

ASSESSMENT OF CITIZENS' PROPERTY RIGHTS IN GEORGIA



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EXECUTIVE SUMMARY

The present study was commissioned following concerns raised in a U.S. State Department report on human rights that Georgian citizens were having their real property rights unduly infringed upon by their government. To evaluate this concern, the authors examined records on 21 court cases involving private citizens, real property, and the state, reviewed court materials and studies prepared by other entities, analyzed all relevant laws and regulations, and conducted interviews with NGOs, legal aid and private lawyers, judges, and officials from relevant government agencies. The findings, conclusions and recommendations contained in this report stem from this body of fact-gathering and analysis.

The central part of this report is the problem statement, which examines concerns raised about whether and how government acquisition of land, functioning of the real property registration system, and functioning of the court system is having adverse effects on the property rights of Georgian citizens. The problem statement also examines the security of property rights held by women. Key findings include:

- The law governing expropriation of real property is generally sound, but the extent to which it is being applied appropriately is difficult to know;
- The government has coerced its citizens into giving or abandoning their real property to the government in certain situations, though the available information did not allow for a definitive conclusion as to whether the problem is systemic;
- Much real property that was privatized and registered during the 1992-2007 privatization period is not recognized as registered in Georgia's modern registration system maintained by the National Agency of the Public Registry. This puts the rights of citizens who own this property at risk;
- Local land rights recognition commissions are responsible for reviewing requests for privatization of real property which is already occupied by the applicant, but for which the applicant does not already have right-establishing documentation. These commissions are functioning in ways that put peoples' rights at risk or prevent them from obtaining rights;
- Court cases reviewed showed enough inconsistency in decision-making and adherence to the law to raise doubts about the impartiality of the judgments being rendered; and
- The real property of a husband and wife acquired during their marriage is community property under Georgian law, but each spouse's rights are nevertheless insecure absent their registration in the Public Registry.

This summary of conclusions naturally leads to the central question that this report is attempting to answer: are the property rights of Georgian citizens secure? While the study found that it was difficult to determine the scope of violations with precision, the authors conclude that the scope of insecurity is indeed widespread due to the signal being sent by the forced abandonments and gifts of property, dubious court decisions and problems with registration. The change in government following the 2012 parliamentary elections is cause for hope, especially regarding the performance of the courts.

A summary of the key recommendations is as follows:

- When acquiring property, the state should make more use of the expropriation law, which provides strong protections to citizens;
- As a matter of policy the state should cease to acquire real property for its projects through gift or abandonment of such property by citizens. The state should purchase the property it needs;
- Providing local land rights commissions with manuals and training on proper application of the law on recognizing title to land plots should help to improve their performance;
- The only way to gain a true understanding of the nature of the mapping and overlap issues that are affecting registration is through a field investigation. A pilot program should be carried out in three to four different areas around the country that have different kinds of property (agricultural land, village land, urban land, commercial buildings, apartments) to work out methodologies and solutions to address the problems;
- In order to improve court decision-making, accurate application of the law and consistency across jurisdictions, legal, registration, and mapping specialists could prepare a reference manual to guide court analysis and decision-making on the different types of property disputes commonly seen in Georgia; and
- The Government of Georgia should actively encourage registration of community property in the names of both the husband and wife. To support this effort, NGOs could conduct awareness-raising activities to promote the benefits of such registration, and should ensure that the legal assistance they provide recommends the registration of community property in both the husband's and wife's name.

INTRODUCTION

In recent years, various non-commercial humanitarian organizations (NGOs) which provide legal and other assistance to Georgian citizens have expressed concerns about the state of private citizens' property rights. Chief among these concerns is that the real property rights of Georgian citizens are being violated by the government and influential business interests during the execution of infrastructure and economic development projects, and that due process and respect for the rule of law are lacking in property rights cases. The U.S. State Department regularly produces reports on human rights practices in various countries, and referenced these concerns in its 2011 Georgia country report.¹

The Judicial Independence and Legal Empowerment Project (JILEP), a project funded by the U.S. Agency for International Development and implemented by the East-West Management Institute, decided to investigate these concerns more fully in line with its mandate to promote judicial independence and equip citizens with the ability to use and defend their legal rights. The present report is the result of this investigation. The report responds not only to the concern raised in the State Department report, but addresses more broadly issues Georgian citizens are facing with the security of their rights to property.

The authors² examined records on 21 court cases involving private citizens, real property, and the state, reviewed court materials and studies prepared by other entities, analyzed all relevant laws and regulations, and conducted interviews with private lawyers, NGO legal aid lawyers, judges, and officials from relevant government agencies. The findings, conclusions and recommendations contained in this report stem from this body of fact-gathering and analysis.

The report begins with sections that provide information on the nature of private property rights in Georgia, the institutions that are relevant to these rights, and laws and regulations that affect these rights. The report continues with its main section – the problem statement – where the variety of issues surrounding the security of private property ownership in Georgia are examined in detail. The report then summarizes the main conclusions drawn from the analysis of fact and law, makes recommendations for improving the ownership rights of citizens, and offers a brief conclusion.

¹ U.S. Department of State. 2011. Country Report on Human Rights Practices for 2011. <http://www.state.gov/j/drl/rls/hrrpt/2011humanrightsreport/index.htm?dliid=186353#wrapper>.

² The authors extend their recognition and gratitude to Mariam Gbedava, Research Specialist and Assistant Grants Manager with JILEP, and to Levan Nanobashvili, a private attorney and special consultant for this project, for their guidance and assistance in researching and compiling this report.

THE PRIVATE PROPERTY LANDSCAPE IN GEORGIA

Georgia's current real property landscape is, to a great extent, the consequence of a massive property privatization effort that took place in the 1990s and early 2000s. This effort followed decades of Soviet rule during which all land was owned by the state.

Agricultural land, including pastures, makes up over 40% of the territory of Georgia. In 1992, the Georgian government started a fast-paced process of distributing parcels of agricultural land to households. At the time they were initiated, privatization reforms had the goal of promoting stability and security during a time of economic crisis and social unrest. Ultimately, roughly 760,000 hectares of agricultural land were allocated in this initial privatization effort.³ However, the process commenced without several key components, including an inventory of the lands to be transferred to private citizens, reliable information on which land the state would retain and plans, systems and institutions (including a registration mechanism) for formally acknowledging the ownership rights of land recipients.

The initial method used in 1992 to formalize land transfers was quickly recognized as inadequate. As a result, in 1993 the government authorized local land reform committees to issue "Receive-Delivery Acts," which were the primary documents supporting the transfer of ownership of agricultural land from the state to a citizen.⁴

In 1997, the government took further steps towards creating formal mechanisms to support a land market. With the assistance of international donors including USAID, KfW Development Bank (Germany), the World Bank and UNDP, it initiated the registration of the rights granted by Receive-Delivery Acts. By 2004, the ownership rights to approximately 2.4 million agricultural land parcels had been registered with the State Department of Land Management, which was the official registration authority at the time, and corresponding land ownership certificates had been issued to the population.⁵

In addition to the privatization of land parcels to the originally targeted privatization beneficiaries, between 2005-2009 the government transferred ownership of 172,000

³ Economic Policy Research Center. 2013. Current State of Land Market in Georgia: Analysis and Recommendations; Association for Protection of Landowners' Rights. 2003. Georgia Country Paper / Land Policy Action Plan. Prepared for the South Caucasus Regional Land Policy Conference, Tbilisi, Georgia.

http://aplr.org/conference/en/country_papers/country_paper_georgia_eng.htm.

⁴ Association for Protection of Landowners' Rights. 2003. Georgia Country Paper / Land Policy Action Plan. Prepared for the South Caucasus Regional Land Policy Conference, Tbilisi, Georgia.

http://aplr.org/conference/en/country_papers/country_paper_georgia_eng.htm.

⁵ Economic Policy Research Center. 2013. Current State of Land Market in Georgia: Analysis and Recommendations; See also Decree of the President of Georgia No. 327 On Urgent Measures for the Initial Registration of Agricultural Land Ownership Rights and Issuance of Registration Certificates to Citizens of Georgia, May 16, 1999.

hectares of arable land that was under lease to its user, and privatized an additional amount of arable land through open auction.⁶ Pasture land, which makes up about 1.8 million hectares of land, was excluded from privatization due to its use as a common resource.⁷

As of this writing, most of the agricultural land classified as arable land in the country has been privatized, meaning that the government made a decision to transfer land ownership to its citizens and then carried out that decision in accordance with the relevant legislation in existence at that time. That said, significant uncertainty remains about how much land remains in state ownership, and it can be difficult for an outside party to easily identify the ownership status of specific parcels of land. Moreover, only an estimated 20-30% of agricultural land is registered in the Public Registry, a requirement for recognition of ownership that was added after most of the agricultural land privatization effort had taken place.

In addition, although privatization efforts succeeded in distributing parcels to almost the entire population, they also contributed to an extreme fragmentation of land. During privatization each beneficiary received from 0.3 to 1.25 hectares of land (up to 5 hectares in mountainous areas). This land usually consisted of 3-4 plots in different locations, rather than one plot.⁸ As discussed below, this has been an obstacle for those wishing to register and protect their rights today.⁹

Turning to the urban landscape, almost all apartments and a substantial portion of the commercial and industrial building stock are now privately owned. The authors made extensive inquiries into precisely how much of the industrial and commercial building stock was privatized as well as the amount of land privatized generally in urban areas, but were unable to locate accurate and precise information.

INSTITUTIONAL ENVIRONMENT

Several government institutions play a role in the recognition and protection of citizens' property rights in Georgia. They are the Public Registry, the Ministry of Economy and Sustainable Development, the National Agency of State Property, the court system, and municipal governments and their land rights recognition commissions. Each institution is described here.

⁶ Association for the Protection of Landowners' Rights. 2010. Final Report: Land Market Development II Activity. 15 December. <http://www.aplr.org/files/2/w5mutpmpfq.pdf>.

⁷ Law No. 1896-RS, 2005, "On Privatization of State-Owned Agricultural Land," Art. 2 (Georgia.); Terra Institute, Ltd. 2005. Final Report: Land Markets Development Project. http://www.terrainstitute.org/pdf/Georgia_LMDP_Final_Report.pdf.

⁸ Terra Institute, Ltd. 2005. Final Report: Georgia Land Markets Development Project. http://www.terrainstitute.org/pdf/Georgia_LMDP_Final_Report.pdf.

⁹ Economic Policy Research Center. 2013. Current State of Land Market in Georgia: Analysis and Recommendations.

1. National Agency of the Public Registry

The National Agency of the Public Registry (“Public Registry”) is responsible for registering property rights. It is a “legal entity of public law” under the Ministry of Justice, and as such has a high level of autonomy from the Ministry and is dedicated to fulfilling the public service tasks assigned to it by law. The Public Registry was established in 2004, and in 2009 assumed full responsibility for registering rights related to immovable property (land and buildings). The Public Registry has 11 regional offices, including one in the new “Public Service Hall” in Tbilisi, at which property can be registered. It also cooperates with more than 350 private entities such as banks, real estate companies, notary offices and others involved in the real property market. These entities have access to the Public Registry’s databases and are authorized to receive citizens’ applications for registration.¹⁰

The Public Registry maintains a “Register of Titles to Immovable Property” for registering a variety of immovable property rights, including: ownership rights; usufruct rights; leases; mortgages; and servitudes (easements). The Public Registry also maintains a “Register of Restrictions Under Public Law” that are imposed by a court or administrative body and a “Register of Tax Liens/Pledges,” both of which have implications for immovable property.¹¹ The Public Registry’s “Register of Addresses” has a bearing on the effective identification of the location of an immovable property object, which is relevant to the registration of the object itself.

The World Bank’s 2013 Doing Business Report ranked Georgia as the easiest country in the world in which to register property.¹² Managers at the Public Registry are proud of this ranking and want to maintain it.

2. Ministry of Economy and Sustainable Development and the National Agency of State Property

The Ministry of Economy and Sustainable Development has two important roles with regard to property rights of citizens. First, the process of expropriating property for pressing public needs requires an order issued by the head of this ministry.¹³

¹⁰ Meskhidze, Ekaterina. 2013. Moving Towards Transparent Land Governance: Land and Property Confidence in Georgia. Annual World Bank Conference on Land and Poverty. 8-11 April 2013.

¹¹ Law on the Public Register (with subsequent amendments), 2008, art. 4. The Public Registry also maintains two other registers that are not related to immovable property: a “Register of Titles to Movable Property and Intangible Assets” and a “Register of Entrepreneurial and Non-Commercial Legal Entities.”

¹² World Bank. 2013. Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises. Washington, DC: World Bank Group. DOI: 10.1596/978-0-8213-9615-5. <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB13-full-report.pdf>.

¹³ Law on Rules of Expropriation of Property for Pressing Public Needs, 1999, art. 2.

Second, matters related to the management of state property, including real property, are the responsibility of the National Agency of State Property. This agency is a “legal entity of public law” under the Ministry and thus, as with the Public Registry, has a high level of autonomy to carry out its duties. State property management is highly relevant to the property rights of citizens because, as described in the problem statement below, flaws and gaps in mapping records have resulted in uncertainty as to what land remains under state ownership. The agency is attempting to clarify what land is state-owned so that it can make management decisions about retaining land in state ownership, privatizing it, and classifying it according to various use or protective categories.

3. Court system

Legal disputes, including those concerning real property, are addressed and resolved through the court system. The court system is defined and guided by two main laws: the Constitution and the Organic Law on Common Courts of Georgia.

Resolution of legal disputes begins in district/city courts, which are “first instance” courts. These courts call witnesses, hear evidence, make findings of fact and conclusions of law, and issue decisions based upon these findings and conclusions. District/city courts have separate chambers for administrative cases, civil cases, and criminal cases. A majority of the property disputes involving the state are heard by judges in the administrative chamber (if an administrative act is disputed), while disputes between two private parties are usually heard in the civil chamber.

If a party to the legal dispute is not satisfied with the decision issued by a district/city court, it can appeal the decision to the appeals court level. The appeals court in the city of Kutaisi hears cases from the western part of Georgia, while the appeals court in Tbilisi hears appeals from Tbilisi and the eastern part of the country. As with the district/city courts, the appeals court has separate administrative, criminal and civil chambers.

The final level of appeal is the Supreme Court of Georgia. As a cassation court, the Supreme Court is limited to reviewing interpretations of the law and does not examine the facts of a case. The Supreme Court does not have to accept all appeals.

Several Supreme Court justices estimated that half of the cases heard by the court system refer to real property disputes in one form or another, and usually involve the Public Registry.

4. Municipal governments and local land rights recognition commissions

The 2007 law “On Recognition of Title to Land Plots Possessed (Used) by Physical Persons and Private Law Entities” provides for citizens to claim ownership of land plots in two situations. The first is when they have a right-establishing document to a land plot that pre-dates the adoption of the law, but that was not registered in accordance with the laws in effect at that time. An example of such a document is a Receive-Delivery Act. The second is when a citizen possesses an “arbitrarily occupied land plot.” The law defines such a plot as one that the citizen occupied before adoption of the law but for which they do not have right-establishing documentation, or a plot that they occupy and that is adjacent to a plot that they do legally possess.

Municipal governments are responsible for reviewing ownership claims to arbitrarily occupied plots, and they discharge this duty through local land rights recognition commissions. The law and its implementing regulation lay out the structure and operational rules for these commissions, and set forth the evidence that a citizen must present to a commission in order for it to approve a privatization request.¹⁴

LEGAL AND REGULATORY ACTS RELEVANT TO PROPERTY RIGHTS OF CITIZENS

This section presents the main laws and regulations that affect a Georgian citizen’s rights to land, and highlights key provisions in these materials. This section provides needed background and context for the problem statement below, but does not represent a comprehensive restatement of each law and regulation. The annex to this report contains a table with a list of all of the relevant legal and regulatory acts. Not all of these acts are discussed in this report’s narrative sections.

1. General recognition to a citizen’s right to property

Georgia’s Constitution is the foundational law establishing a general legal recognition of Georgian citizens’ right to property. Article 21 contains strong language stating that a person’s universal right to property shall be recognized and guaranteed, and includes the right to acquire, alienate and inherit property. It also requires that full and fair compensation be provided prior to the expropriation of property.

¹⁴Law on Recognition of Title to Land Plots Possessed (Used) by Physical Persons and Private Law Entities, 2007, art. 5; Decree of the President of Georgia No. 525 On Rules for Recognition of the Title to Land Plots in the Possession (Use) of Physical Persons and Private Law Entities and the Form of Property Title Certificate, Sept. 15, 2007.

The Civil Code contains the details on the right to property. Most notably, it describes the rights that come with property ownership – including freedom to possess, use, and dispose of land as the owner sees fit – and provides that acquiring property takes place through the making of a written agreement and its registration in the Public Registry (Articles 170, 183).¹⁵

Finally, Georgia is a party to international human rights documents that contain support for recognition of property rights. The country has signed the Universal Declaration of Human Rights, which states, “Everyone has the right to own property alone as well as in association with others,” and “No one shall be arbitrarily deprived of his property” (Article 17). Georgia is also a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which states, “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law” (Protocol 1, Article 1). According to article 6 of the Constitution, international agreements have stronger legal force than national laws if they do not contradict the Constitution. While the Universal Declaration of Human Rights is not an international agreement that creates a legal obligation, the European Convention is such an agreement.

2. Specific recognition of a citizen’s ownership right to land acquired during the post-Soviet privatization period

As described above, from 1992 to 2007 Georgia carried out an extensive land privatization process. Through this process over one million citizens acquired ownership rights to agricultural land. These citizens initially received Receive-Delivery Acts to document their rights, and later received land ownership certificates registered by the State Department of Land Management in accordance with the law that existed at that time. Subsequent to this effort, in 2007 the government adopted the law “On Recognition of Title to Land Plots Possessed (Used) by Physical Persons and Private Law Entities.” This law added a new requirement for the recognition of ownership rights for citizens who had received land through the privatization effort (up until 2007) but not registered it in the Public Registry. The law states that a citizen’s ownership of a land plot must be registered by the Public Registry in order for it to be recognized (Article 4¹). In a sense, this requirement was a restatement of the Civil Code provision that acquisition of ownership rights to real property requires registration (Article 183).

¹⁵ Real property can be acquired by a written agreement executed in a notary office or in an office of the Public Registry. The first option produces a stronger legal document because, as a rule, a notary reviews the content of the agreement. The second option is less expensive and more popular.

This is consistent with a key provision in the 2008 law “On the Public Register,” which states that ownership, usufruct and other rights must be registered in the Public Registry to have legal validity (Article 11(5)). Moreover, the law “On Recognition of Title” outright canceled the right of private law entities to acquire ownership of legally possessed or arbitrarily occupied land if they had not applied for recognition of those rights and had not registered them with the Public Registry before January 1, 2012 (Article 74). These entities could still acquire these ownership rights, but only by privatizing them in accordance with the general rules of privatization in existence in 2012 and beyond.

3. Transfers of property ownership rights

Georgian law lays out the primary means by which ownership to a piece of property can be transferred. The first is through sale. The Civil Code’s rules on sale are straightforward and do not require description here (Article 477).

The second is transfer by gift to a donee. A gift is governed by the Civil Code’s provisions on obligations, which include the requirement that a gift contract be in writing, and that the agreement require the consent of the donee (Articles 323, 524, 525). The Civil Code also provides that a gift can be disallowed if it would “deprive the donor or his dependents of their basic means of support,” and allows the donor to recover the gift “if he/she comes into hardship and is unable to support himself/herself or his/her dependents” and if return of the gift would not put the donee into hardship (Articles 526, 530). Finally, the state can be a recipient of a gift of property. The Law “On State Property” specifically provides that one source of the state property is gifted property (Article 2(h) definition of “property acquired by the state,” and Chapter 5).

Transfers of property by inheritance are guided by an extensive set of provisions in the Civil Code (Articles 1306-1503). Heirs of a decedent’s property are determined through a will or, if a will does not exist, according to the list of heirs described in the Civil Code (Articles 1307, 1336, and 1344). The law “On the Public Register” suggests that inheritance of real property can occur even if that property is not properly registered (Article 10(4)). This would include rights provided under Receive-Delivery Acts.

Finally, the Civil Code provides that property transactions are voidable in certain situations. These include when the transaction was made through deceit or duress, the latter being defined as the use of violence or threats to compel the transaction (Articles 81-89). For example, there have been reports that tax authorities and police threatened citizens with contrived criminal charges for possession of weapons or drugs. To void a transaction made under duress, an aggrieved party must seek to have it declared void

within one year of the detection of the deceit or end of the duress, an unlikely action in cases where the state itself is applying the duress.

4. Abandonment of the property ownership right

A property owner has the right to “abandon” his property. To do so, the owner must prepare a declaration of his intent to abandon the property and file it with the Public Registry (Article 184 of the Civil Code). Once this occurs, the ownership right to the property transfers to the state.¹⁶ General Georgian legal principles hold that, since an abandonment is a unilateral declaration by the property owner, and since there is not another party who must fulfill an obligation with respect to the abandonment, the decision to abandon is irrevocable. There may be an exception if the owner did not have the mental ability to understand the consequences of abandonment.¹⁷

5. Expropriation of property by the state

The state’s ability to use its sovereign power to expropriate property is obviously highly relevant to the question of proper protection of citizens’ property rights. The Constitution establishes the general legal ability of the state to expropriate private property (which must be based on a pressing public need), and the 1999 law “On Rules of Expropriation of Property for Pressing Public Needs” provides extensive details on the rules and process of expropriation. These details include:

- Expropriation is defined as a deprivation of property *with proper compensation* [emphasis added] (Article 1);
- Pressing public needs for which the government can use its expropriation power include transportation infrastructure, utility corridors, mining, national defense, and buildings and other objects that are necessary for public needs (Article 2);
- Pressing public needs also include the “construction of buildings and objects that are necessary for public needs” (Article 2.2(h)). This “catch-all” provision has been used to expropriate land for general investment activities;
- The decision to approve an expropriation request is a two-step process. First, the Minister of Economy and Sustainable Development must issue an order approving the expropriation. The order must explain the pressing public need and identify the “expropriator,” that is, the entity being granted the right of expropriation (the state, a local government body, a public law entity, or a private law entity) (Articles 2 and 3). Second, once the ministerial order is issued, the expropriator must ask a district (city) court for a decision granting the “right to

¹⁶ Law on the Public Register (with subsequent amendments), 2008, art. 14.

¹⁷ Civil Code, 1992, art. 58(3).

expropriation.” As part of this process, the person whose property is at issue must be given adequate notice about the court hearing. The law does not specifically say that the person has a right to participate in the hearing, but such a right would be a reasonable interpretation (Articles 3-5);

- If the court grants the expropriator’s request, the expropriator and the property owner then negotiate the compensation to be paid. The expropriator must commission an independent appraisal of the property before starting negotiations (Article 6). If an agreement on the amount of compensation cannot be reached, the court shall decide the amount (Articles 8-9); and
- The expropriation law does not explicitly require the expropriator to pay the compensation to the owner losing his property *before* transfer of the property to the expropriator. However, Article 21 of the Constitution does require that full and fair compensation take place prior to expropriation.

6. Registration of property and documentation of property rights

Georgia’s modern registration system, which is maintained by the Public Registry, does not capture the land ownership rights that privatization processes established for hundreds of thousands of people between 1992 and 2007. Therefore, the law pertaining to property registration is highly relevant to the question of protection of citizens’ rights to land.

Policy and rules for the implementation of property registration are set out in the Civil Code (Articles 183-185), the law “On the Public Register,” and the regulations “On the Public Register.”¹⁸ Key provisions are as follows:

- A right to property, such as an ownership right, gains validity only upon its registration in the Public Registry (Article 11(5) of the law). In other words, it is the act of registration that creates the legal property right enforceable against third parties;
- The documentation from the Public Registry that serves as evidence of the registered right is known as an “extract” (Articles 9-10 of the law). This should not be confused with a property title certificate, which is a document issued by a local land rights recognition commission to memorialize a decision to privatize a land parcel;¹⁹

¹⁸ Law on the Public Register (with subsequent amendments), 2008; Order No. 4 of the Minister of Justice of Georgia Approving the Regulations of the Public Register, Jan. 15, 2010.

¹⁹ See Decree of the President of Georgia No. 525 On Rules for Recognition of the Ownership Right to Land Plots in the Possession (Use) of Physical Persons and Private Law Entities and the Form of Property Title Certificate, art. 17, Sept. 15, 2007.

- Data in the Public Registry are presumed to be accurate, though inaccuracy may be proved (Article 5 of the law, Article 312(1) of the Civil Code). This is important in situations (referred to as the “overlap” problem) where one party has registered a land parcel to which another party has a privatized but unregistered right;
- The Public Registry will not register rights to a land parcel if that same parcel has already been registered, if cadastral maps indicate that the parcel does not match the boundaries described in the documents substantiating ownership, or if such maps indicate that the parcel overlaps with another to which rights are already registered (Article 21(1)(d) of the law);
- A citizen’s application to register a property right may raise issues that require detailed examination. These could include inadequate documentation supporting the request, potential overlap of the request with an already-registered right, or the failure of the map of the property to meet required standards. In such cases, the Public Registry will “suspend” the registration proceedings for a period of up to 30 calendar days (Article 21 of the law). If during that period “information or a document confirming the elimination of the ground for suspension is submitted,” then the Public Registry will lift the suspension and continue to examine the application (Article 21(4) of the law). This language suggests it is the responsibility of the applicant, not the Public Registry, to find the needed information or documentation;
- Article 23 of the law sets forth the reasons for which the Public Registry will deny a request for registration. These reasons include, among others, the documentation submitted to prove title is not adequate to support the registration request, or the request is for registration of a right that has already been registered;
- The law allows the Public Registry to cancel a registered right (Article 26). Article 61(2)(e) of the General Administrative Code allows such a cancellation if new information is subsequently discovered which eliminates the factual support for the original decision, and if the original decision may entail “significant harm to state or public interests.” This sweeping and undefined language leaves great potential for abuse.

7. Judicial review of property disputes

People engaged in property disputes have a general right under Georgian law to file a lawsuit in a district/city court. This right, found in the Civil Procedure Code, also extends to disputes with state agencies over decisions they have made, as set forth in the Administrative Procedure Code (Civil Procedure Code rules apply in administrative

cases as well unless otherwise stated). Since most property disputes in Georgia currently involve the government, the right to sue the government in a district/city court is especially important.²⁰

A citizen's right to access the court system in the event of property disputes with the government is strengthened by several laws. Article 29(2) of the law "On the Public Register" provides a specific right to challenge decisions of the Public Registry in court, and the law contains several additional references about the court's ability to make decisions that have implications for whether property is to be registered. Article 10 of the decree on the rules for recognizing ownership to a land plot state that the "decision of a [land rights recognition] commission may be challenged before a court according to rules established by law."²¹

The General Administrative Code requires that, in cases involving a state agency, a citizen must first seek to resolve the dispute by using the administrative appeals process. This is done by the filing of an "administrative complaint," the details of which are set forth in the Code.²² However, according to the law "On the Public Register," a citizen can bring a Public Registry-related dispute directly to the court system, without first using the administrative appeals system. This could be an explanation for the high proportion of Public Registry cases in the court system.

Finally, many property disputes seem to revolve around unclear or missing evidence. The administrative chambers of courts in Georgia are not limited to basing their decisions only upon evidence presented by the parties. They may collect facts and evidence on their own initiative in order to make the most legally sound rulings possible.²³

PROBLEM STATEMENT

In recent years, NGOs, journalists, private citizens and others have alleged that the Georgian government is violating citizens' property rights, in particular on behalf of or together with powerful business interests. Specifically, it has been alleged that: expropriation is being used unfairly to seize property; the judicial system's treatment of property rights cases is characterized by a lack of due process and respect for the rule of law; and property registration processes are unfairly applied, fraught with technical difficulties and adversely affecting ownership rights, in particular those given to citizens from 1992-2007, a time that may be called the initial privatization period.

²⁰ Administrative Procedure Code, 1999, art. 2.

²¹ Decree of the President of Georgia On Rules of Recognition of Title to Land Plots Possessed (Used) by Physical Persons and Private Law Entities and the Form of Property Title Certificate, Sept. 15, 2007.

²² Administrative Procedure Code, art. 2(1)(i), 2(5); General Administrative Code, 1999, ch. 13.

²³ Administrative Procedure Code, art. 19.

This section of the report discusses the extent to which these allegations are substantiated. It begins with a discussion of state acquisition of private property, including through expropriation and other means such as gift and abandonment. Then it examines rules, processes and impacts related to property registration requirements and systems. The section continues by assessing court practice vis-à-vis these allegations, and concludes with a review of the extent to which women's rights to property are being adversely affected.

1. Use of the expropriation law

It is appropriate for governments to have the right to take a private citizen's property without his consent for important public needs. But such a taking amounts to an extreme exercise of sovereign power and can inflict significant harm on a citizen, thus such power should be used carefully. This section examines whether Georgia's legal rules governing the expropriation of private property (i) adequately protect private property owners and (ii) are being applied appropriately.

By most standards, the legal rules governing expropriation of private property in Georgia contain the regular protections that should be afforded by such rules. These include a restriction on the reasons for which expropriation may be applied (i.e., pressing public need), adequate compensation of the value of the property paid to its owner, public notice of the state's intent to expropriate, supervision of the proceedings by a court, and the right to appeal.

The question of whether the legal rules on expropriation are being applied appropriately has three elements to it: (i) is the power to expropriate being used in circumstances that qualify as "pressing public needs;" (ii) are the process provisions of the expropriation law being implemented correctly; and (iii) are there situations when the state should use the expropriation law but circumvents it instead. The research for this paper did not uncover any relevant court cases, nor was any anecdotal evidence obtained showing a problem. This lack of information may mean that, when the state decides to assert its expropriation power it is doing so properly, since improper action would have resulted in court cases, in significant publicity or at least in information from legal aid lawyers providing consultation to property owners. On the other hand, the lack of information may suggest that the state is deliberately avoiding use of the expropriation law, and is acquiring the property it needs in other ways that are not as protective of property owners. Either way, it is difficult to make a definitive judgment on the matter.

As a final note, the various protections that expropriation procedures provide for private citizens only apply in situations that involve a "pressing public need." There are

numerous examples of government interests that might not clearly qualify as pressing public needs (for example, the development of hotels in resort zones) but for which the state may seek to acquire property in its role as a market participant, rather than as a sovereign wielding expropriation power. Problems can arise in these situations, as discussed below.

2. Coerced gifts and abandonments

Coerced acquisition, under the color of laws that permit the abandonment and giving away of property, has allegedly been a means by which the government has skirted property rights. As discussed above, laws and regulations permit private citizens to transfer their property to the state through abandonment or gift procedures. These two processes are slightly different, the former being final and irrevocable upon registration and the latter being retractable under certain circumstances.

NGOs, state agencies and others have documented numerous cases of abandonments and gifts in recent years. The Public Registry reported that it registered 1,563 cases of abandonment of property between 2007 and 2011.²⁴ Data obtained from the Ministry of Economy and Sustainable Development indicates that 53 private citizens and legal entities gave 64 pieces of immovable property to the state between 2008 and 2012. Eleven of those cases took place in 2012.²⁵

Although there are some legitimate reasons for which one might abandon or give land to the state (for example, in order to avoid future tax liabilities), it is generally not rational that large numbers of people would freely dispose of their property for no compensation. Cases documented in recent years cast doubt on whether such transactions were truly voluntary and suggest that laws permitting them may facilitate property rights violations.

Numerous cases of gift and abandonment have been grouped in the same geographic areas (including some targeted for major development projects), have been executed within an interval of days or hours of each other and have relied upon the same notary for the processing of the action. In many of these instances, the property had substantial value, and its owners had previously deployed substantial resources in order

²⁴ Association Green Alternative, Georgian Young Lawyers' Association, Transparency International Georgia and the Georgian Regional Media Association. 2012. Stripped Property Rights in Georgia: Third Report.

²⁵ Transparency International Georgia. 2013. Voluntary Gifts or State Robbery? The Years 2008-2012. 12 May. <http://transparency.ge/en/blog/voluntary-gifts-or-state-robbery-years-2008-2012> (see link titled "ENG 2008-2012").

to have it registered. Furthermore, by abandoning their land or transferring it by gift, many of the owners were leaving themselves without a significant source of income.²⁶

The following cases of gift and abandonment, which are well documented in NGO reports, illustrate the doubtful nature of such transactions.

Abandonments in Sairme and Bakhmaro

According to news reports, in December 2010 more than 20 private citizens in Sairme gifted or abandoned 25,137 square meters of property to the state. The majority of them did not have property other than that which they gifted, the properties were located in a tourism region in which they could have demanded a high price, and the incidents had a specific geographic area in common and took place within one to two weeks of each other.

In Bakhmaro, another resort area, 79 acts of property abandonment took place within a two week period in January 2011. Although evidence indicates that there were irregularities in the properties' original ownership certificates (e.g., most of them had been issued to employees of administrative agencies and some were for plots in a forest zone, which is prohibited), the fact that abandonment took place, as opposed to a specified legal process for revoking certificates, is suspicious.

Also questionable is the fact that those who abandoned their land had previously invested significant resources in registering it. They had collected and submitted documents confirming their right to the land plots, notarized witness depositions and paid for cadastral drawings and registration fees.

Source: Association Green Alternative, Georgian Young Lawyers' Association, Transparency International Georgia and the Georgian Regional Media Association. 2012. Stripped Property Rights in Georgia: Third Report.

Relinquishment by gift in central Tbilisi

In the Rike area, where the "peace bridge" leads into a park, former property owners have come forward with claims that they were coerced into giving their property to the state. The property in question was valuable and a significant source of income for the owners, and the state had announced intentions to develop the land. The previous owners have declared an intention to challenge their supposed gifts of land in court, though their property was demolished and replaced with a park in 2011.

3. Inconsistency of application of standards by local land rights recognition commissions

The 2007 title recognition law allows people who have previously existing right-establishing documentation (such as Receive-Delivery acts), but who did not complete the privatization and registration process, to become owners of the parcels for which they have such documentation. The law also allows people who possess plots that meet

²⁶ Association Green Alternative, Georgian Young Lawyers' Association, Transparency International Georgia and the Georgian Regional Media Association. 2012. Stripped Property Rights in Georgia: Third Report.

the definition of “arbitrarily occupied land plots,” but who do not have right-establishing documentation, to have their ownership rights recognized and registered. The law entrusts local land rights recognition commissions with the task of processing these requests for arbitrarily occupied plots. When a commission decides to grant an applicant’s ownership request, it issues a “property title certificate” that the applicant can then take to the Public Registry to register the ownership right.²⁷

Real property attorneys and NGOs have claimed that the local land rights recognition commissions have been a barrier to recognition of private ownership rights claims that are valid under the law. They claim that commissions’ decisions about the documents, records and evidence that one must present to substantiate ownership are often inconsistent or arbitrary.

Recent real property court cases reviewed for this report indicate that there is some merit to this claim. The extent of it is difficult to determine, however, given the number of cases considered and the fact that many petitioners who receive adverse decisions from commissions might not challenge them in court.

Of the 21 court cases reviewed for this report, 13 presented commissions as defendants. Of these at least four, including the one below, provided examples in which commissions denied petitioners’ requests for ownership certificates (or revoked them) where granting them would technically have been legal.²⁸

In March 2008, Nato Khimshiashvili applied to a local land rights recognition commission for recognition of her rights to a plot of land that she had leased since 2001 and then continued to occupy upon the expiration of the lease. The commission provided her an ownership certificate in April 2008 but then revoked it in 2010, claiming that there was a lack of documentation that she had occupied the plot.

Although Khimshiashvili had submitted a land survey drawing, personal identification and witness testimonies certified by a notary public with her application, the commission held that she had failed to submit a “document confirming arbitrary occupation of the land.”

Source: Nato Khimshiashvili vs. Kobuleti Municipality Land Rights Recognition Commission. Batumi City Court. 27 August 2010. Case No. 3-133/11

²⁷ Law on Recognition of Title to Land Plots Possessed (Used) by Physical Persons and Private Law Entities, 2007 ; Decree of the President of Georgia No. 525 on Rules for Recognition of the Ownership Right to Land Plots in the Possession (Use) of Physical Persons and Private Law Entities and the Form of Property Title Certificate, Sept. 15, 2007.

²⁸ Mevlud Dzirkvadze v. Khulo Municipal Council. Khelvachuri District Court. 8 February 2013. Case No. 820310012148388; Nato Khimshiashvili v. Kobuleti Municipality Property Rights Recognition Commission. Batumi City Court. 11 August 2011. Case No. 3-133/11; Gizo Jincharadze v. Kobuleti Municipality Property Rights Recognition Commission. Kutaisi Appeals Court Administrative Chamber. 29 June 2011. Case No. 3/b-461-2011; Valentina Tsimbalenko v. Kobuleti Municipality Property Rights Recognition Commission. Kutaisi Court of Appeals Administrative Chamber. 30 November 2011. Case No. 3/b-958-11y.

According to regulations governing the recognition of title to land plots, a document confirming arbitrary occupation of land can include “a judicial act, an aerial photo, a document confirming subscription, a payment receipt *and/or other documents* [emphasis added].” Furthermore, the same regulations suggest that “a document confirming the arbitrary occupation of a land plot” is not necessary, stating that the former “and/or a witness statement” must be appended to an application for title.²⁹

It is unclear whether this case and others like it represent a pervasive, systemic failure to adhere to regulations, in part because the number of instances in which commissions have decided in *favor* of granting title when faced with similar evidence is unknown. Also unclear is whether such a failure, widespread or isolated, is intentional or inadvertent.

Stakeholders consulted for this report identified numerous factors that may be behind commissions’ seemingly arbitrary denials. Although regulations governing commissions require that they include a representative of the National Agency of State Property and, in Tbilisi, representatives of the Public Registry, some have noted that there are very few requirements for those personnel who staff the commissions and posited that their inconsistency is a function of a lack of specialized knowledge and competence.³⁰

Numerous stakeholders pointed to state influence and a bias in favor of government interest as factors behind commissions’ decisions. According to some, members of local commissions are often reluctant to grant requests for property title certificates because they fear retribution from the state, including in the form of prosecution for alleged negligence. It was also suggested that decisions are based on political expediency, and that there is a relationship between approvals, denials and elections. In five of the 13 commission-related cases reviewed for this report, commissions had granted ownership certificates to petitioners during an important election period and then voided them afterwards. As discussed below, this happened on a mass scale in the village of Gonio as well, where a commission granted property title certificates to residents during a pre-presidential and pre-parliamentary election period in 2008 and then revoked 271 of them later.³¹

To the extent that bias in favor of government interests plays a role in commissions, one cannot gain a sense of its scope simply by looking for decisions with obvious regulatory

²⁹ Decree of the President of Georgia No. 525 on Rules for Recognition of the Ownership Right to Land Plots in the Possession (Use) of Physical Persons and Private Law Entities and the Form of Property Title Certificate, Sept. 15, 2007, art. 11(4)(a).

³⁰ Decree of the President of Georgia No. 525 on Rules for Recognition of the Ownership Right to Land Plots in the Possession (Use) of Physical Persons and Private Law Entities and the Form of Property Title Certificate, Sept. 15, 2007, art. 11(4)(a).

³¹ Transparency International et. al. 2011. Problems Related to the Protection of Property Rights: the Case of Village Gonio. Report Summary.

errors. According to some legal practitioners, the guidance that regulations provide on the types of evidence that can corroborate ownership is loose enough that a commission can appear to be adhering to it even where an outcome is influenced unfairly by a special interest.

4. Property registration system

Stakeholders have claimed that property registration processes are unfairly applied, are burdened by technical difficulties and are adversely affecting ownership rights, in particular those established during Georgia's initial privatization period.

Research conducted for this report determined that there is merit to these claims. More specifically, it found that the following aspects of the registration system contribute to property rights insecurity and violations: the fact that the majority of people who own property have not registered it in the Public Registry; expenses related to registration; competency and state influence within the Public Registry; the occurrence of property "overlaps;" and the possibility of revocation of rights even once registered.

Low levels of registration

As discussed above, registration is the basis for one's ability to realize the full extent of protections associated with the ownership of real property, including those provided under the expropriation law. The registration requirement means that a great majority of Georgia's citizens do not have strong protection because they have not registered their property in the Public Registry. It is estimated that only 40% of Georgia's roughly 3.2 million land parcels are registered. Rates are lowest (20-30%) for agricultural parcels and higher (48%) for non-agricultural land, which is located mostly in cities.³²

A number of practical reasons exist for the low registration rates, and they are described in detail below. In addition to those practical reasons, it is clear that many people have not tried to register their property in the Public Registry because they believe that their rights are already fully protected by law. Many who hold Receive-Delivery Acts distributed during privatization reforms or the follow-on land ownership certificates believe that these documents are sufficient for establishing and protecting their ownership status, and do not know that their property must now be registered in the Public Registry. Moreover, many people have used their land for years without issue, and do not see a need to go through the effort and expense of registration.

³² Economic Policy Research Center. 2013. Current State of Land Market in Georgia: Analysis and Recommendations; Meskhidze, Ekaterina. 2013. Moving Towards Transparent Land Governance: Land and Property Confidence in Georgia. Annual World Bank Conference on Land and Poverty. 8-11 April 2013.

Expense as an obstacle to registration

The Public Registry charges fees for registration.³³ These fees are not onerous. Moreover, legislation no longer requires the use of a notary to ensure the completeness and legality of contract documents transferring real property.³⁴ Instead, citizens can submit their contract documents directly to the Public Registry for registration of real property without notary involvement.

One fee that is significant and cannot be avoided is payment for the cadastral survey. The Public Registry will only register real property whose boundaries and structures are properly described in a cadastral survey. Applicants for registration must pay for these surveys, which typically cost between 200 and 400 Lari³⁵ per hectare or 1 Lari per square meter of land, though amounts can vary depending on whether land is flat or hilly. These costs are particularly burdensome for those who received fragmented parcels during the privatization process, which often resulted in them receiving land that was divided into three, four or more tracts located in different places.³⁶ In theory much of this land was already mapped during the 1992-2007 privatization period, but for the most part these maps are not considered accurate as discussed below.

The “overlap problem” – lack of accessible information on pre-existing rights

The most prominent, systemic and widespread barrier for those seeking to register their property is what numerous stakeholders refer to as the overlap problem. It relates to two different but connected phenomena. The first stems from the fact that the Public Registry has not fully captured and taken account of all rights to real property that came into existence before the Public Registry assumed responsibility for property registration in 2009. As a result, people granted rights during privatization, people attempting to register their property and even those who have already registered (see the Chkholoraia case below) often find that their property has been registered by another party. In many cases, the other party is the state or a business interest to which the state has sold the property.

The National Agency for State Property, which is responsible for the management of state land, claims that it contacts the Public Registry to check for pre-existing rights

³³ Registration of agricultural land is free in certain cases. See Order No. 231 on Regulating Individual Issues Related to Registration of Titles to Agricultural Land Plots and Perfection of Cadastral Data on the Territory of Georgia, June 28, 2012.

³⁴ Notary fees can seem expensive to ordinary citizens, but notaries are still commonly used in Georgia for high-value real property transactions.

³⁵ The exchange rate at the time of this report was USD 1 = GEL 1.65. www.oanda.com.

³⁶ Economic Policy Research Center. 2013. Current State of Land Market in Georgia: Analysis and Recommendations. P. 4; Egiashvili, David. 2011. Georgia Land Governance Assessment Framework: LGAF Implementation and Substantive Findings/Challenges. 18 April.

prior to attempting to register property in the state's name. It acknowledges, however, that clearance from the Public Registry is no guarantee that such pre-existing rights do not in fact exist.

One reason for this is that the Public Registry is currently unable to take account of all relevant records that would indicate that a particular parcel is already titled. In some cases this is because records were destroyed during civil conflict, were damaged during fires or flooding or were not properly transferred to the Public Registry from the institutions that housed them previously. A more pervasive reason is the fact that it is difficult (or impossible, according to some) for the Public Registry to incorporate old paper mapping data into its new electronic system. This is the case whether those data are old land ownership certificates that conveyed title or old cadastral information tied to titles that have actually been registered. Information from old certificates is imprecise and not based on the advanced coordinates system currently in use, making it impractical for the agency to input data and ensure no overlap between pre-existing rights and incoming requests for rights. While it would seem possible for the Public Registry to at least add annotations of approximate pre-existing rights to the new system, some within the institution question whether it has the capacity or mandate to do so.

This problem severely undermines the security of property rights, most notably paper-based rights that are registered and should otherwise have full legal effect. Legally, both paper and electronic registrations are valid. Furthermore, there is no requirement that one must update paper registration with electronic maps. The case below illustrates the impact of this problem.

In December 2007, Merab Chkholoraia registered a plot of land in Anaklia Village that he owned based on a Receive-Delivery Act. His initial registration was for a 0.4 hectare plot with unspecified coordinates. In February 2011, Chkholoraia provided electronic cadastral data and applied to specify his coordinates, but found that his map overlapped with four other properties that had been registered after his initial registration. The registration office halted and ultimately terminated Chkholoraia's proceedings when he failed to present a map that did not contain overlaps.

The court in this case found against Chkholoraia, stating that non-electronic cadastral measurements cannot be considered precise and that comparison between electronic and non-electronic maps is impossible. Despite the fact that Chkholoraia had first registered his plot in 2007, the court found that his claim against those who registered later was groundless because the Public Registry did not have information on his plot. It also stated that, although the plot he registered had the same approximate address and area as the data he attempted to specify later, it could not be established that these were related or the same.

Source: Merab Chkholoraia v. Zugdidi Office of the National Agency of the Public Registry et. al. Zugdidi Regional Court. 30 September 2011. Case No. 3/97-2001.

As further noted in this report’s section on court practice, Georgia’s Supreme Court recently issued a decision that treated this issue differently, finding that the registration of an unspecified area cannot be considered to lack any legal significance and that the introduction of new electronic maps should not result in the cancellation of already existing rights.³⁷

The “overlap problem” – inconsistencies in cadastral and mapping data

The “overlap problem” is also a product of inaccuracies and inconsistencies in cadastral and mapping data. Inaccuracies are present to some extent due to the fact that some older data were intentionally misrepresented at the time they were recorded. Numerous factors have created inconsistencies, including the fact that the state does not have a uniform or comprehensive cadastre and has relied upon different geodetic reference systems at different points in time. Until 2006, the Public Registry and its predecessor agencies used a Soviet-era national grid as a reference. Today, it uses an international UTM (Universal Transverse Mercator) reference system. Unofficially, the Public Registry also references a mixture of field surveys and “office surveys” from maps and aerial photographs. As a result, data from different sources cannot be combined accurately, and gaps and overlaps appear between adjacent parcels when data are entered into a common geo-database.³⁸

Practical challenges aside, some have said that the agency is lacking rules or guidance on how to properly manage discrepancies in information. According to others, regulatory requirements are too rigid and constrain the agency from sufficiently analyzing information. Moreover, there is a requirement that the Public Registry take no more than four business days to provide a decision on any request for registration. While requirements that encourage efficiency are desirable in most situations, for difficult cases this gives the Public Registry very little time to examine records and determine whether claims are already attached to a property in question.³⁹ The law “On the Public Register” does allow for a suspension of registration proceedings for up to 30 days if there are problems with documentation, but it may not apply when the information is already in the Public Registry’s possession but is difficult to assess.

Registration does not guarantee protection

The Chkholoraia case discussed above provides a clear example of the fact that registration, which is the legal basis for full property rights, does not guarantee secure

³⁷ Khatuna Mikeladze v. Tbilisi Office of the Public Registry and Property Management Agency of Tbilisi Municipality. Supreme Court of Georgia Administrative Law Chamber. 8 February 2013. Case No. BS-367-363 (k-12).

³⁸ Meskhidze, Ekaterina. 2013. Moving Towards Transparent Land Governance: Land and Property Confidence in Georgia. Annual World Bank Conference on Land and Poverty. 8-11 April 2013; Interviews conducted for this report.

³⁹ Order No. 509, Dec. 29, 2011.

property rights. Furthermore, it shows that registered rights that are paper-based do not provide adequate protection, despite the fact that they are legally valid and that there is no requirement to update such registrations with electronic maps.

Protections stemming from registration can also be undermined by the revocation of property title certificates. In the cases below, commissions voided private citizens' ownership rights despite the fact that they had found sufficient grounds to grant them earlier and that the owners had subsequently registered their rights with the Public Registry. Of the 21 cases reviewed for this report (13 of which presented commissions as defendants), 6 of them involved scenarios in which commissions voided previously granted certificates.

Between 2007 and 2010, the Khelvachauri Municipality Land Rights Recognition Commission granted property title certificates to residents in the village of Gonio, who then registered their property with the Public Registry. In November 2010, the Commission revoked the certificates of 271 of the residents, citing various reasons including a non-existence of evidence supporting ownership, the plots' location in a cultural heritage zone and their location in a resort strip.

Source: Transparency International et. al., Problems Related to the Protection of Property Rights: the Case of Village Gonio, March 2011.

The Kobuleti Municipality Land Rights Recognition Commission issued two property title certificates to Gizo Jincharadze in May and June of 2008. He had supplied cadastral measurements, copies of identification and testimonies from neighbors confirming that he had occupied and used his land plots since 1990, which the Commission deemed sufficient to establish a claim of ownership. Jincharadze used his certificates to register his properties with the Public Registry.

In December 2010, the Commission voided its earlier decisions to issue property title certificates to Jincharadze, reasoning that it had not had sufficient evidence of the fact that Jincharadze had indeed occupied his land.

Although the Batumi City Court found that the Commission had failed to sufficiently study the factual circumstances of Jincharadze's case, an appeals court ruled in the Commission's favor and found that it was just in deciding that Jincharadze had not presented legally mandated documentation as evidence of ownership.

Source: Gizo Jincharadze v. Kobuleti Municipality Property Rights Recognition Commission. Kutaisi Appeals Court Administrative Chamber. 29 June 2011. Case No. 3/b-461-2011.

5. Court system and practice

In accordance with general civil legal practice, people have the right to appeal decisions made by commissions and the Public Registry to a court.⁴⁰ Statistics shared by the Public Registry suggest that the number of court cases is substantial, with about 25% of registration decisions leading to appeals (either administrative or judicial) in 2008.⁴¹

There is general agreement that private citizens involved in property disputes to which the state is a party have been largely unable to find relief through the court system. Stakeholders suggest there are numerous reasons for this, including a lack of access to legal assistance, costs associated with accessing the courts, undue state influence on the courts, inadequate judicial competence regarding matters relating to immovable property (i.e. land) and an unwillingness or inability on the part of the courts to exercise fact-finding and investigatory powers that they have under the law.

Lack of access to legal services and cost

With the exception of criminal defendants, Georgians are not guaranteed legal representation when coming before a court. Although legal aid organizations offer free legal consultations in some areas, most of the population is unaware of available resources. According to a 2012 survey, 75% of people do not know about free legal aid services provided by NGOs.⁴²

Cost is a barrier to many of those who would seek remedy through the judicial system. In urban areas, one must pay roughly 1,000 Lari in attorneys' fees to reach a court of first instance. Although fees are usually lower in rural areas – typically 200 to 300 Lari – they can be disproportionately burdensome for these plaintiffs, who must not only forego their livelihood to manage the distance and time associated with litigation, but in some cases cover expenses that are multiplied by numerous and scattered parcels of land.

Judicial bias

Costs aside, courts are widely perceived as beholden to government interests, and many potential plaintiffs decide against pursuing claims because they do not believe they have a chance at prevailing. Legal practitioners from both the legal aid and private sectors have described a judicial landscape that (until recently, at least) is biased to the point that “if there is a state interest, there is no court at all.” According to a Public Registry

⁴⁰ Law on the Public Register (with subsequent amendments), 2008, art. 29(3).

⁴¹ Meskhidze, Ekaterina. 2013. Moving Towards Transparent Land Governance: Land and Property Confidence in Georgia. Annual World Bank Conference on Land and Poverty. 8-11 April 2013.

⁴² Open Society Georgia Foundation et. al. 2013. KAP Survey Concerning Justiciable Events in Georgia.

source, all court cases stemming from complaints against the Public Registry require an opinion from the agency's legal division, and courts usually rule in line with the agency's advice.⁴³

Anecdotal evidence does suggest the presence of some judicial bias, though its breadth is difficult to determine. In the example below, a plaintiff lost her case in a situation where one may have expected her to prevail. In her case, the court found in a city's favor based on grounds that would typically lead to a denial if relied upon by a private plaintiff.

In 2006, Batumi City registered property of imprecise coordinates. In February 2011, Lali Bisieshvili registered property based on precise cadastral coordinates with the Public Registry's Batumi Office.

In August 2011, Bisieshvili was informed that her registration was annulled. This was because Batumi City had applied in July 2011 to register an overlapping property based on precise cadastral coordinates. Although the City's application came after Bisieshvili's registration, Batumi City argued that its 2006 registration of property of imprecise coordinates should prevail. Bisieshvili argued that it was impossible for imprecise coordinates to prove an overlap with the property she had registered.

The court sided with Batumi City, reasoning that the imprecise coordinates presented during the 2006 registration and the data presented in July 2011 were not different or incompatible, and that the City's application for registration in 2011 constituted a newly established circumstance that could invalidate an administrative-legal act (i.e. Bisieshvili's registration).

Source: Lali Bisieshvili v. Batumi Registration Office of the Public Registry Agency. Batumi City Court. 27 December 2011. Case No. No. 3-639/11.

With these facts, Bisieshvili found herself in a reversal of circumstances in which one would have expected her to prevail in her claim against the Public Registry. Typically, the party relying upon imprecise coordinates is the private citizen, who may have an old ownership certificate and cadastral information recorded on paper. According to those consulted for this report, the state usually prevails in such situations based on its possession of more precise cadastral data and an argument that imprecise coordinates cannot be compared with new data and prove an overlap. Numerous cases reviewed for this report indicated that this is the usual result.

NGOs are not alone in alleging judicial bias. In April 2013, a former Supreme Court justice claimed publicly that the chairman of the Supreme Court had exerted significant pressure on the bench to decide cases along certain lines (though not specifically in

⁴³ Meskhidze, Ekaterina. 2013. Moving Towards Transparent Land Governance: Land and Property Confidence in Georgia. Annual World Bank Conference on Land and Poverty. 8-11 April 2013.

property matters) and that the head of the Administrative Law Chamber had pressured justices in various cases, including property disputes to which the state was a party. According to her report, she was disciplined unfairly, transferred to another chamber and eventually driven to resign due to her failure to rule accordingly.⁴⁴

By some accounts, bias and pressure are declining following a change in the political landscape that took place as a result of the October 2012 parliamentary elections. Some legal practitioners report that courts have begun reviewing cases differently. For example, in early 2013 a district court showed a willingness to hold local land rights recognition commissions accountable for considering evidence when denying requests for title. In contrast to a number of cases reviewed for this report, this court noted that the commission had failed to hold a repeat on-location examination of the property in question or to provide concrete evidence establishing that the property was to be used for another purpose.⁴⁵

Given that less than a year has passed since the major political changes, it is difficult to assess whether the judicial system has experienced a substantial shift away from bias and being overly influenced by outside pressure. One high profile case is worth noting, however, as it addressed one of the most pressing issues related to property rights – the overlap problem – and undermined the grounds that many lower courts have relied upon in denying the claims of plaintiffs whose rights were registered based on non-electronic data. In February 2013, the Supreme Court’s Administrative Law Chamber issued a decision to return a case to the Public Registry for further investigation. In so doing, it underscored that the agency’s need to conclude registrations quickly (i.e. without fully investigating pre-existing rights) must not be to the detriment of constitutionally protected property rights. It also found that the registration of an unspecified area cannot be considered to lack any legal significance, and that the introduction of new electronic maps should not result in the cancellation of already existing rights.⁴⁶

Regardless of whether state influence on the judicial branch is diminishing, numerous parties consulted for this report claimed that the system’s competence and willingness to exercise investigatory powers continue to affect the extent to which individuals’ property rights are upheld and protected. Stakeholders were not in full agreement regarding competency. While some asserted that judges are often unqualified to fairly decide property disputes and that complex cases of overlap can be especially difficult,

⁴⁴ Khurtsilava, Tea. 2004. Kviris Palitra. The Former Judge Blames Kote Kublashvili. 29 April. <http://www.kvirispalitra.ge/justice/16887-yofili-mosamarthle-kote-kublashvils-amkhels-eqskluzivi.html>.

⁴⁵ Mevlud Dzirkvadze v. Khulo Municipal Council. Khelvachuri District Court. 8 February 2013. Case No. 820310012148388.

⁴⁶ Khatuna Mikeladze v. Tbilisi Office of the Public Registry and Property Management Agency of Tbilisi Municipality. Supreme Court of Georgia Administrative Law Chamber. 28 February 2013. Case No. BS-367-363 (k-12).

others claimed that property cases are for the most part uncomplicated and that competency is not a widespread problem. All agreed, however, that courts are technically empowered with some license to investigate, including by requesting opinions and assistance from experts. While some said that courts do indeed do so, a sample of cases considered for this report indicates that it is not a regular part of court practice.

Numerous parties consulted for this report claimed that despite their fact-finding powers, administrative courts regularly return cases to the Public Registry with an order that it review and consider evidence, despite the fact that the agency is generally unable or unwilling to do so or to arrive at a new conclusion. According to one legal aid attorney, the Public Registry adheres to a rule of resolving requests within four business days at the expense of making a legally sound registration decision. In other words, the Public Registry will reject an application that may take longer than four days to examine. This shortchanges petitioners both at the stage of registration and following judicial review. Where the agency is unable or unwilling to fully consider facts and rights initially, it is similarly constrained when a court returns a case for further consideration.

At least two of the cases reviewed for this report, including the one discussed below, appear to present an opportunity for the courts to exercise greater initiative in examining relevant facts and evidence.

Soso Akubardia purchased and then registered a plot of land in October 2008. He did not present electronic maps of his plot at the time of registration, but applied to register specified measurements based on an electronic map in March 2010. At that point, the Registration Office halted proceedings based on an overlap between Akubardia's property and property that the Ministry of Economy and Sustainable Development had registered in December 2009. At the time of the Ministry's registration, which was based on an electronic cadastral map, there was no indication of Akubardia's previous registration. By the time Akubardia sought to update his registration with specified measurements, the Ministry had sold the property to a company.

Akubardia has appealed his case to the European Court of Human Rights following denials of his appeals in Georgia, where the courts not only held that it is impossible to compare electronic maps with non-electronic, unspecified data, but denied a request by Akubardia to present a former executive of his local municipality as a witness, to bring in engineering-technical expertise and to hold a field visit, on the grounds that this could not possibly establish new circumstances.

Source: Soso Akubardia v. Zugdidi Office of the National Agency of the Public Registry et. al.

6. Assessment of the security of property rights of women

Gender equality is an important factor in the effective use and protection of property rights. When property laws treat women and men the same, and when equality exists in practice, then economic growth can be maximized and everyone benefits. By contrast, gender inequality can be a constraint to economic growth. On a personal level, when one sex faces challenges in the acquisition, use and protection of their rights to property, this can have significant implications on their economic well-being, which in turn affects their ability to provide for their families and have a measure of economic independence.

While gender inequality can hurt either sex, in most countries it is women who have historically suffered because they have less power and because of male-oriented traditions. For example, men are often considered the head of the household, and in that role they exercise a high level of control over a family's economic assets, and have a high level of social authority vis-à-vis other family members.

This section examines whether there is a gender inequality problem in Georgia when it comes to property rights, paying particular attention to how women are treated. It considers the key laws related to property, court practice, and the reality on the ground.

Beginning with the key laws, the Civil Code, the law “On the Public Register,” the law “On Expropriation” and the law “On Recognition of Title to Land Plots” are all prima facie gender neutral: they do not contain provisions that favor the rights of one sex over another. The Civil Code includes a strong statement of equality in a marriage, saying “[i]n domestic relations the spouses shall enjoy equal personal and property rights and shall bear equal duties” (Article 1152). However, a question of conflict between the Civil Code's provisions on community property and the legal provisions on the presumption of the accuracy of registered information may have an adverse effect on the property rights of a husband or wife.⁴⁷

The Civil Code has clear rules on community property. It states that property acquired during marriage is owned by the husband and wife in common, that decisions on its use shall be made by mutual consent, and that it may be disposed of only by mutual consent (Articles 1158-1160). Property owned by one spouse before the marriage, or inherited by a spouse or given to a spouse during the marriage, is that spouse's separate property (Article 1161).

⁴⁷This presumption can be found in the Law on the Public Register and in Article 312 of the Civil Code.

A 2002 Supreme Court case involving a married couple weakened the legal recognition and enforcement of community property rights.⁴⁸ During their marriage, this couple acquired an apartment and registered it in the husband's name in the Public Registry. The couple subsequently decided to divorce. Before the divorce was final – that is, while the couple was still married – the husband sold the apartment to a third party without the consent of his wife.

The wife challenged the validity of the sale in court, asserting that the apartment was common property in accordance with the Civil Code and, as such, her consent was required to sell the property. She lost her case in all courts, including the Supreme Court, which held that:

- Community property of spouses arises only when both spouses are registered in the Public Registry as co-owners of real property. The purpose of this rule is to protect bona fide purchasers of the property;
- A presumption of veracity and completeness applies to records of the Public Registry. A purchaser may rely on records of the Registry, unless it is proven that the purchaser knew about a mistake in the record; and
- The presumption of veracity and completeness is critical for the protection of the market.

As a matter of public policy the Supreme Court had to choose between protecting the integrity of community property rights and protecting the integrity of information in the Public Registry. The Supreme Court chose the latter. Although this decision cannot be said to be at odds with the law, it does reveal a weakness in the legal validity of community property that should be rectified.

Closely related to the conflict of law issue surrounding community property and the Public Registry is the nature of a husband and wife's ownership rights to land acquired during the 1992-2007 privatization era. During the privatization process rural residents – either individuals or households – received ownership rights to residential and agricultural land parcels. The parcels allocated to “households” under the law were listed on the main privatization document (the “Receive-Delivery Act”) only in the head of household's name – usually the husband. As such, it is likely that only husbands were listed as registered owners in the “household” records maintained by the State Department of Land Management, the agency that registered land rights at the time.⁴⁹ The continuing validity and security of these community property rights, which the

⁴⁸ Irma Mtchedlishvili v. Malkhaz Mtchedlishvili and Konstantine Beruashvili. Supreme Court of Georgia. Case No. 3k-932-02. 9 December 2002.

⁴⁹ Terra Institute, Ltd. 2005. Final Report: Land Markets Development Project. http://www.terrainstitute.org/pdf/Georgia_LMDP_Final_Report.pdf.

government clearly intended to grant since the land could be privatized to “households,” is at issue if these rights are registered in the Public Registry. Many of them certainly already are at issue.

Similar issues are likely to exist with regard to privatized apartments and land allocated to city and town residents. The latter beneficiaries received allocations on an individual basis. If they were married when they received those allocations, the land would be considered community property under the Civil Code but not be recognized as such if registered in the Public Registry. In the end, the community property rights of hundreds of thousands of women appear to be at risk.

Research conducted for this report, which included a review of roughly 20 court cases, did not identify any other significant problems regarding women’s property rights or indicate a pattern of discrimination against women. No women had their property targeted for takings on account of their gender, nor was any evidence uncovered suggesting that women’s property rights were excessively affected by state takings vis-à-vis the property rights of men. Problems such as forced gift, registration of property in the state’s ownership when that same property had previously been privatized to a citizen and cancellation of a citizen’s registered right to property happened to both women and men.

7. Involuntary resettlement

In large scale development projects it is not uncommon for hundreds or thousands of people to suffer a loss of income, shelter or access to moneymaking assets that they have traditionally relied upon to survive. To ensure that these people are made whole, the discipline of “involuntary resettlement” has been developed and applied in foreign donor projects over the past 20-30 years. Perhaps the best known and most frequently applied approach to resettlement has been the World Bank’s operational policy on involuntary resettlement, commonly referred to as “OP 4.12.”

A full treatment of the involuntary resettlement question in the Georgian context is beyond the scope of this report. That said, for high mountain pasture areas that have been used for centuries by the local people, there are concerns that hydropower projects will reduce the access of these people to their traditional pastures and thus inflict economic harm. This pasture land is not subject to privatization by the local people, but the loss of this land, which is theirs in all practical ways, would cause economic harm in any event. A state response is therefore needed.

SUMMARY OF CONCLUSIONS

Based on consultations with numerous stakeholders in the legal, nonprofit and government sectors, a review of recent real property cases and an analysis of relevant reports, this section arrives at the following conclusions:

- Determining the extent to which the government may be circumventing expropriation procedures and protections is difficult. For one, circumstances where these procedures are *correctly* applied are challenging to discover, as they likely never reach a court and instead conclude with an out-of-court agreement on compensation. Furthermore, even circumstances rife with violations may remain out of public view given the barriers that much of the population faces in accessing the court system.
- Suspicions that the state may be using other means such as coercing abandonments or gifts of land to acquire property are founded, at least with regard to recent years. Here, too, it is difficult to declare the pervasiveness of the problem. Records indicate that abandonments and gifts were ongoing as of 2012. Although the dates of these most recent occurrences are unclear, there is hope that coercion ceased following the change in government after the 2012 parliamentary elections.
- The local property rights recognition commissions have often failed to grant legally valid requests from citizens to claim ownership of land which they have occupied.
- Although registration entitles people to ownership rights and security over their property, the requirement that property be registered in the Public Registry in order to enjoy full legal protection has created an insecure situation for a large number of property owners. This is due to the fact that most property privatized in the 1990s and 2000s is not registered in the Public Registry – especially village land and agricultural land – and to practical and technical problems in the registration system. Although it is clearly possible for the state to take advantage of insecurities created by the registration requirement and system and has done so on a case-by-case basis, it is not clear that it is doing so on a regular basis as a matter of policy.
- For the most part, people have been unable to turn to the court system for protection of their rights. Costs, a lack of legal assistance, a history of state pressure upon the courts to rule for the state and against citizens and an inability or unwillingness on the part of the courts to exercise fact-finding or investigatory powers all play a role. There is some indication that court independence may be

improving with the change in government following the 2012 parliamentary elections.

- Community property laws are not being followed in the spirit of their intent as written in the Civil Code. This is adversely affecting the property rights of women.
- High mountain pasture dwellers, who rely on land that they have used traditionally but for which they do not have formal rights, could suffer economic harm from having access to their pastures disrupted by hydropower projects.

This summary of conclusions naturally leads to the central question that this report is attempting to answer: are the property rights of Georgian citizens secure? While the study found that it was difficult to determine the scope of violations with precision, the authors conclude that the scope of insecurity is indeed widespread. This is for two reasons. First, the examples of doubtful gifts and abandonments of property and the adverse court cases seeming at odds with the law are sufficient to send a signal that property rights are insecure. Second, registration is the basis for secure property rights, and it is clear that there are systemic practical and technical problems that (i) prevent people from registering their rights and (ii) undermine their ability to rely on rights even if they have registered them (e.g., people who registered rights based on old cadastral data cannot be confident that subsequent registrations will not overlap and cancel theirs).

RECOMMENDATIONS

The recommendations presented here are intended to be realistic and mindful of cost. They offer opportunities for the government and the courts to improve law and practice to better serve the citizens of Georgia with regard to their property rights. The recommendations also identify areas that could benefit from technical expertise and modest funding supplied by foreign donors.

1. Recommendations regarding state acquisition of private property

Georgia's law "On Rules of Expropriation of Property for Pressing Public Needs" is protective of citizens' rights, affording them notice of a proposed taking and a procedure to provide adequate compensation for the loss of rights. However, the legislation does not seem to be used very often, which leads to the disturbing conclusion that the state is likely avoiding using the legislation when it acquires property.

This problem can be solved by the state itself. The Ministry of Economy and Sustainable Development can simply decide to invoke and follow the expropriation law when

property is being acquired for pressing public needs. Even if the state could negotiate property acquisition outside of the law and do so fairly, it should still use the law. The law may be more cumbersome, but its rules are transparent and protect citizens' rights better.

State acquisitions of property do not always meet the standard of pressing public needs, but may be desirable nonetheless. In these cases the expropriation law is not applicable, but several of its procedures could and should be followed anyway. Most notably, the government's intent to acquire private property should be "published in the central and relevant local press" in the spirit of Article 2 of the expropriation law, and should clearly state that, since the proposed acquisition is not for a pressing public need, the property owner is free to accept or reject the state's offer as he or she so chooses. Moreover, the state should pay for an independent appraisal of the property at issue as called for in Article 6, and should pay all costs associated with the transfer (boundary survey fees, registration fees, etc.) as suggested in Article 10.

External pressure can also be applied to ensure that the state treats its citizens fairly when it seeks to acquire their property. JILEP's NGO partners already operate substantial legal assistance programs to help citizens with legal issues, including property issues. Any opportunity that these programs have to engage in potential expropriation cases should be pursued vigorously. Moreover, these programs have represented citizens whose property rights were somehow abrogated in favor of state ownership rights. Such cases could be pursued as expropriation cases in addition to being pursued as inappropriate application of the law on property registration.

Following from the principle that the state should not abuse its citizens when acquiring property, it should amend its internal policy on acquisition of private property to carry out such acquisitions only through purchase. Acquisitions should not be pursued through "gifts" or "abandonment," since the voluntary nature of these methods of transfer is doubtful.

Finally, it is clear that not all legitimate private rights to property are registered in the Public Registry. Hundreds of thousands of citizens received ownership rights to agricultural land and land in villages in the 1990s and 2000s. Most of these rights were properly documented in accordance with the laws at the time, but this documentation was not transferred into the official registration records maintained by the Public Registry. Thus, any state acquisitions of property need to include a full historical investigation to identify these rights and to compensate the owners.

2. Recommendations regarding local land rights recognition commissions

First, steps should be taken to address the obstacles that local land rights recognition commissions pose for people seeking recognition of their property rights. For those who are arbitrarily occupying land, commissions serve as a gateway to the necessary registration with the Public Registry. Obstacles posed by the commissions include an inconsistency in decisions and requirements for documentation of ownership and possession, which many believe stems from a lack of specialized knowledge of property laws and rights. To address this and to improve the commissions' adherence to the letter and spirit of the law, NGO or government stakeholders could prepare a reference manual for the commissions to use when carrying out their work. These stakeholders could also provide related training to the commissions.

3. Recommendations regarding registration of property in the Public Registry

The research effort has concluded that the biggest problem that Georgian citizens face with regard to protection of their property rights has to do with their registration. The Public Registry is an impressive organization, but the transfer of pre-existing rights into the Public Registry's official registration databases has not gone well. As discussed above, it is estimated that only 40% of Georgia's land parcels are registered, in part because many people are unaware of registration requirements and procedures. The problem is multi-faceted and complicated, and has a lot to do with the ability to link the maps that were prepared during the privatization process to fixed reference points so as to determine their positional accuracy.

Three recommendations can be made to address registration problems. First, the public's low level of awareness of registration requirements and procedures must be addressed. To remedy this, the government could conduct an awareness-raising campaign. It should address the risks associated with failing to register or to update maps as well as provide information on possible and supposed barriers to registration (e.g., concerns about land taxes). To bolster such a campaign's effectiveness, the government should consider creating special financial incentives for registration, for example co-financing for mapping costs. NGOs could deepen the impact of awareness-raising efforts by helping publicize the government's campaign or by conducting parallel efforts with similar messages.

Second, the Public Registry has very limited ability to gather facts for making registration decisions. At the present time it simply reviews information submitted to it by registration applicants; it cannot verify the veracity of the information, and its ability

to use information from the privatization archives it inherited from its predecessors – the Bureau of Technical Inventory and the State Department of Land Management – is limited. To remedy this, the rules regulating the Public Registry should be amended to provide it with discretionary authority to conduct field investigations and make more liberal use of its archives when making registration decisions.

In many settings, such authority would be an opportunity for a public agency to engage in corrupt practices. But given the Public Registry’s open nature and pride in performance on the World Bank’s “Doing Business” indicators, it seems unlikely that such corruption would happen to a significant degree, but to be safe the rules providing discretionary authority could be written to expire automatically, say, after three years (e.g., a “sunset” provision).

Third, the only way to gain a true understanding of the nature of the mapping and overlap issues is through a field investigation. A pilot program should be carried out in three to four different areas around the country that have different kinds of property (agricultural land, village land, urban land, commercial buildings, apartments) to work out solutions to the problems and to develop a methodology to address the problem. Some of the things to investigate in the pilot would include the extent to which local authorities have adequate knowledge, and can understand the existing maps, so that owners and plots can be identified; using this same knowledge to identify what land is privately controlled so that the state does not try to assert ownership; and functionality of the local land rights recognition commissions, including ways to address the ownership issue pro-actively, rather than just reacting to requests. Hopefully the solution could include making use of existing maps that were prepared through great effort and expense during the 1990s-2000s privatization efforts.

4. Recommendations regarding court practice on property rights

Two measures would help to improve court practice on property rights. First, city/district courts should make active use of their authority to independently gather facts on real property cases before them. Since half of court cases relate to real property issues, having the courts carry out fact finding directly would have a broad impact and may lead to a reduced caseload over time as decisions become more clear and consistent. Independent fact gathering costs money, of course, so not every case with a factual issue could be investigated. As a first step, the government could allocate a moderate amount of funds to a select number of courts as an experiment to determine their fact-finding efficacy. This could be an area for JILEP action.

Second, in order to ensure accurate application of the law and consistency across jurisdictions, legal, registration, and mapping specialists could prepare a reference

manual to guide court analysis and decision-making on the different types of property disputes commonly seen in Georgia.

Finally, it was striking to learn that, with the change in government in late 2012, the court system's attitude toward property claims brought to them by citizens began to improve dramatically. This underlines the need for ongoing improvement of the independence of the judiciary writ large. Court decision-making should be stable, not shifting depending upon which political party controls the government at any point in time.

5. Recommendations regarding equal treatment of men and women vis-à-vis property rights

A spouse's rights to community property are not secure unless his or her name is listed in the Public Registry. This is detrimental mainly to women's property rights, since historically, documents privatizing land and apartments have listed only the name of the head of the household, who is almost always the husband.

As a matter of policy, the Government of Georgia should actively encourage registration of community property in the names of both the husband and wife. This would fulfill the intent of the Civil Code's community property provisions. A number of measures should be taken:

- The 2010 regulations "On the Public Register" should be amended to require entry of the names of all owners of community property in the Public Register when a registration application is submitted. This should occur regardless of whether all of the names are included on the right-establishing document (land certificate, contract, etc.). Moreover, the Public Registry should be given the affirmative duty to inquire about a registration applicant's marital status and to examine the question in detail if needed;
- For community property that is already registered but in the name of one owner, the Public Registry should encourage that owner to voluntarily amend the registration to include his or her spouse. One way to do this is through a gift agreement, which has the benefit of not being a taxable event; and
- For future privatization of real property, all right-establishing documents transferring land from the state to private parties should include the names of both the husband and the wife. The 2007 law "On Recognition of Ownership Rights to Land Plots . . ." and the presidential decree implementing this law should be amended to specifically require this.

The JILEP project's NGO partners could help strengthen community property rights, and therefore women's property rights, by directly assisting households with registering property in the Public Registry in the names of both spouses. This assistance would be most useful in situations where the land certificate, Receive-Delivery Act, or other right-establishing document lists only the name of the head of household. If a household had a land certificate that included only the husband's name, and asked the Public Registry to register the land in both spouse's name without additional documentation (other than proof of marriage), then the Public Registry would be forced to decide whether the proof of marriage, in conjunction with the Civil Code's legal definition of community property, were sufficient to register both spouses.

If the Public Registry were to refuse the request to register both spouses, then the JILEP project's NGO partners could take the case to court for a legal ruling. If the Public Registry were to grant the request, then the NGO partners could do public outreach work to inform citizens of the opportunity. Finally, it is possible that different Public Registry offices would make different decisions: with the same basic set of facts some offices might refuse the registration request while others would accept it. Ensuring a consistent approach to the issue would be important as well.

6. Recommendations regarding involuntary resettlement

Two recommendations are in order on the matter of involuntary resettlement. First, traditional (customary) use rights of land by people in high mountain pasture areas should be legally recognized. This does not mean that this land should be transferred into their private ownership, only that their right to use the land they have occupied for centuries be respected and, if this use is disrupted, that these people be compensated.

Second, the Government of Georgia should develop a policy on when and how to conduct involuntary resettlement.⁵⁰ Even if full market value of land is paid to a property holder when it is taken, the payment may not be enough to make the property owner whole. Perhaps in 15-20 years an involuntary resettlement policy will not be needed in Georgia, but until that time it will help minimize the harm inflicted upon poor and vulnerable people when they are affected by infrastructure, tourism, or other projects.

⁵⁰ Many bi-lateral and multi-lateral development agencies have fully developed resettlement policies and implementation guidance, so there is ample experience for the government to draw upon. The World Bank's operational policy on involuntary resettlement (OP 4.12) is but one example.

CONCLUSION

Over 20 years have passed since the fall of the Soviet Union and Georgia's emergence as an independent nation. In that time the country has made significant progress in recognizing its citizens' private property rights. Millions of people have become owners of their houses, apartments, and farmland. A new real property registration system has been developed and has received international recognition for its transparency and ease of use.

Even with all of this progress, there remains an undercurrent of property insecurity. Some of it is due to deliberate state action, and some to practical difficulties that may be expected following a transition from central planning to an open market economy. This report describes these reasons and the related problems that need to be fixed and indeed can be remedied. Solutions to these challenges will bring the people of Georgia one more tool – stronger and more secure rights to real property – for building better lives for themselves and future generations.

ANNEX

List of Key Laws
Constitution of Georgia (August 24, 1995, last amended in 2013)
Civil Code of Georgia (1992, with subsequent amendments)
Civil Procedural Code of Georgia (1997, with subsequent amendments)
Law of Georgia No. 820-IIS “On the Public Register” (December 19, 2008, with subsequent amendments)
Order of the Minister of Justice No. 4 “Approving the Regulations on the Public Register” (January 15, 2010)
Law of Georgia No. 5274-RS “On Recognition of Title to Land Plots in the Possession (Use) of Physical Persons and Legal Entities of Private Law” (July 11, 2007 with subsequent amendments)
Decree of the President of Georgia No. 525 “On Rules of Recognition of Title to Land Plots Possessed (Used) by Physical Persons and Private Law Entities and the Form of Property Title Certificate” (September 15, 2007, with subsequent amendments)
Resolution of the Government of Georgia No. 231 “On Regulating Individual Issues Related to Registration of Titles to Agricultural Land Plots and Perfection of Cadastral Data on the Territory of Georgia” (June 28, 2012)
Law of Georgia No. 2349-RS “On Rules for Expropriation of Property for Pressing Public Needs” (July 23, 1999, with subsequent amendments)
Law of Georgia No. 3517 “On State Property” (July 21, 2010)
General Administrative Code of Georgia (No. 2181-IIR, June 25, 1999, with subsequent amendments, with subsequent amendments)
Administrative Procedure Code of Georgia (No. 2352-RS, July 23, 1999, with subsequent amendments)