

AGRICULTURAL LAND CONVERSION IN GEORGIA: LEGAL REVIEW

Green Alternative's report 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 report is intended for public policy makers and practitioners; it will also be useful for those groups and individuals seeking to influence the policymaking processes.

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Introduction

Basic regulatory act setting rules for land conversion is the **Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage When Allocating Agricultural Land for Non-agricultural Uses**. Though the Law was adopted by the parliament in 1997, it did not cover the issue of land conversion until 2007. In 2007 fundamental changes were introduced into the law – it was absolutely revised. As a result, the articles on land conversion were added. Thus the law currently determines when and how the decision on land conversion can be taken.

This policy brief analyzes important aspects of legal regulation of land conversion. The final section of the brief concludes with the shortcomings of the legal framework and recommendations to eradicate them.

1. Definition of agricultural land

Three basic legal acts regulating land management give the definition of agricultural land. It is noteworthy that all three seem to give very similar definitions to one and the same notion, but there are significant differences between them. In particular:

According to the **Law of Georgia on Agricultural Land Ownership**¹ (Article 3), agricultural land is the one that is:

- Registered as agricultural land parcels in the Public Registry;
- Used for cultivating growing crops and for cattle-breeding;
- Land parcel with or without "farm and ancillary structures" on it.

Additionally the law defines agricultural land based on the form of ownership (though there is separate article in this law defining title to agricultural land). In particular it is specified that (a) part of household (family) ownership of pasturelands, haylands, and forests of villages, communities and legal persons, and (b) part of agricultural land that may be an object of a separate right, shall also be deemed agricultural land.

The Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage When Allocating Agricultural Land for Non-agricultural Purposes² virtually reiterates basic explanation of the first law, but gives no additional specification regarding the form of ownership (article 2, paragraph (a)). Still, there are certain differences:

¹ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/32998>

² Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/33400>

- Registration as agricultural land parcel in the Public Registry is still a must.
- The land shall be, or may be used for crop production and livestock breeding - i.e. it is admissible that at the time of registration the land is not used for crop production and livestock breeding but be used for these purposes in the future. Neither this law, nor any other one explains how farming potentials of land should be defined; besides, there is no act legally defining “crop production” and “livestock breeding”.
- The definition provided in this law again focuses on existence of buildings on the land. According to the law, the land shall be with or without buildings on it; as opposed to the first explanation, "residential buildings" are added to “farm and ancillary buildings”. Here again, neither this law, nor any other legal act gives explanation of residential, farm and ancillary buildings.

The third act - **Law of Georgia on State Property** also includes provisions defining agricultural land³. This law was adopted in 2010, i.e. later than the laws mentioned above. Hence, the definitions given there shall be considered as the as a prevailing norm. The State Property Law gives significantly different definition for agricultural land (article 2, paragraph (u)). According to the law, agricultural land is *"an agricultural parcel of land used for crop production and livestock breeding (poultry and fishery) with or without perennials and/or buildings on it"*. Thus, this law:

- Unlike two abovementioned laws, does not provide for registration as agricultural land in public registry as a prerequisite.
- Similar to previous two laws, requires that the land is used for crop production and livestock breeding; at the same time, the law further explains that “livestock breeding” include poultry and fishery. However, these notions are nowhere further explained. It is not clear whether “livestock breeding” includes for instance, cattle breeding, sheep breeding; and if, for example the land is used for beekeeping, shall it be considered agricultural land?
- Unlike the above mentioned laws, besides buildings, this law additionally explains that the land may be with or without perennial plants (but it says nothing, for example, about annual plants). Furthermore, this law does not specify what types of buildings may or may not be located on the land.

Proceeding from the above, it can be concluded that **Georgian legislation does not provide a clear and unambiguous definition of agricultural land.**

It should be mentioned herewith that there is one more law that defines the categories of agricultural land - low and high intensity agricultural farmlands. This is the **Law of Georgia on Public Registry (Article 2)**⁴. Though the law does not explain the meaning of "intensity", as well as of its lowness or height, but according to it, agricultural land plots are divided into the following categories:

- Pasture;
- Heyfield;
- Arable land (land with perennial plants, garden, kitchen garden);
- Homestead land plots.

The law allows for transfer of an agricultural land plot from a lower intensity to a higher intensity land category only according to the sequence shown in the list above. Besides, in the **Tax Code of Georgia** (article 200, paragraph 3) it is specified that for taxing purposes, hayfields and pastures may be "natural", "cultivated" and other (unspecified) types⁵.

³ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/112588>

⁴ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/20560>

⁵ According to Article 200 of the Tax Code of Georgia, there are three types of land – agricultural, non-agricultural, and forestlands. Besides there is another type of land mentioned in the Code which does not belong to any of these three types. It is “agricultural land to be cultivated”, which in its turn is divided into two categories: (1) non-agricultural land to be converted into agricultural cultivable land (Such lands include: virgin land; land to be cultivated by means of melioration (irrigation and drainage); land under brushwood to be cultivated by felling and uprooting; land to be cultivated by terracing slopes; land, degraded by mining and construction, to be cultivated by restoration of its agro-biological productivity); and (2) low-intensity agricultural cultivable lands, which are transformed into high-intensity cultivable agricultural lands, wetlands and saline lands. It is noteworthy that no other act relating to land management gives such categorization of land (including agricultural land).

2. Definition of non-agricultural land

Unlike agricultural land, definitions of non-agricultural land are relatively similar. Definition of such land is provided only by two laws. The first one is the above mentioned **Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage when Allocating Agricultural Land for Non-Agricultural Purposes**. According to this law, *non-agricultural land is the land registered at the public registry as a plot of non-agricultural land*. The law does not provide any additional characteristics of non-agricultural land.

The second act is the Tax Code of Georgia⁶. Article 200 of the Code provides that non-agricultural land is "**land that is not agricultural land**". It is noteworthy that according to the same Code, this definition of non-agricultural land shall be used only for the purposes of book IX of the Code ("local tax").

Hence, it can be concluded that the **definition of non-agricultural land, equally as of agricultural land** in Georgian legislation is **imperfect**. The definition is not based on the characteristics that would allow assigning the land a particular category (agricultural or non-agricultural).

3. Decision-making on land conversion

3.1 Restrictions on land conversion

The rules for land conversion are defined under the **Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage When Allocating Agricultural Land for Non-agricultural Purposes**.

According to the law, **land conversion means transfer of agricultural land to the category of non-agricultural land** (Article 2, paragraph (c)). This means that land conversion refers to only assigning the category of non-agricultural land to agricultural land; reverse process - giving the category of agricultural land to non-agricultural land - is not considered as land conversion. Generally, **Georgian legislation does not provide for transfer of non-agricultural land to the category of agricultural land. This shall be regarded as an important omission of the law.**

Article 3 of the Law establishes **the areas where land conversion is permitted**. Paragraph 1 of this article seems to list the areas where land conversion is allowed. In particular the law states that agricultural lands within the boundaries of recreational areas⁷ and agricultural lands within the administrative boundaries of the city of Tbilisi and the city of Batumi can be converted. However, the subsequent paragraph adds that "other agricultural lands" may also be converted (article 3, paragraph 1, subparagraph (c)). This general, so called "open clause" makes it clear that paragraph 1 allows land conversion everywhere without any restriction.

Paragraph 2 of the same article establishes restrictions to land conversion. According to paragraph 2, land conversion is not allowed in case of "agricultural lands privately owned by citizens (households, families) of Georgia and located outside the boundaries of recreation areas, in case land owner is planning to construct private residential, farm and ancillary buildings".

Thus, as a result of comparing paragraphs 1 and 2 of article 3 of the law, it becomes clear that:

- Agricultural land may be converted to non-agricultural land everywhere, except when:
 - The land plot is located outside the boundaries of recreation areas;
 - The land is privately owned by physical person or a household/family; and
 - Landowner plans constructing "personal residential, farm and ancillary buildings" on this land.

For refusing the land conversion all the above three conditions should be present simultaneously. For example, if a landowner plans to build a hotel, pharmacy, shop, or factory, land conversion would be

⁶ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/1043717>

⁷ Gudauri, Bakuriani, Bakhmaro and Ureki-Shekviteli recreation areas.

permissible, and in case of building "personal residential, household, and ancillary buildings" land conversion would not be allowed.

- Agricultural land conversion is permitted within the boundaries of recreation areas regardless of who owns the land and what are the owner's plans.
- Agricultural land conversion is permitted everywhere, without any restriction, when the land is owned by the state, or a legal person of public law, or private law.

As already mentioned in chapter one, the moratorium (with certain exemptions) was in force from 17 July 2013 to 31 December 2014 on the purchase of agricultural land by foreigners. After the announcement of moratorium the cases of agricultural land conversion, and then selling this land to foreigners increased. Changing the status of land took such a large-scale character⁸ that in two months after the announcement of moratorium, in September 2013, the Parliament had to introduce a temporary restriction to the rules⁹. Until the expiration of moratorium – 31 December 2014 - **agricultural land conversion was allowed only if it is for "urgent public purpose"**. In the end of December 2014, with the approach of the expiration of the moratorium period, the Parliament extended the temporary provision for another six months (until 1 July 2015).

After the expiration of the moratorium period a new rule was enacted¹⁰ according to which a new term was added to the above mentioned ones - agricultural land conversion shall be possible only for:

- (a) „public purposes“ and
- (b) in the case of the land owned by the state or a municipality – „justified need“.

Thus, in 2013-2015 - agricultural land could have been converted for "public purpose" and this "public purpose" had to be "urgent". Since 1 July 2015 there is no term of "urgency", just "public purpose" is sufficient. The rule is different for publicly owned land and the land in municipal ownership - here "justified need" is necessary to change the category of land. It is noteworthy that the law does not provide any criteria for establishing "public need" or "justified need".

3.2 The competent decision-making authority

The decision-making authority on agricultural land conversion has changed several times. From beginning, from July 2007 until March 2011 there were two agencies authorized to make decisions:

- **Ministry of Environment and Natural Resources Protection** - when it referred to recreation areas and agricultural lands within the boundaries of Tbilisi city and Batumi city; the decision should have been taken through simple administrative proceedings. National Agency of Public Registry was responsible for registration of the decision;
- **National Agency of Public Registry (NAPR)** - for other territories of the country. The law did not specify the rules of taking decision.

At the same time, when land conversion was requested **“for the national and/or public needs”** of **“budgetary organizations”**, **the Government of Georgia would have to assess if such need was justified** (article 7, paragraph 3). This provision of the Law is still in force¹¹. At the same time the law still does not specify the definition of “budgetary organization” (probably the organizations, fully or partially financed from state budget, e.g. public

⁸ According to Zurab Tkemaladze, Chairman of Parliamentary Committee for Sectoral Economy and Economic Policies, change of land status took a wide-scale character, over the past two days 61 such applications were received. According to Gigla Abulashvili, Chairman of Parliamentary Committee for Agriculture, though non-agricultural land is more expensive, the demand for agricultural land is so high that the buyer agrees to pay more, and for the seller it is acceptable to pay higher tax for expensive sold land (source: "Rezonansi" newspaper, 25 July 2013).

⁹ Amendments of 6 September 2013 to the Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage and When Allocating Agricultural Land for Non-agricultural Purposes.

¹⁰ See Article 18¹ of the Instruction of Public Registry at: <https://matsne.gov.ge/ka/document/view/88882>

¹¹ The needs assessment function was transferred to Ministry of Environment and Natural Resources Protection (in agreement with Ministry of Economic development); in 2011 it returned to the government.

institutions, self-governments and other legal persons of public law, legal persons of private law). The law also does not clarify what can be considered "national and/or public need".

In March 2011 Ministry of Environment and Natural Resource Protection was deprived of the above mentioned function and **NAPR** became fully responsible for agricultural land conversion, without any exception. This situation lasted until September 2013, when along with introducing the moratorium, additional condition for agricultural land conversion was introduced.

From September 2013 **Georgian Government** became a decision-making authority for agricultural land conversion. Under the law, the Government, on the basis of information presented by public registry, would assess the urgent public purpose agricultural land conversion and make the decision on changing the status of land. The Government had this function until **1 July 2015**. Since then **NAPR** keeps the authority of decision-making.

Hence, today, decision-making authority on land conversion is vested into the hands of the **NAPR**. In accordance to Agency regulations¹², the decision on agricultural land conversion shall be taken by the chairperson of the Agency; however, prior to the chairperson's decision:

- Competent office at the agency is obliged to examine carefully each particular application on land conversion and submit this analysis to special commission (working group);
- The commission, on the basis of the analysis, shall assess if request for land conversion is justified and prepare the opinion (conclusion) of the commission;
- The opinion of the commission shall be submitted to chairperson for consideration and final decision.

There is certain lack of clarity in this chain of decision-making on land conversion when it comes to **the lands under state and municipal ownership**. As mentioned above, according to agency regulations, a **"justified need"** for land conversion is necessary to change the category of agricultural lands owned by the state or municipalities. The decision on land conversion is taken by the NAPR. At the same time the Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage When Allocating Agricultural Land for Non-agricultural Purposes provides that **"national or /and public need"** for the land conversion shall be assessed by the government. Thus, it is not clear whether **"justified need"** or **"national or/and public need"** shall be ascertained as a result of the government assessment and prior to the decision-making by the agency.

4. "Urgent public purpose"

As mentioned in the previous chapter, land conversion (assigning category of non-agricultural land to agricultural land) during so called moratorium was possible only for **"urgent public purpose"** (now – it is allowed only for "public purpose", and in case of land under state or municipal ownership – in case of "justified need"). Therefore, it is important to briefly review the concept of "urgent public purpose" as defined under Georgian law.

In Georgia, like in many other countries around the world, the concept of "public purpose" was introduced in connection with the possibility of property right restriction and property expropriation. Initially it was introduced in the Georgian Constitution and then constitutional norms were further detailed in legislative acts.

Paragraph 1 of Article 21 of the Constitution of Georgia recognizes the right to property. Paragraphs 2 and 3 of the same article clarify that in case of **"urgent public purpose"**:

- The **restriction of property right**¹³ shall be permissible in the cases determined by law and in accordance with a procedure established by law so as not to distort the essence of the right to property (paragraph 2); or

¹² Order #4 of 15 January 2010 by Minister of Justice of Georgia on approval of NAPR's instructions (article 18¹).

¹³ The establishment of the content and scope of the property, the definition of the regulatory legal framework (Regional Centre for Research and Promotion of Constitutionalism, 2013 "Comments to Georgian Constitution: Chapter Two: "Georgian citizenship; basic human rights and liberties").

- **Expropriation of property**¹⁴ shall be permissible only with prior, full and fair compensation: (a) in the circumstances as expressly determined by law, under a court decision or (b) in the case of the urgent necessity determined by the Organic Law.

The above two rules of expropriation for "urgent public purpose" is detailed in two legislative acts: **the Law of Georgia on Rules of Expropriation of Property for Urgent Public Purpose** adopted in 1999, and **Organic Law of Georgia on Rules for Expropriation of Property for Public Purpose under Urgent Circumstances** adopted in 1997. 1999 law lists more conventional public needs when the state when the state is oriented **to achieving the goals yielding positive results for the public**; while the organic law is applicable in cases when "urgent public purpose" is largely determined **by the goals of avoiding certain irreversible negative consequences for the public**.

The Law of Georgia on Rules of Expropriation of Property for Urgent Public Purpose defines the list of those activities (projects), conducting of which may trigger expropriation for "urgent public purpose". These activities are: construction of roads and highways, construction of railways, construction of pipelines for transportation of crude oil, natural gas and oil products, construction of power transmission and distribution lines, construction of water supply, sewage and run-off collection system, telephone lines, TV cables, construction of buildings and facilities for urgent public necessity, works needed for national defense, and mining.

Organic Law of Georgia on Rules for Expropriation of Property for Public Purpose under Urgent Circumstances, as mentioned above, should be used in cases when "urgent public purpose" is largely determined by the goals of avoiding certain irreversible negative consequences for the public. The law does not explain the concept of "public purpose" or its characteristics. The "urgency" of action is determined by the danger to human life and health, or state and public security due to the following reasons: martial law or emergency situation, ecological disaster, natural disasters, epidemic, epizootic.

Alongside with "**public purpose**", Georgian legislation, like legislations of other countries, recognizes the concepts such as: "**public interest**", "**public importance**" and "**public goals**". Below is the list of acts where these and similar concepts are used in different context (see table 1).

Table 1. "Public purpose" and similar concepts used in Georgian legislation¹⁵

Concept	Legal act in which this concept is used	The context of application of the concept
Urgent public purpose	Georgian Constitution	Property expropriation
Urgent public purpose	The Law of Georgia on Rules of Expropriation of Property for Urgent Public Purpose	Property expropriation
Public purpose	Organic Law of Georgia on Rules for Expropriation of Property for Public Purpose under Urgent Circumstances	Property expropriation
Public and national interests	Law of Georgia on Civil Safety ¹⁶	Used in the definition of the term "fire".
National and public interests	Product Safety and Free Movement Code ¹⁷	- Government of Georgia is entitled to release a person from a fine (article 26). - If the violation was not rectified within the set time limit, supervisory body can make a justified decision to fulfil conditions of the directive on its own expense (article 53).
Public interests	Law of Georgia on Legal Status of Aliens and Stateless Persons ¹⁸	Used in definition of the term "a person with free profession".

¹⁴ A one-off individual deprivation of property (the same source)

¹⁵ The list in the table may not be exhaustive.

¹⁶ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/2363013>

¹⁷ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/1659419>

¹⁸ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/2278806>

Urgent public purpose	Law of Georgia on Oil and Gas	Temporary expropriation of property for oil and gas operations
- Important public goals - Reasoned public purpose - Public interests	Law of Georgia on Spatial and Urban Planning Framework ¹⁹	- Territories used for important public purposes (article 18) - Possibility of changing basic parameters of land use zones (article 30) - possibility to change limit value of basic parameters established under the Rules of Development Regulation (article 31)
Programs of national or public importance	The Law of Georgia on Grants ²⁰	Used in the definition of the term "grant"
Exceptionally important information in terms of national and public interest	Georgian Parliament Regulations ²¹	Conditions to establish a temporary parliamentary commission of inquiry
National and public interests	The Law of Georgia on State Property ²²	- A decision on the privatization of agricultural land in the border zone (article 7) - The possibility of reduction of terms for expression of interest in privatization of state-owned agricultural land plots (article 10)
- Exceptionally important national or public interests - Important national or public interests - Wide range of national and public interests ²³	Law of Georgia on Licenses and Permits ²⁴	- Scope of application of the law, principles. - The criteria for selecting activities or actions to be regulated by license or permit. - The possibility to set quantitative, qualitative and time-bound standards and rules user license holders. - The possibility for licensing authority to stipulate the validity period of user license. - The possibility to extend the validity period of a permit. Articles 1, 2, 10, 16 and 26.
Projects of national and public importance	The Law of Georgia on "Red List" and "Red Book" of Georgia ²⁵	Permission on extraction of endangered wild plants and parts thereof, in special cases (article 24)
National and public interests	The Law of Georgia on Regulation and Engineering Protection of the Coasts of the Sea, Reservoirs and Rivers of Georgia ²⁶	Allowing exceptions in the prohibition of privatization of beaches (article 6)

¹⁹ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/29614>

²⁰ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/31510>

²¹ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/1691403#!>

²² Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/112588#!>

²³ There is another concept introduced in this law - "social risks" (professional activities associated with social risks) - however it is not explained in the law.

²⁴ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/26824>

²⁵ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/12514#!>

²⁶ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/1744>

<ul style="list-style-type: none"> - Public information containing public interest - National and public interests - Public interest - Public purpose 	General Administrative Code of Georgia ²⁷	<ul style="list-style-type: none"> - Used in definition of the term "proactive publication" - Allowing exception from the rule of individual administrative act entering into force (article 54) - Allowing exception in declaration of illegal beneficial administrative act null and void (article 60) - Declaring beneficial administrative act issued under law invalid (article 61) - Modification of contracts under public law (article 71) - Withdrawal of an administrative complaint by an interested party (article 191) - Liability of government or local self-government bodies for damages caused by lawful administrative acts (article 209)
<ul style="list-style-type: none"> - National or public interests - Event of national and public importance 	Law of Georgia on State Procurement ²⁸	<ul style="list-style-type: none"> - Used in definition of term "urgent necessity" (article 3) - Rights and obligations of a procuring entity, suspending procurement procedure (article 7) - state procurement through a simplified electronic tender (article 10¹)
Significant national and public interests	Government Order #1070 of 20 August 2010 ²⁹	Used in the context of the substantiating the need for forest land conversion.
Projects of special national and public importance	Government Order #655 of 15 April 2016 ³⁰	List of current and planned projects [of building and reconstruction of roads] enjoying this status.
Public interests	Government Resolution #59 of 15 January 2014 ³¹	Used to declare the resolution purposes
Important national and/or public projects	Government Resolution #243 of 19 September 2013 ³²	Giving the government the authority to take a decision on the import of fly ash of GG040/ex 2621 category from coal-fired thermal power plants (articles 2 and 4)
National or public interests	Government Resolution #138 of 11 August 2005 ³³	Establishing rules of issuing fishing license; Granting the Ministry the right to establish qualitative and time-bound rules and regulations for each fishing licensees (article 3).
Public purpose	Order #4 of 15 January 2010 by Minister of Justice of Georgia ³⁴	Agricultural land conversion

²⁷ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/16270>

²⁸ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/31252>

²⁹ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/2262408>

³⁰ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/3262370>

³¹ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/2196598>

³² Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/2021402>

³³ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/10312>

³⁴ Order #4 of 15 January 2010 on Approval of the Instruction on Public Registry

Public interests	(a) Government Resolution # 493 of 13 August 2014 (b) Government Resolution #494 of 13 August 2014 ³⁵	- The possibility of development of undeveloped areas (article 3) - The reasons for changes in the uses of certain parts of the territory, approved by the general land use plan (article 6) - Grounds for increasing maximal exponents of development intensity factors (article 14) ³⁶
Infrastructural projects of national and/or public importance	(a) Tbilisi Municipal Council Resolution #17-55 of 12 December 2014 (b) Senaki Municipal Council Resolution #17 of 28 April 2016 ³⁷	Cases when logging for special purposes is allowed (article 19 in both acts)

As becomes evident from the table above, “public purpose” and similar concepts are often used as precondition (grounds) for taking very important decisions. At the same time it is noteworthy that none of these legal acts explain what is implied under "public interest" or "public purpose" or "public need", there are no criteria that would allow a public servant (or any other interested party) to establish the existence of "public interest", "public need" or "purposes" in each specific case. **Such vagueness, certainly gives rise to the possibility of taking unreasonable and wrong decisions by public officials, and even to enter into corrupt deal with an interested party. In this situation even a decision, allegedly aimed at the public welfare, can be harmful.**

As for the legal act reviewed in this paper - the Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage When Allocating Agricultural Land for Non-agricultural Purposes - it also gives no explanation for "urgent public purpose". The separate study was undertaken to find out how this general provision of the law was interpreted in practice and what type of decisions have been made during the period of moratorium³⁸.

5. Compensation for the loss of agricultural land

Special attention should also be paid to the financial mechanisms of compensation for the damage caused by the loss of agricultural land due to its use for non-agricultural purposes. Such mechanisms are again defined by the Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage when Allocating Agricultural Land for Non-Agricultural Purposes.

The law stipulates two financial mechanisms of compensation for the loss of agricultural lands:

1. Payment of the compensation amount in lieu of agricultural land in the case of using (or disposing³⁹) a plot of agricultural land for non-agricultural purposes (article 7); and
2. Compensation of damages caused in the case of using agricultural land for non-agricultural purposes (article 11).

Below, each mechanism is discussed briefly.

³⁵ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/2458909>; and <https://matsne.gov.ge/ka/document/view/2458923>

³⁶ See: Practice of agricultural land conversion in Georgia at Green Alternative’s website: www.greenalt.org

³⁷ This is basically the rule defining maximum height of a building planned to be built in a specific area.

³⁸ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/2619144>; and <https://matsne.gov.ge/ka/document/view/3270879>

³⁹ The law does not explain the difference between “using” and “disposing” or what “disposing” means at all.

5.1 Payment of the compensation amount in lieu of agricultural land

Regretfully, the law says nothing about the content of this financial mechanism – what particular goal it serves and how, what particular factors are used for its calculation.

One of the articles of the law (article 2) provides definition about “compensation amount to be paid in lieu of agricultural land.” According to this definition, it is “**the amount of substitute land development value** in the case of allocation of agricultural land for a non-agricultural purpose”; however, the law says nothing about, for example, the type of substitute land (what criteria it should meet), where it should be located or generally, what is meant under “development”.

Logically, stemming from the name of this mechanism, it could be assumed that compensation can be paid for two possible purposes: (a) compensation of expenses for using new land for the same purpose as in case of lost land; or (b) compensation of expenses for recovery of other barren, less productive, degraded lands. Regretfully, the law says nothing about it. The law only defines (1) conditions, when it is compulsory to pay this compensation; (2) compensation amounts and (3) where the paid amount should be transferred. In particular:

(1) According to the law (article 7), compensation should be paid for agricultural land **within the boundaries of recreation areas or within the boundaries of the city of Tbilisi and the city of Batumi**. But, there are some exceptions. It is not compulsory to pay compensation if:

- The land is owned by local self-government or the state; or
- The land is allocated for “budgetary organizations” for “state and/or public purposes”.

Payment of compensations is not compulsory for agricultural lands located outside the boundaries of recreation areas or the boundaries of the city of Tbilisi and the city of Batumi.

Thus, payment of compensation is compulsory only in case of land conversion within the boundaries of recreation areas, and the city of Tbilisi and the city of Batumi (with certain exemption – depending on who is interested in land conversion and for which purposes).

(2) According to article 8 of the law, the compensation amount in lieu of one hectare of agricultural land shall be:

- For agricultural land within the boundaries of **recreation areas** – Gel 100,000, i.e. Gel 10 per sq.m (about Euro 4);
- For agricultural land within the boundaries of the **city of Tbilisi and the city of Batumi** – Gel 34,001, i.e. Gel 3.4 per sq.m (about Euro 1.3).

(3) According to article 10 of the law, the compensation amounts to be paid in lieu of agricultural land shall be transferred to the budget of a respective local self-governing unit. It means that compensation amounts will be transferred to the budgets of recreation areas as well as the Tbilisi and Batumi budgets. **The law says nothing about how these funds accumulated in local budgets should be spent ultimately.**

Thus, it can be concluded that this financial mechanism (compensation amount in lieu of agricultural land):

- Simply serves to attract funds to the budget;
- The attracted funds are not be spent on restoration of degraded lands;
- The amount paid as compensation is not as high as to restrain the conversion of agricultural lands located within urban areas. Generally, urbanization of non-urban, agricultural areas is not considered a problem and it is clearly confirmed by the fact of joining adjacent villages to Tbilisi and Batumi in 2007 and 2011, respectively.
- There is no established price for protection and conservation of valuable, fertile lands and soils; **if it were not so, the payment would have been imposed on conversion of agricultural lands located outside the urban areas, instead of those located within the urban areas.**

5.2 Compensation of damages caused in the case of using agricultural land for non-agricultural purposes

Articles 11 and 12 of the above mentioned law are dedicated to the second financial mechanism. **It is not fully clear from these articles which particular cases envisage compensation for damages.**

According to article 11, in the case of use of agricultural land for non-agricultural purposes, **the damage caused to the landowner by deterioration of the land quality shall be compensated.** But it is not clear, when the damage should be compensated: (a) when deterioration of the land quality and damage comes after violation of legal requirements; or (b) in any authorized case of land conversion; i.e. when legal requirements are observed, but land quality is still deteriorated and damage is caused to landowner. **Apparently, legal obligation on compensation for damages applies to the both cases, but this is not clearly stated in the law.**

According to article 12 of the law, the amounts to be compensated for the damages shall be transferred to the account of the owner of deteriorated land. Like in case of the compensation amounts, **the law says nothing about how the amounts received from compensation of damages should be spent.**

Paragraph 2 of article 11 refers to Annex 1 of the law and reads that “in the case of use of agricultural land for non-agricultural purposes **the damage caused by deterioration of agricultural land quality shall be calculated in compliance with the amounts as provided for in Annex 1 to this Law, according to the methodology approved by the respective normative act of the Government of Georgia**”. Below, we provide short discussion of initially (a) appendix to the law and then (b) “the methodology approved by the respective normative act of the Government of Georgia”.

(a) **The Annex of the law defines** “Compensation amounts in lieu of agricultural land according to municipalities and recreation areas for calculating the damages caused in the case of using agricultural land for non-agricultural purposes”. The first column of the table presented in the Annex lists 62 Georgian municipalities (including the municipalities located on Georgia’s occupied territories) and recreation areas; the second column provides compensation amount per 1 hectare of agricultural land. Some of the most problematic issues related to the Annex are listed below:

- **Neither the law, nor the annex says anything about the parameters based on which the compensation amounts had been defined.** It would be logical for this pricing to be based, among other factors, on soil fertility; however, the law does not contain any such reference.
- The pricing does not vary within the boundaries of municipalities – it is impossible to have the soils of only one type and fertility, or lands with similar characteristics within the boundaries of one municipality.
- It is unclear what are those characteristics due to which the municipalities located in various Georgian regions, which have different climatic and physical-geographical features, have one and the same pricing; for example, why the municipalities of Kobuleti, Gardabani, Marneuli and Tbilisi (Gel 3.4 per sq.m); or the municipalities of Akhalkalaki, Bagdati, Dmanisi, Zestaponi, Kaspi, Martvili, Ninotsminda, Kareli, Kvareli, Tsalenjikha and Khashuri (Gel 2.8 per sq.m) have one and the same pricing.
- The Annex also involves the pricing in respect of Georgia’s breakaway regions of Abkhazia and Tskhinvali Region; these territories, which are occupied by the Russian Federation, remain out of Georgia’s jurisdiction, to say nothing about the possibility of conducting any research of the soils and lands on the occupied territories. Thus, it is unclear why the annex involves the pricing for these municipalities too. In addition, this pricing coincides with the pricing for other municipalities of Georgia. For example: in the occupied municipalities of Gudauta and Gulripshi, the amount of compensation per hectare is Gel 30 858 (Gel 3 per sq.m); the amount is similar in the municipalities of Gurjaani, Dedoplistskaro, Telavi, Lanchkhuti, Senaki, Khobi and Khoni. Similarly, in the occupied Tskhinvali and Java municipalities, the amount of compensation per hectare is Gel 30 715; the compensation amount is similar in the Gori and Bolnisi municipalities.

Thus, based on the above, it can be assumed that **the pricing provided in the annex of the law is not based on any realistic data and calculations.**

Moreover, **the pricing provided in the annex does not promote the protection of agricultural lands, as well as the prevention of their transformation and urbanization.** To avoid the process of loss of lands and fertile soils, the pricing should be much higher in less urbanized municipalities, oriented to agricultural activities and having fertile soils, than in urban areas. Quite the opposite is observed in Georgia: **the pricing provided in the annex is significantly high in urban areas, compared to less developed areas as well as those oriented to agricultural activities.**

(b) **“Methodology approved by the respective normative act of the Government of Georgia”.** As already mentioned above, paragraph 2 of article 11 of the law points at the need of using the methodology approved by the respective normative act of the Government of Georgia in calculation of the damage. The law does not directly mention the name of the normative act; apparently, it is the following act: technical regulations “Methodology on determining (calculation of) the damage to the environment”⁴⁰ approved by the Decree #54 of the Government of Georgia dated January 14, 2014:

- The act is applicable only in case of violation of legal requirements;
- If the competent body learns about the “real damage caused to the environment” as a result of violation, through concrete actions or inaction;
- The act is applied to the objects of regulation⁴¹, “which use natural resources, and/or any entrepreneurial and economic activities, which have an impact on the state of the environment”.

Articles 3 and 4 of the technical regulations, as well as annexes 3 and 9 are dedicated to the rule of calculation of the damage caused to land. They provide special formulas to calculate the damage caused to the environment by land pollution or land (or soil – it is not formulated clearly) degradation. This policy brief does not discuss thoroughly the shortcomings in the methodology of calculation of the damage; however to demonstrate the poor quality of the methodology, it should be stated that one of the parameters used in all formulas – so called “baseline norm” – is based on unjustified and unclear pricing defined by the municipalities and recreation areas in the annex of the above mentioned law.

6. Assessment of environmental and social impacts of land conversion

As seen from the previous chapters, the Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage when Allocating Agricultural Land for Non-Agricultural Purposes, though incomprehensively, but still defines the rules of decision-making on land conversion, as well as compensation mechanisms. It is interesting, whether the country’s legislation defines any specific, environmental (including land protection) or social protection requirements for such cases, when large land areas are converted. As it turned out, it does not.

Social consequences of conversion of large tracts of agricultural land have never been evaluated in Georgia and are not evaluated today either. The legislation does not require the use of social impact assessment tools. As far as the environmental impact assessment is concerned, Georgian legislation does not include such obligation for already a decade; however, before the environmental reform in 2005-2007, Georgian legislation required conducting of environmental impact assessment and obtaining environmental permit in case of using large areas of agricultural lands for non-agricultural purposes.

The Law of Georgia on Environmental Permits⁴² acting in 1996-2007 obliged the project proponents to conduct a research before launching the activities in order to assess the environmental impacts of using large areas of agricultural lands for non-agricultural purposes. Taking into account the scales of environmental impact, its

⁴⁰ Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/2195792>

⁴¹ “Object of regulation - a natural person, a legal person or other organizational formation, a license/permit holder (including an operator) in the field of environmental protection and the use of natural resources, a state or local self-government body, to whom environmental requirements apply that are provided for by the legislation of Georgia and by the international agreements of Georgia in the field of environmental protection and the use of natural resources” - The Law of Georgia on Environmental Protection; Article 4. Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/33340>

⁴² Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/33256>

significance and other factors, the law was dividing the activities into four categories; different requirements for decision-making were set for each category. For example:

- **The first category** involved the use of over 50 hectare of agricultural lands for non-agricultural purposes;
- **The second category** – the use of 30-50 hectare of agricultural lands for non-agricultural purposes;
- **The third category** – the use of 20-30 hectare of agricultural lands for non-agricultural purposes;
- **The fourth category** – the use of up to 20 hectare of agricultural lands for non-agricultural purposes.

In case of the I and II categories, permits were issued by the Ministry of Environment and Natural Resources Protection; in case of the III and IV categories – the Ministry's regional and local bodies and relevant ministries of Autonomous Republics. In case of the I category activities, the project developer was obliged to conduct environmental impact assessment (EIA); in case of the remaining three categories, more limited environmental research had to be conducted. In case of I, II and III categories, permitting decisions were made through public administrative proceedings enabling the public to participate in decision-making.

As a result of the reform implemented in 2005-2007, the environmental impact assessment system was changed comprehensively, in particular, it aggravated significantly. Presently:

- The use of large areas of agricultural lands for non-agricultural purposes – **land conversion – does not need either EIA or any environmental research**; as a result of the 2005-2007 reform, the categories of the above-mentioned activities have been simplified; the second, third and fourth categories were abolished at all; the list of activities included in the first category was narrowed down. The use of agricultural lands for non-agricultural purposes also fell under this reduction.
- Since such activity is no more regulated by environmental (presently – environmental impact) permit issuance procedures, **the projects, envisaging the use of agricultural lands on large areas for non-agricultural purposes, are completely closed to the public.**
- As a result of narrowing down the list of activities subject to EIA, **no EIA is required for the activity having strong negative impact on agricultural lands, such as mining.** No EIA is required for the agricultural and food industrial enterprises, timber processing, paper, leather and textile enterprises, some infrastructure projects, also having significant impacts on the environment (including land).
- Even in case when the activity falls under the first category and potentially has a significant impact on agricultural lands, if this activity is conducted by the governmental agencies (i.e. in case of the state projects), it is not required to conduct EIA and obtain a permit. Furthermore, the Law of Georgia on State Support for Investments makes it possible, even in case of implementing private projects, to avoid EIA and permits on condition that this obligation will be fulfilled sometime in the future.

Thus, as seen from the above mentioned, environmental and social risks of using large areas of agricultural lands for non-agricultural purposes (land conversion) are not assessed in Georgia; neither are such risks taken into account in decision-making; the population affected by such decisions is neither informed about the planned projects, nor involved in decision-making.

Finally, it should be noted that the disruption of EIA system in 2005-2007 coincided with the process of establishing special, favourable conditions for mining companies, citing promotion of investments. In particular:

- As already mentioned above, mining was removed from the list of activities subject to EIA.
- **Mining was added to the list of those activities conducting of which may trigger expropriation for “urgent public purpose”** under the Law of Georgia on Rules of Expropriation of Property for Urgent Public Purpose⁴³; this amendment to the law is still in force.

⁴³ The Law of Georgia dated April 22, 2005 on making additions to the Law of Georgia on the Rules for Expropriation of Property for Sine Qua Public Necessity. Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/29428>

- On the day of adopting the above mentioned amendment, the Parliament also approved amendments to another legislative act – the Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage when Allocating Agricultural Land for Non-Agricultural Purposes⁴⁴. Under this amendment, financial mechanisms of compensation for the loss of agricultural lands defined by the law were no more applied to the mining companies. In other words, the mining companies were no more obliged “to compensate for substitute land development value and damage caused by land expropriation or temporary occupation”. This amendment to the law was in force till August 2007. In July 2007, another amendment was introduced⁴⁵ that completely changed the law and this norm disappeared from the law.

Conclusion and recommendations

Based on the analysis provided in the previous chapters following conclusions can be made:

1. Georgian legislation does not provide clear definition of land categories. The existing system of land categorization is obscure and inconsistent and is not based on clear indicators, land characteristics. For example, definition of agricultural land is provided by three current laws, but all of them define it differently. In addition, two more laws define the categories and subcategories of agricultural lands for particular [taxing] purposes, while the sector-specific, land legislation does not outline subcategories at all. The definition of non-agricultural land provided by Georgian legislation is beyond any criticism.
2. Under legislation, land conversion means only transferring agricultural land to the category of non-agricultural land. The law does not even admit the possibility of transferring non-agricultural land to the category of agricultural land.
3. The law defines certain conditions and restrictions on allocation of agricultural land for non-agricultural purposes (i.e. on the change of land status, category). It is not clear, what is the aim of the restrictions imposed on land conversion.
4. Starting from July 1, 2015, new conditions were added to the territorial and property restrictions set by Georgian legislation for land conversion. Today land conversion is possible only for “public purpose” (earlier, during the 2013-2015 moratorium – for “urgent public purpose”); in case of the land owned by the state or municipality – for “the state and/or public purpose”, when “necessity is substantiated”. The legislation does not define the criteria for specifying “public purpose”, “state purpose” and “substantiated necessity”.

This legislative shortcoming paves the way for making unjustified and false decisions by public officials and making corrupt deals with interested parties. In such situation, the decision, which is likely to bring public welfare, may cause significant harm.

5. Georgian legislation determines two financial mechanisms of compensation for the loss of agricultural land for using agricultural land for non-agricultural purposes. As the analysis has shown:
 - It is not clear what are those goals and principles, on which these mechanisms are based;
 - It is not clear what are those parameters and calculations, which serve as the basis for the pricing of agricultural lands by municipalities, used in case of the both mechanisms;
 - The amounts attracted through financial mechanisms are not spent on the measures for improvement of land status (for instance, for rehabilitation of degraded or cleaning up of polluted lands);

⁴⁴ See the Law of Georgia dated April 22, 2005 on making amendments to the Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage when Allocating Agricultural Land for Non-Agricultural Purposes. Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/29410>

⁴⁵ See the Law of Georgia dated July 11, 2007 on making amendments to the Law of Georgia on Compensating for Substitute Land Development Value and Sustained Damage when Allocating Agricultural Land for Non-Agricultural Purposes. Available at Legislative Herald: <https://matsne.gov.ge/ka/document/view/22282>

- None of the mechanisms is aimed at restraining the transformation of agricultural lands located within the urban areas, protection of agricultural lands;
 - None of the financial mechanisms is set for protection and conservation of valuable, highly fertile lands and soils.
6. Social consequences of land conversion have never been assessed in Georgia and are not assessed today either. Legislation does not require the use of social impact assessment tools.
 7. Before environmental protection system reform in 2005-2007, Georgian legislation required conducting of EIA and obtaining environmental permit in case of using large areas of agricultural lands for non-agricultural purposes. Georgian legislation does not include such obligation for already a decade.

No EIA is required for the activity having strong negative impact on agricultural lands, such as mining. No EIA is required for the agricultural and food industrial enterprises, timber processing, paper, leather and textile enterprises, some infrastructure projects, also having significant impacts on the environment (land).

The projects, envisaging the use of large tracts of agricultural lands for non-agricultural purposes, are completely closed to the public.

Thus, the legal framework regulating the land conversion in Georgia needs significant improvement. Obviously, it is possible to improve the above mentioned shortcomings through making relevant amendments to legal acts; but in order to make these amendments effective, they should be based on the systemic vision of development of land governance. Such vision can be established in the national land policy; it is the land policy that should define the goals for land protection at the national level, as well as the means to achieve them. Then, the legislation (as the policy enforcement tool) can be improved in line with the policy goals and principles.



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