Green Alternative's Policy Briefs are short analyses on some of the challenges to country's sustainable development. They are part of the broader Green Alternative's analytical works; some complement or summarize reports, while others combine analysis from the research with consultation around a pressing issue. The purpose is to convey urgent public policy problems and promote debate on courses of action to resolve them.

This policy brief is intended for public policy makers and practitioners; it will also be useful for those groups and individuals seeking to influence the policymaking processes.

This policy brief is also available in Georgian.

# What are the threats to the traditional land-use coming from new governmental initiative?

## on draft law on state appropriation of land plots unregistered with Public Registry

On 16 December, 2015 Georgian Government submitted to the Parliament a draft law "On changes to the law of Georgia "On Public Registry"[1]. The draft law, developed by Ministry of Justice of Georgia provides for registration of the land plots not registered with Public Registry as the state property without any on-site inspection. According to the draft law, National Agency of State Property may (but is not obliged) require a ban to dispose or transfer for ownership of such land. If interested parties (e.g. persons who traditionally, generation to generation owned this land) fail to register the land, National Agency for State Property will be authorized to alienate these lands. A person, who fails to prove the ownership right, will lose this land. If National Agency for State Property does not require a ban to dispose and transfer for ownership, then the Agency will have the right to dispose the land at its discretion from the moment of its registration as state property.

Many organizations and experts, also parliamentary committee for legal issues and the Ombudsman expressed their disapproval of the draft law. It is impossible not to agree with their concerns in this regard. The probability is high, that the persons who in fact own the land plots (including homestead yards of villagers) fail to register these lands with public registry within the timeframe – one year – specified in the draft law, or the registration is disturbed due to inaccurate data (old household registration books, overlapping of land plots on the maps, etc.) and their interests will be compromised. Besides, the registration is associated with financial expenses, and bureaucratic hurdles. As a result, with the adoption of this law, the implementation of land tenure rights in Georgia will be under serious threat.

In addition to the concerns mentioned above, we think there is another serious problem, which regrettably is not regulated under the existing law, and which will aggravate with the adoption of the proposed amendment. This is about the lands that traditionally were in the collective or communal property and use. Unfortunately, Georgian legislation does not recognize such forms of ownership as collective or communal. Local population's attempts to implement their traditional property rights and protect their interests are interpreted by Government officials as "unauthorized seizure of lands".

A village, a community is not an arithmetic sum of private households. In fact, rural population uses the land – pastures, hayfields, forest, village roads and traditional sites of assembly – which historically are common property of the village/community, but the communities are not entitled to register such lands with public registry under the communal ownership. The issue is especially relevant for mountainous areas, where household yards and private land plots occupy very small area, as compared to the lands of common use. This aspect of land use is totally ignored in the draft law "On changes to the law of Georgia on public registry".

[1] The proposed draft law – amendment to the law of Georgia "On Public Registry" – is available in Georgian at the parliaments' web-site: http://parliament.ge/ge/law/11140/28083

The whole population of Georgia, each of us, experienced acute manifestation of ignoring public property rights and public interests: privatization of public space – green areas, recreation zones, pavements, sports grounds – and implementation of the projects there, harmful to the population but advantageous to specific "investor". Privatization, long-term lease or licensing off, and alienation for a symbolic price of the areas, in fact owned by villagers and communities - forests, pastures, hayfields, livestock herding routes, and rivers – significantly deteriorated social and economic situation of the country and its citizens.

Even under the current legislation, some local communities and civic activists were able to stop the state, and the "investors" hiding behind the state (e.g. suspension of construction of the hotel in Vake Park, protection of Svaneti villages from inundation and devastation due to dam construction, Gldani stadium and Batumi boulevard salvation, etc.). The adoption of the draft amendment initiated by the government will deprive us even of this opportunity.

Similar problems are characteristic to many countries, especially the developing ones: the desire of outsiders to grab land, traditionally belonging to local communities, lead to grave conflicts. According to international organizations' latest data, up to 65 percent of the world's land is held by indigenous peoples and communities, yet only 10 percent is legally recognized as belonging to them. The rest of the lands (55 percent) are owned and governed by governments. Many governments use the lands, historically belonging to local communities, under the pretext of implementation of infrastructural projects. In other cases these lands are leased to certain companies for indefinite term for the extraction of natural resources, or implementation of agricultural and other development projects. When governments fully or partially restrict the right to use the land and other natural resources (especially when these are corrupt, and/or abusing their authority governments) local communities are at risk of losing their homes and livelihood.

If the proposed amendment is adopted, the government will easily transfer lands, traditionally owned and used by local communities to the "investors" for implementation such controversial projects as: Khudoni hydropower plant (will cause inundation of the villages of Khaishi community), Pari hydropower plant (will cause flooding of Latali community villages) and Panorama-Tbilisi urban development project, etc. There were many instances of land grab in the nearest past as well ( in Mestia, Gonio and other areas).

The draft amendment is a clear continuation of the government's "command and control" policy; regrettably, the government is not looking for more advanced approaches to avoid possible conflicts. It is very disappointing that the draft law was submitted to the parliament without any public consultation or discussion, whereas the law relates to regulation of tenure rights on the resources to which a large part of Georgian population is dependent for their livelihoods (not to mention social, cultural, spiritual and other value of the land).

The proposed amendment contradicts to the purpose specified in its explanatory note: not only it is not of benefit to society, and it will not promote the country's economic development, but on the contrary, it will hamper it. The thing is that large investment projects usually are never implemented without participation of international financial institutions, which, in contrast with Georgian legislation, recognize traditional ownership rights. Hence, project developers have to apply different standards to different situations, which often results in misunderstanding and conflicts. Due to incompatibility of national standards and social and environmental safeguards of international financial institutions, the affected communities and advocacy groups quite often turn to banks and international organizations with a demand to suspend funding the projects.

The proposed draft law is contrary to the obligations assumed under the Convention on Biodiversity and many other international agreements, it will prevent implementation of the activities under 2014-2020 biodiversity strategy and action plan, approved by Georgian government in May 2014. Another fact that shall be taken into account is that full implementation of biodiversity strategy and action plan is one of the important conditions of Association agreement with the EU.

The draft law also contradicts to "Georgian National Forest Concept" adopted by Georgian parliament in December 2013. The Forest Concept provides that access to forest for noncommercial use shall be ensured regardless the ownership form (state, community etc.); the identity and the culture of communities living in forest areas, and their traditional knowledge of forest use and forest conservation shall be recognized and supported. Benefits from the use of forest shall be fairly distributed between local, regional and national users.

The draft law contradicts to the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security adopted by FAO committee on World Food Security in May 2012 and supported by 128 countries. Pursuant to this document:

- States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from lack of legal capacity, and lack of access to economic resources, etc.

- Where States intend to recognize or allocate tenure rights, they should first identify all existing tenure rights and right holders, whether recorded or not. Indigenous peoples and other communities with customary tenure systems, smallholders and anyone else who could be affected should be included in the consultation process.
- States should, where applicable, recognize and protect publicly-owned land, and their related systems of collective use and management. Besides, States should consider adapting their policy, legal and organizational frameworks to recognize tenure systems of indigenous peoples and other communities with customary tenure systems.
- States should clearly state and widely spread the information regarding the changes to land related policy, legal and organizational frameworks and their possible results.

**Thus, we strongly believe that the Parliament should not vote for the draft law in the present form, and the government should withdraw the draft law for revision.** The government, with participation of public concerned, should ensure the development of such legal framework (legal guarantees) for land use that would demark community lands and community rights would be observed. Otherwise Georgian population is facing the risk of losing land and livelihoods for the benefit of the government and the investors, and fulfillment of their rights will be under the threat.

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The views expressed in this policy brief reflect Green Alternative's position and should not be taken to represent those of the European Union or the CEE Bankwatch Network.



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