeframe was the same, when the issue was regulated by Presidential Resolution). We deem it inappropriate to fix the dates, when the objective of designation is building a church, creation of appropriate environment for the prayers (regardless the fact that the legislation allows for extension of the agreement on expiry of 20 years).

The “aim of designation”, indicated in Article 19 of the same Resolution somehow differs from the previous regulation (defined under Presidential Resolution) and sets maximum acreage of 20 Hectares of the territory designated to the Patriarchy (however, the wording of this provision is clumsy and allows for multiple interpretations). Out of 49 designated areas, the Acreage of 23 of them exceeds 20 Hectares (some of them far exceed the maximum limit). See Table 1 below:

*Table 1. Areas, designated to the Patriarchy of Georgia, with the territory exceeding 20 Hectares*

<b>Region</b>	<b>Forest district</b>	<b>Forestry</b>	<b>Area (HA)</b>	<b>Order N</b>	<b>Management Agency</b>
Kakheti	Telavi	Telavi	194,4	N668, 03.12.2007	NFA
Kakheti	Akhmeta	Zemo Khodasheni	259	N748, 23.10.2009	NFA
Kakheti	Kvareli	Akhalsopeli	92,5	N242, 10.05.2008	NFA
Kakheti	Dedoplistskaro-Signagi	Gediki and Dedoplistskaro	279,5	N177, 27.05.2008	NFA
Kakheti	Dedoplistskaro-Signagi	Dedoplistskaro	68,6	N22, 18.01.2008	NFA
Kakheti	Kvareli	Shilda	23	N237, 10.05.2008	NFA
Kakheti	Kvareli	Shilda	31.3	N246, 10.05.2008	NFA
Kakheti	Kvareli	Akhalsopeli	40,7	N243, 10.05.2008	NFA
Kakheti	Kvareli	Akhalsopeli	35	N248, 10.05.2008	NFA
Kakheti	Kvareli	Akhalsopeli	21,6	N233, 10.05.2008	NFA
Kakheti	Kvareli	Duruji	20.8	N232, 10.05.2008	NFA
Kakheti	Kvareli	Kvareli	26	N245, 10.05.2008	NFA
Kakheti	Kvareli	Kvareli	25	N236, 10.05.2008	NFA
Kakheti	Kvareli	Gremi	39	N 239, 10.05.2008	NFA
Kakheti	Kvareli	Kvareli	30	N 247, 10.05.2008	NFA
Kakheti	Kvareli	Mtisdziri	21,4	N 240, 10.05.2008	NFA
Samegrelo-Upper Svaneti	Kolkheti	Eki	33,6	N 749, 30.12.2007	NFA
Samegrelo-Upper Svaneti	Former Abasha forest nursery	Siriachkoni	21	N336, 27.06.2008	NFA
Samtske-Javakheti	Akhalsikhe	Akhalsikhe	50	N455, 19.09.2008	NFA
Samtske-Javakheti	Borjom-Bakuriani	Tsagveri	28	N733, 30.12.2007	NFA
Samtske-Javakheti	Borjom-Bakuriani	Borjomi	33	N273, 2.05.2008	NFA
Kakheti	Vashlovani Protected Area		180	N747, 30.12.2007	APA

It should be mentioned that 1318,3 Hectares (83% of designated forest fund) of usable forest fund in Kakheti are assigned to the Patriarchy, among them – 465,3 Hectares in Kvareli forest district. It seems, that designation of large areas to the Patriarchy has created problems to local population, as well as the agencies involved in forest management, which necessitated the establishment of 20 Hectare limit.

Though the citizens' rights may be essentially violated as a result of designation, the law does not provide for public information or public participation in decision making, or public participation in approving the management plan for designated areas. These plans are not proactively accessible for the public. Pursuant to the "Forest Use Rules" actors, interested in forest designation are not required to give any guarantees to local population. Such a legislation and practice may cause problems related to violation of the rights of local population in terms of their social and economic interests and access to the resources. Proceeding from the above we think that the forest designation regulations need to be revised seriously.

**The expediency and form of designation of forestlands to the Patriarchy is a complex issue and need to be widely discussed with the involvement of not only ecologists, but also historians, lawyers and constitutionalists, as well as general public. Against the background of today's reality (territories are already designated) the following steps would be needed:**

- Development of legal mechanisms of public participation in the process of forest designation and forest transfer decision making;
- Development of legal mechanisms of public participation in the process of discussion and approval of management plan for designated area;
- Proactive disclosure of management plans (if the information is not a state secret);
- Ensuring sustainable use/accessibility of agricultural lands in designated areas for local population;
- Ensuring transparency of state expenses related to protection and management of designated areas.

### **3.5 Forest Categorization**

According to initial version of the Forest Code, legal basis of categorization of the "forest fund" was set forth in its Chapter VI – "Establishing Boundaries and Categories of the State Forest Fund" (Articles 18 and 19) and Chapter VII – "Categories of the state forest fund" (Articles 20, 21, and 22). These articles and bylaws, related to them underwent significant changes during recent years. However, the regulations in its initial version were also quite vague, not allowing forest management on principles of sustainable development.

According to Article 18, demarcation of the usable state "forest fund" and the local "forest fund" was envisaged. Article 18 provided that boundaries of the protected areas of the state "forest fund" are established by Georgian legislation (implying that establishment of a new protected area would be permissible only under appropriate Law passed by the Parliament). At the same time this Article provided that boundaries for the usable state "forest fund" are established and separated out from the protected areas in accordance with the "Regulations for Establishing Boundaries of the Usable State Forest Fund". State Department of Land Management in agreement with Ministry of Environment, State Department of Protected Areas, Natural Reserves and Hunting Ranges was supposed to draft such a resolution to be submitted for Presidential approval.

Article 19 of Forest Code (Categorization of the State "forest fund") provides that the state "forest fund" comprises the state forest and the State "forest fund" lands. Against the background of the Code definition of the term "forest" (see above), the sense of such categorization is incomprehensible and impractical. According to Para 2 of this Article "Following are the categories established for the state "forest fund":

- forest lands under open stands and nurseries, clear-cut areas, fire damaged and dead stands, 0.1 ha and larger fields and forest farm yards;
- Agricultural lands, e.g. arable lands, meadows, pastures, orchards, wine yards, etc;
- Other non-forestry lands and lands of special use with hard surface roads and passage ways of

various purpose, power and communication lines, oil and gas pipelines, allocated areas for mining, ponds, farm yards and gardens;

- Idle lands of the State Forest Fund, e.g. swamps, sands, glaciers, rocks, etc.”

In compliance with Articles 18 and 19 of the Forest Code two presidential Resolutions had been passed to establish boundaries of State “forest fund” and separation of territories managed by appropriate institutions:

1. Resolution of the President of Georgia No. 403 of 12 September 2000 “On approval of the regulations of establishing boundaries of state usable forest fund of Georgia”.
2. Resolution of the President of Georgia No. 508 of 10 December 2002 “On approval of the regulations of Establishing and changing boundaries of State Forest and State forest fund”.

Resolution (No. 403 of 12 September 2000) “On approval of the regulations of establishing boundaries of state usable forest fund of Georgia” determined rules of separation of different categories of lands, like “forest fund”, protected areas, reserves, hunting ranges, local and usable “forest fund” etc. The Resolution provided for joint coordination of establishing boundaries of state usable forest by State Department of Forestry, Ministry of Agriculture and Food, Ministry of urbanization and construction, and State Department of land management, as well as offices of President’s authorized representatives. Local government bodies would create a commission consisting of representatives from different state institutions for consideration and decision making. The commission decisions were distributed to state institutions for endorsement. The endorsed documentation would be sent to Land Use and Protection state Commission. The latter was supposed to approve it and send back to Forestry State Department and Land Management State Department, who, in their turn would register the documentation with Public Register (it is unclear which of these two departments was supposed to submit the documentation to Public Registry). The Separation procedures would not end there. Next stage was handing-over of forest fund boundaries, for which new commissions, consisting of representatives from land management and forestry state department, Ministry of Environment and Natural Resources, Ministry of Agriculture and Food, Ministry of Urbanization and Construction, regional services, local self-governments and governments, stakeholders and executing experts. The function of this commission was drafting the record of acceptance, where the boundaries would be described in detail and the number of boundary marks indicated.

So, the procedure was quite bureaucratic and costly. Despite the “detailed” procedures, the competences were not properly distributed. No public information or participation in decision-making was envisaged.

Resolution “On approval of the regulations of Establishing and changing boundaries of State Forest and State forest fund”<sup>29</sup> aimed at establishing the rules of determination and changing of boundaries of State “forest fund”, forest land, agricultural land, land for special purpose and unused land. The Resolution defined physical separation rules for different categories of “forest fund” (use of visual signs as terrain features, columns, log on the tree, etc.; the distance between demarcation signs and other details were also defined. Forestry state department and state department of protected areas had to agree this issue with Ministry of Environment and Natural Resources Protection, Land Management State Department, owners of adjacent areas (users) and appropriate local self-government and government bodies. Public information and participation in decision-making was not envisaged here either. The Resolution could not definitively resolve the issue: in order to define the status of “State forest fund forest” and “State forest fund lands” the decision-maker would have to be guided by another statutory act: “State Forest Fund Accounting Rules”<sup>30</sup>, approved under the Order by Chairman of Forestry State Department.

Practical purpose of Presidential Resolution is not clear. What is the aim of separating forests and other ecosystems by means of wooden poles and other signs? Use of these regulations with regard to protected areas was especially absurd. Besides, it is clear that the rules in above mentioned two Resolutions often overlapped.

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<sup>29</sup> Presidential Decree No 508 of 10 December 2002

<sup>30</sup> Pursuant to Article 11 of Presidential Decree No 508 of 10 December 2002

Despite shortcomings, some of the issues in these Resolutions were much better regulated from environmental point of view than under present legislation. For example, reduction of the land from the state “forest fund” was possible only at the permission of Ministry of Environment and Natural Resources Protection (though permit issuance procedures were not developed). It was defined that reduction of forest area was permissible only at low density (0, 1-0, and 0, 2) areas, except for the cases of special use. Each fact of forest area reduction had to be justified and related to the following three cases: local need (though it was not clear what it implies), national need (oil-pipe or gas-pipe; high voltage transmission lines etc.), and inadvisability of forest regeneration due to erosion or other natural phenomena. In the case of illegal reduction of forest area, it had to be restored to its previous state. There is no information on implementation of these provisions.

Eventually it became clear that the above Articles of the Code were not efficient and local “forest fund” has not been allocated so far.<sup>32</sup> Adoption of the Code and its implementing regulations in this form led to imbalance between forest conservation and use of resources since it was practically impossible to allocate new protected areas. After the adoption of Forest Code each initiation of new protected areas would be followed by real struggle between the Ministry of Environment and State Forestry Department. This “struggle” ended in favor of creation of new protected areas only in case if Forestry Department and the Department of Protected Areas received major funding from international environmental and donor organizations. The two World Bank funded projects (“Protected areas development project”<sup>32</sup> and “Forest development project”<sup>33</sup>) demonstrate this situation very clearly. Geographically these two projects intersected in Central Caucasus (Svaneti, Racha, and Lechkhumi) and aimed at creating so called “laboratory zone” – mix of protected areas and a modern forestry area. As a result of institutional struggle the process dragged on infinitely and ended in nothing.

According to Chapter VII of the Forest Code State “forest fund” is divided into two categories: the protected areas and the usable State forest. The Forest Code iterated certain Articles of the Law of Georgia “On the System of Protected Areas”, listing the types of protected areas allowed in Georgia, comprising those included in international network of protected areas. There is the same confusion in this part of the Forest Code, as we mentioned already when talking about “definition of the terms” and “Institutional Management”. Such a categorization means nothing in terms of management of protected areas.

Usable forest fund was divided into three categories: 1. “resort forest”; 2. “green zone” (green zone forests); and 3. “Forest with soil protection and water regulation functions”. The main purpose of management “resort forest” is the improvement and protection of the forest spa characteristics and sanitary conditions. Green zone forests were the forests adjacent to settlements and intended for recreational purposes. Main purpose of their management was improvement and protection of their recreation, sanitary and aesthetic condition. The rest of the “forest fund” territory was categorized as “Forest with soil protection and water regulation functions”. Regardless the “environmental” title, any form of forest use and felling activities was permitted there.

Article 21 of the Code provided for two more sub-categories: “areas with special functions” and “landscape areas”. To clarify the issues of separation and management of these sub-categories the Regulations “on separation and assignment of status to areas with special functions and landscape areas” were agreed with Ministry of Environment and Natural Resources and passed under the Order<sup>34</sup> of the Chairman of Forestry State Department. According the Regulations “landscape area” status would be assigned to forest areas of outstanding aesthetic and decorative properties. The status of areas with special functions were assigned to floodplain forest, subalpine forest (“treeline”), forest edge or/and any other area of usable forest fund with special environmental or other value, which could not be categorized due to its small acreage. Besides, the status of areas with special functions were assigned to different forest types, which are quite artificially assembled in para 6 of Article 2 of the Regulations: especially valuable large forests<sup>35</sup>, shelterbelts

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<sup>31</sup> See “Green Alternative” study for more details

<sup>32</sup> Protected Areas Development Project, 2001-2008, P048791. <http://www.worldbank.org> ;

<sup>33</sup> Forests Development Project 2001-2008, P048791. <http://www.worldbank.org> ;

<sup>34</sup> Order No.10/63 of 29.09.2000

<sup>35</sup> Typical soviet terminology implying expensive wood and not meeting contemporary principles of ecology/conservation

containing spawning grounds of precious species of fish<sup>36</sup> or animal migration routes; protective shelterbelts along railways or highways; forests in sparsely regions, special purpose forests and their sections (high forest etc.); untouched forests; scientifically important forests; species listed in the Red List, relict, indigenous, cultural, historic and other precious species<sup>37</sup>; forest areas rich in species of unique productivity and genetic value; forests, sustainable development of which are threatened due to the damage caused by pests, diseases, or intensive use; forests on the banks of rivers, natural and artificial reservoirs, sources of drinking water, gorges and ravines (within 100 m or based on the lay of land); anti-erosion forests; post-fire and post-felling forest plots; and other special use forests<sup>38</sup>.

The selection of areas with “special functions” and “landscape areas” should take place as a result of Forest Inventory. However, it could have been done as a result of special studies carried out during the period between the forest inventories. According to the Regulations, floodplain forest, subalpine stripe of forest and especially valuable forest were supposed to be separated in all forest categories (it is unclear why should it be done in protected areas).

Forestry State Department would grant the status of areas with special functions including floodplain and subalpine forests, as well as landscape area status to State usable “forest fund” areas, and local self-government and government bodies, in coordination with Forestry State Department – to local forest fund areas. Different governmental institutions (including those of the Autonomous Republics), local self-government and government bodies, institutions under Forestry State Department, natural and legal persons had the right to initiate status assignment issue. The status could have been assigned for fixed term or with no fixed term. Since “local forest fund” has not been separated during all those years, local governmental bodies did not allocate areas with special functions and landscape areas.

Another misunderstanding due to these Regulations was related to the fact that the Chairman of State Forestry Department would define forms of management for forests under jurisdiction of other public institutions (State Department of Protected Areas, Reserves and Hunting Grounds, local self-government and government bodies) and set them various tasks.

Alongside with status assignment, the governing body had to develop “specific management rules (directive)” for each of the area with special function and landscape area. There is no a single example of elaboration of such “directive”. It means that this categorization system doesn’t work.

Despite many drawbacks, the Regulations contained some quite acceptable, from environmental point of view, provisions. Significant limitations were provided in the woods with a conservation status (especially in floodplain and subalpine forests): final felling, activities of the first and second category, prescribed by the Law of Georgia on Environmental permissions”, etc. were prohibited. A list of floodplain forests, occupying 27285 Ha in valleys of Mtkvari, Alazani, Iori and Khrami rivers (indicating forest districts) was approved under this Regulation.

In general, categorization and management rules under the Forest Code and its implementing regulations contained many fundamental flaws that made sustainable development of forest impossible.

- Biodiversity conservation and forest management modern requirements were ignored when introducing categories;
- Competences, rights and responsibilities of various institutions were not fully distributed and often contradicted to other laws;
- Management tasks and methods for protected areas and for forestry were equalized;
- Forest inventory, which never took place in that period, was needed for categorization;
- Many activities under the Regulations were not implemented (due to subjective or objective reasons);
- Most of the categories and sub-categories were not put on the maps;

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<sup>36</sup> Besides that the definition is stylistically/grammatically faulty, it is senseless from environmental and natural resources management point of view.

<sup>37</sup> Stands must be implied

<sup>38</sup> Not clear what is implied

- Complicated bureaucratic procedures were related to high public expenditure and corrupt deal possibilities;
- Public information and public participation in decision making was not provided at all.

In summer 2010 important and wide-scale changes were introduced in forest legislation. Ministry of Environment made these changes non-transparently and without public participation. As a result of these changes LEPL National Forest Agency (NFA) was founded, several Articles were removed from the Forest Code, almost all bylaws were revoked and, instead, all forest management issues were governed by four regulations approved under the Governmental Decrees. Many regulations, removed from the Forest Code were added in above mentioned to Governmental Decrees.

**Below are discussed the current legislation on categorization of forests and forest lands.** According to Article 19 of current Forest Code the State Forest Fund comprises the areas covered with forest and areas not covered with forest. They are established on the bases “The forest registration, planning and monitoring rules”<sup>39</sup>. Para 1 of Article 5 of the Regulations (Article 5. State Forest Fund Categories) iterates above mentioned Article 19 of the Forest Code (the State Forest Fund comprises the areas covered with forest and areas not covered with forest) and further paragraphs of the Article define categories and subcategories of areas covered with forest and areas, not covered with forest. There may be two categories of areas covered with forest: of natural origin and of artificial origin. Areas not covered with forest comprise categories listed in Para 2 of Article 19 of previous version of the Forest Code:

- arable lands, meadows, pastures, orchards, wine yards;
- forest lands under open plantations and nurseries, clear-cut areas, fire damaged and dead stands, 0.1 ha and larger fields and forest farm yards;
- lands with ponds, weirs etc.;
- Idle lands of the State Forest Fund, e.g. swamps, sands, glaciers, rocks, etc;
- lands of special use with hard surface roads and passage ways of various purpose, power and communication lines, oil and gas pipelines, allocated areas for mining, ponds, farm yards and gardens.

According to the Resolution on “Forest Use Rules” (No. 242, 20.08.2010) certain activities, like plantation farming, construction of buildings for recreational forest use, fishery, use for non-agricultural purposes, implying construction of different buildings, including construction of catering facilities are permissible only in the areas not covered with forest. However, the essence, the need and practical purpose of such division is not completely clear. All the more treeless territories were withdrawn from “forest fund” by Public Register National Agency.

“Forest use rules” (Government Resolution No. 242, 20.08.2010) marks out another category of “forest fund” – “Area with special functions”, which is divided into sub-categories:

- Green zone and resort zone areas;
- Floodplain forests;
- Shelterbelts of various purpose;
- Subalpine forests;
- Up to 100 Hectare forest covered areas between treeless expanses;
- Up to 200 m wide woodland belt along permanent channel of avalanches and floods;
- Forest areas located on over 35° slopes;
- Up to 100 m wide woodland belts near layered, landslide areas, karst formations, and places where bearing rocks come out to the surface of the earth;

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<sup>39</sup> Approved under Georgian Government Resolution No. 179 of 17.07.2013

- Up to 100 m wide woodland belts along railways and highways;
- Up to 300 m wide woodland belts along rivers, lakes, water reservoirs and water channels;
- Forest areas within a radius of one kilometer from resorts, sanatoria and medical institutions, and mineral springs. The distance is limited by watershed.

In contrast to the Law in force until 2010, areas with special functions are not selected within protected areas. They can be selected only within usable, local and autonomous republics “forest funds”. The Resolution provides certain rules and limitation to be observed when managing (using) areas with special functions. E.g. Article 9 of the Resolution provides that final felling shall not be allowed in areas with special functions under the jurisdiction of NFA. However, there is no restriction for the activities, requiring EIA in these areas.

Social logging (Article 10. Social logging)<sup>40</sup> is also prohibited in areas with special functions under the jurisdiction of NFA. However, Para 20 of this Article allows for exceptions, e.g. social logging may be allowed in old forest stands inside “resort” and “green zone” forests. In this case forest density shall not go below 0,4. At the same time the priority of woody species shall be preserved<sup>41</sup> (i.e. in hornbeam wood hornbeam is the priority, in beech wood – beech is the priority etc.).

Some of the Resolution provisions allow for dual interpretation. In particular, if logging be called “thinning”, social logging shall be allowed not only in old forest stands (Article 10). In 1990-ies (until 2004) “legalization” of illegal and unsystematic logging has led to the degradation of the forest ecosystem. Thinning permits, issued by State Forest Department to private persons made this possible. Under Article 9 final felling and social logging are allowed in areas with special functions of Autonomous Republics and/or local self-government forests (except for Tusheti protected landscape). Under Article 55, **spa, recreational, sports and other cultural activities in areas with special functions are allowed only without building constructions for touristic purposes**. The meaning of “*touristic purposes*” is not clear. Is it possible to build constructions and to do the logging without touristic purposes? If not, which law governs it?

**Unfortunately there is no statutory act to define the location of these “areas with special functions”. Appropriate map has not been made and approved either. In fact, allocation of “areas with special functions” is possible only as a result of forest inventory. However, in reality, allocation of cutting area, or any other kind of forest use takes place in the forest areas, belonging to one of the categories of areas with special functions. At the same time, the most important, from conservation view-point, old growth forests are still considered to be the most accessible source of wood resources.<sup>42</sup> So, we can say that this form of categorization (allocation of “areas with special functions”) does not work in reality.**

There is one more statutory act offering forest categorization. It is the list of green zone and resort territories, including appropriate forest areas. The document is approved under the Order No. 161 of 29 December 2014 by Minister of Environment and Natural Resources.<sup>43</sup> But National Forest Agency has no map of green zone and resort zone territories.

As mentioned above, The Forest Code contradicts to Organic Law of Georgia “Local Self-government Code”. But this is not the only case, when public authorities, in violation of “Local Self-government Code” are granted certain rights on the territories of self-governing units (Tbilisi). In this terms Law of Georgia “On special protection of green space and State Forest Fund within Tbilisi limits and adjacent areas” and Georgian Government Resolution “On approval of forest use rules” (No 242 of 20.08.2010) contradict to the Organic law.

According to public information of National Forestry Agency, forests and forest areas in Georgia are distributed as follows:

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<sup>40</sup> The main purpose of “social logging” is supply of local population with fuelwood and material timber

<sup>41</sup> We do not quote the Resolution due to terminological mistakes in it.

<sup>42</sup> The problem had been raised in biodiversity protection strategy action plan, approved in 2005

<sup>43</sup> On approval of green zone and spa zone territories in jurisdiction of LEPL National Forest Agency under the Ministry of Environment and Natural Resources.

In terms of institutional management

Usable State forest fund – 2694.7 thousand Hectares, 89.6%	Protected areas of State forest fund – 312.9 thousand Hectares, 10.4%
<ul style="list-style-type: none"> <li>• Resort forests – 119.4 thousand Ha. 4.0%</li> <li>• Green Zone forests – 276.5 thousand Ha. 9.2%</li> <li>• Soil-protective and water-regulating forests – 2298.8 thousand Ha. 76.4%</li> </ul>	<ul style="list-style-type: none"> <li>• National reserves – 136.6 thousand Ha. 4.6%</li> <li>• National parks – 134.8 thousand Ha. 4.5%</li> <li>• Monuments of the nature – 0.3 thousand Ha.</li> <li>• Closed forests – 33.7 thousand Ha. 1.1%</li> <li>• Protected landscapes – 7.5 thousand Ha. 0.2%</li> </ul>

The division of “Usable State forest fund” into these categories (resort, green zone, soil-protective and water-regulating) was legally abolished in 2010. Reliability of 2010 quantitative data is also doubtful, since forest inventory never took place during last tens of years.

The information related to “Protected areas of state forest fund” also is not clear: is total area of protected territories implied, or only forest covered part of it? If total area is implied, then these figures do not reflect the reality.

According to the same source “State Forest Fund” consists of forest and Forest Fund lands, distributed as follows:

Forests all – 93.8%	Forest fund lands all – 6.2%
<ul style="list-style-type: none"> <li>• Artificial forests – 2.5%</li> <li>• Natural forests – 97.5%</li> </ul>	<ul style="list-style-type: none"> <li>• Agricultural lands – 2.4%</li> <li>• Forest lands – 1.0%</li> <li>• Special use lands – 0.3%</li> <li>• Unused lands – 2.5%</li> </ul>

Quantitative data in this table are also doubtful due to the fact that there is no updated inventory data in Georgia.

#### **4. Forests lost in the name of development – mining and infrastructure projects in forestland areas**

Infrastructure development is a relatively new threat to the biodiversity of Georgia. The problem of negative impact of different infrastructure/development projects on natural ecosystems (including forests) is becoming more and more topical and acute. This is mentioned in “National Forest Concept”, where insufficient account for forest values in planning and decision making is named the one of the main reason of deforestation and degradation of ecosystems. According to the documents this happens due to the absence or weakness of legal instruments, which shall be used when drafting and implementing development programs (EIA and SEA).

NBSAP states that the degradation or even complete loss of forest cover is often caused by infrastructure projects such as the construction of roads, pipelines, reservoirs etc. and by open-pit mining (e.g. manganese mining in Chiatura) and the removal of the fertile layer of soil. “At present (2011-12), the rate of forest degradation due to these factors is not too high. But with economic development and in the absence of effective control, the acuteness of the problem is likely to increase”. According to NBSAP rapid economic recovery and growth has triggered large-scale infrastructure development. There are plans to construct new pipelines, dams, power lines, mining facilities, railways and roads. Hydropower development is given a particular emphasis in the economic policy of the government. New hydroelectric plants and dams may require the clearance of significant forest areas. Because of the strategically important location of Georgia and its “corridor” function between Europe and Asia, the existing transportation networks (railways, motor roads, hotels, etc.) will be modernized and extended. There is a high risk that ecosystems with high biodiversity value will be lost due to infrastructure development activities. The destruction of even a relatively small portion of natural habitats could cause irreversible damage if it takes place in an ecological corridor or other environmentally sensitive areas. The main enabling factors of the problem are the following:

- insufficient regard paid to the value of biodiversity in policies, strategies and programmes;
- inadequate and in some cases perverse laws regulating the use of biological resources;
- lack of resources to enforce regulations and implement procedures that are designed to safeguard biodiversity.<sup>44</sup>

Different infrastructure projects in forest areas, construction and mining are carried out using such forms of land use, as “use of state forest fund for special purpose” and “exclusion from forest fund”. These issues are immediately related to the provisions of the forest law (the Forest Code appropriate articles and its bylaws) addressing the definition of the terms and categorization. The legislation governing “use of forest for special purposes” and “exclusion of areas” from the forest fund is very inconsistent and far from the principles of sustainable development. The situation is even more complicated in terms of application of this law in different cases.

#### 4.1 Use of state “forest fund” for special purposes

**Use of state “forest fund” for special purposes** - This form of forest management was provided in the initial version of Forest Code (1999). A number of changes have been introduced to the legislation, regulating this issue; and as a result of such forest use deforestation and degradation rate exceeded traditional threats (unsustainable felling and grazing).<sup>45</sup> Currently this issue is regulated under the Forest Code (Article 33) and the Government Resolution (No.242 of 20.08.2010) “On approval of forest use rules”<sup>46</sup>. Pursuant to Article 27<sup>1</sup> of the Resolution the use for special purposes is allowed, when the objectives are:

- Functioning of water engineering systems, pipelines, highways, electricity transmission communications, channels; construction and reconstruction (rehabilitation); or dismantling; or related to the project and/or geotechnical activities;
- Fire-fighting activities and elimination of flood consequences;
- Threat to the functioning or damage of any infrastructure or its certain elements as a result of possible falling trees;
- Exploration of mineral resources and/or mining;
- Reconstruction (rehabilitation) of monuments of cultural heritage, archaeological works, archaeological exploration and archaeological excavations;
- Oil and gas operations;
- Implementation of infrastructure projects of national or/and public importance;
- Special felling carried out by National Forest Agency.

So, this form of forest use is applied in activities, causing the extermination of biodiversity and environment degradation.

It should be mentioned that, according to Georgian legislation, most of the forest use activities are not subject to Environment Impact Assessment (EIA) and, respectively, do not require positive conclusion of ecological expertise. These are: Exploration of mineral resources and, mining, highways and other linear infrastructure and urban development projects implemented by state organizations etc. for part of the activities (e.g. hydropower plant construction) the legislation provides for the necessity of EIA, but as a rule the issues of special forest use are not reflected in EIA reports.

<sup>44</sup> Government decree N343, 08.05.2014.

<sup>45</sup> see: <http://www.globalforestwatch.org/map>.

<sup>46</sup> Government decree N228, 01.06.2011.

According to Para 1 of Article 33 of the Forest Code the State Forest Fund may be allocated for special use if necessary, or with the purpose of obtaining significant economic benefit. However this Article does not give explain how to establish “necessity”, as well as who “obtains significant economic benefit” – the state or a private person. The legislation does not explain how to measure the “importance” of economic benefit. The same paragraph provides that “Forest Fund may be allocated for special use in accordance with environmental legislation of Georgia” but the laws (legislation) are not specified. It goes without saying that forest use with special purpose is impermissible when legal requirements, related to protection of protected areas, species, their habitats and ecosystems, water, air, land and other environmental components, are violated. When making the decision on use with special purpose, key principles of Article 5 of the Law “On Environment Protection” shall be observed: Para 1 of Article 5 provides that “Public authorities, natural and legal persons (regardless their organizational or legal form of property) are obliged to be guided by key principles of environment protection.”

When making the decision on use of the “Forest Fund” for special purpose, at least some of the principles, listed in Article 5 of the Law of Georgia on “Environment Protection”, shall be observed:

- “Principle of Priority”- the action, which is likely to have adverse effects on the environment and health of humans may be replaced by other, less risky action (even if this is more expensive). The priority is given to the latter one if the costs do not exceed the compensation for damage caused as a result of environmental harm as a result of less expensive action;
- “Polluter pays Principle”- the subject of the activity, as well as the physical person or legal entity is obliged to compensate for damage to the environment;
- “Principle of Preservation of Biological Diversity”- the activity must not lead to the irreversible degradation of biological diversity;
- “Principle of Restitution”- the environment degraded as a result of the implementation of the activity, must be restored in a form, which must be as close to its initial state as possible (restitutio in integrum);
- “Principle of the Assessment of the Impact on the Environment”- in the course of planning and projecting the activity, the subject of the activity is, under the established order, obliged to take into consideration and evaluate the possible effects on the environment, which may be caused by the activity;
- “Principle of Participation of the Public in the Decision-Making Process” participation of the public in taking important decisions, related to the implementation of the activity is ensured;
- “Principle of Access to Information”-information on the state of the environment is transparent and available to the public.

According to current legislation, the decision on granting the right to forest use with special purpose (including in protected areas) shall be made by Ministry of Environment and Natural Resources Protection in agreement with the stakeholders. In exceptional cases when the felling is needed on slope gradients of 35° and more, for the construction of special national significance.<sup>47</sup> In this case the government shall take into account Article 31 of the Forest Code, titled “Special Requirements for the Management of the State Forest Fund”. However, current version of the Article is quite strange, giving some comic tint to the term “special requirements”: “Any changes leading to the reduction of the State „forest fund“ shall be well justified”. The way and the form of justification are not specified.

In the initial version of the Forest Code (1999) the State Commission on Land Use and Protection, in agreement with the stakeholders and the State Department of Forestry and State Department for Protected Areas would allocate State forests and the State Forest Fund for the use with special purpose. All the changes aimed at reduction of forest had to be “justified” and needed the permit by Ministry of Environment and Natural Resources (the form and the procedure of permit issuance was not established.)

The decision on special use of state forest fund is made by the Ministry or the government through simple administrative procedure, which excludes participation of the public concerned in decision making.

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<sup>47</sup> Forest Code, chapter 68.5 and 69.3

The Forest Code does not outline “public concerned”, to agree the decision with. According to Article 6 of Georgian Constitution “The legislation of Georgia shall correspond to universally recognized principles and rules of international law. An international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts”. Pursuant to this article we shall be guided by Aarhus Convention<sup>48</sup>, which explains that “The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

Compensation for damage caused to the ecosystem is another problematic issue. Only in three and a half years after the enactment of new forest use regulations the government realized that the damage caused to the environment is huge and introduced appropriate changes to “the Rules of Forest Use”.<sup>49</sup> The new rules provide that the company receiving the forest area for special use is obliged to carry out compensatory measures in the area of equal acreage. The Agreement shall provide for types of compensatory measures, the timeline and location; the issue needs to be agreed with governmental institution.

This rule turned out to be formalistic and did not work in practice. Often areas transferred to the companies were small (only a few square meters), not allowing for full compensatory measures (forest restoration). And in the cases when transferred area was large enough (several hundred hectares), compensatory measures (planting forests, promote natural regeneration, breeding nursery etc.) required large financial expenses: recruitment of appropriate specialists, development and implementation of projects. As usual investors complied with the terms of the contract only formalistically – they presented the regeneration projects to NFA, but took no efforts to implement them. They preferred to pay the fine for breach of contract, which was cheaper. Only a few new users carried out the measures agreed with National Forestry Agency.<sup>50</sup>

This is not surprising, bearing in mind that mining activities in forests are carried out e” by such companies as “Rich Metal Group” – RMG (mining and processing of copper, gold and other nonferrous metals in Bolnisi and Dmanisi regions, East Georgia) and “Georgian manganese” (mining and processing manganese in Chiatura region, West Georgia), which are not notable for high corporate social responsibility. These companies endanger the health of local population, devalue their property, harm the environment and agricultural land; force their employees work in slavery conditions. RMG was implicated in the case of annihilation of Sakdrisi<sup>50</sup> – ancient cultural monument of world significance. Being one of the richest corporations in the country, they still avoid the costs of ecosystem restoration.

Eventually the shortcomings of new regulations became clear. The Rules approved under the Resolution did not cover many of the aspects, provided under the Law “On Forest Fund Management” and the Forest Code; some of the issues remained unresolved. Illogicality of new regulations<sup>51</sup> became apparent to Ministry of Environment and Natural Resources. In order to find the way out of this deadlock the changes, regarding the compensation of the damage were introduced in the “Rules of Forest Use” at the initiative of the Ministry. New compensation mechanism was introduced under Governmental Resolution No. 425 of 17 August 2015. According to new regulations the forest user company shall pay annually the compensation at the sum, corresponding to the areas allocated to them, to the forest managing body (National Forestry Agency or The Agency for Protected Areas). The Ministry developed compensatory sums calculation method on the basis of the Law of Georgia “On Natural Resource Fees”, which establishes the amount of the payment for the extraction of timber for commercial purposes. In case of cutting wood species the user, alongside with area compensatory sums, shall pay compensatory sums, the amount of which is determined in accordance with the volume of species to be cut. In Case the species listed in the “Red List”, the compensation sum shall be doubled. The forest users who started compensatory activities before the introduction of new regulations can transfer to the new scheme. The Ministry and the Government realized that new regulations would also be faulty and mentioned, in an explanatory note, that the rule was provisional and would be revised in the process of development of new legislation.

<sup>48</sup> The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

<sup>49</sup> Government resolution N302, 29.11.2013

<sup>50</sup> for more information see research articles at: [www.greenalt.org](http://www.greenalt.org) and [www.emc.org.ge](http://www.emc.org.ge)

<sup>51</sup> source: explanatory note of the Government resolution

In 2013-2015, 50 agreements were signed with NFA on the use of forest for special purpose; in 2011-2015 – 43 agreements were signed with APA. Besides, APA signed three agreements “on placement of communication buildings in the forest fund”. NFA has signed nine similar agreements with different organizations (as of January 2016).

So, the law regarding “the use of state forest fund with special purpose” contains the following basic weaknesses:

- There is no legal instrument to establish the necessity of a specific activity/project, requiring the use of forest “with special purpose”.
- There is no legal instrument to establish that a particular activity necessarily needs “use of forest with special purpose”.
- The beneficiary of “significant economic gains” is not established – whether it shall be the state or a private entity, carrying out the activity.
- The procedure of assessment of economic gains (to provide cost-benefit analysis) is not established.
- The procedures of informing and participation of the public concerned in decision making are not developed.
- The procedure/mechanism of assessing the compliance of a particular activity with environmental legislation is not developed.
- How to justify the forest area reduction is not established.
- Compensation mechanisms are not adjusted. The legislation provides for compensation for the damage to the environment, but the options avoiding or mitigating this damage (through the technological and/or other alternatives) are not considered. Proceeding from sustainable development principles, the need and the obligation to compensate begins when all prevention and mitigation possibilities are exhausted. In case of violation of this hierarchy (prevention-mitigation-compensation) irreversible degradation of biodiversity is inevitable.

Environmental Impact Assessment is the instrument of solving the above problems. How can EIA promote the solution of the above listed problems? Unfortunately, the situation today is as follows:

1. The activities related to the use of forest fund with “special purpose”, that do not need the EIA Under the legislation in force;
2. The activities related to the use of forest fund with “special purpose”, that needs the EIA, but the reports of the users do not cover these issues.

Traditionally the reports state, that the felling, equally as other impact on ecosystem within the framework of the planned activities, is not subject of EIA and shall be regulated under the agreement on the use for special purpose. This and other phrases on compensation on the basis of so called “habitat-hectare” method go unchanged from one EIA report to another.<sup>52</sup> Ignoring these issues in the reports is incorrect – both legally and environmentally – but Ministry of Environment sees no problem to give a positive opinion. There has been no case compensatory arrangement carried out by implementer on the bases of above mentioned “habitat-hectare” method.

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<sup>52</sup> source: [www.moe.gov.ge](http://www.moe.gov.ge)

## 4.2 Exclusion of the territory of the State “Forest Fund”

Exclusion of the territory from “forest fund” is immediately related to forest categorization, which is (was) provided in Chapter VI of the Forest Code titled “Establishing Boundaries of the State Forest Fund”. The Articles of this chapter and related bylaws underwent significant changes during recent years.

From 1999 to 2004 exclusion of territories from state “forest fund” was carried out under the decision of the State Commission on use and protection of the land of Georgia. 23 decisions were passed by this Commission during this period.<sup>53</sup> These decisions have never been published and, it is difficult for the public concerned to get information about excluded areas.

From 2004 until June 2011 exclusion of territories from state “forest fund” was carried out under the Government decree or Governmental Resolution. 75 such acts were passed in that period. 65 of them were published, and according to them in 2006 -2011 period 4512.4 hectares were excluded from “forest fund” for different purposes (source - Ministry of Environment and Natural Resources Protection).

According to current legislation exclusion from “forest fund” is carried out in compliance with Governmental resolution “On the rules of establishing boundaries of state forest fund” No. 240 of 13 August 2010. At the same time three previous resolutions were cancelled:

1. The Resolution by the President of Georgia “on approval of regulations of establishing boundaries of state forest fund” No. 403 of 12 September 2000;<sup>54</sup>
2. The Resolution by the President of Georgia “on approval of regulations of establishing and changing the boundaries of state forest fund” No. 508 of 10 December 2002;<sup>55</sup>
3. Georgian Government Resolution “on approval of regulations of exclusion and inclusion of areas from the state forest fund lands” No. 96 of 10 May 2007.

Governmental resolution “On the rules of establishing boundaries of state forest fund” (No. 240 of 13 August 2010) does not apply to protected areas of the state forest fund (it is unknown whether this rules apply to protected landscapes and multiple use areas).

The main decision-making institution on exclusion of areas from state forest fund (correction of boundaries) is Ministry of Economy and Sustainable development of Georgia. A physical or legal person, interested in the exclusion shall make an application to this Ministry. Besides, the ministry can initiate the exclusion independently. For the initiation of the issue it is sufficient that the initiator presents the need (necessity) of change of forest area, the purpose (objective) and cadastral drawing of this area (electronic version). Ministry of Economy sends these documents to the MoENRP for agreement; on the territory of Ajara Autonomous Republic the documents for agreement are sent to AFA. Provided positive reply from these bodies, Ministry of Economy and Sustainable Development applies in writing to National Agency of Public Registry for the corrections of “forest fund” boundaries (exclusion).

The Resolution provides that the exclusion of forest area shall be permissible for implementation of infrastructural projects, related to:

- National defense, security and safety;
- Transport infrastructure of national and local importance;
- Water supply and energy projects of national and local importance;
- Digital broadcast of national importance.

Besides, the exclusion from “forest fund” may be related to an investment proposal. In this case not more the 3 hectares may be excluded, and investment cost per hectare of excluded territory shall not be less than

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<sup>53</sup> source: National Forest Agency

<sup>54</sup> Abolished by the Presidential order N674, 08/24/2010

<sup>55</sup> Abolished by the Presidential order N674, 08/24/2010

250000 GEL. One of the terms of exclusion is preservation of trees and plants on 75% of excluded area. The investor shall be liable for paying 25000 Gel per hectare of excluded area to forest management agency.

It is hard to believe that minimum 250 000 GEL investment per hectare of excluded area is adequate price for the damage caused to the environment by private investors. The monitoring, carried out by Environmental Supervision Department of MoENRP in 2015 revealed that the damage caused to the environment by “Georgian Manganese” equals to 357.36 million GEL. This was calculated by fees on natural resources, and not on the basis of assessment of the full value of the ecosystem (considering the costs for ecosystem services).

Thus, the exclusion is implemented for the projects of national and public importance, except for energy projects. The latter – construction of thermal power plants and hydro power plants – are carried out by private investors and the main financial benefit goes to them, not the state. Energy project investors enjoy flourishing conditions in another respect too: in compliance with this Governmental Resolution the obligations of paying compensation sums and preserving 75% of trees and plants do not refer to them.

The exclusion is allowed also in the case when the assets registered as public property are situated on the territory managed by NFA or AFA. If the cause of exclusion does not correspond to the above list, it can still be carried out under Georgian Government decision (sub-para “k” of para 5 of Article 4 of the Resolution). This paragraph of the Resolution opens up possibilities for a broad interpretation.

***In 1999-2011 it was withdrawn from the forest territory managed by NFA 44272.79885 hectares (including territories transferred to APA and Tbilisi city hall)<sup>56</sup>. In 2011-2015 it was withdrawn from the forests managed by NFA 17881.29 hectares.***

Current legislation defines also other types of forestland use: “Use for resort, recreational, sport and other cultural purposes”, “Forest use for agricultural purposes”, “Arrangement of fishery farms”, “Arrangement of animal shelters and farms”, “Forest use for non-agricultural purposes”, “Complex forest use”. According of information of MoENRP never was issued permits for above mentioned types of forestland use.

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<sup>56</sup> source: NFA

## 5. Cases of land use in forest territories

### 5.1 Special use of forest in the territory of National Park

Dariali project involves the construction of diversion HPP of 109 mW base-load generating capacity and 521 mln. kilowatt/hours of annual generation on the River Tergi in Dariali gorge, Kazbegi municipality, near Georgian-Russian border. The HPP will join the grid through a 110 kilovolt line, connecting Georgian and Russian grids. The project will be implemented on the basis of an agreement between Georgian Government (signed, on behalf of the Government, by Alexander Khetaguri, Minister of Energy and Natural Resources), "Dariali energy" Ltd, "Energo Trans" Ltd and "Commercial operator of Energy System" Ltd, signed on 19 May 2011.

Before signing the Agreement, Minister Khetaguri had been notified repeatedly, that the planned Dariali HPP area would be crossing Kazbegi national park area. Still, the Minister signed the agreement, stipulating illegal construction of a hydro power station within the territory of protected area.

On 28 November 2011 Ministry of Environment issued a positive conclusion of the state ecological expertise of Dariali project with gross violations: the project documentation, presented by "Dariali Energy" to state ecological expertise clearly indicated that certain part of the power plant would be built within Kazbegi national park, which is prohibited under Georgian legislation<sup>57</sup>; in fact "Dariali Energy" requested a permit for illegal activity. And, on 30 November 2011 Ministry of Economy and Sustainable Development issued the construction permit on the basis of positive conclusion by state ecological expertise.

Green Alternative tried to cancel these documents through the court but both, the trial court (31 May 2012) and Court of Appeal (on 19 December 2012) did not allow Green Alternative's appeal. The Supreme Court found the cassation claim inadmissible (18 April 2013).

On 17 May 2014 glacial mudflow from Devdoraki gorge to Dariali gorge damaged already constructed Larsi HPP and Dariali HPP under construction. This disaster caused human casualties, some of the HPP builders died. On 20 August 2014 another mudflow caused much more serious consequences for Larsi HPP. Two builders died. Damages were caused by violations in preparation of the project and issuing the permits, to which Green Alternative pointed repeatedly: it was not taken into account that avalanches of various sizes from Devdoraki gorge occur time and again and sooner or later such a tragedy would happen.

Finally, both the constructing company and the Ministry had to admit their mistakes and on 7 October 2014 Minister of Environment and Natural Resources Protection issued the Order No. 612 "On Ecological expertise conclusion and approval for the construction and operation of new transport tunnel to "Darialienergy" and "Dariali" HPP underground structure". Both, the Company documents and the Ministry conclusion state, that the initial project did not take into account historical experience of Devdoraki mudflows and the risk of recurrent disasters was still high.

At the appeal hearing in Tbilisi court on 6 December 2012 Nikoloz Chakhnakia, former head of Ecological expertise and inspection department of Ministry of Environment, was interrogated as a specialist. He presented Governmental Regulation No. 2247 of 18 November 2011, according to which 8.7737 hectares of Kazbegi national Park were allocated for "Dariali HPP" construction. The regulation was based on Article 27<sup>1</sup> of Governmental Resolution No. 242 of 20 August 2010, which provides for the use of protected areas with special purposes. By signing this Regulation Prime-Minister Nika Gilauri exceeded his authority (the issue is within the competence of the parliament) and took completely illegal decision. At the same court hearing, Irakli Zhorzholiani, representative of "Dariali Energy", presented the agreement No. 6 of 29 November 2012, on the use of forest for special purposes, signed between LEPL Agency for Protected Areas and "Dariali Energy" on the basis of Governmental Regulation No.2247 of 18 November 2011. According to this Agreement 8.7737 hectares of Kazbegi national Park were allocated to "Dariali Energy" Ltd until 1 January 2013 for the use of forest with special purpose".

Such a solution was so incorrect legally, that the Parliament had to intervene in the process later; on 13 March 2012, at the initiative of Ministry of Energy, Parliament of Georgia passed the law "On changes to the Law "On the status of protected areas". Under this law 20 hectares of territory was cut from Kazbegi

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<sup>57</sup> Law of Georgia "On the system of protected areas", Articles 5 and 20.

national park. Legally, the parliament can take the decision on reduction of protected area only at the initiative of Ministry of Environment, and only in extraordinary cases stipulated by law (catastrophic and irreversible destruction of ecosystems, the need for ecosystem restoration etc.)<sup>58</sup>.

Green Alternative made a claim to the City Court demanding to declare abovementioned Regulation No. 2247 of 18 November 2011 null and void. Although we realized that declaring the Regulation null and void would not influence the project (court hearings were scheduled only after the agreement had expired; besides, by then the territory was already excluded from Kazbegi National park area), we still thought that the very fact of judicial review of the issue and its legal assessment would be important for future practices.

Unfortunately, as expected, the City Court did not allow Green Alternative's claim. However, the manner, this decision was grounded, was unexpected. Judge Nino Buachidze proposed the interpretation of Environmental law which implied practical abolition of Georgian system of protected areas.

The defendant in the court (Georgian government was represented by Zaza Taktakishvili) and the third party in court (Ministry of Environment and Natural Resources – Shota Kublashvili, the Agency for Protected Areas – Irakli Jugeli) argued that the construction of a HPP within traditional zone of the national park was not activities prohibited by law (i.e. violation of environmental law). The judge considered this argument not viable and continued further misinterpretation of the law.

Taking decision on the use of forest with special purposes under Article 27<sup>1</sup> of Regulations No. 242 of 20 August 2010 need the existence of several conditions:

- Use with special purpose shall not violate environmental law – this is primary condition for taking the decision on the use with special purpose;
- The territory shall be included in the “forest fund”;
- The activity shall be related with necessity or significant economic profit;
- The decision on the use of the forest within the “forest fund” with special purpose shall be taken by Ministry of Environment. According to the Forest Code, the government can take the decision on issuing the permit for the use with special purpose only in case, when the activity requires forest felling on 35° slopes.

The Court decision was based on wrong interpretation of Article 14 of the Forest Code. **The Court decided that all protected areas, under Georgian legislation, are included in the “Forest Fund” area. By this logics the Black Sea part of Kolkheti National park, Javakheti lakes (water surface) – Madatafa, Khanchali, Kartsakhi, Bugdasheni, treeless alpine and subalpine zones – are “the Forest Fund”. So the Court concluded that the contested territory was part of the “Forest Fund”, though there are no plants and trees there.**

The defendant in the Court could not present a single evidence of significant economic advantage, related to this activity. On the contrary, Ministry of Economy and Sustainable Development presented, as evidence, the documentation proving that there was no opinion letter in the Ministry about economic benefits of “Dariali HPP” project. Court equated amount contributed by the investor and economic benefits.

**The court, and even MoENRP and the APA, announced that the activity, unacceptable for national park (particularly the zone of traditional use) regime is not a violation of environmental legislation.**

Pursuant to Article 5 (“National Park”) of the Law of Georgia “On the system of protected areas” “national park shall be established for the protection of nationally or internationally important, relatively large and distinctive by their natural charms ecosystems, preservation of living environment, conducting of scientific and research, educational and recreational activities”. Para 3 of Article 5 of the same law provides that “a traditional usage zone shall be established to conduct economic activities related to the environment protection and traditional use of renewable natural resources. In such zones there shall be permitted: mowing, pasturing, wood collecting, etc., within the limits of local needs and natural productivity. There shall be prohibited: sowing, plowing and building of agricultural facilities. There have been instances when the local population was limited in their activities within their own smallholdings due to incorrect planning

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<sup>58</sup> Law of Georgia “On the system of protected areas”, Article 14.2

of the protected territories, since these activities were not listed among the ones allowed by the law (e.g. they were not allowed to plow and build a stall for cattle).

Pursuant to Para 4 of Article 20 (“Activities in the protected territories”) of the Law of Georgia “On the system of protected territories” “Within the protected territory hereby is prohibited: to destroy or modify natural ecosystems; to destroy (exterminate), extract (seize), ruin, damage (injure) or scare any natural resource for the purpose of exploitation or for any other reason; to damage natural ecosystems or species as a result of pollution; to import into the territory explosive or poisonous materials; any other activity prevented by the regulations or the management plan of the protected territory.

Hence, construction and operating of HPP on the territory of National park is incompatible with the activities, legally allowed within the zone of traditional use of national park. Respectively, allocation of the territory for the construction of HPP under the pretext of special purpose is violation of environmental law.

Following the Court logics, as well as the logics of MoENRP and the APA, the use with special purpose (e.g. any construction, ore mining, felling etc.) would be allowed not only in the zone of traditional use of national parks, but also in such strictly protected territories, as Lagodekhi nature reserve, Borjomi nature reserve, Batsara-Babaneuri nature reserve, zones of strict protection of national parks etc. since these territories are included in the “forest fund”. **This decision of the court, with which the MoENRP and the APA agreed, gives rise to a dangerous precedent, as a result of which the system of protected territories in Georgia can be practically abolished and it will be equated to usable forest fund.**

## 5.2 Machakhela National Park – an example of bad governance

Protected area is a keystone of biodiversity conservation since it is most efficient means for protection of nature, conservation of species and sustainable use of ecosystem services. However, the very fact of establishment of a protected area does not imply guarantees of protection of species and/or biodiversity. The above functions can be performed only under proper planning of protected areas, meaning proper selection and categorization of the territory to be protected.

MacArthur and Wilson biogeographic model (1967)<sup>59</sup> is usually used for planning protected areas. This approach implies protection of all ecosystems (watershed, river gorge, etc.) rather than only a part of it when establishing protecting area. The territory, as far as possible, shall be large and not fragmented. Protected areas shall make a uniform system where they are not isolated, but linked by means of ecological corridors. Ecological corridor does not necessarily mean legally established protected areas. Out of the protected areas different forms of planning, management and use of natural resources can be applied in order to insure unimpeded migration of species and maintaining ecosystem integrity. Taking into account the existing geographic and political barriers, and the land use regulations, it is not always possible to establish large reserves and national parks. An example of good planning is where large and high conservation status areas surround small size and/or low conservation status protected areas (e.g. natural monuments, managed reserves protected landscapes – so called “stepping stones” situated between the strict nature reserves and national parks). “Stepping stones”, in their turn, ensure the unity of the protected areas system and serve as a wildlife corridor to increase connectivity between habitats.

Another important thing that is necessary to be taken into account in the natural resources/ecosystems management is that the regulation of human activities yields better results than strict restrictions. Human access to protected areas and the resources therein shall be rather brought under certain regulations, than be strictly banned, except when there is an urgent need for species’ protections.

Establishment of protected area means, that the law shall provide for: the boundaries of protected area; the amount and form of permissible use of natural resources; accessibility of natural resources for local population; protection purposes, strategy and regime. The selected for protected area category shall exactly fit with the needs of conservation (protection of nature). Otherwise, there is a risk that the establishment of strict nature reserve categories (under IUCN I, II categories) brings worse results than of easier categories (under IUCN IV, V, VI categories).

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<sup>59</sup> R. Primack, 2014, Essentials of Conservation biology, sixth edition

A bad example of planning and establishing protected area without consideration of the above mentioned principles is Machakhela national park.

In 2008, association for Environment Protection and Sustainable Development MTA-BARI<sup>60</sup>, with the support of Critical Ecosystem Partnership Fund (CEPF) and WWF, developed a document called “Mtirala and Machakhela natural landscape territory management and spatial-territorial planning document”. The ultimate goal of the document was to establish “Machakhela protected landscape” (protected area category “protected landscape/seascape” – IUCN category V) and “Mtirala national park support/buffer zone” (protected area category “Area of multiple use” – IUCN category VI) in order to develop the protected areas system and improve social and economic situation of local population. Two-stage approach was chosen for the establishment of these two protected areas. The first stage envisaged the creation of “Mtirala and Machakhela natural-landscape territory” in accordance with the law of Georgia on the “Principals of Spatial Arrangement and Urban Construction”, and the second stage envisaged the establishment of “Mtirala support/buffer zone” and “Machakhela protected landscape” under the law of Georgia “On the System of Protected Territories”.

This two-stage approach and the establishment of protected areas with low conservation status was applied in order to ensure the participation of local population and self-governments in the management process, and to minimize the conflict of interests of environmental protection and the local population.

Machakhela-river, and its tributaries gorges, where typical Adjarian mountainous villages are located, is a natural and cultural landscape created as a result of harmonious interaction of the nature and a man, which could be protected, conserved and sustainably used only through the establishment of protected area with “protected landscape” category. “Machakhela protected landscape” could have been an effective model of conservative management where the functions of natural and cultural heritage, wildlife corridor and transboundary cooperation would be combined.

The “protected landscape” would ensure protection and sustainable use of ecosystem services. Habitat or supporting ecosystem services need to specially mentioned: it was supposed that the most important function of “Machakhela protected landscape” would be the creation of ecological corridor to link together south-west Georgia protected areas (Mtirala National Park and Kintrishi State Nature Reserve) and north-east Turkey protected areas (in particular Camili Biosphere reserve, located at the beginning of Machakhela-river gorge in Turkey<sup>61</sup>). This would be the best way of conservation of South-Colchian relict forests’ representative biodiversity (conservation of this type forests is an international priority).

Provisioning Ecosystem Services are very important for local population: forest wood products (firewood and timber), non-timber plant products (fruit, berries, pastures etc.), fresh water, (which is widely used for fish farming). Introduction of methods of their sustainable use would be/is most convenient through “protected landscape”. Along with local resources, this would guarantee stability of drinking-water supply to most of Ajara (including Batumi).

The protected landscape would ensure the protection of regulating ecosystem services: sustainability and ecological balance of Kobuleti-Chakvi and Shavsheti ridges would allow avoiding the development of erosion-landslide occurrences and floods not only in the mountains, but also in lowland zone.

Cultural services should also be mentioned herewith: preservation of harmonious appearance of natural (South-Colchian unique ecosystems) and cultural landscapes, tourism development in Chorokhi/Machakhela river valleys and support of alternative income sources of local population.

In order to implement the above plan, WWF CauPO developed draft law on the establishment of Machakhela protected landscape (IUCN category V), and sent it to Ajara government for submission to the Parliament of Georgia. Ajara government made substantial changes to the bill: raised the category from IUCN V to IUCN II, and respectively the Law was called “On Machakhela National Park”. Besides, apparently under the pressure of the Ministry of Energy, Machakhela-river and its tributary Skurdidi were removed from Machakhela National Park. Ministry of Energy planned large-scale hydroelectric projects on these rivers. Georgian Parliament adopted the Law “On Machakhela National Park” in 2012<sup>62</sup>.

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<sup>60</sup> NGO from Batumi, Ajara

<sup>61</sup> <http://www.unesco.org/mabdb/br/brdir/directory/biores.asp?mode=all&code=TUR+01>

<sup>62</sup> №6179. 15.05. 2012

What problems created wrong planning – both spatial and legal (wrong categorization) - of protected area in Machakhela valley? Left without river gorge National Park cannot ensure the provision of main ecosystem services – protection of migration routes and habitat for fish and mammals. Machakhela National Park not only cannot perform the functions of the ecological corridor connecting Camile, Mtirala and Kintrishi protected areas, but it itself is parted.

The construction of big hydro-power-station – Shuakhevi Power Station – started in the region. The project provides diversion of 90% of Machakhela-river natural flow (mean annual flow) to Acharistskali river. Water habitat, as well as floodplain forests will degrade due to left without water the river. Local producers, who have trout farms where they use river water for their business, will also be affected. According to the hydro power station EIA report, the dam and sediment deterrent will be installed on Machakhela River, which will adversely impact river habitats and species. Besides, two more hydro power stations are planned in Machakhela river valley<sup>63</sup>.

Incorrect planning created problems to local population too. Agricultural land belonging to the population, as well as pastures are found to be within the park, their right, to use forest is restricted. Territory of a National Park, under Georgian law, is a state property. Hence the population could not register the land and property in their actual possession with public registry. And without registration they cannot sell or load mortgage on their property. One cannot even hold the electric wiring in the house without registration with public registry.<sup>64</sup>

Machakhela population constantly complained to the various government agencies, including the APA and demanded excretion of their private land plots and houses out of the Park limits. There was growing discontent among the population with regard to protected area, which left without natural resources already land-poor population. Another reason that aggravated the conflict was miscommunication between the Park administration and the population. The population was not informed about the activities allowed or banned in the Park territory thus causing the more aggression.<sup>65</sup> Significant part of population initially supported the idea of protected area, hoping that this would stop the destructive hydro power projects that would completely destroy natural and cultural landscape. In the end this part of population also showed negative attitude due to the double standard of administrative implementation: on the one hand the bans were imposed upon population, and on the other hand the government was blind to clear violations of environmental law/principles by hydro projects.

In order to find the way out of the situation, the demarcation was carried out within UNDP/GEF project “Expansion and Improved Management Effectiveness of the Adjara Region’s Protected Areas”. It was decided to exempt the territory of 1000 hectare (agricultural land, orchards, gardens etc. intensively used by the population) from the park area, so that the population could continue traditional activities on the ancestral land without violating the law. Demarcation works were conducted in active consultations with local communities. The issue of reducing the park territory was considered at advisory council meeting of the Agency for Protected Territories, for which its special sitting was convened on 18 September 2015. Members of the Council agreed that land plots inside the National Park, which belonged to the local population, were not consistent with the National Park objectives, established by law. At the same time their exception would not impact significantly the biodiversity. They also agreed that the APA and the Council members, together with other experts would work on legalization of the status of protected area for Machakhela River and its tributaries (most probably the category of protected landscape and/or protected area with sustainable use of natural resources). It should be mentioned that according to “Shuakhevi-HPP” EIA the implementing company pledged, to help the National Park if Machakhela River turned out on its territory as a compensation of damages caused to the environment. Similar recommendation was developed under UNDP/GEF project “Expansion and Improved Management Effectiveness of the Adjara Region’s Protected Areas”.

However, this Council decision has not yield any results so far. Moreover, illegal decisions in favor of the construction of HPPs continue. On 23 September 2015 Georgian Government resolution No. 2057 was issued under which the area of 35273 m<sup>2</sup> within Machakhela National Park traditional use zone was

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<sup>63</sup> [www.energy.gov.ge](http://www.energy.gov.ge)

<sup>64</sup> A citizen shall present an extract from publicregister, confirming ownership to “Energopro” Company in order to register as a power user.

<sup>65</sup> Source: minutes of advisory board session of the Agency for Protected Areas. 18.09.2015

allocated to “Machakhela HPP” Ltd. in the form of forest use for special purpose to develop “Machakhela 1” and “Machakhela 2” HPPs initial projects. APA did not share the information on this decision with the Council members at its 18 September sitting. All the above proves that allocation of the territory of Dariali National Park for the construction of “Dariali-HPP” is a typical case rather than exception.

### 5.3 Rental of “Forest Fund” territory

Floodplain forests belong to the most vulnerable and endangered habitats. Floodplain forests can be found in Georgia only in fragments – mainly in Mtkvari, Iori and Alazani valleys. One of them is Chiauri floodplain forest along Alazani River. A game farm, owned by “Fauna” Ltd. is functioning on 5020 hectares of Alazani and Afeni forestry on the basis of 20 years license issued in 2002.

*In 2002 game (hunting) farm licenses were issued on a tender basis. The tender was usually preceded by preliminary study of the territory and establishment of license terms (natural conditions, ecological situation, common species, hunting quotas, zoning of hunting farms etc.) The tender documents were considered by the Experts’ Interagency Council, which took the decision on the issuance of the license. The Council sitting was open and any interested person could attend it, express the view and, respectively, participate in decision making. Prior to receiving the license the winner company had to receive the Environment Impact Permission. Under the law, then in force in Georgia, public participation in the EIP issuance process was ensured by the body in charge of issuing the permission – Ministry of environment and Natural Resources Protection, which was responsible for holding public discussion.*

*Regrettably the permit issuance process was often formalistic, not ensuring high level of public participation. Thus, public attitude to some of the important, in terms of biodiversity conservation, projects aiming at sustainable use of natural resources and environment protection (including the creation of protected areas and hunting farms) was antagonistic. Due to miscommunication with the public and shortcomings in the organization of their participation in decision making, it was impossible to fully consider the problems of land use and use of natural resources (most often – the use of pastures and timber resources), and conduct adequate activities for solving/prevention these problems. Local population extracted resources illegally, without application of sustainable methods. Conflicts between them, on the one side, and the owners of hunting farms, and/or protected areas, on the other, were quite frequent.*

*Under current legislation i.e. the law of Georgia “on Licenses and Permits” (2005) game farm license is issued on the auction basis, without prior study of natural conditions, and public participation in decision making, and EIA. Hunting farm plan is approved after its public discussion, but this process is also formalistic, since is conducted only in Tbilisi, at the Ministry of Environment and Natural Resources Protection, without notifying local population.*

Special game farm licensee’s liabilities (terms of license) are defined under Georgian Government Resolution No.132 of 11 August 2005 “on the approval of regulations on the rules and terms of issuing forest use licenses” which was developed in compliance with the law of Georgia “on Licenses and Permits”. Regrettably the licensee liabilities are not consistent with his/her rights under the law. The license holder is obliged to protect the area, specified in the license, from illegal hunting and forest use. However, under the same law, the licensee or his/her staff is not eligible to detain the perpetrator, draw up a report on the offense or take away weapons from poachers.

In the case of hunting farm in Chiauri floodplain forest, combating illegal use of natural resources was complicated by the fact that part of the area in the center of hunting farm – pastures – were not included in the license. This area of about 130-150 hectares was used by rural population around the farm; shepherds had built houses for themselves there. Frequent were the cases of unsustainable grazing within the hunting farm, unauthorized occupation of space, illegal logging and poaching.<sup>66</sup> Grazing cattle contributed to the spread of invasive species, created threat of severe diseases to wild animals. The game farm repeatedly

<sup>66</sup> Source: “Fauna” Ltd. reports, documents/letters prepared by Ministry of Environment, Agency for natural Resources and local self-governments

appealed for help to local and central authorities, but to no avail. Moreover, in 2012, the commission, which held the inspection in response to their appeal, assessed the damage to the environment as a result of illegal logging at 80 000 GEL, on the basis of which the prosecutor's office instituted legal proceedings against "Fauna" Ltd.

In 17 March 2011 the population of Leliani, Chabukiani and Afeni villages of Lagodekhi Municipality sent to the President of Georgia Mikheil Saakashvili a joint letter where they expressed their indignation at the fact that forestry representatives and game farm rangers did not allow to use pastures, which, as they claimed, were in their ownership since 1989. According to them, game farm representatives intended to purchase the pastures; they also stated that the pastures were used to graze the livestock of three villages (about 9 thousand head of cattle), which is the main income source for locals. They demanded from the president that the land be turned over to them with the right of enjoyment.

On 8 April 2011 presidential administration forwarded the letter to the Ministry of Energy and Natural Resources for further response. Kakheti field office of the Agency for Natural Resources studied the situation on the spot and reported on it to Forest Management Department of the Agency for Natural Resources. According to their report the areas, mentioned in the locals' letter were meadows and pastures belonging to Lagodekhi forestry and had never been turned over to local population with the right of enjoyment. Until 2005 Lagodekhi forestry issued tickets for seasonal grazing. According to the same report the above areas did not fall under the game farm license, issued to "Fauna" Ltd. (in essence, the facts contained in the report and in statements of the local population do not contradict each other that indicates the lack of dialogue between the population and the enterpriser, on the one hand, and the enterpriser and the government – on the other).

On 3 May 2011 "Fauna" Ltd. sent a letter to A. Khetaguri, Minister of Energy and Natural Resources, with the request to transfer to the hunting farm additional 520 hectares of grounds in order to stop and prevent unsustainable use of natural resources. The letter remained unanswered.

On 14 May 2012 "Fauna" Ltd. sent another letter to LEPL Agency for Natural Resources<sup>67</sup> under the Ministry of Energy, requesting the transfer of 133.5 hectares within the farm circuit, belonging to Lagodekhi forestry district.

The Agency for Natural Resources responded to this letter on 6 July 2012, stating that the Agency had received a letter, dated 18 June, from Kakheti region governor where he requested that this very area be excluded from State "forest fund" and transferred to the possession of Lagodekhi municipality. According to the letter signed by Deputy Head of Agency the issue was under review and a final decision would be communicated to the applicant. However, the applicant did not receive any further information.

On 22 August 2012 Ministry of Economy and Sustainable Development, without prior informing the party concerned, applied to Lagodekhi registration office of National Agency of Public Registry with the request to correct the boundaries of state owned "forest fund", to register 126.56 agricultural land (pasture) located in Afeni village as state property and to issue appropriate extract from the registry, on the basis of Article 15<sup>1</sup> of the "Law on Public Registry". The basis for this decision was letter No.04/1356 of 26 July 2012 from Ministry of Energy and Natural Resources, and letter No.08-05/656 of 19 July 2012 from LEPL Agency for Natural Resources.

Under the Order No.1-1/101 of 14 August 2012 by the Minister of Economy and Sustainable Development, excluded from the "forest fund" area was transferred to Lagodekhi municipality in the form of additional property. On 31 August 2012 the Public Registry registered the property right of a self-governing body to this land plot. On 27 September Lagodekhi Council gave the land to local (Afeni and Leliani villages) population on one year lease.

According to our information (obtained through interviews, and analysis of official correspondence) these actions aimed at winning favorable attitude of local population ahead of 2012 parliamentary elections.

After the elections "Fauna" Ltd repeatedly appealed to local authorities, as well as different ministries, but to no avail. On 26 March 2013 "Fauna" Ltd sent another letter to Valerian Alibegashvili, Head of Lagodekhi

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<sup>67</sup> Forest management functions by then were already transferred to the Ministry of Energy, where LEPL Agency for Natural Resources was established on the basis of former structures under the Ministry of Environment, including the Inspection for environmental protection, investigation department, forest department etc.

municipality. In the letter they described the problem caused by giving the above mentioned 126.5 hectare pastures on lease. The organization again requested this territory to be passed over to them in exchange of 829 hectares adjacent to the villages. "Fauna" requested the Lagodekhi Council to act as a mediator between them and ministries of: Economy and Sustainable Development, Environment, and Energy and Natural Resources.

Lagodekhi municipality, in its letter of 4 April 2013, informed the above mentioned ministries about its no objection to the interchange. On 22 May 2013 Head of the Council Administration ("Gamagebeli") wrote to the Ministry of Environment and Natural Resources Protection, and its subordinate LEPL National Forest Agency<sup>68</sup>. In his response (letter No. 6 02/172 of 6.6.2013) Bidzina Giorgobiani, Head of National Forest Agency, notified that the Agency was under reorganization and the issue of correcting state "forest fund" boundaries would be considered after the reorganization.

It should be mentioned that there was no official reorganization at newly established NFA (the Agency regulations were approved 10 May 2013 under the Order No5 of Minister of Environment and Natural Resources). During the period between 2013 and July 2015 Ministry of Economy and Sustainable Development had issued 85 decisions on correcting forest boundaries. Some of them imply exclusion of certain areas from "State Forest Fund". With regard to all the decisions there are consents of respective forest management agencies (NFA, APA, or AFA) and so called "current reorganization process" did not interrupt the issuance of these decisions.

Regardless the fact that Lagodekhi Municipal Council supported the transfer of the disputed 126,5 hectares to "Fauna" Ltd., on 10 June 2013 it still signed one year lease agreement with five lessees (Fridon Mermanishvili, Gari Gobejshvili, Alexander Darbaidze, Shota Barbakadze and DaviT Chaladze). According to the extract from public registry, tax land mortgages had not been registered in that period.

On 15 November 2013 - with six months delay – Dimitri Kumsishvili, Head of LEPL National Agency for Property Management, responded to Lagodekhi Municipality. In his letter Mr. Kumsishvili stated that disputed 126.5 hectares was the property of Lagodekhi municipality and the Agency was not in a position to meet the request (In fact the request was about assistance in interchange of land plots, which was possible only in cooperation of all public and local agencies).

On 20 November 2013 "Fauna" again appealed to Ministry of Economy and Sustainable Development (copies of applications were sent to Ministry of Environment and Natural Resources Protection, and Parliamentary Committee on Environment and Natural Recourses protection) with the request to establish a competent commission in order to find optimal solution to the problem.

In June 2014 changes were introduced in the lease agreement. According to 19 June 2014 extract from public registry, changes to rental rights were registered. According to the document the lease agreement was extended until 10 June 2016. According to the same extract the land plot was imposed tax mortgage the same day (19 June 2014).

On 12 August "Fauna" Ltd. applied to Irakli Shiolashvili, Kakheti governor, Lagodeki government and the Council with the request to establish the commission and study the issue.

On 18 March 2015 "Fauna" Ltd sent another letter to Lagodekhi municipal government and council. The applicant stated that in accordance with his previous applications the commission, consisting of municipality and Council members, was established. However the resolution of the commission had not been communicated to the applicant and no effective steps had been taken to remedy the situation. The applicant requested to organize a joint meeting.

At the same time Jondo Koberidze – property management, economic development and statistics specialist of Lagodekhi Municipality – appealed to Head of Lagodekhi municipality with memo describing the situation at the game farm, which he had studied together with representatives of Afeni and Leliani village administrations. It was mentioned that "Fauna" Ltd. allowed local population to graze cattle in hunting farm territory, since the leased 126.5 hectares were located far from villages and locals did not go there. The territory was used by some other people, who had put 14 cattle corrals there. Central part of the farm was

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<sup>68</sup> In May 2013, as a result of governmental reorganization, Ministry of Energy, and Ministry of Environment and Natural Resources replaced, respectively, Ministry of Energy and Natural Resources and Ministry of Environment. Forest fund management function was transferred to newly established LEPL National Forest Agency (NFA) under the MoENRP.

also used for cattle grazing which has adverse impact both, on natural environment and the farm itself. The commission member raised the question that municipality cancels the lease agreement for disputed territory and cede it to the state. In this case “Fauna” Ltd. would allow locals to graze their cattle in pastures located in their leased territory; or issue a lease if needed.

On 18 March 2015 “Fauna” Ltd. wrote to Elguja Khokrishvili, Minister of Environment and Natural Resources Protection requesting to enhance cooperation and dialogue between the Ministry, the self-government, local population and licensees in order to solve the problem. The licensee continued correspondence with Gigla Agulashvili, the new minister, but no practical steps followed.

The above case reveals not one systemic problem:

- Labilities of game farm licensees (equally as of logging licensees) are not consistent with their rights defined by law;
- Regulations for issuing forest use licenses and approval of management plans do not provide for informing the public concerned and their participation in decision making;
- Regulations of excluding territories from “forest fund” do not provide for informing the public concerned and their participation in decision making;
- Local population in fact does not know its rights and obligations in regard of the use of natural resources (pastures, forest);
- Local self-governments and central authorities in fact do not cooperate;
- Uncoordinated work of different ministries is striking;
- Though ministries are informed about the problems relating to discordant regulations, they do not make efforts to change them;
- When it comes to consideration of environmental issues in decision making, governmental officials often refer to current institutional reforms. The “reform”, or “reform” allegation has become permanent and has been continuing for 15 years already. At the same time “reform process” does not prevent from taking environmentally and socially destructive decisions.

## 6. Assessment of Forestland Governance

### 6.1. Methodology of the research

Green Alternative carried out the assessment of quality of forestland governance based on “Governance of Forests Initiative (GFI) Indicator Framework”<sup>69</sup>. GFI Indicator Framework recognizes three components of forest governance:

1. **Actors** (people and institutions that shape decisions about how forests are managed and used. These actors include government agencies, legislatures, companies, communities, the media, and civil society).
2. **Rules** (policies, laws, and regulations that affect forests).
3. **Practices** (how actors develop and apply rules to drive practices at an operational level).

The five principles of good governance - **transparency, participation, accountability, coordination and capacity**- provide the benchmark of quality against which the component of forest governance (**actors, rules, and practices**) can be assessed. The GFI framework contains 122 unique indicators. According to methodology it is not necessary to use all of them. The indicators are organized by themes and subthemes to help researchers identify priority areas of interest—such as forest tenure, forest law enforcement, or public access to information—and focus their assessment (Table 2). The choice of how many indicators to complete is up to the researcher, and varies widely depending on resources, time, and the goal of the assessment.

**Table 2: Organization of the Indicators by thematic area and subtheme**

Thematic areas	Subthemes			
<b>1. Forest tenure</b>	1.1. Forest ownership and use rights	1.2 Tenure dispute resolution	1.3. State forest ownership	1.4. Concession allocation
<b>2. Land use</b>	2.1.Land use planning	2.2 Land use plan implementation	2.3 Sectoral land use	2.4. Forest classification
<b>3. Forest management</b>	3.1. Forest legal and policy framework	3.2 Forest strategies and plans	3.3. Forest monitoring	3.4. Forest management practices
				3.5 Forest law enforcement
<b>4. Forest revenues</b>	4.1. Forest charge administration	4.2. Forest revenue distribution	4.3. Benefit sharing	4.4. Budgeting
<b>5 Cross-cutting Institutions</b>	5.1. Legislature	5.2. Judiciary	5.3 Executive agencies	5.4. Private sector
				5.5. Civil society
<b>6. Cross-cutting Issues</b>	6.1. Public participation in decision-making	6.2 Public access to information	6.3. Financial transparency and accountability	6.4. Anticorruption measures

Due to limited time and financial resources it was possible to evaluate only some thematic areas of forest governance: land tenure (Subthemes: Forest ownership and use rights, state forest ownership) and land use (Subthemes: land use planning, Land use plan implementation, sectoral land use, forest classification).

Primary sources of the information were legislative acts (policy documents, laws, sub-laws), researches prepared by the governmental and non-governmental organizations, etc. Secondary sources were

<sup>69</sup> World Resources Institute, available: <http://www.wri.org/our-work/project/governance-forests-initiative/tools#project-tabs>

interviews with various stakeholders (governmental officials, experts, representatives of NGOs/CBOs, academic institutions, local population, etc.)<sup>70</sup>.

According to the methodology, scoring of the GFI indicators may or may not be necessary, depending on the objectives of the assessment. For example, if the aim is to diagnose a governance problem in order to suggest a solution, the process of systematically collecting and documenting evidence for each element of quality can provide significant insight without assigning a score to indicator. We find out that binary response (“yes” or “no”) was not adequate to assign an accurate value to each element of quality. Based on GFI framework and experience of GFI Brazil partners we developed three-tiered scoring system (tables 3, 4, 5, 6).

**Table N3. Scoring method (sample)**

Indicator N				
Elements of quality (EOQs)	Scores			Explanation
	0 NO	0,5 Partially	1 Yes	
EOQ 1	X			
EOQ 2		X		
EOQ 3			X	
EOQ 4		X		
EOQ 5			X	
Total score	3			
Overall performance	Moderate			

**Table N4. Scoring system when indicator contains 4 elements of quality (EOQ )**

Total Score	Governance Quality	
0-1	Very weak	<i>Low</i>
1,5 - 2	Weak	<i>Low-Medium</i>
2,5	Moderate	<i>Medium</i>
3	Satisfactory	<i>Medium-High</i>
3,5 - 4	Strong	<i>High</i>

**Table N5. Scoring system when indicator contains 5 elements of quality (EOQ )**

Total Score	Governance Quality
0-1	Very weak
1,5 - 2	Weak
2,5 - 3	Moderate
3,5 - 4	Satisfactory
4,5 - 5	Strong

<sup>70</sup> Detailed information about sources see in previous chapters of this publication

**Table N6. Scoring system when indicator contains 6 and more elements of quality (EOQ )**

Total Score	Governance Quality
0-1	Very weak
1,5 - 2	Weak
2,5 - 3	Moderate
3,5 - 4	Satisfactory
4,5 – and more	Strong

In this publication we shortly presented results of assessment of governance for following subthemes:

- Forest ownership and use rights;
- State forest ownership;
- Land use planning ;
- Sectoral land use.

For visibility, scoring system is indicated for the assessment of some thematic areas (see below).

## 6.2. Results Assessment of Forestland Governance

### Thematic area: 1. Forest Tenure Indicators

#### Subtheme: 1.1. Forest ownership and use rights

#### Indicator 1. Legal recognition of forest tenure rights

*To what extent does the legal framework for forest tenure recognize a broad spectrum of existing forest tenure rights and rights-holders?*

Element of quality (EOQ)	Score	Explanation <sup>6</sup>
<p><b>1. Individual rights</b></p> <p>The forest tenure rights held by individuals and households are recognized in the legal framework.</p>	0,5	Georgian legislation formally recognizes individual rights on forest tenure/ownership. According to Forest Code of Georgia forests may be held by a physical or legal person of the public law. Despite this, all forestlands are owned by the state (the most part) or local self-governments. According to Forest Code for the privatization of State forests should be adopted law “On the Privatization of Georgian Forests”. This Law has never been elaborated. According to the “Law on State Property” it is possible to privatize part of state forest (so called former “Kolkhoz Forests”). However this right cannot be realized due to imperfect regulations.
<p><b>2. Communal rights.</b></p> <p>The forest tenure rights collectively held by local communities and other relevant groups are recognized in the legal framework.</p>	0	The forest tenure rights of local communities and/or families are not officially recognized in legal framework.

<sup>71</sup> For detailed explanation see chapter 3.2.

<p><b>3. Traditional rights.</b></p> <p>The forest tenure rights traditionally held by indigenous peoples and other groups with customary tenure systems are recognized in the legal framework</p>	0,5	<p>Traditional rights are not recognized in legal framework. Only possibility to realize traditional tenure rights are – participation of local population/communities in management of protected landscapes (IUCN category V) and Multiple Use territories (IUCN category VI). But these rights are not realized due to absence of detailed regulations.</p> <p>One of the goals of National Forest Concept of Georgia is protection of rights of local communities (principle - “All forests are local”). The documents states, that “the identity and culture of local communities residing in the forested areas, and traditional knowledge regarding forest use and conservation shall be acknowledged, appreciated, and supported. All benefits derived from the use of natural resources shall be distributed fairly between local, regional and national users.”</p>
<p><b>4. Rights of women.</b></p> <p>The legal framework does not discriminate against the forest tenure rights of women.</p>	1	<p>Women have equal forest tenure rights. In the legislation does not exist any restrictions in relation to women’s land rights. State policy documents such as “National Forest Concept” and NBSAP recognizes the role and rights of women. According the “National Forest Concept”, “women shall be considered as a separate stakeholder”.</p>
<p>Total score - 2</p>		
<p>Overall performance – Weak</p>		

**Additional explanation**

In some parts of Georgia people still respect traditions of forest tenure and management. Local population of Zemo Svaneti (Great Caucasus, East Georgia, Mestia district, River Enguri and its tributaries) and Kvemo Svaneti Great Caucasus, East Georgia, Lentekhi district, River Tskhenistskali and its tributaries) still remember which family or community owned particular forest territories.

In mountainous regions of Eastern Georgia (Khevsureti, Tusheti) are sacred forests – so called “iconic forests” where any use of resources (logging, grazing, hunting) or even entrance strongly prohibited. In some places are allowed to cut tall trees for constructions of bridges. This is rare exemption from strict restrictions. “Iconic forests” providing important ecosystem services to local settlements: protection from avalanches, mudflows and other extreme events, water protection, etc.

Information about private forests still remembers people in other parts of Georgia. In Imereti (West Georgia) forests were owned by communities and families. Forest plots were divided by special stones – “Samani” (old Georgian word “Boundary”). Before Soviet period these forests were sustainably managed by private owners. Currently these forest stands are degraded due to unsustainable use, grazing and household pollution (see pictures 11, 12).

**Thematic area: 1. Forest Tenure Indicators**

**Subtheme: 1.1. Forest ownership and use rights**

Indicators	Number of EOQs	Total score	Overall performance
<p><b>N 2 . Legal support and protection of forest tenure rights</b></p>	6	0	Very weak
<p><b>N 3. Legal basis for adjudication of forest tenure rights</b></p>	4	0	Very weak
<p><b>N 4. Forest tenure adjudication in practice</b></p>	6	0	Very weak

<b>N 5. Legal basis for administration of forest tenure rights</b>	4	0	Very weak
<b>N 6. Forest tenure administration in practice</b>	5	0	Very weak
<b>N 7. Information about forest tenure rights</b>	4	0	Very weak
<b>N 8. Support for rights-holders</b>	4	0	Very weak
<b>N 9. Recognition and protection of forest tenure rights in practice</b>	5	0	Very weak

**Thematic area: 1. Forest Tenure Indicators**

**Subtheme: 1.2. Tenure dispute resolution**

It has no sense to use scoring for this subtheme (indicators N10, N11, N12, N13). Governance quality is very low.

**Thematic area: 1. Forest Tenure Indicators**

**Subtheme: 1.3. State forest ownership<sup>72</sup>**

Indicator	Number of EOQs	Total score	Overall performance
<b>N 14. Legal basis for designating state forest</b>	6	3	Moderate
<b>N 15. Designation of state forests in practice</b>	6	2	Weak
<b>N 16. Legal basis for expropriation</b>	Not applicable. All forests are state		
<b>N 17. Expropriation in practice</b>	Not applicable. All forests are state		

**Thematic area: 2 Land Use Indicators**

**Subtheme: 2.1. Land use planning**

Indicator	Number of EOQs	Total score	Overall performance
<b>N 24. Legal basis for land use planning</b> <i>To what extent does the legal framework define a coherent institutional framework and process for conducting multi-sector land use planning?</i>	4	2	weak
<b>N 25. Legal basis for social and environmental considerations in land use planning</b> <i>To what extent does the legal framework promote the consideration of social and environmental issues in land use planning?</i>	4	1,5	Weak
<b>N 26. Capacity of land use planning agencies</b> <i>To what extent do land use planning agencies have the capacity and expertise to produce high-quality land use plans?</i>	Not assessed		

<sup>72</sup> For detailed explanation see chapter 3.2 and chapter 3.3.

<b>N 27. Coordination of land use planning</b> <i>To what extent are land use planning processes effectively coordinated at the national level?</i>	Not assessed
<b>N 28. Community participation in land use planning</b> <i>To what extent do communities effectively participate in local land use planning processes?</i>	Not assessed
<b>N 29. Quality of land use plans</b> <i>To what extent do land use planning processes result in transparent and justifiable land use plans?</i>	Not assessed
<p>The issue is regulated by <b>Law of Georgia on “Principals of Spatial Arrangement and Urban Construction”<sup>73</sup></b> – This law regulates the process of spatial arrangement and urban construction, including accommodation, settling, and infrastructure development based on cultural and environmental needs. It defines the responsibilities and rights of the State Government Agencies, private and corporate parties as well as the principles, priorities, aims and tasks of spatial arrangement and urban construction; the law also defines forms of documentation for planning and their role in the development and construction of Georgian territory.</p> <p>According to the law it should be elaborated spatial plans on country level, municipality level and settlement level. Plans should cover issues of forestland use: recreational zones, protected areas, territories for the development of agriculture, mining ores and watersheds. The law was rarely used. Only case is spatial planning of “forest fund” territories described in chapter 5.2.</p>	

#### Thematic area: 2 Land Use Indicators

##### Subtheme: 2.2 Land use plan implementation

Not assessed (indicators N 30, 31, 32)

#### Thematic area: 2. Land Use Indicators

##### Subtheme: 2.3. Sectoral land use

Indicator	Number of EOQs	Total score	Overall performance
<b>N 33. Coordination of sector planning processes</b> <i>To what extent are sector planning processes effectively coordinated within a broader land use planning framework?</i>	4	0,5	Very weak
<b>N 34. Strategic social and environmental assessment in sector planning</b> <i>To what extent are sector planning processes based on strategic social and environmental assessments of potential impacts?</i>	5	0	Very weak
<b>N 35. Quality of sector plans</b> <i>To what extent do sector planning processes result in transparent and justifiable plans?</i>	Not assessed. Not applicable		

<sup>73</sup> Law of Georgia on “Principals of Spatial Arrangement and Urban Construction - 02.06. N 1506 -I.

<p><b>N 36. Legal basis for environmental and social impact assessments (ESIAs) of sector projects</b>  <i>To what extent does the legal framework require ESIA of sector projects that may have significant impacts on land use?</i></p>	4	1,5	Weak
<p><b>N 37. 37. Legal basis for implementing and enforcing ESIA</b>  <i>To what extent does the legal framework facilitate effective implementation and enforcement of ESIA?</i></p>			
<p><b>N 38. Implementation and enforcement of ESIA in practice</b>  <i>To what extent are ESIA effectively implemented and enforced in practice?</i></p>	6	1,5	Very weak
<p><b>N 39. Monitoring social and environmental impacts of sectoral land use</b>  <i>To what extent are the social and environmental impacts of sector policies, plans, and projects effectively monitored?</i></p>	6	0,5	Very weak

**N 34 Explanation of indicator:**

Georgian legislation doesn't require strategic impact assessment at all. By donor organizations had been elaborated SEA/SIA for different strategic projects/regions; as usual results of these assessments are not considered by state institutions during the decision making process.

**N 36 Explanation of indicator:**

Activities/projects which have heavy impact on forest ecosystems (for example mining) do not need the EIAs/ESIAs under the current legislation; some projects require EIA, but in practice EIA reports do cover issues related to impacts of forests (for example "special forest use" for construction of hydropower station)<sup>74</sup>; screening is not required to determine if an ESIA/EIA is necessary for a given project. Regulations related to public consultation process are very weak. The legal framework do not provides technical guidelines for conducting ESIA.

**N 37 Explanation of indicator:**

The legal framework do not requires that the entity responsible for conducting ESIA should be independent from the project proponent. Moreover, according to current legislation project proponent can hire National Environmental Agency to conduct EIA. Simultaneously, representatives of this state institution participate in approval of Environmental permits and later - in monitoring of Environmental permit conditions.

These kinds of regulations indicate the possibility of a conflict of interest and corruption. The legal framework do not provide guidelines (do not require) about the expertise or qualifications of ESIA teams. The legal framework do not establishes clear guidelines for granting exemptions to ESIA. As usual exemptions do not provide any justification (even for projects with significant social and environmental impacts – construction of roads, high voltage power grids, etc.). The practice of exemptions contains signs of elite corruption.

**N 38 Explanation of indicator:**

As usual composition and expertise/qualification as well as independence of assessment team raises doubts. Qualities of EIA reports are poor. Public consultation process is fictitious, main/principal comments of representatives of affected population and NGOs are not taken into account. Social and environmental risks are not adequately considered.

<sup>74</sup> For detailed explanations see in chapter 4.1.

**Thematic area: 2 Land Use Indicators**

**Subtheme: 2.4. Forest classification**

**Indicator N 40. Legal basis for forest classification**

*To what extent does the legal framework define a clear process and institutional framework for classifying forests according to their intended use?*

Element of Quality (EOQ)	Score	Explanation <sup>75</sup>
<p><b>1. Definitions.</b> <i>The legal framework clearly defines forest classifications according to the intended forest use.</i></p>	0	<p>The legal framework does not define how forests are to be classified for different purposes (in compliance with their ecological functions) such as preservation, conservation, recreation, or timber production. Existing regulations are not clear. "State forest fund" is divided in "protected areas forest" and "usable forest"<sup>76</sup>. The "State Forest Fund" comprises the "areas covered with forest" and "areas not covered with forest". These two categories are divided in subcategories<sup>77</sup>. However, this division does not correspond to the forests ecological functions and purpose of use - for example, the category "areas covered with forest" may be strictly protected forest as well as timber harvesting area. In addition, in different regulations specifies categories such as "area with special functions"<sup>78</sup> and "high conservation value forests"<sup>79</sup>. There are no clear linkages between forests categories assigned by different legal acts.</p>
<p><b>2. Institutional mandates.</b> <i>The legal framework assigns authority to classify forests to a level of government appropriate to the temporal and geographic scale of the classification.</i></p>	0	<p>Each Legal act defines authority that is in charge to assign particular forests category established by the same legal act. But we think that given EOQ deserved zero score because: 1. forests are not categorized/classified in compliance with their ecological functions. 2. No clear linkages between categories assigned by different regulatory acts. 3. In practice (physically) forests are not divided by categories. 4. Existing forest categories are inapplicable to protected areas management goals and they are useless.</p>
<p><b>3. Procedures.</b> The legal framework establishes clear procedures for forest classification.</p>	0,5	<p>The legal framework establishes procedures for definition of some forest categories</p>
<p><b>4. Restrictions.</b> The legal framework defines any restrictions on where classification for certain forest uses may occur.</p>	0,5	<p>The legal framework defines restrictions related to different categories of protected areas. Also legal framework defines activities which are restricted in some categories of forests (such as "high conservation value forests").</p>
<p><b>5. Declassification.</b> <i>The legal framework defines the circumstances under which declassification may occur and procedures that must be followed.</i></p>	0	<p>The legal framework does not define.</p>

<sup>75</sup> For detailed explanation see chapter 3.5.

<sup>76</sup> Forest Code of Georgia (1999);

<sup>77</sup> Decree of Government of Georgia N179/ 17.07.2013

<sup>78</sup> Decree of Government of Georgia N242/ 20.08.2010

<sup>79</sup> Decree of Government of Georgia N132/ 11.08.2005

Total score - 1
Overall performance – Very weak

#### Indicator N 41. Information basis for forest classification

*To what extent do decision-makers consider high-quality social, environmental, and economic information when conducting forest classification?*

Element of Quality (EOQ)	Score	Explanation
<b>1. Environmental information.</b> <i>Decision-makers consider up-to-date and accurate environmental information about forest ecosystems.</i>	0	Up-to date and accurate environmental information about forest ecosystems does not exist. Forest inventory was not carried out during last decades. Does not exist information on forests may include information on forest types, forest cover, soil type, ecosystem services, biodiversity, high conservation value areas, species composition, and stand dynamics.
<b>2. Land use information.</b> <i>Decision-makers consider up-to-date and accurate information on existing forest uses and tenure rights in law and practice.</i>	1	Information about land tenure and land users mainly updated and registered by National Agency of Public Register.
<b>3. Economic information.</b> <i>Decision-makers consider up-to-date and accurate information about the economic potential of forest ecosystems.</i>	0	Economic potential of forest ecosystems is not assessed. Legislation does not require assessment of economic potential of forests during the decision making process when land use type is changed. Never had been collected/analyzed Economic information on forests such as timber market values, NTFP market values, ecosystem services, role of forest resources in contributing to livelihoods, and number of jobs created by the forest sector, etc. <sup>80</sup> .
<b>4. Impact assessment.</b> <i>Decision makers consider social and environmental impact assessments when the proposed classification will result in a significant change in land use</i>	0	The legal framework does not require elaboration of social and environmental impact assessments for forest classification.
Total score - 1		
Overall performance – Very weak		

#### Indicator N 42. Appropriateness of forest classifications

*To what extent are existing forest classifications transparent and justifiable?*

Element of Quality (EOQ)	Score	explanation <sup>81</sup>
<b>1. Coverage.</b> <i>All state forests have been classified.</i>	0,5	All territory of state forests is divided in two categories" areas covered with forest" and "areas not covered with forest". There are only few cases of determination of "areas with special functions" and "high conservation value forests".

<sup>80</sup> Source: NBSAP-2

<p><b>2. Legal compliance.</b> <i>Classifications and declassifications comply with the procedures and provisions set out in the legal framework.</i></p>	0,5	The legal framework does not establish clear criteria. Nation and/or region level land use/forest use plans never was developed. Accordingly it's impossible to review cases (documentation) related to forest classification and compare with legal requirements.
<p><b>3. Existing rights.</b> <i>Classifications are consistent with existing local land uses and rights.</i></p>	0	Not applicable
<p><b>4. Environmental objectives.</b> <i>Classifications are consistent with national objectives for sustainable forest management and environmental protection</i></p>	0	Not applicable <sup>82</sup>
<p><b>5. Transparency.</b>  Classifications are publicly disclosed.</p>	0.5	Information about the boundaries of “State forest fund” is publicly disclosed at the website of National Agency of Public Register. Information about protected areas including their management plans is available at the website of Agency of Protected Areas ( <a href="http://www.apa.gov.ge">www.apa.gov.ge</a> ). Management plans of forest areas of Ajara Autonomous Republic (except of protected areas) are available at the website of LEPL Ajara Forest Agency. Management plans of forest areas of forest under jurisdiction of National forest Agency never were developed except forests managed by long term license owners. Unfortunately their management plans aren't publicly disclosed. Quality and accuracy of public information is low.
Total score – 1,5		
Overall performance – Weak		

### 6.3 Results of the assessment and way forward

The present research clearly shows that the quality of forestland governance in Georgia is bad. In spatial planning and EIA legislation is not integrated issues of forestland governance; or decision-makers do not paying attention to these regulations. Forest categorization system is insufficient. Frequently decision-makers using principals of management of commercial/usable forests in management of protected areas. It leads to the reduction of the value and importance of protected areas.

To improve forest governance it is necessary to horizontal legislation of Georgia (EIA, SEA, spatial panning, public participation) needs substantial changes. The legislation should be harmonized with EU directives. It is necessary to reflect biodiversity conservation and sustainable forest management needs in EIA legislation. All activities with potential negative impact on forest ecosystems should be subject of EIA.

Currently MoENRP elaborated draft laws: “Law on Biodiversity”, “Forest Code of Georgia” and “EIA Law”. It is necessary to harmonize these draft regulations. To improve environmental governance it is desirable to carry out assessment of these draft laws based on GFI indicator framework – with help of calibrated methodology and results presented in this publication.

<sup>81</sup> For detailed explanations sees chapter 3.5.

<sup>82</sup> source: NBSAP, National Forest Concept.

## ILLUSTRATIONS

Picture 1.



Picture 2.



Pictures 1, 2. Manganese mining in forests, Chiatura district, West Georgia

Picture 3.



Picture 4.



Pictures 3, 4. Chestnut forests being destroyed due to manganese open mining. Endangered chestnut is included in "National Red List" of Georgia

Picture 5. Abulmugi, Dmanisi district, East Georgia



Picture 6. East Georgia, the Gold mine Sakdrisi



Picture 5, 6. Gold and copper mining in forest territories

Picture 7. Quartz sand open mining, Sachkhere district, West Georgia



Picture 8. Clear cuts in forests of Surami ridge. Bako-Supsa pipeline



Picture 9.



Picture 10.



Pictures 9, 10. Forestland used for agricultural purposes

Picture 11.

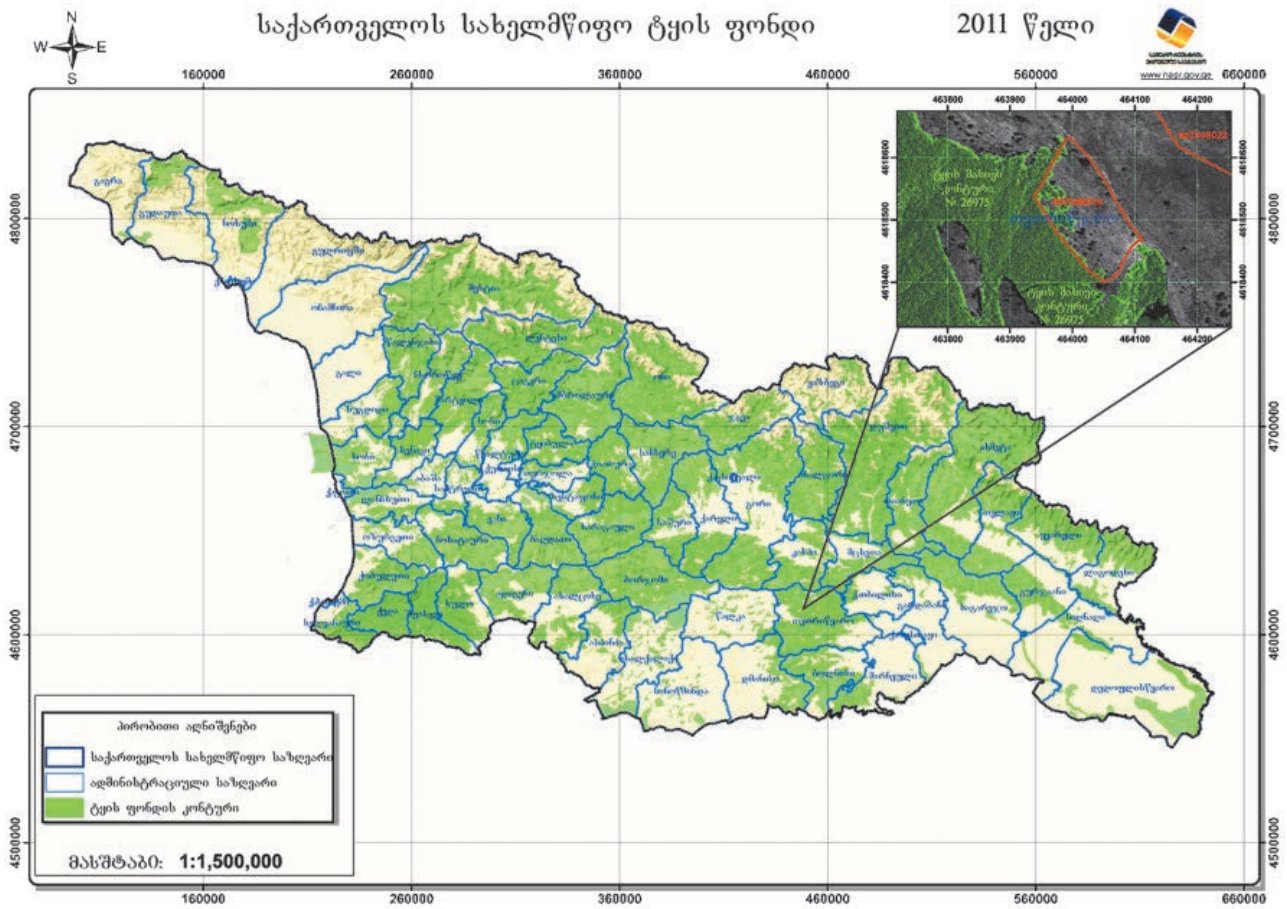


Picture 12.



Pictures 11, 12. Forest which was owned by the community before the soviet period. Forest plots were divided by special stones - "Samani"

Picture 13. State “forest fund” adopted by the Governmental decree N299, 04.0.2011.



Picture 14. Machakhela National park



Picture 15. Tusheti Protected Areas



Picture 16. Former Kolkhoz forests, degraded due to unsustainable use



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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