

# PRACTICE OF AGRICULTURAL LAND CONVERSION IN GEORGIA

December, 2015



Striving for environmental  
and social justice in Georgia

## Introduction

Georgian legislation sets some conditions for conversion of agriculture lands for non-agriculture uses, i.e. for changing the status of agriculture land to non-agriculture. In 2013, the parliament introduced additional condition, according to which conversion of agricultural land was allowed only for “urgent public purpose”. In this study, at first, legal framework on land conversion is discussed briefly. Then, the practice of land conversion during 2013-2015 is reviewed in detail.

## 1. Conversion of agricultural land: an overview of legal framework

### 1.1 The legal restrictions on land conversion

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**. The Law was adopted by the parliament in 1997; it determines when and how the decision on land conversion can be taken.

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.

Article 3 of the Law establishes **the areas where land conversion is permitted**. According to the law:

- Agricultural land may be transferred to the category of non-agricultural everywhere, except when:
  - The land plot is located outside the boundaries of recreation areas<sup>1</sup>;
  - The land is privately owned by physical person or a household/family; and
  - Landowner plans constructing “personal residential, household, 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 permissible, and in case of building “personal residential, household, and ancillary buildings” land conversion would not be allowed.

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<sup>1</sup> Gudauri, Bakuriani, Bakhmaro and Ureki-SekveTili recreation areas.

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- 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.

In September 2013, the Parliament introduced a temporary additional provision (restriction) to the rules of agricultural land conversion, stating that **agricultural land conversion shall be permissible only if it is for "urgent public purpose"**.

The restriction followed the moratorium (with certain exemptions) on the purchase of agricultural land by foreigners introduced from 17 July 2013 to 31 December 2014. 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 character<sup>2</sup> that in two months after the announcement of moratorium, in September 2013, the Parliament had to introduce a temporary restriction to the rules<sup>3</sup>.

Thus, 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 enacted<sup>4</sup> 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". Alongside with "public need", Georgian legislation recognizes the concepts such as: "public interest", "public importance" and "public goals". The analysis showed that there are more than 20 statutory acts in Georgia that use „public purpose“ and similar concepts as prerequisite (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 such situation even a decision, allegedly aimed at the public well-being, can be harmful.

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<sup>2</sup> 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).

<sup>3</sup> 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.

<sup>4</sup> See Article 18<sup>1</sup> of the Instruction of Public Registry at: <https://matsne.gov.ge/ka/document/view/88882>

## 1.2 Competent decision-making authority

The decision-making authority on agricultural land conversion has changed several times. From beginning, 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; and **National Agency of Public Registry** - for other territories of the country.

At the same time, when the land conversion was due to the needs of “**budgetary organizations**” or “**for the national and/or public needs**” the **Government of Georgia would assess the national and/or public need for the land to be allocated to budgetary organizations**” (article 7, paragraph 3 of the law). This provision of the law is still in force<sup>5</sup>.

In March 2011 Ministry of Environment and Natural Resource Protection was deprived of the above mentioned right and **National Agency of Public Registry** became fully, without any exception, responsible for agricultural land conversion. 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 **National Agency of Public Registry (NAPR)** keeps the authority of decision-making. In accordance with Agency regulations<sup>6</sup> the decision on agricultural land conversion shall be taken by the chairperson of the Agency, based on the opinion (conclusion) of the special commission.

## 1.3 Agricultural land conversion and foreigners’ ownership on agricultural land

Basic regulatory framework regarding ownership of agricultural land in Georgia is defined by the **Law of Georgia on Agricultural Land Ownership** adopted in 1996 and amended several times since. Here we will focus on some of the amendments that are especially interesting in terms of ownership of foreigners on agricultural land.

In July 2007 the Law on Agricultural Land Ownership was amended<sup>7</sup>. According to the amendment the agricultural land could have been owned by:

- **An alien** - only the inherited agricultural land, or the land he/she legitimately possessed as a citizen of Georgia;
- **A legal person registered abroad** - only inherited agricultural land.

It should be noted, however, that under the law, aliens and legal persons registered abroad were obliged to sell agricultural land parcels owned by them to a citizen of Georgia, household and/or legal person registered in Georgia, within six months after origination of title to the land; otherwise, the land would have been appropriated to the state. Hence, the law seems to allow, as an exception, foreign natural and legal persons to own agricultural land in Georgia, but this right was restricted under the same law.

The law said nothing about **legal person registered in Georgia by an alien** according to the legislation of Georgia. Thus, after this amendment (and even before) such companies could buy and own agricultural land in Georgia.

Next important change in the law regarding ownership to agricultural land was made in 2012. This change

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<sup>5</sup> 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.

<sup>6</sup> Order # 4 of 15 January 2010 by Minister of Justice of Georgia.

<sup>7</sup> Law of Georgia of 19 June 2007 amending Law of Georgia on Agricultural Land Ownership.

was due to Danish citizen's, Heike Cronqvist's appeal to the Constitutional Court<sup>8</sup>. Heike Cronqvist argued that prohibition of the purchase of agricultural land by foreign natural persons in Georgia, and obligation to sell inherited and legally owned land, contradicted to the essence of the property right guaranteed under Georgian Constitution, and that these rules of the law should be recognized unconstitutional. The Constitutional Court agreed with the plaintiff and, in accordance with 26 June 2012 verdict of Constitutional Court **aliens (natural persons)** were allowed to own agricultural land in Georgia. The Constitutional Court's decision referred only to natural persons, and the restrictions regarding legal persons', registered abroad, rights to purchase, own and dispose agricultural land remained in force.

In June 2013 most important changes in the Law of Georgia on Agricultural Land Ownership were introduced<sup>9</sup>. The provisions on land ownership right were refined and besides, certain temporary and permanent restrictions were introduced. According to this amendment, title to agricultural land in Georgia (including the inherited one) may have:

- A Georgian citizen;
- A household;
- A legal person registered in Georgia by a citizen of Georgia according to the legislation of Georgia;
- An alien;
- Legal person registered abroad;
- Legal person registered in Georgia by an alien according to the legislation of Georgia.

Under these changes **aliens' (and legal persons' registered abroad)** property rights were again restricted - they were made obliged to alienate agricultural land parcels owned by them within six months after origination of title to the land to a citizen of Georgia, household and/or legal person registered in Georgia according to the legislation of Georgia. It is noteworthy that this restriction, under the Law, did not refer **to legal persons registered in Georgia by aliens**.

Under the same change, "to avoid the bulk purchase of cheap land by citizens of wealthy nations"<sup>10</sup>, aliens, legal persons registered abroad and legal persons registered in Georgia by aliens, temporarily, until 31 December 2014, were banned from buying agricultural land. By adopting this rule a moratorium was declared on the purchase of land by foreigners in Georgia from 17 July 2013 to 31 December 2014.

Seven months after the moratorium, in February 2014, another amendment was adopted<sup>11</sup> allowing for an **exception** from the rule with regard to **legal persons registered in Georgia by aliens**. In particular, regardless the moratorium the agricultural land, under the law, could be purchased by:

- **Commercial banks** defined under the laws of Georgia; and
- **A legal person registered in Georgia by alien, but in "special cases" only**, after proper evaluation and decision by the government. Under the law legal person interested in acquisition of agricultural land had to "apply to appropriate governmental agency, making policy in this sector"; and this agency, would submit the issue to the Government for final decision "if reasonably necessary, taking into account the public interest".

Later an exemption from the ban was allowed with regard to **foreign natural persons**. The temporary suspension of selling agriculture land to foreigners was removed in 24th June 2014 following a verdict #563 of the Constitution Court of Georgia in response to complaint filed with the Constitutional Court by Austrian citizen Mathias Huter. It also ruled it was inadmissible to oblige foreign citizens to sell the legally inherited property (see above).

Hence, the moratorium remained in force before its expiry (until 31 December 2014) **only with regard to legal**

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<sup>8</sup> The decision #3/1/512 of 26 June 2012 of the plenum of the Constitutional Court of Georgia on the case of „Heike Cronqvist, a Danish citizen, vs Parliament of Georgia“.

<sup>9</sup> Law of Georgia of 28 June 2013 amending Law of Georgia on Agricultural Land Ownership.

<sup>10</sup> Constitutional Court verdict of 24 June 2014 on the case "Mathias Huter, Austrian citizen vs Georgian Parliament", paragraph 15.

<sup>11</sup> Law of Georgia of 20 February 2014 amending the Law of Georgia on Agricultural Land Ownership.

**persons registered abroad and legal persons registered in Georgia by aliens.** However, in the latter case an exception was allowed in “special cases”, as mentioned above.

After the expiry of moratorium, the situation in the field of ownership to agricultural land did not change. According to current regulations title to agricultural land in Georgia (including the inherited) may have:

- A Georgian citizen;
- A household;
- A legal person registered in Georgia by a Georgian citizen in accordance with Georgian legislation;
- An alien;
- A legal person registered in Georgia by an alien in accordance with Georgian legislation; and
- Legal persons registered abroad - these persons, however, may obtain into ownership by inheritance. But they are obliged to alienate agricultural land parcels owned by them within six months after origination of title to the land to a citizen of Georgia, household and/or legal person registered in Georgia according to the legislation of Georgia.

To summarize, as it is clear from the review provided above, additional restriction imposed on agricultural land conversion (justification of „urgent public purpose“) was only because the moratorium on selling agriculture land to foreigners proved ineffective. The restriction was introduced to avoid agricultural land conversion by Georgian citizens and legal persons in order to finally sell it to foreigners. In the next chapter it is reviewed how this restriction worked during moratorium and six months after moratorium expired (while moratorium ended up on 31 December 2014, the restriction was prolonged until 1 July 2015).

## **2. Practice of agricultural land conversion**

This chapter reviews the practice of agricultural land conversion from September 20, 2013 till July 1, 2015 – in the period when the so-called “additional condition” was in force, i.e. the period when:

- Agricultural land could have been converted only for “urgent public purpose”; and
- Foreigners (physical entities, legal entities registered abroad, and legal entities registered in Georgia by foreign citizens) with certain exceptions (see the chapter above) could not purchase agricultural land in Georgia.

### **2.1 Government orders issued on conversion of agricultural land**

In total from September 20, 2013 till July 1, 2015 (approximately 18 months) period, based on the information published at web-sites of the Government of Georgia and The Legislative Herald, it can be stated that 140 governmental orders were adopted (see annex 1). These orders, in total, **converted 1773 plots of agricultural land, with total area - 811 hectares (8.109.983 square meter).**

This is not a little area and a loss for Georgia. To compare – during the 2008 Russian-Georgian military conflict, about 200 hectares of forest were burnt in Borjomi district. The government declared an ecological disaster and damage was estimated at USD 1 billion. As these data show, in just 18 months, Georgia lost four times the land area than was deteriorated during the 2008 conflict.

It should be noted that the number of orders issued, as well as total area of land converted, may not be accurate, since during the analysis we found a Government’s order (Government order # 340 of March 4, 2104), which has not been published in any of the web-sites; We have learned about the existence of such order from one of the published orders in which it was referred to (the published order was amending the unpublished one)<sup>12</sup> and then the copy of unpublished order was requested from the State Chancellery. Thus, it can be assumed that, there could be other unknown [unpublished] acts on land conversion.

The fact of omitting from publication (and/or delayed publication) of governmental orders is of course a serious problem, but this issue is not discussed here, since it is beyond the scope of this study.

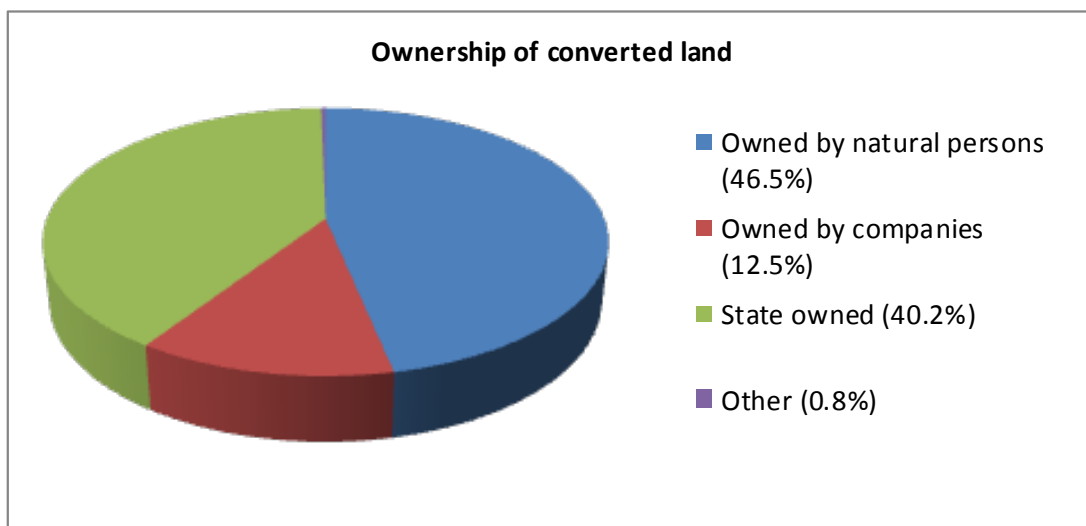
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<sup>12</sup> Governmental order #492 of 26 March 2014 amending Governmental order #340 of 4 March 2014.

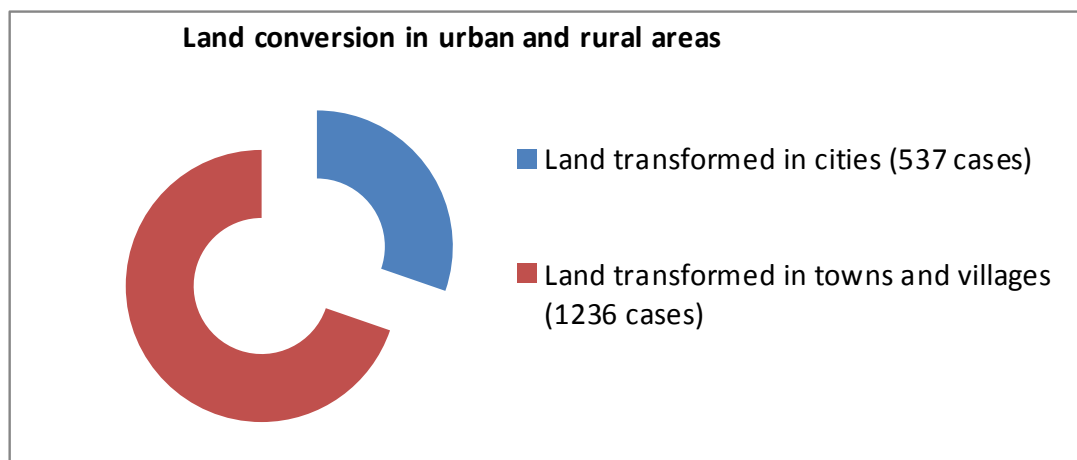
For this study 140 governmental orders adopted over the period of “additional condition” were statistically processed; this included 1773 cases of agricultural land conversion. In addition, out of the 1773 cases, 590 cases of land conversion that took place within the first eight months after the enactment of the “restriction” (from September 20, 2013 till June 1, 2014) have been thoroughly studied. In this case, we have studied the government’s orders and all the administrative materials processed for each governmental order. Thus, the following sections of the study are based on a statistical analysis of the data, as well as in depth analysis of 590 cases.

## 2.2 The overall picture of agricultural land conversion

**Ownership of converted land:** out of 1773 cases reviewed for this study: 826 land plots were owned by natural persons, 221 – by companies; 711 – was state-owned, one was owned by Adjara Autonomous Republic, 11 – by local self-governance units and finally, three land plots were owned by - Georgian Patriarchate. The diagram below shows the distribution of converted land by ownership. As the diagram shows large part of converted land - more than 40 percent - was owned by the state. Typically, state-owned agricultural land was converted for two reasons: further alienation (in this case, there is already a person interested in land privatization), or a variety of infrastructure projects for a long-term use (under leasehold or usufruct agreement).

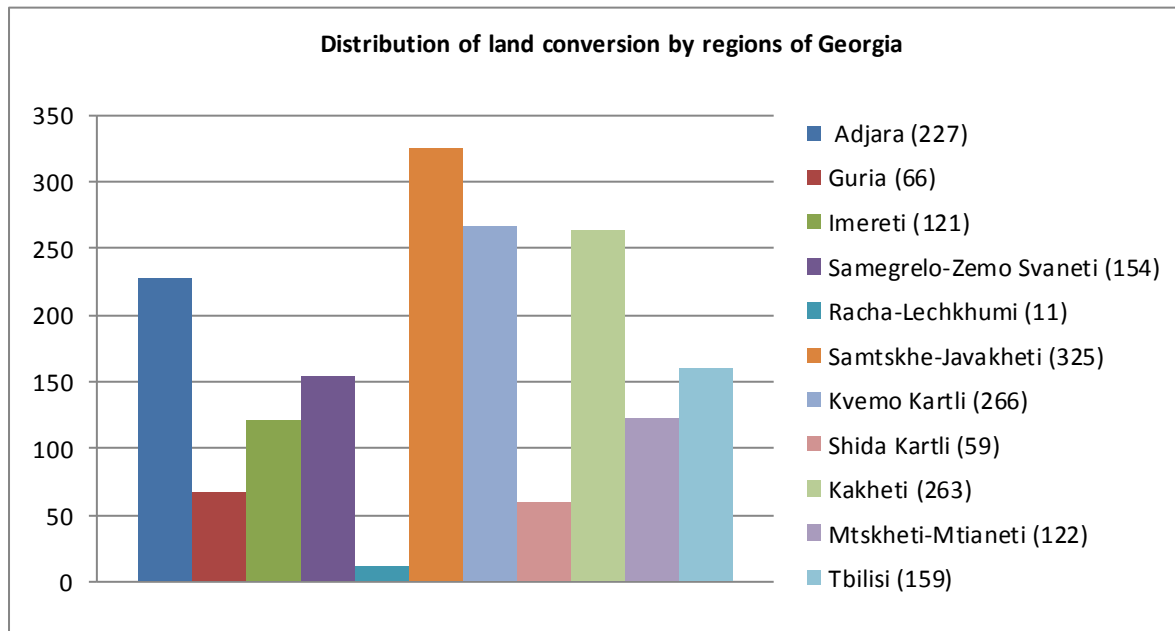


Largest portion of converted land – 70 percent - is located in towns and villages; 30 percent of converted land comes on cities. The share of land conversion in urban areas is quite high, but it should be noted that in most cases land is converted in the suburbs of Tbilisi and Batumi cities and the villages that joined those two cities in recent years (for example, villages of Tabakhmela, Shindisi, Dighomi).





The picture of land conversion by regions is following: the vast majority of converted land plots (325) were located in Samtskhe-Javakheti region. This region was followed by Kvemo Kartli (266 land plots), Kakheti (263 land plots) and Adjara Autonomous Republic (227 land plots). Approximately same number of land plots was converted in Tbilisi (159 land plots), Samegrelo-Zemo Svaneti (154 land plots), Mtskheta-Mtianeti (122 land plots) and Imereti (121 land plots). Comparably small amount land plots were converted in Guria (66 land plots), Shida Kartli (59 land plots) and Racha-Lechkhumi (11 land plots).



The diagram above shows distribution of converted agricultural land, by region of Georgia. “Championship” of Samtskhe-Javakheti region was mainly due to the land taken for such large infrastructure project as the South Caucasus Pipeline Expansion Project. Land was mainly converted for the needs of the same project in Kvemo Kartli region.

### 2.3 The reasons of land conversion

It is impossible to determine the reasons of land conversion from the text of governmental orders. Thus, persons concerned should apply to the government office and request explanatory notes and all the administrative materials produced to issue governmental orders. Thus, the orders issued by the Government in November 2013 - May 2014, and 590 cases of land conversion covered by these acts were studied and the following reasons of land conversion was revealed:

- Infrastructure projects (highway, railway, pipeline, airports, telephone exchanges, power substations, lines and functionally related facilities);
- Mining and processing;
- Processing of agricultural products (wine production, nut processing, fruit processing);
- Hydroelectric power stations and wind power plant;
- Residential buildings and hotels;
- Shops, warehouses and bakeries (often referred to as “commercial buildings”);
- Petrol and gas stations (new construction or expansion of existing ones);
- Sawmills and wood industries;
- Vehicle service centers;
- Various (for example: ceremonial hall, a cafe, a dental clinic, a construction materials plant, mill, workshop, etc.).

A category - “Unknown” should be added to the above, because in some cases, it is impossible to determine the reasons for land conversion – neither explanatory notes, nor other administrative materials indicate the purpose of land conversion; as to why landowner is asking to convert land (in some cases, landowners simply indicate - “construction” or “arrangement of facility”). Nevertheless, this situation (not to mention absence of justification of “urgent public purpose”) does not influence the decision-making process, and in such cases, the owners’ requests are still satisfied – land plots are converted.

It is also interesting what kind of non-agricultural activities are using most of the agricultural land; that is, when do we lose most of the agricultural land? The table below shows the situation identified through the analysis of 590 cases of land conversion.

**Table 1. The largest and the smallest areas of converted agricultural land**

Purpose / Project	Area in square meter (as indicated in governmental orders)	Approx. Area in Hectares
<b>Largest converted areas</b>		
Mirabilite(Glauber salt) mining and processing (Sagarejo region) <sup>13</sup>	498 310	≈ 50
South Caucasus Pipeline Expansion Project (Samtskhe-Javakheti and Kvemo Kartli regions) <sup>14</sup>	431 145	≈ 43
The construction of high voltage substations (Tsalenjikha and Khobi districts) <sup>15</sup>	251 233	≈ 25
Facilities of Patriarchate of Georgia (Kazbegi district) <sup>16</sup>	100 000	10
Construction of airport (Mestia district) <sup>17</sup>	74 634	≈ 7.5
Expansion of railway station (Tsalka district) <sup>18</sup>	60 817	≈ 6
Stone quarry and concrete plants (Terjola district) <sup>19</sup>	60 080	≈ 6
Wind power plant (Gori city)	25 600	≈ 2.5
Nut processing factory (Zugdidi district) <sup>20</sup>	22 166	≈ 2
<b>Smallest converted area</b>		
Telephone and internet access at the base station (Dusheti district) <sup>21</sup>	10	0.010
Location of transformer (Mtskheta) <sup>22</sup>	9	0.009

As the table shows, the scale of the loss of agricultural land is especially high due to mining projects; which is followed by infrastructure projects. In general, this picture was in line with experience of different countries and researches, according to which the pressure on agricultural lands is particularly strong from mining, large-scale infrastructure, energy and agricultural projects.

<sup>13</sup> Order of the Government of Georgia # 308 of February 20, 2014.

<sup>14</sup> Orders of the Government of Georgia #340 of 4 March 2014, #492 of 26 March 2014, #753 of 1 May 2014, and #756 of 1 May 2014.

<sup>15</sup> Order of the Government of Georgia #400 of 12 March 2014 ; Decree of the Government of Georgia #453 of 18 March 2014.

<sup>16</sup> Order of the Government of Georgia #397 of 12 March 2014.

<sup>17</sup> Order of the Government of Georgia #238 of 13 February 2014.

<sup>18</sup> Order of the Government of Georgia #398 of 12 March 2014.

<sup>19</sup> Order of the Government of Georgia #308 of 20 February 2014.

<sup>20</sup> Order of the Government of Georgia #400 of 12 March 2014.

<sup>21</sup> Order of the Government of Georgia #1919 of 11 December 2013.

<sup>22</sup> Order of the Government of Georgia #858 of 15 May 2014.



There is one activity that drops out of the logical picture shown in the table above; this is undefined activity performed by the Patriarchate of Georgia for which land was converted. It should be noted that in this case, neither type of activity, nor “urgent public purpose” is justified.

## 2.4 Justification of “urgent public purpose”

As has been repeatedly mentioned in previous chapters, from September 20, 2013 till July 1, 2015 conversion of agricultural land to non-agricultural land was permissible only in the case if it was for an “urgent public purpose”. It is interesting, how persons interested in land conversion justified the “urgent public purpose”. Below is the general picture drawn from the analysis of administrative materials produced to issue the governmental acts on land conversion.

As it turned out, often, “urgent public purpose” land conversion is justified by the amount of planned investment (which often was not very high) and potential employment opportunities. There were many cases, when land conversion was requested for ongoing or completed construction (typically, commercial buildings). In such case, applicants usually attach copies of construction permits or statements from authorities to the request of land conversion, noting that granting the construction permit or operation of the building is hindered by one factor only –the land was categorized as agricultural land. In some cases, development of tourism and hydroelectric power plants are considered as “urgent public purpose”. There were cases when “urgent public purpose” was confirmed by signatures of villagers, village attorney or by a letter of the local governor. In these letters, the signatories simply state that the land conversion is for “urgent public purpose”.

Thus, poorly but still, persons interested in land conversion often tried to justify “urgent public purpose”; however, there were numerous cases when “urgent public purpose” was not substantiated at all.

The box below lists the extracts from the administrative documents produced to issue governmental orders on land conversion. It specifically contains the places in which the applicants are trying to justify the “urgent public purpose”.

### Box 1. Examples of justification of “urgent public purpose”

- "To arrange the residence for Qatar, the transfer of [my] household land is a matter of national importance and is fully compliant with the requirements of the relevant legislation."
- "Construction of the plant is of great significance for social and economic development of Kazbegi region population. In particular, the plant will employ about fifty people, the budget will receive a million two hundred thousand GEL, it is planned to dedicate 10 percent of the profit for construction of Dariali monastery complex, etc."
- "There is a large demand for production and sale of CO<sub>2</sub> both in and outside the country... Kasara Ltd guarantees that from its own 10 000 sq. m land plot, not a single meter of land will be alienated to a foreign citizen, or a foreign company."
- "Most of the undersigned are currently and formerly the officers armed forces and other law enforcement agencies and members of their families, the persons who were or are in the service of the country. In our company, there are not any foreign nationalities either among the shareholders or among those wishing to purchase an apartment... I, the undersigned, am a former officer of the armed forces. I have participated in the 2004 Russian-Georgian conflict; I am a veteran of Georgian-Russian war of August 2008. In 2011, I took part in peace mission to the Republic of Afghanistan. Please take into consideration our contribution to the motherland."
- "There are no auto repair shops in Saghmamedlo and adjacent villages, which poses some problems for car owners."
- "We need the land plot referred to in the application for public activity (construction of the market)."
- "I am going to construct a pharmacy, which will be the only 24-hour pharmacy on entire surrounding area, and a trade facility; this is strategically important for the people living there."
- "Selling the land to foreign citizens is out of question. Land will not be sold to foreigners under any circumstances. On the contrary, I was worried when I heard that foreigners were buying land. I am glad land alienation to foreign citizens has stopped."

- "Please, be informed that the various dioceses of the Patriarchate of Georgia need land plots and buildings located on it. This is to request transfer of the following [state] property under ownership of Georgian Apostolic Autocephalous Orthodox Church, through direct disposal procedures, at a symbolic price: (a) Kazbegi district, Kobi village, an area of 100,000 sq. m of land;... (b) Mtskheta, 3798 sq. m and 2421 sq. m of land... God bless you and make you feel happy."
- In the application on land conversion, the applicant states that he is constructing bakery on the agriculture land. He discovered the land status must be changed to continue construction. The applicant explains that his family members are unemployed and his apartment is encumbered. To substantiate "urgent public need" he further stresses: "in case of refusal, we will remain homeless."
- "I want to construct a building/facility for the commercial activity, and employ my family members."
- "My family goes through hardship. Therefore we require additional incomes."
- In the application on land conversion, the applicant states he is planning to construct a store. He claims that the construction of store "is an urgent necessity for fellow villagers". "Within a 2 km, there is not a single grocery store. The elderly find it difficult to walk long distances."
- "I want to expand the retail network to improve the family business."

Unfortunately, in all cases, when substantiation of "urgent public purpose" was totally irrelevant and in cases when nothing was mentioned about "urgent public purpose", the government satisfied all the requests and converted agricultural land to non-agricultural category.

It is also interesting to note that, there were cases when it was clear that land conversion was requested to sell the land afterwards to legal entities registered in Georgia by foreigners. For example:

- In one case Tbilisi residents requested land conversion openly stating that the plan is to sell the land to the Super Company afterwards. The intention statement was supported by the company's letter. As it turned out, 12 percent of shares in Super Company are owned by a citizen of the Netherlands, the rest of the shares are distributed among six citizens of Georgia.
- In another case, Chitatskari villagers (Zugdidi) were requesting conversion of privately owned land to sell it afterwards to Anka Fair Trade company; the applicants stated that the company was planning to construct hazelnut processing plant. Anka Fair Trade company is 100% owned by the citizen of Turkey.
- The residents of village Chakhati (Kobuleti) were requesting conversion of privately owned land to sell it afterwards to Hydro Development Company which planned construction of a power plant. Hydro Development Company is 100% owned by the Estonian joint-stock company Skinest Hydro.
- Tbilisi residents requested conversion of private agricultural lands as it was planned to allocate these plots for construction of residence of Qatari ambassador in Georgia.

## 2.5 Decision-making on land conversion

As it was mentioned in the first chapter, in the period of the so-called "additional condition", the decision-making power on land conversion was vested with **the government**. The government was obliged, on the basis of information submitted by the **NAPR**, to assess "urgent public purpose" of land conversion and to take a decision.

From administrative materials analyzed, it is clear that members of the government had very little time allocated to assess "urgent public purpose" of land conversion and to take a decision. The time devoted for consultation among the governmental agencies, usually varies from 1 day to 1 week. The electronic consultation process among governmental agencies ends up with expression "I agree". In all studied cases, there has not been a single case when a member of government (governmental agency) refused to agree or had comments.

Based on the analysis, it can be stated that the assessment of "urgent public purpose", as well as whole decision-making process is merely a formality. In reality, neither "urgent public purpose" nor the impacts of land conversion is assessed. This is demonstrated by the analysis provided in the chapters above, as well as specific case described below.

As was mentioned above, an unpublished order was found among the governmental orders reviewed for this research. It is a Government order #340 of 4 March 2014 on conversion of certain plots of agricultural land.

The order was not published either on Georgian Government, or on the Legislative Herald's websites. The copy of the order, explanatory note and other materials of administrative proceedings were provided to Green Alternative upon request. As it turned out, the order was to converse 336 state-owned agricultural land plots (with total area 1.118.593 sq.m.) for the purposes of South Caucasus Pipeline Expansion Project (SCPX).

As can be seen from the materials of administrative proceedings, on 9 January 2014, the National Agency of State Property requested the NAPR to converse about 111 hectares of state-owned agricultural land in: Akhaltsikhe district - about 15 hectares of land (10 plots); Tsalka district - approx. 26 hectares of land (175 plots), city of Rustavi - approx. 8 hectares of land (22 plots), Gardabani - approx. 52 hectares of land (104 plots), Marneuli district - approx. 4 hectares of land (19 plots) and Tetrtskaro district - approx. 6 hectares of land (6 plots). The Agency cited SCPX (Shah Deniz Stage 2 Azerbaijan) as a reason for land conversion, with further transfer of land with usufruct, construction and servitude right for free use to the South Caucasus Pipeline Company for 7 years (over the construction period) and 49 years (operation period).

As is other cases, the "urgent public purpose" of land conversion is not provided in this order either. In the materials of administrative proceedings, host country government agreement of April 17, 2002 is referred only. The request was satisfied based on such "justification" and therefore, the government has ordered to change the status of the agricultural land in five districts and one city of Georgia.

Later, in just one and a half month, it turned out that South Caucasus Pipeline Company did not need to have so many land plots changed their status. The company made a mistake, and demanded land conversion for almost twice as much land than actually needed.

The materials of administrative proceedings of the order #492 of 26 March 2014 concerning the correction of the mistake<sup>23</sup> showed that on 28 February 2014 the National Agency of State Property has appealed again to the NAPR. Application was accompanied with the letter from South Caucasus Pipeline Company Ltd Georgia of 24 February 2014, in which the company representative states that 154 land plots designated for pipeline construction were mistakenly recorded on the electronic drive and they did not require conversion. The company representative asks to inform NAPR and regret over the mistake.

The company's request was again satisfied by the Government: by the order of the Government of Georgia #492 of 26 March 2014, just in two weeks after the decision on land conversion, the status was restored to 146 land plots (almost half) out of 336. Therefore, ultimately, the status was changed to about 41.5 ha of agricultural land instead of 111 ha (190 land plots instead of 336) in the three districts (Akhaltsikhe District - approx. 15 hectares, Tsalka district approx. 26 hectares and Gardabani - approx. 0.4 hectares) rather than in 5 districts and one city.

## **Conclusion and recommendations**

The analysis from the previous chapters shows that the condition that was in force in 2013-2015 for land conversion – obliging the person concerned to justify and then the government to assess the "urgent public purpose" - was very formal.

This mechanism, in fact, was absolutely useless and did not serve the purpose for which it was originally introduced. In addition, the mechanism was just wasting of resources (financial, technical, human resources) of all parties involved in the process - persons interested in land conversion, the NAPR and governmental agencies.

It should be noted, however, that regardless the mechanism proved ineffective, the government should continue to search for the mechanisms to protect and preserve agriculture lands. The government should make every effort to achieve this goal. In consultation with all stakeholders, the government must introduce a mechanism that would prevent loss of agricultural land, and ensure transparency and informed decision-making.

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<sup>23</sup> Order of the government #492 of 26 March 2014 amending Order #340 of 4 March 2014 on conversion of certain plots of agricultural land.

## Annex 1.

### The list of governmental orders issued from 20 September, 2013 till 1 July, 2015 regarding conversion of agriculture land to non-agricultural uses

#### Note

- The following list may not be exhaustive.
- The act numbered # 13 in the list is published neither on the website of Legislative Herald nor the government's website.
- The acts numbered # 77-81 in the list, as well as acts numbered # 98-99 are published at Legislative Herald's website, but are not published at the government's website.
- The administrative materials of the acts numbered # 1-32 were analyzed for the purposes of this study.

1. Governmental order # 1543 of November 5, 2013 on conversion of land agriculture land plot located in village Chela, Adigeni Municipality
2. Government order #1567 of 15 November 2013 on conversion of certain plots of agricultural land;
3. Government order #1837 of 9 December 2013 on conversion of land agriculture land plot located in village Chakhati, Kobuleti Municipality
4. Government order #1919 of 11 December 2013 on conversion of certain plots of agricultural land;
5. Government order #1998 of 19 December 2013 on conversion of certain plots of agricultural land;
6. Government order #23 of 10 January 2014 on conversion of certain plots of agricultural land;
7. Government order #228 of 10 February 2014 on conversion of certain plots of agricultural land;
8. Government order #238 of 13 February 2014 on conversion of certain plots of agricultural land;
9. Government order #239 of 13 February 2014 on conversion of certain plots of agricultural land;
10. Government order #308 of 20 February, 2014 on conversion of certain plots of agricultural land;
11. Government order #332 of 21 February 2014 on conversion of certain plots of agricultural land;
12. Government order #333 of 21 February 2014 on conversion of certain plots of agricultural land;
13. Government order #340 of 4 March 2014 on conversion of certain plots of agricultural land;
14. Government order #397 of 12 March 2014 on conversion of certain plots of agricultural land;
15. Government order #398 of 12 March 2014 on conversion of certain plots of agricultural land;
16. Government order #399 of 12 March 2014 on conversion of certain plots of agricultural land;
17. Government order #400 of 12 March 2014 on conversion of certain plots of agricultural land;
18. Government order #452 of 18 March 2014 on conversion of certain plots of agricultural land;
19. Government order #453 of 18 March 2014 on conversion of certain plots of agricultural land;
20. Government order #454 of 18 March 2014 on conversion of certain plots of agricultural land;
21. Government order #492 of 26 March 2014 amending Government order #340 of 4 March 2014 on conversion of certain plots of agricultural land;
22. Government order #505 of 27 March 2014 on conversion of certain plots of agricultural land;
23. Government order #693 of 15 April 2014 on conversion of certain plots of agricultural land;
24. Government order #706 of 16 April 2014 on conversion of certain plots of agricultural land;
25. Government order #753 of 1 May 2014 on conversion of certain plots of agricultural land;
26. Government order #754 of 1 May 2014 on conversion of certain plots of agricultural land;
27. Government order #755 of 1 May 2014 on conversion of certain plots of agricultural land;

28. Government order #756 of 1 May 2014 on conversion of certain plots of agricultural land;
29. Government order #757 of 1 May 2014 on conversion of certain plots of agricultural land;
30. Government order #784 of 5 May 2014 on conversion of certain plots of agricultural land;
31. Government order #857 of 14 May 2014 on conversion of certain plots of agricultural land;
32. Government order #858 of 15 May 2014 on conversion of certain plots of agricultural land;
33. Government order #973 of 5 June 2014 on conversion of certain plots of agricultural land;
34. Government order #974 of 5 June 2014 on conversion of certain plots of agricultural land;
35. Government order #980 of 6 June 2014 on conversion of certain plots of agricultural land;
36. Government order #981 of 6 June 2014 on conversion of certain plots of agricultural land;
37. Government order #1065 of 11 June 2014 on conversion of certain plots of agricultural land;
38. Government order #1124 of 23 June 2014 on conversion of certain plots of agricultural land;
39. Government order #1125 of 23 June 2014 on conversion of certain plots of agricultural land;
40. Government order #1127 of 23 June 2014 on conversion of certain plots of agricultural land;
41. Government order #1173 of 26 June 2014 on conversion of certain plots of agricultural land;
42. Government order #1174 of 26 June 2014 on conversion of certain plots of agricultural land;
43. Government order #1218 of 14 July 2014 on conversion of certain plots of agricultural land;
44. Government order #1219 of 14 July 2014 on conversion of certain plots of agricultural land;
45. Government order #1223 of 14 July 2014 on conversion of certain plots of agricultural land;
46. Government order #1371 of 5 August 2014 on conversion of certain plots of agricultural land;
47. Government order #1372 of 5 August 2014 on conversion of certain plots of agricultural land;
48. Government order #1416 of 7 August 2014 on conversion of certain plots of agricultural land;
49. Government order #1419 of 7 August 2014 on conversion of certain plots of agricultural land;
50. Government order #1497 of 1 September 2014 on conversion of certain plots of agricultural land;
51. Government order #1498 of 1 September 2014 on conversion of certain plots of agricultural land;
52. Government order #1499 of 1 September 2014 on conversion of certain plots of agricultural land;
53. Government order #1500 of 1 September 2014 on conversion of certain plots of agricultural land;
54. Government order #1501 of 1 September 2014 on conversion of certain plots of agricultural land;
55. Government order #1558 of 10 September 2014 on conversion of certain plots of agricultural land;
56. Government order #1683 of 15 September 2014 on conversion of certain plots of agricultural land;
57. Government order #1684 of 15 September 2014 on conversion of certain plots of agricultural land;
58. Government order #1738 of 29 September 2014 on conversion of certain plots of agricultural land;
59. Government order #1755 of 29 September 2014 on conversion of certain plots of agricultural land;
60. Government order #1878 of 20 October 2014 on conversion of certain plots of agricultural land;
61. Government order #1879 of 20 October 2014 on conversion of certain plots of agricultural land;
62. Government order #1880 of 20 October 2014 on conversion of certain plots of agricultural land;
63. Government order #1881 of 20 October 2014 on conversion of certain plots of agricultural land;
64. Government order #1886 of 21 October 2014 on conversion of certain plots of agricultural land;
65. Government order #1954 of 31 October 2014 on conversion of certain plots of agricultural land;
66. Government order #2042 of 10 November 2014 on conversion of certain plots of agricultural land;
67. Government order #2043 of 10 November 2014 on conversion of certain plots of agricultural land;
68. Government order #2044 of 10 November 2014 on conversion of certain plots of agricultural land;



69. Government order #2051 of 11 November 2014 on conversion of certain plots of agricultural land;
70. Government order #2079 of 26 November 2014 on conversion of certain plots of agricultural land;
71. Government order #2085 of 26 November 2014 on conversion of certain plots of agricultural land;
72. Government order #2113 of 28 November 2014 on conversion of certain plots of agricultural land;
73. Government order #2144 of 28 November 2014 on conversion of certain plots of agricultural land;
74. Government order #2318 of 12 December 2014 on conversion of certain plots of agricultural land;
75. Government order #2319 of 12 December 2014 on conversion of certain plots of agricultural land;
76. Government order #2470 of 26 December 2014 on conversion of certain plots of agricultural land;
77. Government order #2471 of 26 December 2014 on conversion of certain plots of agricultural land;
78. Government order #2472 of 26 December 2014 on conversion of certain plots of agricultural land;
79. Government order #2473 of 26 December 2014 on conversion of certain plots of agricultural land;
80. Government order #2474 of 26 December 2014 on conversion of certain plots of agricultural land;
81. Government order #2475 of 26 December 2014 on conversion of certain plots of agricultural land;
82. Government order #2607 of 31 December 2014 on conversion of certain plots of agricultural land;
83. Government order #2608 of 31 December 2014 on conversion of certain plots of agricultural land;
84. Government order #2609 of 31 December 2014 on conversion of certain plots of agricultural land;
85. Government order #2616 of 31 December 2014 on conversion of certain plots of agricultural land;
86. Government order #114 of 2 February 2015 on conversion of certain plots of agricultural land;
87. Government order #120 of 3 February 2015 on conversion of certain plots of agricultural land;
88. Government order #124 of 3 February 2015 on conversion of certain plots of agricultural land;
89. Government order #199 of 12 February 2015 on conversion of certain plots of agricultural land;
90. Government order #214 of 13 February 2015 on conversion of certain plots of agricultural land;
91. Government order #215 of 13 February 2015 on conversion of certain plots of agricultural land;
92. Government order #216 of 13 February 2015 on conversion of certain plots of agricultural land;
93. Government order #296 of 19 February 2015 on conversion of certain plots of agricultural land;
94. Government order #297 of 19 February 2015 on conversion of certain plots of agricultural land;
95. Government order #312 of 20 February 2015 on conversion of certain plots of agricultural land;
96. Government order #364 of 5 March 2015 on conversion of certain plots of agricultural land;
97. Government order #444 of 10 March 2015 on conversion of certain plots of agricultural land;
98. Government order #445 of 10 March 2015 on conversion of certain plots of agricultural land;
99. Government order #446 of 10 March 2015 on conversion of certain plots of agricultural land;
100. Government order #618 of 24 March 2015 on conversion of certain plots of agricultural land;
101. Government order #619 of 24 March 2015 on conversion of certain plots of agricultural land;
102. Government order #661 of 30 March 2015 on conversion of certain plots of agricultural land;
103. Government order #662 of 30 March 2015 on conversion of certain plots of agricultural land;
104. Government order #661 of 30 March 2015 on conversion of certain plots of agricultural land;
105. Government order #695 of 3 April 2015 on conversion of certain plots of agricultural land;
106. Government order #696 of 3 April 2015 on conversion of certain plots of agricultural land;
107. Government order #705 of 8 April 2015 on conversion of certain plots of agricultural land;
108. Government order #762 of 8 April 2015 on conversion of certain plots of agricultural land;
109. Government order #763 of 8 April 2015 on conversion of certain plots of agricultural land;



110. Government order #786 of 20 April 2015 on conversion of certain plots of agricultural land;  
111. Government order #844 of 22 April 2015 on conversion of certain plots of agricultural land;  
112. Government order #845 of 22 April 2015 on conversion of certain plots of agricultural land;  
113. Government order #846 of 22 April 2015 on conversion of certain plots of agricultural land;  
114. Government order #847 of 22 April 2015 on conversion of certain plots of agricultural land;  
115. Government order #848 of 22 April 2015 on conversion of certain plots of agricultural land;  
116. Government order #889 of 24 April 2015 on conversion of certain plots of agricultural land;  
117. Government order #890 of 24 April 2015 on conversion of certain plots of agricultural land;  
118. Government order #987 of 15 May 2015 on conversion of certain plots of agricultural land;  
119. Government order #1033 of 25 May 2015 on conversion of certain plots of agricultural land;  
120. Government order #1034 of 25 May 2015 on conversion of certain plots of agricultural land;  
121. Government order #1035 of 25 May 2015 on conversion of certain plots of agricultural land;  
122. Government order #1036 of 25 May 2015 on conversion of certain plots of agricultural land;  
123. Government order #1037 of 25 May 2015 on conversion of certain plots of agricultural land;  
124. Government order #1038 of 25 May 2015 on conversion of certain plots of agricultural land;  
125. Government order #1039 of 25 May 2015 on conversion of certain plots of agricultural land;  
126. Government order #1040 of 25 May 2015 on conversion of certain plots of agricultural land;  
127. Government order #1041 of 25 May 2015 on conversion of certain plots of agricultural land;  
128. Government order #1127 of 2 June 2015 on conversion of certain plots of agricultural land;  
129. Government order #1287 of 16 June 2015 on conversion of certain plots of agricultural land;  
130. Government order #1288 of 16 June 2015 on conversion of certain plots of agricultural land;  
131. Government order #1289 of 16 June 2015 on conversion of certain plots of agricultural land;  
132. Government order #1367 of 25 June 2015 on conversion of certain plots of agricultural land;  
133. Government order #1368 of 25 June 2015 on conversion of certain plots of agricultural land;  
134. Government order #1369 of 25 June 2015 on conversion of certain plots of agricultural land;  
135. Government order #1370 of 26 June 2015 on conversion of certain plots of agricultural land;  
136. Government order #1383 of 30 June 2015 on conversion of certain plots of agricultural land;  
137. Government order #1384 of 30 June 2015 on conversion of certain plots of agricultural land;  
138. Government order #1385 of 30 June 2015 on conversion of certain plots of agricultural land;  
139. Government order #1386 of 30 June 2015 on conversion of certain plots of agricultural land;  
140. Government order #1387 of 30 June 2015 on conversion of certain plots of agricultural land.



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