

Problems and Challenges of Forest Governance in Georgia



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INTRODUCTION

Since its foundation Green Alternative has been working on a problem related to the forest sector in Georgia. Starting from 2000 the organization has been monitoring the elaboration and implementation process of World Bank “Georgia Forests Development Project”¹. Several reports were published in recent years with detailed review of the developments in this sector, the assessment and recommendations on conservation and sustainable management of forests. The situation in forest sector changes so often and is so unpredictable that, for the sake of completeness, we deem it worthwhile to recall the main issues, raised in those reports.

The organization’s report titled “Problems of Forestry Sector of Georgia: Illegal Activities and Legislative Collisions”² contains 2005-2006 monitoring results. The study reviews facts of corruption and illegal actions in forest sector and conducive to them factors; problems of decision-making transparency, weak enforcement of the law; problems of newly set up Environmental Inspection in fighting against illegal logging and possible corruption in this agency; possible corrupt deals at customs for timber export; materials of the journalistic investigation into the supply of firewood in Tbilisi; 2006 legislative chaos that followed the government’s reckless actions related to providing rural population with firewood; separate chapter is dedicated to violations related to issuance of permits on felling in Imereti region the type of chestnut, listed in the Red Book; besides, the report contains the information on the extent of illegal logging on Kolkheti National Park territory.

In the same period a study titled “Analysis and Recommendations Regarding Forest Legislation in Georgia”³ was published. It reviews the forest legislation and institutional structure; factors, conducive to corruption, emerging from legal reform of that period. It also contains recommendation for eliminating the problems analyzed in the study.

In the end of 2008 Green Alternative published its report on “Monitoring Georgian Forest Sector”⁴. Chapter 1 of the report describes chronologically important developments, related to Georgia’s forest sector in 2007-2008; in subsequent chapters these developments are analyzed: the process of “reforming” forest sector in Georgia and elaboration of policy/strategic documents, related to it since 2004 is described, thus demonstrating inconsistency of this process; also described are: unsuccessful attempt of decentralization of forest sector, causes and results of this failure of Georgian government; problems of rural population’s access to forest resources; continuation of the history of illegal issuance of permits for felling chestnut; violations and other problems that accompanied the commercial forest use in that period (issuance both, one year and long-term licenses). The study provides recommendations with regard to the development of forest sector in Georgia and describes in short the results of Green Alternative’s advocacy and successful stories. Besides, several studies have been published on forest conservation and sustainable management, including:

- 2006 - Environmental governance and forestry of Georgia⁵;
- 2007 – Protection and management of biodiversity in: Georgia⁶;

¹ Georgia Forests Development Project <http://www.worldbank.org>

² Problems of Forestry Sector of Georgia: Illegal Activities and Legislative Collisions, 2006, Tbilisi, Green alternative, 46 p. www.greenalt.org

³ Analysis and Recommendations Regarding Forest Legislation in Georgia, 2006, edited by I. Macharashvili, Association Green Alternative Tbilisi, 84 p. (in Georgian).

⁴ I. Matcharashvili, 2008. “Monitoring of Georgian Forest Sector 2007-2008, Green Alternative, Tbilisi, 56 p. www.greenalt.org (in Georgian)

⁵ In: “Environmental governance in Georgia and how the EU can contribute to its strengthening”, 2006, Green Alternative, www.greenalt.org

- 2008 – Decentralization of Forest Sector - manual⁷;
- 2009 –Forestry sector in Georgia, policy brief⁸;
- 2010 – Policy Brief - Does the Georgian Legislation Provide the Protection and Sustainable Use of Biodiversity? ⁹;
- 2011 – Implementation of Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) In Georgia - Alternative Report¹⁰;
- 2012 – Policy, institutional and regulatory gap analysis in the area of biodiversity protection and use of biological resources¹¹.

With present publication Green Alternative continues reporting on monitoring of forest sector. Special emphasis is on the flaws in Georgian legislation in terms of transparency of forest management and public participation in decision-making process.

⁶ I. Matcharashvili, 2007, Protection and management in Georgia, Green Alternative, Tbilisi, p.21 www.greenalt.org (in Georgian)

⁷ I. Matcharashvili, 2008, Decentralization of Forest Sector Manual, Green Alternative, Tbilisi www.greenalt.org

⁸ I. Matcharashvili, 2009, Forestry sector in Georgia, policy brief, Caucasus Institute for Peace, Democracy and Development, Tbilisi, 6 p. www.cipdd.org; www.greenalt.org

⁹ I. Matcharashvili, 2010. Policy Brief - Does the Georgian Legislation Provide the Protection and Sustainable Use of Biodiversity? Green Alternative, Tbilisi www.greenalt.org

¹⁰ Gurchiani T., K. Gujaraidze, 2011 Implementation of Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) In Georgia - Alternative Report, Tbilisi, Green Alternative <http://www.greenalt.org>

¹¹ Environmental policy, institutional and regulatory gap analysis, 2012, Green Alternative.

GENERAL OVERVIEW OF FOREST GOVERNANCE IN GEORGIA¹²

INSTITUTIONAL STRUCTURE

Before the establishment of Soviet regime forests belonged to the State, private owners, churches, villages and communities (i.e. families and clans). After 1921 forest was declared state property and Commissariat for Agriculture was made responsible. During Soviet period the same law for forest sector management was adopted in all the union republics.¹³

In accordance to 1923 law forest were divided into two groups: those managed by the State (urban, assigned and reserves) and local or collective farm forests. The lands under the *kolkhoz* forests were in permanent tenure of the collective farms and were registered in corresponding agencies as forests owned by collective farms. All regulations pertaining to forest use, protection and restoration, provided by the forest legislation, applied to the *kolkhoz* forests. Forestry was run by foresters, supervised and audited by forest inspectors. This system was in force until the end of 20-ies and 5 December 1929 the Resolution on Soviet forestry (“leskhoz”) and Soviet industrial forestry (“lespromkhoz”) was adopted.

In 1930 the forestry and forest industry were united into union Association “Soviet forest industry” (“Sojuzlesprom”) and new period of absorbing forestry by industry started – wide-scale use of forests for industrial purposes replaced sustainable use of forests.

31 July 1931 forest areas were split into two zones: forestry and forest plantations. These two zones were run by two different government bodies. In 1939 special government agencies for forest protection were set up. Even during Second World War government agencies for forest protection and monitoring were being created. In 1947 Union Ministry for Forestry, i.e. independent body for forest management was established. But in 1953 it was abolished and subordinated to Ministry of Agriculture. But Ministry of Agriculture failed to manage forests and 6 years later the agency in charge of forests was separated from the Ministry.

In 1977 “The Foundations of forest legislation of the Soviet Union” was approved, on the basis of which, one year later, all union republics passed their own Forest Codes. In 1978 “Forest Code of Georgian SSR” entered in force and all the forests on Georgia’s territory were managed in compliance with it. In accordance with the Code all of the country’s forests – forests subordinate to forest agencies, assigned forests, forests belonging to former collective farms and state farms, nature reserves - constitute a single state forest fund. In accordance to the Code forests of national importance and collective farm forests in Georgian SSR carried out only water-conservation, protection, hygienic and recreational functions and had minor operational functions. State management in the area of the use, reproduction, and care and protection of forests in Georgian SSR was carried out by Council of Ministers of the USSR, Council of Ministers of Georgian SSR, Councils of Ministers of Adjara and Abkhaz Autonomous Republics, Executive Committees of local Councils of People’s Deputies, as well as forestry State bodies and other state agencies in compliance with legislations of the USSR and Georgian SSR.

Care and protection, and reforestation in Georgia were carried out by State Forestry Department. Forest use was allowed only under special permit – logging ticket or forest ticket of a special form, which was approved by USSR Council of Ministers in accordance with established procedure. Logging tickets or forest tickets were issued by organizations and agencies in charge of forestry. State control over the state, use, reproduction, care

¹² As of 15 September 2012

¹³ Forests nationalization in Russia took place before Georgia’s annexation: 27 May 1918 Central Executive Committee’s Decree on forests was passed, under which private ownership of forests, buildings and equipment of forestry was banned.

and protection of collective farm forests were carried out by Councils of People's Deputies, their executive and administrative bodies, as well as forestry State bodies and other authorized bodies in compliance with established procedure. Forests on the lands transferred to collective farms in perpetuity that were properly registered in land records, were considered to belong to collective farms and the later possessed them perpetually too.

In accordance with the basics of the USSR and Union Republics' forest law these forests were managed by collective farms in compliance with the Regulations on collective farm forests, approved by the USSR Council of Ministers. Collective farms were allowed to manage the forestry jointly with other collective farms, state farms and industrial organizations and institutions in compliance with the order established by the USSR and Georgian SSR legislations. Forestry in collective farm forests was managed by State agricultural bodies. Forestry State bodies helped collective farms in planning and administering the forestry and, if needed, their subordinate bodies carried out works for the protection of forests and forest plantations under the contracts with collective farms. Collective farms that had forests in perpetuate ownership had the right to build industrial facilities, related to forestry management on the territory of the State Forest Fund with the permission of regional or city council executive committees.

Thus, during Soviet period most of the State forests – economic forests - were managed by state agency functioning under different titles in different periods. Forest management entities were forestry, which, alongside with administrative functions (protection, permitting documents) had economical functions (logging, restoration, turnover etc). Basic function of these forests was logging. Reserves and forest-hunting farms were run by separate independent State body (General Directorate of Reserves and Hunting Farms).

There were attempts after regaining independence by Georgia to subordinate all the forests to a single management. For the purpose of establishing forest functions Georgian Government, on 22 September 1992 passed Resolution No.949 relating to the transition to the State ownership of state farms, collective farms and other agricultural enterprises.

On 7 March 1995 Georgian Parliament adopted the Law of Georgian Republic "On Changes and Amendments to Forest Code of Georgian SSR". With this Georgian Parliament in fact approved the first forest code of Georgia. It clearly states that forest in the Republic of Georgia is State property. Unified State fund consists of forests, allocated forests and nature reserves.

Care, protection and reproduction of forests were carried out by Forestry Department of the Republic of Georgia. Since 1997 it was called State Department of Forestry of Georgia. Depending on the topography forests were divided into mountain forests and lowland forests, which in their turn were divided, depending on functionality, protection and economic regimes, into the following categories: reserve forests, arrays of precious tree species and natural monuments, green zone forests, resort forests of near-field zone, protective and production forests of lowlands. Forest regulation was compulsory for all types of forests, regardless of their subordination. Forest management was carried out by the State forest management organization on the basis of a single system.

On 7 March 1995 Georgian Parliament passed Resolution¹⁴, according to which it was decided that a single State Forest Management Body was necessary to be established for improving the grave situation with Georgian forests. For this purpose former collective farm forests and the entire related infrastructure should have been passed over to the Forestry Department within two months. This Resolution could not be fully implemented and part of the forests was not passed over to the State.

¹⁴ Georgian Parliament Resolution No. 671-11s of 7 March 1995 "On Interkolhoz and Municipal Forests"

In 1992-1999 Soviet style of management was still in force in the forest sector i.e. an administrative body, at certain instants, performed economic functions too (logging, forestation etc.) and even received financing from the budget. In second half of 90-ties licenses for harvesting licenses were being issued by Ministry of Environment and Natural Resources Protection, the Forestry State Department was issuing tickets for all other types of logging.

In 1999 the law, governing the relations in forest sector – Georgian Code of Forest - was adopted. Economic functions were separated from forestry administrations i.e. stocking up rights were delegated to private sector. In accordance with the Code denationalization of forests was allowed, provided that special law is adopted. Also, local forest fund, run by self-government was allowed. However no practical steps have been made in either of these directions (privatization, decentralization) up to the present.

In 1999-2004 state forests were managed by State Forestry Department and all appropriate documentation (logging license, agreement, ticket, export permission) were issued by this body. Protected forest (protected areas) was run by State Department of nature reserves, protected areas and game farms. Ministry of protection environment and natural resources participated in general policy making (though it meant nothing in practice), and issued hunting management licenses. Logging remained the main form of forest use, on the basis of 1 year license (or ticket).

As a result of 2004 legislative changes the structure of executive body changed. Cabinet Ministers, headed by Prime-minister was set up. Number of government agencies significantly reduced, the State Department was abolished, Ministry of Protection of Environment and Natural resources was liquidated and Ministry of Environment Protection and Natural resources (MEPNR) was established. Reorganized were State Forestry Department (Forestry Department subordinated to MEPNR was created) and State Department of nature reserves, protected areas and game farms (Department of Protected Area subordinated to MEPNR was created). Central Administration of Ecological Police under Ministry of Interior was abolished. Environmental Inspection - one of the divisions of MEPNR was entrusted to monitor environmental situation. This division was set up on the basis of special law. The Investigatory Department was established with the same Ministry. This department was entrusted with preliminary investigation of criminal offence in the field of environmental protection. Ministry's department of licenses and environmental impact permits was tasked with issuing licenses of forest use. That way all state functions with regard to protection and management of biodiversity (including forest) was fully concentrated at MEPNR.

Subsequent period was characterized by frequent changes in legislation and institutional structure, accompanied with personnel changes. We will stop on some of important institutional changes. In 2007 MEPNR started so called "forest reform", aiming maximum release of the State from forest management functions. Appropriate institutional reform was initiated. Forestry Department was renamed into "Forest Department", its structure changed and central office was reduced, its territorial bodies were reorganized: forestries were abolished and 10 regional forest management administrations were created. As a result, the Department personnel reduced from 1694 to 682, the employees' average wages increased 2.4 fold. Ordinary employee's – a ranger's (former forester was named as "a ranger") salary became about 400 GEL. Each ranger became in charge of about 5 thousand hectares. (Rangers were responsible for cutting short illegal logging, issue-check permitting documents, prevention of forest fires and forest diseases etc.).

In March 2008 MEPNR was denied the issuance of licenses and this function was transferred to Ministry of Economic Development (further on called Ministry of Economy and Sustainable Development). Amount of natural resources (quota), allowed for licensed extraction was determined by MEPNR and approved by

Ministry of Economy. In 2010 public law legal entity Forest Agency replaced Forest Department. The Agency was allowed to carry on certain commercial activity.

In spring 2011 Georgian government underwent significant structural changes. Instead of MEPNR and Ministry of Energy, two other ministries were established – Ministry of Environment Protection (MoEP) and Ministry of Energy and Natural resources (MENR). The following structural entities were transferred to the latter: environmental inspection, investigation department and Forest Agency. Later these entities were disbanded and public law legal entity Agency of Natural Recourses (ANR) was created within the new Ministry. Among the functions of this Agency is the management of forest, hunting, fishing and mining issues (quotas, check the license terms, law enforcement, etc.). Besides, Ministry of Economy and Sustainable Development was denied the function of selling the licenses for use of natural resources and this function was passed over to the ANR.

Agency of Protected Areas (APA) remained with the MoEP. Biodiversity issues that are not related to resource use, is coordinated by biodiversity service, part of the Ministry central office. MoEP is charged with certain functions, referring to biological resources. Quotas of extraction of species listed in annexes of “Convention on International Trade in endangered Species of Wild Fauna and Flora” (CITES) are set by the ANR on the basis of the conclusions of scientific body under the MoEP. In compliance with amendments (08.11.2011 No. 5201) introduced to the Law “On the Red List and the Red Book”, hunting quotas of endangered animals shall be set by Minister of Environment Protection. Ecological expertise (including issuance of conclusion) and issuance of environmental impact permit, also monitoring of conditions of this permit are also within the functions of MoEP. Alongside with MoEP, Revenue Service of Ministry of Finances was granted the function of issuing of CITES.

So, it is clear that the period after 2004 was rich in frequent institutional changes. State agency, responsible for forest management first was included in MEPNR, then licensing function were transferred to Ministry of Economy, then Forest Department was transformed into Forest Agency and, finally, it joined Ministry of Energy and, along with other structural units of MEPNR merged into the ANR.

The ANR has many different tasks. Suffice to say, that Article 3 of the Agency Statue, defining its functions and rights, consists of 69 points. Wording of the final point is very general and indicates that there are much more other functions that are endowed with the Agency. The Agency consists of the following structural entities:

- Forest and wildlife department;
- Mining department;
- Oil and gas department;
- Methodological and informational support department;
- Financial department;
- General inspection;
- Legal department;
- Staff of Agency (with department status);
- Black Sea service;
- Adjara service.

Forest and wildlife department consists of the following entities: Kakheti, Kvemo Kartli, Shida Kartli, Mtskheta-Mtianeti, Samtskhe-Javakheti, Imereti, Guria, Racha-Lechkhumi-Lower Svaneti, Samegrelo-Upper Svaneti administrations. The range of functions is wide, including participation in different activities related to logging (care for the forest, identification of cutting areas, restoration of forests and planting trees, prevention of fires, protection from pests and diseases, establishing and clarifying the boundaries of the forest fund, etc.). Among

the functions of the Department are issues, related to implementation of the Resolution on enforcement of law, control and monitoring, permitting documents and data base, investigation and offences. Its activities are not limited to forestry, but also cover hunting and fishing issues.

It is quite difficult to review and understand these multiple functions: a case from our practice is good confirmation to it – when Green Alternative requested the information on long-term logging licenses for 2007-2008, this documentation could be found at mining department, not at forest and wildlife department. Besides, detailed review of the department's functions would not be important and interesting to the reader, since, to our information, further structural changes are envisaged in forest sector. In accordance with informal information it is planned that forests are transferred to local governments with further transfer of regional administrations from State subordination to local authorities' subordination. More details are unknown even to the Agency staff.

OVERVIEW OF FOREST LEGISLATION

As mentioned above, the period after 2004 was characterized with frequent institutional changes. Still during the period from 2004 to 2008, there were much less legal changes than in 2009-2012. As indicated in last years' studies, the Law of Georgia "On licenses and Permits" adopted by Georgian parliament in 2005 had important impact on natural resources management, including protection and use of forest. Many of the regulations of the Forest Code, as well as of other laws, related to environment protection and use of natural resources became meaningless. In a study, published already in 2006¹⁵ it was mentioned, that the conflict between environmental legislation and the Law "On licenses and Permits" that the latter looks as a foreign body in Georgia's legislative area. It was provided in the Law "On Licenses and Permits" that 4 months after its adoption would be a transitional period for bringing other laws in conformity with it. Issues, emerging during transitional period should have been managed through of Government resolutions. For the management of forest sector Government Resolution No.132 of 11 August 2005 was passed "On approval of regulations of rules and terms of licensing the use of forest". 7 years after passing this 4 months transitional regulation, it, not only is not cancelled, but on the contrary, is more and more referred to for addressing various issues. To date, about 60 amendments have been introduced in it. So, the following laws govern forest protection and forest use issues today:

Law of Georgia "On Environment Protection" (1996) It is often called a "framework law", since it integrates principles and terminology of the documents adopted at 1992 Rio de Janeiro Earth summit and other conventions on environmental protection. This law is general, providing general principles of environment protection and legal terminology. The law applies to the following issues: protection of environment from the harmful effects; improvement of environment quality; sustainable development and sustainable use of natural resources; maintain of biodiversity and ecological balance; protection of unique landscapes and ecosystems; application of certain efforts for solving global ecological problems; determination of rights and obligation of citizens in environmental area; environmental education.

Regrettably, legal acts adopted recently are less and less consistent with the spirit and principles of the Law "On Environment Protection". The situation would be different provided the law is an organic one. In this case it would better serve as a framework of Georgian environmental legislation.

¹⁵ Analysis and Recommendations Regarding Forest Legislation in Georgia, 2006, edited by I. Macharashvili, Association Green Alternative Tbilisi, 84 p. (in Georgian)

Law of Georgia “On the System of Protected Territories” (1996) defines aspects of establishing, development and functioning of reserve territories; defines the bodies, responsible for the management on different levels as well as the activities (to be regulated), allowed or prohibited on the territory of different category reserves. Besides it provides for certain general rules, related the use of natural resources.

Law of Georgia “On Wildlife” (1996) regulated legal relations in the field of protection and use of fauna. The law, along with protection of wild fauna proper, also provides for protection of their habitats, migration routes, breeding sites, ensures sustainable use of wild animals and creates legal basis for it *in-situ* and *ex-situ* conservation. Until August 2005 this was the only law to regulate the issues of use/licensing of animal animals (including fishing).

Forest Code of Georgia (1999) regulated legal relations regarding care, protection, restoration and use of Georgia’s forest fund and its resources. Pursuant to Forest Code the definition of State forest is explained, implying the lands and its resources (forests) legally assigned to the State. The Code also regulated forest fund property rights. At the moment of adoption of the Code whole forest fund was declared State property; denationalization process was to be regulated under separate law.¹⁶

Law of Georgia “On Red List and Red Book” (2003) provides legal definition of Georgian “Red List” and “Red Book” (having recommendation and methodic value) listing Georgia’s endangered wild animals and plants. The law defines the structure of Red List, procedures for selecting species, drafting, approving and updating (revising) the Red List. It also regulates the issues related to endangered species, planning and financing the activities for their protection, extraction, restoration and preservation.

Law of Georgia “On the Fees for Use of Natural Resources” (2004) was adopted on 29 December 2004 and entered in force on 1 January 2005. The law aims at state-owned resources conservation based on the principles of sustainable development of potentials of the environment through establishing the principle of paid use of nature. Amount of the fee is also defined in the Law (for mammals and birds – per individual, for fish and aquatic animals – per ton, bulbous plants and fir cones – per kilogram, for wood – per cubic meter, for fossil – depending on weight or volume, as well as specifics of the resource). The law provides for fee-payment regulations. Fees go to local budget of the region, where resources were extracted. The amount of fees established by law may be used for calculation of damage from illegal extraction of resources (for penalties). The amount of fee can be used for establishing starting price of licenses for the use of nature.

Law of Georgia “On Licenses and Permits” (2005) provides full list of activities subject to licensing and permit-issuance, as well as types of licenses and permits. The following licenses are issued for the use of natural resources:

- License for mining
- General license for the use of oil and gas resources, consisting of: (a) special license for oil and gas prospecting works; (b) special license for oil and gas production. These two special licenses may be issued also independently.
- General license for the forest use, consisting of: a) logging special license; b) hunting special license. These two special licenses may be issued also independently.
- Fishing license (implying commercial fishery)
- License for use for exporting purposes of fir cone and bulbs of snowdrop and cyclamen, listed in annexes to the CITES

¹⁶ Article 9.2: “Georgian State forest fund is State property and its denationalization regulations shall be set forth in the Law of Georgia “On Denationalization of Georgian Forests”.

These licenses are issued through auctions. No other license, related to natural resources is being issued at present. The same Law governs issuance of “environment impact permit” and “permits for export, import, re-export and introduction from the sea of species listed in annexes to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)”

Law of Georgia on Public Law Legal Entity Forest Agency adopted on 6 July 2010. On 11 March 2011 changes and amendments were introduced to this law and it was titled “On Forest Fund Management (No.4419). The Law aimed at creating Forest Agency (to replace Forest Department) defining basic principles of its functioning, organizational and legal structure, authorities and main activities. The objectives of the Agency were to care and restore forest, to ensure sustainable use of biodiversity components on the forest fund territory. The Agency’s functions were: promote determining forest fund boundaries; control forest fund territory; monitor forest fund and create monitoring data base; prepare projects under licensing; care and restore forest; fighting/prevention of fire; issuance of permit documents for forest use, including logging and hunting (except for migratory birds).

The same day, 6 July 2010, the Parliament adopted the Law “On Amendments to the Law of Georgia on Wildlife”, in accordance with which hunting was allowed in Game reserves, managed reserves (protected area, IUCN IV category), other special territories of protected areas assigned for hunting and territories subordinate to Forest Agency i.e. total forest fund. Until then hunting was allowed in Game reserves (farms) and some of the managed reserves. It should be mentioned that it was impossible at that period to introduce changes in bylaws regarding hunting and allocating hunting quotas. Because of this Forest Agency was not able to issue hunting permits.

On 6 July of the same 2010 Georgian parliament adopted the “Law on changes and amendments to Forest Law of Georgia (No.3346-rs)”. These were major and wide-scale changes to the Forest Code. In particular, as a result of these changes were removed from Forest Code important issues that created the foundation of forestry, as well as the foundation of conservation and sustainable use of ecosystems: forest fund cadaster, forest inventory (the requirement, which provided for every 10 years forest inventory was canceled); system and rules of registration of forest fund; assignment of protection mode to categories of forest fund (which provided for special protection mode resort and green zone forests, floodplain forests and sub-alpine forests); forest protection (chapter XII); requirements for forest planning; establishing optimal age of maturity and logging; forestry plantation; use of non-timber resources of the state forest fund; etc. Besides, changes were introduced into the articles providing for public participation in decision making process (see below).

It was decided to declare void all bylaws in force by that time. Instead, the following bylaws of Georgian government were adopted: “Rule of establishing boundaries of state forest fund”; “Rule of forest registry, planning and monitoring”; “Rule of use of forest”; “Rule of care and restoration of forest”; “Rule of awarding the title of honored forester of Georgia”; Order of the Minister of Environment and Natural Resources “On approval of regulations of issuing documents confirming lawfulness and origin of wood”. Some of the above listed acts were adopted in August 2010.

Significant changes were introduced in forest code in accordance with the Law No.4677-is “On Changes to Georgian Forest Code” (17th of May, 2011). In particular the definition of social cutting was introduced (implementation of appropriate arrangements of providing wood for noncommercial purposes to population, budget organizations, legal entities of public law and Georgian Orthodox Church). General requirements for transportation and primary processing of roundwood (logs) were established, timber labeling – registration of log by means of special electronic marker and entering the data to united database – was legitimized. One of the most important changes was the extension of long-term use of forest from 20 to 49 years. So, the

following statutory acts regarding protection of forest biodiversity and use of resources are in force (are used)¹⁷ to date:

- Forest Code 1999
- Law of Georgia “On “Red List” and “Red Book” of Georgia”, 2003
- Law of Georgia “On fees for use of resources”, 2004
- Law of Georgia “On licenses and permits” 2005
- Law of Georgia “On Forest Fund management”, 2010
- Government Resolution “On approval of regulations on the rules and terms of issuing licenses for use of forest” – No. 132, 11 August 2005
- Government Resolution “On establishing boundaries of state forest fund” – No. 240, 13 August 2010
- Government Resolution “On general care and reforestation” – No.241, 13 August 2010, Tbilisi
- Government Resolution “On approval of rules of forest use” – No. 242, 20 August 2010
- Order of the Minister of Energy and Natural Resources “On rules of timber transportation on the territory of Georgia and approval of technical rules for rough conversion of roundwood (logs) facility (sawing shop) No.96, 24 June 2011
- Order of the Minister of Energy and Natural Resources “On development and approval of forest use plan” – No.277, 27 August 2012.

Hunting issues are governed through bylaws of the “Law on Wildlife”, though many of them are either canceled or not applied in practice since, after adoption of this law, institutional structure and legal framework of this sector changed significantly. To date in force are the following bylaws of the “Law on Wildlife”:

- “On approval of rules, terms and the list weapons and devices that are allowed for the capture of animals by their types”;
- “On approval of regulations about “the rules of determining the list of the animals, intended for hunting”;
- “On approval of regulations “On hunting and fishery starting and ending deadlines”;
- “On approval of the list of animals, intended for hunting”.

The latter Order, as is clear from the title, approves the list of animals allowed for hunting (approved by the Order of Minister of Environment and Natural Resources No 18 of 25 May 2009; (registered with Ministry of Justice, registration code 410.030.000.22.023. 013.136). The list of allowed for hunting animals is also approved by the Order No. 175 of 1 September 2011 of Minister of Energy and Natural Resources “On approval of animal species allowed for hunting (except migrating birds)”, issued on the basis of the Law of Georgia “On Forest Fund management”. Moreover, on 8 November 2011 Georgian parliament adopted the Law “On changes to some of the statutory acts”. One of the changes provides, that the following “z” point had been added to Article 116 of Forest Code: “Order of Minister of Energy and Natural Resources “On the list of animals allowed for hunting” to be issued before 1 August 2012”. Thus, we can see the situation, when the same legal relationship (establishment of species for hunting) is governed by three acts.

Rules and terms of CITES permit are determined by Georgian government decree No. 18 of 6 February 2007. Rules and terms of use for export of fir cones and wild snowdrop and/or cyclamen bulbs, listed in annexes to the CITES are governed by Georgian government Resolution No. 21 of 6 February 2007. Thus, pursuant to the legislation the following forest use licenses and permits are in force:

¹⁷ As of 15 September 2012

- Forest use general license, encompassing the following licenses: a) Logging special license b) Game management special license
- Fishery license
- License on use for export of fir cones and wild snowdrop and/or cyclamen bulbs, listed in annexes to the CITES.
- CITES Permit

The following types of forest use are determined by legislation:

- Logging;
- Hunting;
- Use for allocation purposes;
- Use for special purposes;
- Manufacturing of forest wood products and inferior wood materials;
- Removal of fertile soil in forests;
- Use of non-timber forest resources;
- Forest plantation;
- Forest use for agricultural purposes;
- Forest use for resort, recreation, sport and other cultural and recreational purposes;
- Fishery;
- Animal shelters and nurseries;
- Use for non-agricultural purposes;
- Integrated use of forest;
- Placement of communication means;

Besides the above licenses and permits, ANR issues other types of permitting documents (pursuant to the Law “On Forest Fund Management”):

- The hunting permit (except for migratory birds)
- Logging ticket (for social cutting)
- Forest use agreement
- Forest use ticket (issued only for the purpose of removal of fertile soil)
- State forest fund allocation agreement
- Agreement of forest use for special purposes

So, 2009-2012 were characterized with frequent and significant legal changes. For example the Forest Code, adopted by Georgian parliament in 1999, as basic law governing forest sector, underwent 17 changes, of which: in 2001 – 1, 2003 – 1, 2004 – 2, 2005 – 1, 2006 – 1, 2009 – 3, 2010 – 2, 2011 – 6 changes. About two hundred statutory acts, regarding forest sector were passed by Georgian parliament and other government bodies in 2009-2012. More than half of them are normative (legal basis regarding reserve areas, as well as some of that related to hunting is not included).

Frequent were changes to bylaws too. As mentioned above, about sixty changes had been introduced to the Government Resolution No.132 of 11 August 2005 “On approval of regulations on rules and terms of issuing forest use licenses”. 27 changes have been introduced to the Government Resolution No. 242 of 20 August 2010 “On approval of the rules of forest use”, 3 changes – to resolution No.240 of 13 August 2010 “On determining state forest fund boundaries”, 2 changes – to the Government Resolution No.241 of 13 August 2010 “On the rules of care and reforestation”, 8 changes – to the Order by Minister of Energy and Natural Resources “On approval of rules of timber transportation on the territory of Georgia and technical rules for

rough conversion of roundwood (logs) facility (sawing shop). Often these changes offer different in content, and even contradicting regulations.

All the above testifies to inconsistent government policies for the forest sector and stresses again the urgent need for the document governing national policy and strategy regarding forest sector.

GENERAL OVERVIEW OF THE LEGISLATION REGARDING PARTICIPATION IN DECISION-MAKING PROCESS

Georgian citizens' rights regarding state of environment and environmental information are proclaimed by the Constitution – Supreme Law of the country. Besides, public information and participation in decision making regarding the environment, including forest, are provided in different multilateral agreements (international conventions and agreements) ratified by Georgia. These rights and ways of exercising them are specified in Georgian laws. Different bylaws (Presidential decrees, government resolutions, ministers' orders etc.) describe the mechanisms how to implement these opportunities. Citizens' rights in the field of environment cover three key areas:

1. Access to information;
2. Participation in decision-making;
3. Access to justice.

GEORGIAN CONSTITUTION

Citizen's rights regarding state of environment and access to environmental information are provided by p.p. 3 - 5 of Article 37 of Georgian Constitution. p. 3 refers to citizens' rights and obligations in the environment: *"Everyone shall have the right to live in healthy environment and enjoy natural and cultural environment. Everyone shall be obliged to care for natural and cultural environment"*. Point 4 stresses the States' obligations in environmental protection and use of natural resources. *"State, with due regard to the interests of the current and future generations, ensures environmental protection and rational use, sustainable development of the country in accordance with economic and ecological interests of society.* Point 5 defines citizens' rights to receive environmental information and provides, that *"a person shall have the right to receive complete, objective and timely information as to a state environment."* Article 42 of the Constitution provides that everyone has the right to apply to a court for the protection of his/her rights and freedoms.

INTERNATIONAL AGREEMENTS

Pursuant to p. 2 of Article 6 of the Constitution *"The legislation of Georgia shall correspond to universally recognized principles and rules of international law. An international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts."*

Georgia has joined a number of environmental conventions and agreements, covering *inter alia* informing the public and public participation issues.

Convention on Biological Diversity

The Convention on biodiversity pursues three main objectives: 1. Protection and conservation of biological diversity; 2. Sustainable use of its components; 3. Fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

The Convention stresses the role of developing educational and public awareness programs with respect to conservation and sustainable use of biological diversity. The Convention recognizes that there is close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising therein. It also stresses the importance of international, regional and global cooperation among States and intergovernmental and nongovernmental sector for the conservation of biological diversity and the sustainable use of its components.

Article 13 of the Convention touches upon the issues of educational and public awareness programs, providing that Parties to the Convention (i.e. the States that have ratified the Convention) should promote and encourage understanding of the importance of, and the measures required for the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in education programs. Cooperation of all the States and international organization in developing educational and public awareness programs with respect to conservation and sustainable use of biological diversity is important.

The Convention has developed quite a number of guidelines, resolutions, decisions etc. legally binding for contracting parties. Among them noteworthy are “Forest Biological Diversity program”¹⁸ and “Communication, Education and Public Awareness program”¹⁹

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was signed on June 25, 1998 at Fourth Ministerial Conference of UNECE countries “Environment for Europe” in Aarhus, Denmark. That is why it is often referred to as “Aarhus Convention”. The Convention entered in force on 30 October 2001, after it was ratified by 16th State. Georgia signed Aarhus Convention on 25 June 1998 and Georgian parliament, with its Resolution ratified it on 11 April 2000.

In accordance to Aarhus Convention, to contribute to the protection of the right of every person of present and future generations, three key rights are important, since they lead to implementation of all other environmental rights. These are:

1. Access to Information
2. Public participation in decision-making
3. Access to justice in environmental matters

The Aarhus Convention sets minimum standards for protection of the above rights and encourages contracting parties to implement the arrangements aiming at wider access to environmental information and more active public participation in decision-making and law-making, simpler and efficient access to them.

¹⁸ www.cbd.int/forest

¹⁹ www.cbd.int/cepa

Aarhus convention gives the definition of “Environmental information” (Article 2.3.), “The public” (Article 2.4.) and “The public concerned” (2.5.).

“Environmental information” means any information in written, visual, aural, electronic or any other material form on the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components (forest undoubtedly is a biological diversity component), including genetically modified organisms, and the interaction among these elements, affecting or likely to affect the elements of the environment and the state of human health.

“The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organization or groups.

“The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

Officials and authorities should assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.

Access to environmental information

Issues, related to access to environmental information are defined in articles 4 and 5.

All environmental information should be made available to the public. For this purpose the Convention requires that public authorities possess and update environmental information, actively communicate certain part of it, and in response to a request make other information also available.

The Convention does not specify in details the methodology of how to meet this requirement. Instead, it obliges contracting States to develop transparent and efficient system to be able to meet the commitments under the Convention.

Public participation in decision-making process

With regard to second principle of the Convention – public participation in decision-making process – minimum required procedures are set for public participation in decision-making. This principle may be divided into three categories, proceeding from the scale and the nature of participation:

- I category (Article 6) – decisions on specific activities;
 - II category (Article 7) – strategic (policy) decisions
 - III category (Article 8) – decisions on executive regulations and/or generally applicable legally binding normative instruments
-
- Relatively detailed description of the **procedure of participation in decision-making on specific activities (category I)** is provided, starting from activities to which the provisions of this article applies and ending with appealing the decision.

Sub-paragraph 1 of Para 1 of Article 6 provides, that “Each party shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex 1. The fact that “forest sector” or “forest use” are not listed in annex 1, does not mean that authorities can refuse public participation in decision-making on these issues.

Sub-paragraph “b” of Para 1 of Article 6 provides that each party shall “in accordance with its national law, apply the provisions of this article to decision on proposed activities, not listed in annex 1 which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions”. Obligation of the State to ensure public participation in decision-making regarding forest use is provided in Georgian legislation (e.g. Georgian Forest Code etc. see below). Proceeding from the above the procedures provided for in Para 1 of Article 6 of the Conventions should apply to them.

In accordance with Para 2 of Article 6 “The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner”. Further on this paragraph specifies the information to be submitted to the public so that its participation in decision-making is ensured (e.g. public concerned should be able to join the process of decision-making on forest use licenses before the announcement of the auction and before the decision on alienation of license):

- a) The proposed activity and the application on which a decision will be taken
- b) The nature of possible decisions or the draft decision
- c) The public authority responsible for making the decision
- d) the envisaged procedure, including, as and when this information can be provided:
 - i. The commencement of the procedure;
 - ii. II)The opportunities for the public to participate;
 - iii. The time and venue of any envisaged public hearing;
 - iv. An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public
 - v. An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions
 - vi. An indication of what environmental information relevant to the proposed activity is available

The Convention obliges authorities to allocate reasonable timeframe for various phases of public participation procedures, to ensure public participation on early stage, when options are still open and the public can efficiently participate in it. The public has the right to submit any comment, information, result of analysis or idea relevant to the proposed activity at public discussion or in writing. Public agency shall pay due attention to the results of public participation; immediately inform the public on the decision of public agency, allow the public familiarize itself with the text of decision, including the causes and approaches, that made the basis for the decision.

Participation of public concerned in strategic decision-making (II category) is defined by Article 7 of the Convention (*Article 7 Public Participation Concerning Plans, Programs and Policies Relating to the Environment*). It obliges the States-parties to make appropriate provisions for the public to participate in the preparation of policies relating to the environment, within a transparent and fair framework both on the national and local levels.

Pursuant to Article 7 Each party shall ensure the public participation during strategic decision-making. For this purpose the Convention provides that each party shall make appropriate practical and/or other provisions in order that:

- the participation procedure is transparent and fair
- relevant public authorities identify the public which may participate
- early public participation, when all options are open is possible

- necessary information is provided to the public
- timeframe sufficient for effective participation is fixed
- in the decision due account is taken of the outcome of the public participation
- the public can participate, to the extent appropriate, in preparation of strategic documents relating to the environment.

This article of the Convention is not limited to the related to the environment plans, programs and policies. “Relating to the environment” means that the commitments under this article apply to any plans and programs that are likely to impact the environment, including: regional development plans, spatial planning, land use plans, agricultural, transport, energy, health development and action plans, strategic and political decisions in other sectors of economy. This article also implies that changes of national policies, e.g. with regard to forest management and forms of ownership, as well as significant institutional changes influencing environmental management (e.g. transfer of competences relating to environment from one ministry to another, etc.)

- **Public participation in the decisions relating to executive resolutions and normative acts (III category)** is provided for in Article 8 of the Convention (*Article 8 “Public participation during the preparation of executive regulation and/or generally applicable legally binding normative instruments”*). Executive bodies should promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. “Executive regulations” also imply single and/or individual regulations, including the ministries’ administrative decisions on announcing the auctions for long-term licenses for timber and legalization of the auction results). The same Article provides that “the public shall be given the opportunity to comment and the results of the public participation shall be taken into account as far as possible”.

- **Access to Justice.** Article 9 of the convention is titled “Access to Justice”, which states that access to justice for the general public is provided by this Convention”. Any person who considers that his/her request for information has been ignored, wrongfully refused, whether in part or in full, inadequately answered or otherwise not dealt with, shall have access to a review procedure before a court of law or another independent and impartial body established by law. Besides, any natural or legal person shall have access to a review procedure to challenge the legality any decision, act or omission, when: 1) the right of the public participation in decision-making is violated; or 2) contradicts to National environmental law. In this case, members of the public, whether or not harm was caused to them or their interests, may bring an action for violation of environmental legislation²⁰. This Article further explains, that “the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient”. As mentioned above Para. 5 of Article 2 provides that “non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.”

FOREST EUROPE i.e. the Ministerial Conference on the Protection of Forests in Europe (MCPFE)

FOREST EUROPE (the Ministerial Conference on the Protection of Forests in Europe) is the Pan-European political process for the sustainable management of the continent’s forests²¹. FOREST EUROPE develops common strategies for its 46 member countries and the European Union on how to protect and sustainably

²⁰ A simplified guide to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 2006. UNECE, UNEP. <http://www.unece.org/env/pp/>

²¹ www.foresteuropa.org

manage forests. Since 1990, the collaboration of the ministers responsible for forests in Europe has had a great economic, environmental and social impact on the national and international level.

FOREST EUROPE 's key priority is to increase the forests unique potential to support a green economy, livelihoods, climate change mitigation, biodiversity conservation, enhancing water quality and combating desertification. It is important to develop the structure of future cooperation in forest related issues and study the possibilities for negotiating legally binding agreements.

Several non-European countries participate in the work of FOREST EUROPE conferences, as well as international non-governmental and private sector organizations. Spain is FOREST EUROPE Chairman-in-Office at present.

FOREST EUROPE has developed six criteria of sustainable forest management and related to them indicators²². The criteria are as follows:

1. Maintenance and appropriate enhancement of forest resources and their contribution to **global carbon cycles**;
2. Maintenance of forest ecosystems' **health and vitality**;
3. Maintenance and encouragement of **productive functions** of forests (wood and non-wood);
4. Maintenance, conservation and appropriate enhancement of **biological diversity** in forest ecosystems;
5. Maintenance, conservation and appropriate enhancement of **protective functions** in forest management (notably soil and water); and
6. Maintenance of other **socio-economic functions** and conditions.

These criteria and indicators form the guidelines for developing forest sustainable management policies. Similar criteria are set forth by other regional and inter-regional political initiatives. All these documents are in conformity with seven thematic elements of sustainable forest management that are recognized by the UN.²³

Reference Framework (thematic elements) of sustainable forest management. The UN Forest Forum, 2004

1. Extent of forest resources.
2. Biological diversity.
3. Forest health and vitality.
4. Productive functions of forest resources.
5. Protective functions of forest resources.
6. Socio-economic functions.
7. Legal, policy and institutional framework

EUROPE FOREST Ministerial developed guideline principles on public participation in forest sector; the role of the public in sustainable forest development is as follows:

- Increase public awareness of forests and forestry among the public
- Maximize the total benefits of forests (Increased dialogue with the public opens up new possibilities to improve market-oriented delivery of forest goods and services. It enables to keep track of changes in the use of forests and facilitates the integration of these changes in forest management. This contributes to improving multiple-use forestry and to maximize the total benefits of forests.)
- Share costs and benefits in a fair and equitable way
- Enhance the social acceptance of sustainable forest management

²² www.foresteuropa.org

²³ http://www.un.org/esa/forests/pdf/publications/Enabling_SFM_highlights.pdf

Documents of the Ministerial define four major principles of public participation in forest sector:

1. Participation in the development of policies (instruments and plans);
2. Promotion of public participation in specific forest projects;
3. Public monitoring of forest projects and activities;
4. Advisory boards to consider the public recommendation and conflict-management.

To date, MCPFE documents and resolutions are not legally binding documents. However, for improvement of forest policies application of these recommendations would be very useful.²⁴ Besides, as mentioned above, efforts are being made to make this European initiative obligatory one. This idea was supported by Georgian delegation at 2011 Oslo Ministerial Conference.

GEORGIAN LAWS AND BYLAWS

Law of Georgia on Environmental Protection

Pursuant to the “Law on Environmental Protection” The bodies of the state authority, physical persons or legal entities (without distinction of the kinds of property or of organizational legal form) in the course of planning and implementing the activity must be guided by the basic principles of environmental protection. We would like to highlight those immediately related to public awareness and participation of the public in decision-making process.

- “Principle of the Environmental Impact Assessment” – in the course of planning and projecting the activity, the subject of the activity is, under the established order, obliged to take into consideration and evaluate the possible effects on the environment, which may be caused by the activity;
- “Principle of Participation of the Public in the Decision – Making Process” participation of the public in taking important decisions, related to the implementation of the activity is ensured;
- “Principle of Availability of the Information” – information on the state of the environment is transparent and available to the public.

Article 6 of the Law further specifies the citizens’ Constitutional rights regarding environmental protection. A citizen is entitled to: live in healthy and harmless to his/her health environment; enjoy the natural environment; obtain full, objective and timely information on the state of his/her living and working environment; receive environmental and ecological education; raise environmental awareness; enter the public environmental protection organizations; take part in decision-making process and in the examination of this decision in the scope of environmental protection; get the compensation for the damage resulting from the violation of Georgia’s laws on environmental protection; Under the rule of court, demand to change decisions on projecting, building, deposition, reconstruction and use of the units dangerous from ecological point of view.

The General Administrative Code of Georgia

The purpose of The General Administrative Code of Georgia is to ensure the protection of human rights and freedoms, public interests, and the rule of law by administrative agencies. The Code defines the procedures for

²⁴ Public Participation in Forestry in Europe and North America. Report of the Team of Specialists on Participation in Forestry, 2002

issuing and enforcing administrative acts, reviewing administrative complaints, and preparing, concluding, and implementing administrative contracts by an administrative agency.

Pursuant to the Code a person may apply to an administrative agency²⁵ to solve the matters that fall within the area of responsibility of the agency and directly affect the applicant's rights and legal interests (Article 12). An administrative agency shall review the application pertaining to the matter that falls within the area of its responsibility, and render an appropriate decision. The Code also provides that a person shall be enabled to present his/her opinion (Article 13).

The code requires public agencies to designate a public servant who will be responsible for ensuring the accessibility of public information (Article 36) and charge no fee for distributing public information (Article 38). Nobody shall be required to specify grounds or purpose for requesting the information. Everyone may request public information irrespective of its physical form (a copy, electronic version etc.)

The procedures of releasing public information are governed by Article 40: a public agency shall release public information immediately or not later than ten days. If responding to a request for public information is labor-consuming and/or requires acquisition of information from its subdivision that operates in another area, or from another public agency. If release of public information requires the period of 10 days, the public agency shall immediately inform the applicant thereof upon his request. The Code provides, that the information concerning environment shall not be classified (Article 42).

The Forest Code of Georgia

Articles 35 and 36 of the Forest Code of Georgia regulate the issues related to participation of the public in decision making process. Citizens and the representatives of public organizations are authorized to receive full, reliable and timely information on current condition of the State Forest Fund, as well as fully participate in the planning of forest management of the State Forest Fund at any stage. The latter is further specified in Para 3 of the Article, which states, that the entity, authorized for managing the State Forest Fund, shall take a decision on forest use, forest management, issuance of long-term licenses etc. only in consultations with the public.

This responsibility of Administrative Agencies is further specified in Para 1 of Article 36, which provides that the bodies, authorized for managing the State Forest Fund shall consider comments and suggestions made by citizens and representatives of public organizations prior to making decisions. The same Article states that public agencies shall elaborate training programs for raising awareness of the public.

Georgian Government Resolution No. 132 of 11 August 2005 on "Approval of the Regulations on rules and terms of issuance of forest use licenses"

This document establishes the rule and terms of issuing of general licenses, as well as special licenses on timber production and establishment of hunting farms. Certain peaces of it refer to the issues of participation of the public in long-term licenses issuance process.

Article 2¹ sets forth general requirements to implementation of forest use. It contains the provisions similar to those of Articles 35, 36 of the Forest Code of Georgia requiring the national agencies to begin public administrative proceedings to determine the area and amount of wood resources to be licensed. Pursuant to Para 5 of this Article, Administrative Agency authorized for managing the State Forest Fund shall begin public

²⁵ Administrative agency – any state or local self-government agency or institution, legal entity of Public Law (except for political and religious associations)

administrative proceedings to determine the area and the amount of wood to be cut in selected for long-term forest use; this information shall be published on the web-page of administrative agency, authorized for managing the State Forest Fund.

After the Public Agency authorized for managing the State Forest Fund takes the decision on issuance of forest use license, pursuant to the “Law of Georgia on Licenses and Permits”, an auction for general and special licenses shall be announced (Article 4. Rules of issuing general and special licenses). The decision on the form of auction shall be taken by the ANR. Electronic auction is held on the Agency web-page or on www.eauction.ge. The Agency announces about the auction by passing appropriate administrative act, to be published not later than 1 month prior to the auction. ANR shall publish the announcement on the auction in central media. In case the auction is electronic, the announcement shall be published on the Agency web-page or on www.eauction.ge

Terms of long-term license is approved by these Regulations (Article 8). All licenses shall be issued under similar terms. In accordance with legislation additional terms shall be laid down only in accordance with law. Some of the terms are related to the right of local population. In particular, Para “t” requires the owner of the license to not prevent local population to pick berries and fruit, mushrooms, medicinal herbs and other forest non-timber products (other than the species listed in the Red Book) free. Use of the licensed territory for tourist and recreational purposes is not prohibited either.

Para “x” and “y” of the same Article provide for the responsibilities of a licensee in respect of labor rights of workers hired. It is stated that the licensee’s operations shall be carried out mainly (80%) by the local hiring. Labor agreement shall be signed with the personnel (description of work and indicating the place of residence of hired workers). These agreements shall be presented to controlling bodies on demand. These provisions are important not only for local population and the employer, but also allow independent controlling persons and NGOs to make documentary verification of the licensee’s compliance with the commitments under the license. A licensee must submit for approval to the ANR no later than 12 months after receiving a license, plan for forest use, prepared in accordance with applicable law.

Order No. 277 of 27 August 2012 of Minister of Energy and Natural Resources of Georgia on “Approval of developing and approving rules of the forest use plan”

This Order defines the rules of developing and approving of “forest use plan” (management plan) by long-term licensee. The plan shall reflect care, protection, reforestation and forest use arrangements for 10 years, which are binding for the licensee. The plan shall be developed on the basis of forest fund inventory and the licensee shall draft it. Approving procedures are set forth in Article 2. It provides for the deadlines of publishing, presenting the comments by the interested parties, considering of the comments and introducing corrections to the plan:

Article 2. Procedures for approval of the plan

1. Public law legal entity”, ANR” (further on – Agency), shall publish draft plan on its official web-page no later than in 5 calendar days after it had been presented for approval.
2. 15 days after publication of the Plan on the web-page interested persons are eligible to present to the Agency their comments and recommendations regarding the Plan. After this period the comments shall not be accepted.

3. In three days after the deadline provided for in p.2 of this Article the Agency shall consider the comments and recommendations of interested persons, and in 5 days after that hold discussions with participation of interested persons and the authors of the Plan.

4. The Agency is authorized to submit the comments to the licensee with the view of reflecting them in the plan at any stage of the discussions

5. Provided the licensee reflects the comments in the plan, the Agency approves it in 35 calendar days after its submission. In case the comments are not reflected in the presented by licensee plan, the Agency returns it to the licensee in 30 calendar days after its presentation. The later shall within three months present the plan with due amendments on the basis of the comments (in this case the plan goes through all the procedures provided by this Article).

6. When 30 days deadline's last day falls on days-off or a holiday, next work day shall be deemed the deadline.

7. When necessary and with appropriate justification, it shall be possible to introduce changes and/or amendments to the plan (introducing changes and amendments does not need the procedures provided by p.p. 2, 3, 4, and 5 of this Article). The amendments as per the present paragraph shall be introduced into the plan as appropriate within 30 calendar days after submission.

Law of Georgia on the System of Protected Areas

Alongside with the territories, granted under licenses, the population shows interest in how the protected areas are managed (currently protected areas of Georgia cover 511123 hectares, which is about 7% of country's total territory, of which 75% is covered with forest²⁶).

The decision on protected territories shall be taken by the Parliament. Law shall be passed in order to establish protected territory. Protected territories shall be managed in accordance with the management plan, to be approved by Minister of Environment.

Basic law, governing the system of protected areas is the Law of Georgia "On the System of Protected Areas" (1996). In accordance to this law founding of protected areas serves to preserving for future generations the natural and cultural environment and its components, protection of human mental and physical health and creation of one of the major foundations for civilized society development.

The law provides for the right of population and representatives of public associations to participate in the decisions regarding to founding, development, reduction and abolition of protected areas as well as in adoption of management plans, etc., (Article 22). Regrettably, mechanisms of exercising these rights are not perfect. Article 21 of this Law provides for establishing scientific and advisory boards for the protected areas to cooperate with interagency bodies and local governments. Unfortunately this mechanism is inactive in practice.

²⁶ APA web-page www.apa.gov.ge

Order No 39 of 22 August of 2011 of the Minister for Environment “On the stages and procedures of methodology for developing the structure, contents and thematic parts of management plans for protected areas”.

The methodology of developing the structure, contents and thematic parts of management plans for protected areas was approved by an Order by Minister of Environment. One of the stages of development of management plan is public hearing (Article 11). Regrettably the hearing procedures are not established which makes it difficult for public participation in decision-making on this key issue.

Thus, in accordance with Aarhus Convention and the General Administrative Code of Georgia, any person may request environmental information from any administrative agency; Besides, all have right to appeal, in administrative order or by the law of court, infringement of his/her right of access to information, as well as the violation of environmental law; each may require a full and adequate participation in decision-making on the issues related to the environment. The Convention has legal prevalence with regard to domestic laws of Georgia. Hence, regardless whether or not public participation mechanisms are provided by Georgian legislation, these rights are guaranteed by international agreements.

RECENT PRACTICES OF PUBLIC INFORMATION, PARTICIPATION AND JUSTICE

Recent practices of public information, public participation and justice related to forest protection and forest use, are reviewed and analyzed in this chapter²⁷. For this purpose several aspects of forest management will be considered: development of the forest policies and legislation, Public participation and awareness raising, decision-making, long term license issuance practice, hunting issues, establishment and management of protected areas.

As already mentioned, Georgian citizens’ rights and obligations, as well as the State’s responsibilities regarding environment protection are recognized under the Constitution of Georgia adopted in 1995. In October 15, 2010 another amendments were introduced in Georgian Constitution, touching upon Article 37 too. However, it did not undergo any essential changes, and the new edition is granting even wider rights to the public: under Para 5 of Article 37 a person shall have the right to receive a complete, objective and timely information not only as to a state of his/her working and living environment, as provided in the old version. Besides, Para 4 of the same Article is better worded and introduces the notion of “sustainable development” into the Constitution. The State is charged with ensuring the principles of sustainable development. Here we would like to highlight the procedure of implementing the changes in regard of this issue/article. Draft Constitutional changes submitted for public discussion did not provide for amendment to Article 37. Only after the approval it turned out that it also underwent the changes without prior discussions. This again indicates to no transparency of decision-making in environment related issues. Besides, we would like to mention again that the public’s right to information about the environment is specially stressed in the Constitution. Hence, there are no constitutional barriers to implementation of international conventions on the environment, ratified by Georgia.

²⁷ More generally this problem is reviewed in Green Alternative’s “Alternative report (2011) on implementation of Aarhus Convention in Georgia”

FOREST POLICY AND FOREST LEGISLATION DEVELOPMENT

Forest reform has been an issue of active discussions since 1990-ies. But, regrettably no national forest policy or forest strategy document has been adopted to date, which is one of the major impediments towards successful reform. Forest policy development process was initiated several times and never finalized. Several draft projects and concepts on “Forest Sector Reform/National Forest Policy” were developed and none of them adopted as an official document (approved under legal act). Each time institutional and personnel reforms preceded (so called “Forest Reform”) and then development of national forest policy started. Development of the “forest policy”/“forest reform” usually meant applying it to already existing personnel or the decisions on industrial use of forests. The nature of “forest reform” depended on structural changes in the government, and what is worse, on personnel policy at Head of forest department level. Public involvement in forest policy elaboration process was weak and, respectively transparency of draft projects developing process was insufficient. In any case it was under strong pressure on the side of NGOs that the documents’ accessibility and public discussions could be arranged.

Basic aspects of forest reforms and forest policy development attempts until 2009 will be touched upon briefly here. More detailed review of these issues can be found in Green Alternative’s previous years studies. More deeply we will review the years 2009-2012²⁸.

First model of forest sector reform was drafted in 2003 within the World Bank “Forest Development Project”. State Forestry Department (not subordinated to any Ministry) was responsible for forest management. The reform implied establishment of a commercial body to carry out economic activities²⁹. Only after that the project got United Nations Food and Agriculture Organization (FAO) grant for developing National forest policies.

In 2004 Forestry Department prepared draft reform concept. The parties concerned did not participate in this process; moreover, the concept had not been discussed with the MEPNR, to which the forestry department was subordinated. The essence of the reforms was the following: a public joint stock company with 100% state share would be established to become an authorized body (commercial structure) responsible for forest management. The joint stock company would carry out its business activities under Georgian law; forests would be split into different categories depending on their purpose and functions – high category, high productivity and protective forests. By ownership forests would be divided into community, municipal and state forests; forest use form would be long-term lease, with possible further transformation into private property. Besides, log storage would be established. Similar management model is used in most of Europe. However, the reform failed to properly consider important economic, social and ecologic issues. In fact, this was a modified version of the document developed within the World Bank project.³⁰ In the same period the World Bank project was working on development of forest policies.

Simultaneously, “Georgia’s Biodiversity Strategy and Action Plan” was being developed, which later was approved under Government Resolution (19.02.2005, No.27). One of the chapters of this document is called “Sustainable Forestry”. “Georgia’s Biodiversity Strategy and Action Plan” sets forest related strategic objectives and targets, but no action plan is there in order to avoid duplication of the World Bank project. Regrettably

²⁸ See Green Alternative’s publications at www.greenalt.org/publications

²⁹ “Forest Sector restructuring project” was drafted within WB Forests Development Project and submitted to the government in September 2003.

³⁰ The model was developed by Bidzina Giorgobiani, former Chairman of Forest Department but rejected by Kakha Bendukidze, then the Minister of Economic Development. In early 2005, after the death of Prime-Minister Zurab Zhvania, the leadership at MEPNR changed, Bidzina Giorgobiani was detained by Constitutional Security Department and charged with abuse of power (later was convicted in absentia). He fled from Georgia and was granted political asylum in Germany.

the World Bank terminated “Forest Development Project” due to noncompliance of the Georgian party to its pledges under the Agreement³¹

After 2005 change of Forest Department leadership, the reform accent again changed. New concept document – “The Position of Georgian MEPNR Regarding the Management and Use of State Forest Resources” was published in the beginning of 2006. In accordance with this document long-term leasing of most of the forest resources to private sector was intended. Later, this long-term lease would be transformed into private ownership. African and South American, Asian countries, together with Russia and Canada were listed among model countries. Essential difference from previous reform was as follows: no state commercial body would be established, since it was deemed a corruption source and potential monopolist structure. There were many shortcomings in this concept: it was not defined who would manage not leased forests, conservation measures, delivery of wood to population for direct consumption etc. The document contained some interesting and noteworthy moments but the problem is that the planned arrangements/future plans were not adequate to the results of the discussions and analysis. Absolutely unrealistic activity plan was attached to the document. The reform concept was heavily criticized as weak and finally rejected. NGOs criticized the document discussion procedure (transparency issue) too.

In early summer 2006 a group of experts set up by the Ministry worked out “Georgian Forest Policy Concept”. After the adoption of this document Georgian forest policy and strategy developing was intended. Neither this time was public concerned involved.

In autumn 2006, as a result of next in turn a change in personnel, new document – “Georgian forest policy and strategy” – was published. This was a compilation of two previous documents – “The basics of Georgian forest policy” and “Reform concept” disseminated by the Ministry in early 2006. This document was also criticized by NGOs; later it was totally forgotten.

In 2007, some months after initiation of so called “forest reform”, MEPNR, through advocating by donors and NGOs resumed its work on forest policy document. In summer 2007 public hearing of the document started. The document was called “Georgian forest policy”. According to the document following forms of forest ownership would be set up:

1. State owned forest areas. Part of them would be passed over in long-term lease for logging, hunting and tourist/recreation purposes through auction
2. Forest fund run by Autonomous Republics
3. Forest fund run by self-governments (municipal forests)
4. Forest fund run by the Patriarchy

The State was supposed to shift the focus to forest use licensing. It was declared that FSC requirements would be introduced for development of sustainable forest area and fulfillment of international commitments (normally these requirements are applied to voluntary certification, not to compulsory licensing, as intended by Georgian government. A number of long-term logging licenses were issued under these licensing terms, but in two months after issuing the license this term was canceled).

Georgian Prime-Minister, in his annual report in September 2007 stated that the government had approved “Georgian Forest Policies” document and would submit to the Parliament for approval. However the document did not go to the Parliament and the government had not passed any act on approving it.

³¹ See details “Georgian Forest Sector Monitoring 2007-2008

In summer 2007 development of new forest code started and in the end of the year the draft for public discussion was published. In January 2008 the Ministry hosted only one discussion after which the work was paused and the paper was buried.

In the end of 2008³² Goga Khachidze, new Minister of Environment and Natural Resources, declared upcoming significant changes in forest policy. The new approach implied creation of state forestry unit (State Corporation with limited responsibility or a stock company) to whom part of state forests would be transferred for management. Pilot projects were intended for implementation in several regions. It was declared that groups of 20 people each would be set up to carry out the overall forest inventory during one year.³³ The Minister made a statement on after inventory separation of local forests, but before, it was important to carry out forest inventory, precisely define the rights of self-governments and to set up forest use regulations.

In March 2009 MEPNR published a document “A concept on future development of Georgian forest sector”. This two page document had been repeatedly discussed with NGOs, research organizations and experts; several presentations to donor organizations were carried out. Final version of the document provides that Georgian forest sector development aims to set proper balance between protection and use of forests for which it is necessary: to improve legislation, make an inventory of forests, voluntary certification, create updated information system, improve forest management, train human resources in forest sector and protect forest biodiversity. The latter implies preserving forests with high conservation potential, expanding the network of protected forested areas, enhancement of forest protection and reforestation activities.

Although the Minister personally, and the Forest Department widely popularized this document, it had never been approved and no policy and strategy development, or forest reform started on its basis. The process must have had two purposes: 1) Temporary suspension of NGOs’ and experts’ criticism. They required the development of a document that defines the course of the reform, and 2) to make some grounds for requesting new financing from the donors (e.g. to “revive” above mentioned FAO project, where unspent about 250 thousand USD were suspended by World Bank due to termination of “forest sector development project”).

In the same period another campaign in support of development of “Environmental Code” was initiated by the MEPNR. Part of the Code was forest law.³⁴ Draft Code was published and sporadic, unstructured discussions were held. This work did not lead to any results either. However the Ministry repeatedly mentioned environmental code in its official reports; as a rule the Ministry recognized the shortcomings in their work and in the law, and believed the adoption of new code³⁵ the main possibility of redress.

Alongside with Forest Department, the Ministry’s policy regarding forests was implemented by Environmental Inspection. The Ministry and the Inspection had declared merciless fight against illegal logging and corruption. Under this pretext the structure and leadership of Environmental Inspection changed in the beginning of 2009, and jobs tender was announced³⁶. Public relations strategy aimed at reforming the environmental inspection, recruitment of new personnel with “clean CV”, transparency of recruitment etc. Regrettably these efforts (“PR campaign”) resulted in the collapse when top officials of environment inspection – Nikoloz Chimakadze, Head of Inspection, and deputy of enforcement unit Kukuri Rukhaia – were detained 4 November 2009 on charges of extorting money from businessmen. In accordance with the statement on MEPNR’ web-page “police

³² In 2006 replacement of one year forest use licenses by 20-year ones started. In the end of 2008 13 long-term (20 years) licenses were in effect.

³³ See www.moe.gov.ge for the Minister’s statement on a new forest reform program

³⁴ Development of Environmental Code was the UNDP project

³⁵ See Georgia’s national reports to Aarhus and Biodiversity Conventions

³⁶ “The tender will be open and transparent” http://moe.gov.ge/index.php?lang_id=GEO&sec_id=40&info_id=1053

unraveled corruption scheme in logging business”³⁷. After this incident all Environmental Inspection top management wrote letters of resignation on their own will. This had adverse effect on the Ministry’s further activities.

As it was mentioned, in July 2010 important and wide-scale amendments were introduced in forest legislation. MEPNR worked on these amendments in absolutely nontransparent mode, without public participation. A package of draft laws was discussed in the Parliament already in the beginning of March 2010.³⁸ The public was informed about these amendments in the end of June 2010. On 30 June public discussion on Forest Department project (transforming of Forest Department into legal entity of public law and appropriate amendments to legislation) was held at “Ambadori” hotel, where all Department officials participated. The discussion was attended by representatives of NGOs and different divisions of MEPNR. Later it became clear, that this discussion was just a formality (the purpose of the discussion is not clear, as well as why the money for its organization was spent) since the discussions of draft laws at the Parliament had been over by then (finally the Parliament adopted it on 6 July 2010). The Ministry’s this activity can be called nothing but deception. In 2009-2010 information on the Ministry and Forest Department web-pages was being updated regularly, but there was no indication about wide-scale change of forest legislation and policy. The changes, adopted in gross violation of the law on public information and participation in decision-making, had even worse results, when natural resources’ management was passed over to Ministry of Energy.

As mentioned in chapter 3, right after establishment of Forest Agency it was decided to declare all by-laws void and to put all forest management issues in four Regulations approved by the Government. On 20 July 2010, hotel “Ambadori” again was the venue of the meeting with participation of Forest Agency, Environmental Inspection, Ministry of Agriculture, NGOs and FAO representatives³⁹. The meeting aimed to discuss the above regulations. However, their texts were not disseminated prior to or at the meeting. The regulations were approved by the Government on 1 August so that the public did not have an opportunity to acquaint with the draft or to comment on it.

Development of national forest policy was further hampered by detentions of Forest Agency officials on 17 December 2010. In accordance with the information published, Prosecutors Investigation Department and the Constitutional Security Department, in a joint operation, detained Papuna Khachidze, Chairman of Forest Agency and Giorgi Baghaturia, head of geo-information service of the same Agency on charges of money laundering, illegal income and bribery.⁴⁰ Deputy prosecutor David Sikharulidze and chief of investigation Zaza Qachibaia commented on this case. According to them “these people abused of office for long time, lobbying different companies in state procurement and logging licenses”⁴¹.

President Saakashvili immediately responded to this fact, chairing the meeting of Government in Sataplia cave.⁴² Saakashvili stated that only in forest sector, where corruption facts are still frequent, the government fails to introduce law and order. He charged the government with presenting the Ministry reorganization plan. There he also outlined the reform and future structure of the Ministry: *“I have no doubt that forest sector is*

³⁷ http://moe.gov.ge/index.php?lang_id=GEO&sec_id=40&info_id=1279

³⁸ www.parliament.ge

³⁹ <http://www.forestry.gov.ge/index.php?id=135&lang=geo>

⁴⁰ Source: <http://www.ambebi.ge/samartali/29663-prokuraturam-papuna-khachidzis-dakavebis-faqtidaadastura.html#ixzz2DvFQvWoV>

⁴¹ Papuna Khachidze, Chairman of Forest Agency pleaded not guilty, he was sentenced suppression of freedom. As mentioned above Bidzina Giorgobiani, former chairman of forest department also pleaded not guilty and received political asylum in Germany. It is noteworthy that both chairmen initiated similar forest reforms (implying establishment forest management national agency) and in both cases influential political figures of leading party opposed to it.

⁴² <http://www.heretifm.com/?2/880/=2=Y2FsZW5kYXluMjAxMC4xMi40>

*absolutely out of control. The fact that 110, out of 300 staff are arrested leads to concrete conclusions. One third of the staff is imprisoned and 100 more should be detained. I hate to insult anyone, but that is what I can see. Everyone in Georgia knows that Forest Department is the agency where we fail to introduce law and order. We managed to establish the order in the Police, at customs, and the only place where we are chronically unable to establish order is Forest Department. When it is about bribes of 30-40-100 GEL, it indicates that corruption is systemic phenomenon and covers everyone in forest sector, and not that the level of corruption is low. Please provide me with a plan of the Ministry reorganization, as there is overlap with some areas of other ministries. Forest sector should become a profitable business, but at the same time well controlled business. Lack of control is a sign of weakness and dementia. This should be the business, which feeds the country, foresters and serves to the public. I visited Sweden several times and there, forest department's good work can be noticed already from the plane – forest in some places is carved, in other places – new, and still in other places old, but well maintained everywhere. These are strictly managed by the State, and never believe that there is another way to do it. Only in the Soviet Union nothing was managed. Under market economy everything is strictly managed and serves to people's wellbeing. I want to state unequivocally that you just wrecked this sector. Everything should be changed in this Ministry. The Prime-Minister is in the know. Sit together and submit the reorganization plan not later than the end of year. Many will have to resign. Functions will be redistributed and, in general, many issues should be raised from structural point of view.*⁴³

More than one month passed after this statement of the President, but the public concerned received no information on the fulfillment of presidential assignment. On 8 February 2011, Prime-Minister Nika Guilauri made a statement on reorganization of the MEPNR. According to him the Ministry would be transformed into the Office of State Minister and much of its functions would be transferred to the MENR, to be established on the basis of Ministry of Energy; APA would become part of the Ministry of Economy and Sustainable Development, and Environmental Inspection – part of Ministry of Interior or, alternatively of Ministry of Energy. “The Ministry will be released from unnecessary functions and become an agency in charge of purely environmental issues” – commented Minister of Environment Protection and Natural Resources Goga Khachidze.

This decision was not preceded by any public discussion. NGOs and experts expressed strong protest against the decision, which was taken in haste and with no transparency. They insisted that: submission of reorganization project to the Parliament was suspended; the public was fully informed on the details of the proposed scheme; wide public discussion of the Ministry reorganization issue, with participation of all parties concerned was held as stipulated in Aarhus Convention.

Regardless the above, the government violated Aarhus Convention requirements and presented draft law on reorganization to the Parliament without prior public discussions.⁴⁴ But this version did not provide for abolition of the Ministry. A heated debate in the Parliament was held and NGOs managed to introduce significant changes in the draft law. The decision regarding the APA is worth mentioning, which was not subordinated to Ministry of Economy and Sustainable Development. This decision was a surprise to Minister Goga Khachidze himself. On 25 February Minister Goga Khachidze, Chairman of the Agency for Protected Areas Giorgi Shonvadze and Executive Director of Caucasus Nature Fund (CNF) David Morrison signed an agreement on development of protected areas. The Minister made following comments in this regard: “As we know a proposal has been submitted to the Parliament on subordinating the APA to another Ministry. If such a decision is made we will give the Agency with quite good “dowry”⁴⁵. The very same day, in a debate between

⁴³ Source: official web-page of Georgian President

http://www.president.gov.ge/index.php?lang_id=GEO&sec_id=228&info_id=5965

⁴⁴ See: Aarhus Center in Georgia to Georgian government on reorganization of MEPNR. 16.02.2012

<http://aarhus.ge/?page=1&lang=geo&content=564>

⁴⁵ Source: official web-page of MoEP www.moe.gov.ge

NGOs and government representatives at the Parliament the fate of the Agency for Protected Areas was decided. Principal position of NGOs and international organizations had been crucial in this matter.

As mentioned in previous chapter, ANR was set up with newly established MENR. Minister Alexander Khetaguri concurrently held the position of Head of the Agency.⁴⁶

Recent Forest Reform and New Forest Law

The public learned about new initiative regarding Georgian forest sector in the end of July 2011 via the statements by Alexander Khetaguri, Minister of Energy and Natural Resources. According to him, all the restrictions had been removed and local population was allowed to produce wood for own consumption - firewood and timber; besides, already from August, 49-years forest leasing would start.

In order to double-check media information, NGOs addressed to the Minister for clarification and requested a public meeting. In response the Ministry invited only a few organizations to the meeting on 4 August at Metekhi Palace hotel. The Ministry denied journalists who came to the hotel.

At that meeting the Minister stated that by then there had been no official document (reform concept, draft law, etc.) at the Ministry and, respectively, he was not in a position to deliver any public information. The Minister made a presentation and talked about the activities, already carried out within the Ministry. According to him the Ministry started to settle illegal logging problem not by reinforcement of forest control and forest protection, but by monitoring markets, tighter control over transportation and sawmills. In order to monitor transportation of round logs electronic chips were introduced; besides, special invoices will be used to register entry of round logs to sawmills; uniform electronic system was developed access to which would have revenue service of Ministry of Finances and ANR of the MENR. Logging was split into two categories: social logging (for the own consumption of local population) and commercial logging. All sorts of restrictions as for firewood and timber volume were removed; local population could cut wood in unlimited quantities. In future local population would be able to pay through pay-boxes and obtain social logging permit. This permit would contain its owner's personal data, amount of the payment, name and the quantity of the wood to be logged, location of logging site, time limits and the name of the Agency staff member serving given area. The receipt for the wood, logged on privately owned territory, would be issued by local government. The following would be impermissible: any form of trade in wood cut under social logging; transportation or processing of round beam without electronic chip and supporting documentation (prohibitions applied to both, social and commercial logging). The Minister also talked about future forest reform. According to him the reform aimed at: increase of economic turnover balanced with environmental and social factors; efficient development of resources located in forest areas, gradual increase of the forest resource. To achieve this new Forest Code and new by-laws were being developed; new regulations would be in conformity with international standards; lease owner would have to meet the Forest Stewardship Council (FSC) requirements.

According to the Minister, the Government's main objective was long-term (49 years) lease of forest, with exclusive right of further extension; all the forests, not included in protected areas or already leased for long-term logging – about 1.800.000 hectares – would be divided into auction items by river basins. Specific river basin would be leased to an investor who offers the highest annual rent. In contrast with existing regulations the investor would not have to pay millions to state budget to receive the license. Rent payment would start 1-2 years after the auction. First two years after the auction the investor would not have logging right and hence would not pay the rent. This period would be given to him for inventory of leased territory and development of

⁴⁶ In compliance with Georgian Government Resolution No.133 of 16 March "Minister or Deputy Minister may hold the position of Head of the Agency for Natural Resources – legal person of public law

management plan. Application of FSC standards would be required when planning. The plan would further be approved on the conclusion of certified by FSC audit.

Following responsibilities would be imposed upon the tenant: care, reforestation, sanitary felling, infrastructure development, protection of forest from fires, erosion, pests and diseases, protection from illegal activities; unhindered access of the population to the forest for recreation, collection of brushwood, berries, mushrooms and other unlicensed resources, (e.g. sport fishing) and pasturing; making room for social logging and ensuring access road; securing safe logging.

In case of detection of violations and failure to correct them the tenant would lose his contract; in each case of failure to fulfill obligations, the ANR would implement this action (e.g. reforestation, forest roads) with reimbursement by the tenant at a commercial price.

The Minister also talked about the tenant's rights. These are: exclusive right of use of natural resources in the whole area of leased river basin (not only wood but also other natural resources, including minerals); different activities and related infrastructural development, e.g. fish and hunting grounds, tourism, agriculture, plantations etc. Besides, the tenant would be allowed to sub-lease part of the territory at the Ministry's consent.

As for forest management proper: it was envisaged to allow clear cuts in natural forests ("in this case, the tenant would be required to plant new trees in the ratio of one to three" – A. Khetaguri), prohibitions on logging on steep slopes were cancelled (under the current law, cutting of forests on over 35-degree slopes are prohibited). According to the Minister no protected areas would be created in future, since the existing ones were quite enough. Besides, the existing protected areas impede implementation of hydropower and other infrastructural projects. Since the territories beyond protected areas would be leased, the tenant would better decide what to protect. The Minister stated that Austrian forest code had such regulations and if someone said that it is impermissible, he would point to appropriate provisions in Austrian and German law. In Austria, what is called natural forest was in reality planted 200 years ago and there is nothing wrong in it – added the Minister. The Minister promised that new law would be drafted and disseminated for public discussion by end of August. After the discussions the government would submit it to the Parliament for further review and approval.

The resemblance between 2007 failed reform and planned in 2011 "reforms of forest sector" is striking: key players of 2007 reforms were David Chantladze, First Deputy Minister of Environment and Natural Resources (then Minister) and FSC Director Heiko Liedeker. In 2007 David Chantladze and Zviad Cheishvili, Chairman of Forest Department visited FSC head office in Bonn (Germany) and had a meeting with Heiko Liedeker. In May 2007 FSC and Forest Department signed the MoU on cooperation. At the same time long-term logging licenses were issued. In accordance with the license terms, its owner was required to develop management plan in conformity with FSC standards to be approved by FSC certified auditing company. Three months after the issuance of licenses this term was abolished (in response to Green Alternative's remark Minister Khetaguri said that previously this provision had been approved under Government Resolution, whereas the new one would be approved under the law thus creating the guarantee for not changing the lease terms).

David Chantladze's activity in the area of forest reform could not be deemed successful (President of Georgia also indicated to it more than once). Still, on 1 August 2011, the Agency for Natural Resources, signed the agreement with "Gutidze, Damenia, Chantladze Solutions" Ltd on developing legal foundations regarding forest sector reform (draft law, draft lease agreement, draft standard regulations for leasing auctions, etc.). The agreement was signed through simplified procurement rules and amounted to 270 000 GEL. For expert

advice, “Gutidze, Damenia, Chantladze Solutions” Ltd hired Heiko Liedeker who, by then, was no more FSC Director General and represented a private company.

It is noteworthy herewith that under Georgian Government Resolution No.1169 of 1 June 2011, the ANR was granted the right to fulfill the above procurement. In accordance with the Resolution, the Agreement aims at “introducing correct management of state forest fund and forest use under the lease”. The same sentence may be found in the Agreement text. “Subject of the Agreement, 1.1.”. So, certain group of government officials willfully, without public participation and proper study decided for what is “correct forest management”.

On 5 September 2011 MENR sent draft forest code and draft long-term lease agreement in English to a number of organizations by E-mail. According to the Ministry letter NGOs and international organizations’ meeting for the discussion of the above working documents was scheduled on 15 September.

In response NGOs expressed concern over not observing basic rules of publicity for the discussion of such important document. They refused to participate in the meeting unless the following basic requirements are met:

1. The start of the discussion over draft forest law is publicly announced;
2. The documents under discussion are published in native language;
3. Reasonable timeframes are set for the discussion of, and commenting on the documents.

At the same time there was a thought that MENR might pose meeting with parties concerned as formal public hearings. It is notable that the Ministry could not logically ground its rush to adopt this new law; this gave rise to a suspicion that there is a promise to specific persons on leasing forests for half century.

Deputy Minister Nino Enukidze explained this as follows (e-mail correspondence with NGOs): The document under discussion will be presented to the Parliament in Georgian language and be considered in due course, but since Austrian and German experts participated in drafting process, it is difficult to work with them in Georgian. Besides, from the viewpoint of legal technique, it is preferable to draft the document in one language in order to make it easier to work on it and not protract in time.

In response to dissatisfaction about the lack of public awareness (dissemination of the document only in English and only to a selected organizations), the Minister set up a meeting on 6 September, i.e. the day next to publishing the document. Only one organization attended that meeting with the Minister. Disappointed Minister Khetaguri stated that the text would be translated only prior to its submission to the Parliament and the debate would also be held only in the Parliament.

On 13 September drafts of forest code and long-term lease agreement in English, and only forest code in Georgian were sent to selected organizations. These organizations were also notified that the meeting would be held on 15 September, 11:00 a.m. at Metekhi Palace Hotel.

So, restricted number of documents under discussion were sent to NGOs twice: 5 September (a day before the meeting scheduled for 6 September and only in English) and on 13 September (two days prior to the meeting scheduled for 15 September, only draft law in Georgian and, draft agreement and draft law – in English). NGOs’ wide participation in the discussions was impossible due to low level of publicity and unreasonable timeframe for public discussion.

On 15 September 2011, at the initiative of MENR, the meeting regarding draft forest code and draft long-term lease agreement was held. The meeting was attended by representatives of donor organizations, international financial institutions, embassies, EU Delegation and NGOs. Alexander Khetaguri, Minister of Energy and Natural Resources chaired the meeting and led the discussions. Draft law presentation was made by “Gutidze, Damenia, Chantladze Solutions” hired expert Peter Herbst and he, along with the Minister was answering the questions.

The Minister made a statement about the meeting saying that this would not be a public hearing, but just technical working meeting, where basic principles of new forest code would be presented (without clause by clause discussion), in order to hear general view of NGOs and donor organizations; in future public hearings would be held with wider participation of the parties concerned; after the public discussion, political process would take place in the Parliament.

According to the Minister, it took about 3-4 months to develop the document (though, as mentioned above, official agreement of developing draft law was signed in 1 August, and 4 August meeting the Minister stated that the work had not started yet). He presented CVs of key experts (Peter Herbst, Heiko Leideker) and said that new draft forest code was based on Austrian model; the Minister explained that Austria was chosen as a model country due to its resemblance to Georgia in terms of extent of forest resources, topography, land area and forest resources per capita.

Stephan Stork, Deputy Head of Operation Section at the EU Delegation to Georgia, expressed concern regarding the quality of public discussion on forest code. He stated that the process should be in conformity with Aarhus Convention requirements and urged the Ministry to more transparency and involvement of NGOs and local authorities/population in the debate. He demanded an explanation about environmental, political, social and economic impact of new forest code. Further he declared the need of more approximation of the code with sustainable development principles and stated that negotiations on Association Agreement with the EU oblige Georgia to reflect in new forest code the requirements of the five EU directives on environment protection. He also pointed to the need to preliminary inventory of the resources and EIA.

Minister Khetaguri did not accept criticism with regard to public participation and repeatedly expressed his dissatisfaction about the NGOs for their absence at the meeting and blamed them for “groundless political statements”. He also criticized the donors saying that the latter were relying upon the NGO interpretations. In his opinion, the non-governmental organizations should be oriented to discussing technical issues of the documents instead of making groundless political statements. Minister Khetaguri also said that the Aarhus Convention envisages publishing of a document, which should be discussed in the Parliament. The forest code, he said, was not ready to be discussed in the Parliament and therefore it was not made available for the public. The Minister, likewise his Deputy, gave an explanation to the fact why the document was published in English. According to him English is a common language understood by everyone and the document’s concept discussion, not-by-article discussion is more appropriate in English. He believed that representatives of all NGOs are fluent in English (otherwise they would not have had grants from donors) and saw no problem in the fact that the documentation was presented in English. About inventory the Minister said that it should be held by the tenant: there is no point in spending state money for inventory and then sell the forest.

The Minister also presented his view on forest conservation and said that in fact there were no more virgin forests in Europe. When our country catches up with Europe in terms of standard of living and there are no starving people we will afford care about virgin forests. According to him Georgia should not remain a developing country, “we should not fence in large areas and call them protected areas so that we do not

become a subject of observation from the outside”⁴⁷ The Minister also touched the issues of further expansion of protected areas and said that he was strictly against it especially in those places, where it was unjustified. He also said that he would only agree to establish protected areas, if the initiative will come from the local population and not from the Ministry of Environment and/or NGOs. He would agree on establishing protected areas only in case of scientific justification and agreement with the population. According to him the issue of protected areas had never been agreed with the population.⁴⁸ As a negative example of Protected Areas the Minister named Tusheti, where, according to him, the forest is in good condition only out of the boundaries of National Park. Inside the National Park the forest is in bad condition since no logging is going on there, “trees are falling, they are rotting and creating a threat of landslides”⁴⁹. Minister responded to the observations that the process is too accelerated. He said that because no one was in a hurry 90% of forests were cut down illegally and it was due to everybody’s inactivity. He repeatedly blamed Ministry of Environment Protection in inactivity and passive position in the past, as well as in current processes. After the discussion Minister stated with regard to procedures that the document would be printed in Georgian only after it is presented to the Parliament and public discussion is scheduled. The discussion would not last for months or years and would finish approximately within a month and a half. According to him he had his own schedule for evaluating the effectiveness of his work. By early October the Ministry would be able to present draft law to the Parliament. Minister added that it is impossible to draft an ideal law and no country has ideal legislation, but he was sure that the new law would be much better and more civilized than the existing one.

In fact Minister allowed himself to define what would be of interest for the public and what would not. When listening to A. Khetaguri, it becomes clear that he has very vague knowledge of Aarhus Convention, NGOs mission and, in general, about public awareness and public participation in decision making process, let alone the importance of forest conservation.

After this meeting Green Alternative managed to organize information campaign via Facebook social network and other means. Different organizations and private persons sent tens of letters to the Ministry requiring publishing draft law in Georgian and scheduling public discussions, more transparency and observance of publicity standards. The Ministry was forced to send 200 pages document (draft statutory acts) to everyone and to invite them to a meeting. The Ministry hosted a number of consultative meetings and one public discussion (13.10. 2011, Sheraton Metekhi Palace hotel) regarding the draft law.

On 3 October 2011 MENR published a statement on its official web-page announcing public discussion of draft forest law on 13 October. Draft “Forest Law” was published for the discussion (it was called “Forest Code” before); some of the details had been also changed but the main line was preserved.

One important detail should be noted here: at the first meeting the Minister said that FSC-related requirements would be included in the new law ensuring that after leasing the forest, a leaseholder would not be exempted from this obligation. Finally, under the submitted documents, FSC-related requirements will be put only in the lease agreement, which is approved by the Minister’s order and actually, from legal point of view, it will be extremely easy to abolish these requirements and soften lease conditions. While the law was not yet finalized MENR created his official web-page where the investors were encouraged to rent forest under new, 50 years lease terms.⁵⁰

⁴⁷ Minister Khetaguri used this “clever” phrase in a number of his meetings

⁴⁸ This may be correct only with regard to protected areas, created in Soviet period. However, at that time creation of protected areas was initiated by prominent scholars.

⁴⁹ Evidently this statement is not true. In fact Tusheti is not a landslide prone region

⁵⁰ <http://minenergy.gov.ge/uploads/presentation/index.html?PHPSESSID=cdb9b6bd5a35f988bdb27ee6019117fa>

No other public discussion of draft law took place since. A number of working meetings were held between Ministry staff, hired experts and NGO representatives, where some details of draft law were discussed. In the beginning of 2012 MENR put on its web-page somewhat updated version of the draft law. Ministry statement declared that the draft law had been put on the webpage for public comment. We asked if there were deadlines for presenting comments to which the Ministry replied negative. This was a hint to that the government was not in a hurry to adopt new law, or even had changed its mind in this regard.

In compliance with the agreement the Company presented draft “Georgian Forest Law” (27 pages), draft agreement on long-term lease of forests (39 pages) and draft instruction on holding lease auction (8 pages). It should be stressed that approval of the presented drafts was not possible since no by-law regulation had been developed even on a draft level. Proceeding from the above, since it was intended, with adoption of the new law, to cancel all laws and by-laws in force, this would lead to the collapse of the whole system and appearance of loopholes and gaps. On the other hand, the maintaining of existing laws could cause many conflicts.

AMENDMENTS TO HUNTING REGULATIONS

As mentioned above, as a result of 2010 not transparent legislative changes, hunting was allowed within whole forest fund and Forest Agency was given the right of issuance of hunting permit. As a result of granting natural resources’ management functions to Ministry of Energy, national policy aimed at utmost financial profit from hunting enhanced even more.

In September 2011 Minister of Interior, Minister of Environment and Minister of Energy and Natural Resources of Georgia met with tourist companies and acquainted them with government decision on allowing hunting of endangered species, listed in the National Red List (the meeting took place at Ministry of Interior). Ministers proposed tourist companies that they start attracting tourists – hunters from abroad. They promised that legislative changes would be implemented as soon as Parliament fall session opens.

Indeed, in September 2011 draft law “On amendments to several legal acts of Georgia” was published. The draft law offered new regulations endangering Georgia’s biodiversity. Below are a number of problematic issues:

- Extraction of endangered species for commercial purposes (hunting, felling);
- Hunting within protected areas, including national parks;
- Legalization of the possibility of destruction of habitats of rare and endangered species;
- Cancellation of the fee for hunting of species listed in the “Red Book” and of reparation of damage to the nature as a result of illegal production;

WWF Caucasus PO, NACRES and Green Alternative made statement with regard to the draft law urging to refrain from adopting this law. On 27 September 2011 Green Alternative presented detailed comments on draft law stating that it is not in conformity with sustainable development principles and contradicts to Georgia’s international commitments and EU directives.

As a result of principal position of NGOs and international organizations and their firm arguments a number of clauses containing threat to biodiversity were removed form draft law. In particular, the articles implying

allowing hunting in national parks and establishing zero fee for production of endangered species were removed.⁵¹

As for allowing hunting of species included in the Red List, quite an ambiguous wording was included in the legislation.

Article 22 of the Law on the Red List and Red Book is titled “The Cases of Extraction (Removal from Natural Environment) of Endangered Wild Animals and Wild Plants.” The original text of this article looked as follows: “Extraction (removal from natural environment) of endangered wild animals and wild plants or their parts is allowed only in special cases prescribed by the Georgian legislation – for saving, treating, restoration or scientific purposes”. Thus, the law admitted only four cases of extraction of endangered wild animals and wild plants: for the purpose of their saving, treating, restoration and for scientific purposes.

According to the amendments to the Law on the Red List and Red Book (8.11.2011, No5201), article 22 became more extensive, while paragraphs 1 and 2 include the following wording: “The decision on the number of endangered wild animals (except those reproduced in captivity) allowed for extraction (removal from natural environment) is made by the Minister of Environment through an individual-legal act. Except for the decision envisaged by paragraph 1 of this article, it is allowed to extract (remove from the natural environment) endangered wild animals for the purpose of their saving, treating, restoration of population as well as scientific purposes that can be carried out with a written consent of the Ministry of Environment Protection of Georgia (the mentioned consent may contain certain restrictions and/or conditions for the extraction (removal from natural environment) of endangered species).”

So, even in this wording of the law only the same four cases of production of endangered wild animals and plants are envisaged: securing, treatment and recovery, and scientific purposes. Para 1 of this Article does not provide for any other case/possibility of production of endangered species; it only defines the agency, responsible for establishing the allowable amount of species. Though permissibility of hunting of endangered wild animals is not provided directly in Article 22, Georgian government interpreted it differently and issued several statutory acts to allow commercial hunting of animals, listed in the Red List.

Draft law contained a transitory commitment, according to which Minister of Energy and Natural Resources would pass the Order before 1 August 2012 “On the list of the objects of the animal world attributed for hunting”. The order was passed by Minister of Energy and Natural Recourses prior to publishing draft law (01.09.2011, No. 175). Along with other, species, those listed in the Red Book (brown bear, red deer, West Caucasus tur, East Caucasus tur, wild goat, Caucasus grouse, and Caspian snowcock) also were allowed for hunting.

On 29 December 2011 Georgian government Resolution No.513 “On amendments to Georgian government Resolution No.242 of 20 August 2010 “On approval of forest use rules” was passed. According to it species listed in the Red Book are allowed for hunting; besides, the sums to be paid by a hunter to MENR for hunting permit are fixed for each object (wild goat – 500 GEL, tur, red deer, brown bear – 300 GEL, Caucasus grouse and Caspian snowcock – 100 GEL).

Furthermore, order No 275 of the Minister of Energy and Natural Resources of Georgia dated December 27, 2011 amending order No 07 of the Minister of Energy and Natural Resources of Georgia dated April 6, 2011 “On approval of the provision on the rules and timeframes of extraction of wild animals, by their species, and the list of weapons and equipment allowed for hunting”, along with other species, has determined certain conditions and prohibitions on the extraction of endangered wild animals. Specifically, it has prohibited

⁵¹ The law entered in force on 8 November 2011 (No. 5201).

hunting of: a bear under one year, as well as a female bear, who has a cube under one year; female specimens of red deer, tur, grouse and snowcock; male specimens of tur with horn length less than 100 cm (along curve); male deer, whose antlers are not branched and/or are branched, but the length of the main axis is less than 90 cm. It should be emphasized that these restrictions are formal, since there are no mechanism to fight poaching, as well as to control or monitor hunting process. Order No. 276 of 27 December 2011 "On amendments to ministerial order No.30 of 10 May 2011 "On establishing the term of hunting season" establishes the season of hunting for endangered animals too.

On January 10, 2012 the MENR issued a statement on its official website, according to which "quotas on the extraction of the objects of the wildlife for 2012 hunting season were approved". Species mentioned in the statement did not include Red listed species, however, it named species and numbers only, without specifying hunting areas (Coypu – 194, Hare – 615, Badger – 168, Pine marten – 157, Stone marten – 157, Grey wolf – 120, Golden jackal – 1453, Red fox – 162, Wild cat – 77, Wild boar – 189, Roe deer 417, Raccoon – 96, Pheasant 416, Chukkar partridge – 713, Black francolin - 50. It should be stressed that during years, not a single state or scientific institution has ever registered hunting species outside the protected areas (previously hunting was allowed only in hunting farms, now it is allowed anywhere, except nature reserves and national parks). Furthermore, hunting quotas should definitely be bound to a particular hunting plot. Legalization of the number of hunting species without specifying those areas, where it is possible to extract these animals (i.e. without distribution of extractable species by hunting plots) is quite absurd. Taking all these into consideration, we should suppose that the quotas approved by the Ministry provide false information. This fact was confirmed in the Ministry answer in writing to Green Alternative's question about the basis for the quota. MENR response reads that work on this issue continues.

Minister of Energy and Natural Resources on 30 January 2012 (following our lawsuit) issued two orders: Order No.35 on amendments to ministerial Order No.30 of 10 May 2011 "On approving starting and ending dates for fishing and hunting" and Order No.36 on amendments to ministerial Order No. 07 of 6 April 2011 "On approval of the provision on the rules and timeframes of extraction of wild animals, by their species, and the list of weapons and equipment allowed for hunting". In accordance with these amendments term for hunting of mountain goat and chamois was extended to 6 months.

Green Alternative filed lawsuit on all listed above by-laws. Green Alternative believes that Article 8 of Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters) was violated which should have served as a basis to recognize them void. But the court did not agree to Green Alternatives arguments and did not recognize the by-laws invalid.

The Parliament introduced amendments to some other laws in order to cancel as much as possible bans on hunting: Law of Georgia "On amendments to the law of Georgia on creation and management of Tusheti, Batsara-babaneuri, Lagodekhi and Vashlovani protected areas" (24 November 2011; No.5298-Il). In accordance to these amendments fishing, hunting and game-management were allowed in Tusheti protected landscape, Ito and Lagodekhi preserves; Law of Georgia on amendments to the law of Georgia "On creation and management of Kolkheti protected areas" (24 November 2011, No.5299-Il), in accordance with which fishing, hunting and game-management were allowed in Kobuleti managed reserve. This law may be classified as one of the most curious of the laws. Kobuleti reserve includes Ispani II marsh, which is unique in terms of biodiversity, almost untouched habitat of international importance. It is veiled by 25-45 cm thick living sphagnum (white moss) which is never covered by water and creates a dome. Moving through this area is only possible with special wooden skis and due to this specificity (no water surface) fishing or hunting there is impossible. Since 1996 Ispani II has been included in the Ramsar List of Wetlands of International Importance.

It should be mentioned herewith that the amendments to the Law “On creation and management of Kolkheti protected areas” (31.10.2011) were introduced without any prior discussion. As a result of these amendments a section was removed from Kolkheti national park (its central part) and multiple use area was created there. Kolkheti multiple use area is managed by appropriate local authority, and not the APA. These amendments aimed at laying highway (Poti-Anaklia) through this territory. This construction may lead to severe degradation of Kolkheti National Park core zone. As in case of Ispani II, since 1996 this territory has been included in the Ramsar List of Wetlands of International Importance.

Summing up national policies of this period will offer the following picture of protection and use of forest eco-systems. The existing protected areas will face a threat of strong degradation, if new regulations on protected species, regulations allowing hunting and sanitary cuttings in the protected areas, as well as change of zoning for implementing infrastructure projects come into effect. Establishment of new protected areas will actually become impossible because of leasing the territories of the country for a term of 49 years. Actually, all the forests, which presently are not categorized as protected areas, will acquire economic importance that will pave the way for industrial cuttings (including clear cuttings).

On 4 July 2012 Parliament expressed confidence in the new government. Former Minister of Internal Affairs Ivane Merabishvili was appointed Prime-Minister, and Bachana Akhalaia was appointed Minister of Internal Affairs. This entailed transfer of MIA top officials (mainly from intelligence department) to MENR. Immediately, the Ministry Statute changed. In accordance with Government Resolution No.246 of 9 July 2012 amendments were introduced in MENR’ statute and it was decided, that “the Minister or one of his deputies may simultaneously be Head or Deputy Head of Natural Resources Agency – public law legal entity”. George Mazmishvili, newly appointed Deputy Minister (former head of intelligence department) combined the job of Head of Natural Resources Agency. On 15 August Minister of Energy and Natural Resources was replaced by Member of Parliament Vakhtang Balavadze.

In the beginning of September Georgian Government again changed its policy regarding forest sector. On the first stage by-law regulations were changed; forest origin document, marking logs with electronic chips, sawmill registration and maintenance of related electronic documents were canceled. Validity of logging ticket was extended from 2 months to 1 year, timber, produced as a result of social logging could be used for commercial purposes. Besides, restrictions regarding logging areas were removed. It was declared that fees per 1 cubic m timber and firewood would fall to 2 GEL (under the law in force the fee per 1 cubic m. of timber is 22-47GEL and for firewood – 9-19 GEL). New fees were planned to enter in force after the parliamentary elections since appropriate legislative changes were required. So, in September 2012 the system, set up as a result of Minister A. Khetaguri forest reform fully changed.

LEGAL PRACTICES

On the basis of Aarhus Convention Green alternative several times filed complaints with administrative bodies and lawsuits with courts regarding the violation of forest law. Problems related to Aarhus Convention implementation in Georgia, including that of legal issues, are reviewed in 2011 report⁵². As we have already mentioned above, pursuant to Georgian legislation, international agreements are directly applicable in Georgia, without incorporating them into the national legislation. Georgian courts have applied the Aarhus Convention only upon the request of plaintiff non-governmental organizations. Judges do not have proper qualification and training to apply the mentioned convention assertively. The courts guide themselves by Administrative Procedural Code and Civil Procedural Code, which envisage the principles of disposition and competitiveness of the parties. This, first of all, means that the court cannot go beyond the limits of the plaintiff's requirement, though it has the right to invalidate the decision of an administrative body.

Green Alternative has come across the case when the legal advisors at government offices, after the hearings on Green Alternative's administrative appeal (on lawfulness of issuance of 20-years special logging license on 1 May 2007), requested a copy of Aarhus Convention, since they could not find it; however, this did not prevent them from denying Green Alternative's complaint.

Court proceedings related to forest use are usually protracted in time and may last for years. Introduction of administrative complaint compulsory mechanism creates additional barrier to justice and increases significantly the period of court proceedings.

Green Alternative's three claims were about violations in the process of issuance of long term licenses. These violations, conventionally, may be divided into three groups: violation of the public's right to information and participation in decision making, improper preparation of license terms and disregard of environmental issues (protection of biodiversity).

The first claim referred to 1 May 2007 auction, held at the MEPNR, as a result of which three special, 20-years logging licenses were issued.

1. No. 00624 is issued to "Georgian Timber Industry Company" Ltd. in Kakheti regional forest division (3 May 2007 Order No 472 of MENR);
2. No. 00627 is issued to a natural person Emil Reiners in Samtskhe-Javakheti regional forest division (3 May 2007 Order No 471 of MENR);
3. No. 00628 is issued to "Georgia wood and industrial development Co" Ltd in Tsalenjikha and Chkhorotsku regional forest divisions (3 May 2007 Order No 470 of MENR).

Court proceedings on the above case, where Green Alternative demanded cancellation of the above orders, lasted for almost two years. (Date of issuance of appeal acts – 03.05.2007; administrative complaint filing date – 04.06.2007; the Prime-Minister's act – denying of administrative complaint – 03.08.2007; date of appeal to the Municipal Court 12.09.2006; date of judgment 25.09.2008; handing over the arguments – 23.02.2009).

Due to institutional changes in the government the defendant in court changed – MEPNR (MENR) was replaced by Ministry of Economic Development (MoED), which was tasked with license issuance function in

⁵² Gurchiani T., K. Gujaraidze, 2011 Implementation of Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) In Georgia - Alternative Report, Tbilisi, Green Alternative <http://www.greenalt.org>

2007. It should be mentioned that MoED did not present any rejoinder to the court, (more exactly it did but exactly the same as its predecessor) neither did its representative attend the court hearing. Still, none of Green Alternative's appeals had been allowed. It took 5 more months to the judge Nino Oniani to prepare the justification of the decision, which reads: "In compliance with Para two of Article 17 of the Code of Administrative Offences of Georgia, in the case of a claim for recognition of an individual administrative act invalid or out of force, the burden of proving lays upon administrative body that issued the act. Proceeding from this fact, the court believes that it is not fair to lay the burden of proving only upon administrative body and to fully release the plaintiff of responsibility of substantiation of the claim..." "The plaintiff has not submitted the proof of that the circumstances, essential to the case, had not been studied by the moment of adoption of disputed acts" A number of proofs were presented – and the defendant did not deny this either – that the licenses were issued on the basis of 30 years old forest inventory documents, which is illegal. Also noteworthy is the fact that Green Alternative submitted the ombudsmen's conclusion⁵³ on the case, but the court did not take this document into account when passing the judgment.

Green Alternative also appealed, first through administrative procedure and then through the courts, individual legal acts related to the issuance in autumn 2008 of special licenses on long-term forest use. MoED on 4 and 5 September 2008 passed the acts announcing issuance of forest use licenses for certain areas (9 licensed areas). Green Alternative required suspension of the disputable act until the end of administrative proceedings. But this requirement has not been satisfied. Georgian government's reaction to the requirement is worth mentioning – the government instructed the defendant – MoED – to consider the suspension of its own act. The Ministry certainly did not find it expedient to suspend the act. Another interesting thing with this claim is that the hearing was held after the auction had been finished and the decision on issuance of forest use licenses had been taken. Hence, administrative dispute (for any decision) had no sense.

Green Alternative appealed the decisions (ministerial orders) on forest use as a result of the auction first through administrative procedures and then before the courts. The claim concerns forest use licenses issued for 20-year term on 7 and 8 October 2008, as a result of auction held at the MoED.

1. No. 10004 issued to "Georgia wood and industrial development Co." Ltd at Kakheti regional forest district; total acreage of the area given under the license is 4807 hectare, out of which 4564 is forest-covered (Order No. 1-1/2142 of 9 October 2008).
2. No. 10003 issued to "Georgia wood and industrial development Co." Ltd at Kakheti regional forest district; total acreage of the area given under the license – 5945 hectare of which 5634 is forest-covered (Order No. 1-1/2143 of 9 October 2008).
3. No. 10003 issued to "Georgia wood and industrial development Co." Ltd at Kakheti regional forest district; total acreage of the area given under the license – 9484 hectare of which 8999 is forest-covered (Order No. 1-1/2144 of 9 October 2008).
4. No. 10001 issued to "Georgia wood and industrial development Co." Ltd at Imereti regional forest district; total acreage of the area given under the license – 18482 hectare of which 17970 is forest-covered (Order No. 1-1/2145 of 9 October 2008).
5. No. 10002 issued to "Georgia wood and industrial development Co." Ltd at Mtskheta-Mtianeti regional forest district; total acreage of the area given under the license – 7706 hectare of which 7568 is forest-covered (Order No. 1-1/2146 of 9 October 2008).
6. No. 100071 issued to "Guria JF" Ltd at Guria regional district; total acreage of the area given under the license – 8674 hectare of which 8414 is forest-covered (Order No. 1-1/2220 of 15 October 2008).

⁵³ Public Defender studied the issue on the basis of Green Alternative's application, found Green Alternative's claims fair and concluded that public interest in the given case was the priority as compared to the interest of private person, and that the disputable acts should be recognized void.

7. No. 100010 issued to “House+” Ltd at Mtskheta-Mtianeti regional forest district; total acreage of the area given under the license – 868 hectare of which 851 is forest-covered (Order No. 1-1/2222 of 15 October 2008).
8. No. 100006 issued to “Imedi” Ltd at Kakheti regional forest department Akhmeta forest district; total acreage of the area given under the license – 868 hectare of which 851 is forest-covered (Order No. 1-1/2225 of 15 October 2008).
9. No. 100009 issued to “I/E Vepkhia Shubitidze” Ltd at Samtskhe-Javakheti regional forest district; total acreage of the area given under the license – 689 hectare of which 642 is forest-covered (Order No. 1-1/2388 of 15 October 2008).

Judge Nana Daraselia dismissed Green Alternative’s lawsuit. Green alternative appealed this decision but the Court of Appeal fully upheld the arguments of the court of first instance (more precisely, the courts of both instances fully upheld the arguments of the Government). The Supreme Court refused to accept Green Alternative’s appeal.

Administrative procedures and judicial trial took 2 years and 7 months (ministerial orders on holding the auction were issued on 4th and 5th September 2008, the auction was held on 4th and 5th October 2008; Green alternative filed administrative complaint on 5th December 2008, which was dismissed on 18th February 2009. Denial of the claim by Tbilisi court of Administrative Affairs – 29 January 2010, Denial of the claim by the Court of Appeals – 21 October 2010, legitimate decision was sent to Green Alternative on 26 January 2011).

There were cases in Green Alternative’s recent practice when the defendants, on admissibility stage, required that Green Alternative is recognized inappropriate plaintiff under the pretext that it did not bear immediate losses. More specifically, a third person, “Georgia wood and industrial development Co” Ltd, demanded that Green Alternative’s lawsuit is not allowed and judicial proceedings are terminated. It grounded the own demand by the fact that Green Alternative did not suffer immediate damage. Besides, according to them, Aarhus Convention refers only to the activities related to issuance or Environment Impact Permits and not the forest use activities. At the court trials the defendants, representatives of Georgian government (Irakli Kopaliani) and Ministry of Economic Development (Nino Kvernadze) supported this demand of the third party. But after Green Alternative pointed to appropriate Articles in Aarhus Convention both, administrative agencies and the court, denied this demand and recognized the complaint/lawsuit valid.

When demanding cancellation of the above 12 licenses Green Alternative argued that they were issued under wrong data, wrong/impossible licensing terms and without participation of the public concerned including local population. Green Alternative argued that if the claim is not allowed, government institutions, in one or two years, would have to annul the licenses for non-compliance, or turn a blind eye to obvious violations of the law.

To date only 8 out of the above 12 licenses are functioning. The following licenses have been annulled:

- No. 00624 issued to “Georgian Timber Industry Company” Ltd. in Kvareli forest area (deprived of the license; new owner – “Kartuli Jgupi” Ltd).
- No. 00627 issued to a natural person Emil Reiners in Akhaltsikhe forest area of Samtskhe-Javakheti regional forest district (cancelled due to non-payment).
- No. 100006 issued to “Imedi” Ltd at Kakheti regional forest district Akhmeta region (After the owner had been arrested for violations he refused in writing to meet the terms of license and refused it “to the State’s benefit”).
- No. 100009 issued to “I/E Vepkhia Shubitidze” Ltd at Samtskhe-Javakheti regional forest district. The license was divided into four parts, each of which is too small for profitable forestry

In two cases forest area secured under the license changed significantly:

- No. 100006 issued to “Imedi” Ltd was changed because local population complained about the contamination of drinking water due to forest works.
- No. 100071 issued to “Guria JF” Ltd comprised additional forest areas under different governmental resolutions and ministerial orders.

The rest of the licenses belong to “House+” Ltd (License No. 10010) and Georgian-Chinese company “Georgia Wood and Industrial Development Co” Ltd (Licenses: N 00628, N 100001 N 10002 100003 N10004 N 100005)⁵⁴.

69 long-term (5, 10 and 20 years) licenses were issued as to September 2012. Green Alternative plans to prepare separate report on legitimacy of these licenses and their implementation.

INFORMING THE PUBLIC CONCERNED

In compliance with Georgian legislation public representatives shall have the right to receive full, objective and timely information on the state of forest fund, and government bodies shall ensure accessibility of appropriate information. These provisions are not met due to different subjective and objective reasons. First of all it is that the state is not aware of the real situation with forest fund, since no inventory has been carried out during recent 30 years. Georgian forest fund is about 3 mln hectares, of which the inventory was carried out on only long-term licensed areas, which is about 160 thousand hectares.

On the other hand the information on even inventoried areas is not accessible for the public concerned. Approved forest use plans and attached maps are stored at ANR and interested parties may see the material only on the spot. The Agency does not have electronic version of these papers.⁵⁵ Good practices imply placement of these documents on appropriate agency’s web-page so that public concerned could see them without special request. Besides, they should be available at forest departments of those regions, where the activities are carried out.

Georgian legal standards on issuance of public information (the information should be issued immediately or not later than 10 days) are seldom met in practice. Regrettably, 3-days term of justifying the refusal is almost never observed. The provision of the law, according to which an official agency is obliged to notify the applicant if the issuance of information takes 10 days, is also not met. The agencies believe that, by giving out the information within 10 days they fully comply with the requirement of the law. And some of them (Natural Resources Agency) believe that Administrative Code provides for one month term for the issuance of information.

From January 2009 to September 2012 Green Alternative filed 37 applications, referring to forest sector, with appropriate public agencies (MEPNR, Ministry of Economic Development, Forest Department/Agency, Environmental Inspection, President of Georgia, Chamber of Control, Parliament of Georgia, MoEP, APA, MENR, Natural Resources Agency). Only three of them were responded within 10 days. 14 applications remained

⁵⁴ Separate report is being prepared on the links between forest license owners and government officials within the framework of “Open Society Georgia project “Elite corruption and pressure on business by state”

⁵⁵ Letter signed by the Head of Natural Resources Agency – response to Green Alternative’s request for public information. No. 08-08/1552, 14,09, 2012

unanswered. The responses were usually late and incomplete. E.g. Green Alternative requested from MENR the documentation reflecting compliance of the owner of 12 logging licenses with the terms of license, electronic versions of approved management plans, copies of the licensees' reports, information about violations and response arrangements. Only after one month Green Alternative received part of the requested public information. The public agency did not supply any information on violations, but this does not mean that there is no such information: in 2007-2008 appropriate public agencies had provided Green Alternative with information on the violations.

In some instances the cause of failure to supply the information is lack of knowledge and formal approach to the duties. In July 2011 MENR on its web-page, as well as media spread the information on participation of Georgian delegation, headed by Ms. Mariam Valishvili, First Deputy Minister of Energy and Natural Resources participated in ministerial conference in Oslo, Norway⁵⁶. According to this information Mariam Valishvili, in her presentation to the Conference "stressed the importance of the reforms in Georgia's forest sector, the balanced forest policy, implying reforestation and forest protection on the one hand, and enhancement of its social and economic functions and successful investments in forestry, on the other hand". Green Alternative requested the following materials: a copy of Ms. Mariam Valishvili's presentation to the Conference; information about the arrangement for implementation of the Ministerial Conference decisions; the information available at the Ministry with regard to the planned arrangements for forest sector reform, including: administrative and legal acts and /or draft acts; memoranda; correspondence with other governmental agencies and government offices etc.

Response letter, signed by Deputy Minister Nino Erukidze states, that "the information on the presentation and implementation of Ministerial Conference decisions are available at the Conference official web-page". The answer is quite funny: this web-page contains only video version of Georgian delegation's presentation. Besides, it is clear that this web-page cannot contain the plans of Georgian MENR for implementation of the Conference decisions. The fact that no copy of the presentation or a plan of arrangements were available at the Ministry indicates clearly that the government did not intend to implement the decisions of this international forum. Further events fully confirmed this assumption. Green Alternative's third request was also rejected (on forest sector reform and related documents) due to its nonexistence. As it became evident later this reply by Deputy Minister was a lie, since by the time of signing the letter the agreement between ANR and "Gutidze, Damera Chantladze Solutions" Ltd on elaboration of new forest legislation.

PUBLIC PARTICIPATION

As was mentioned in previous chapters, public participation in decision-making on environmental issues is guaranteed under Articles 6, 7, 8 of Aarhus Convention. Public participation in the issues related to protection of forest ecosystems and resources may be as follows:

1. Participation in preliminary review of draft laws, programs and strategic documents;
2. Participation in decision making over the projects which may have effect on the ecosystems and species (State ecological expertise/EIA process);
3. In the case of commercial forests:
 - 3.1 participation in decision making about issuance of licenses and
 - 3.2 participation in forest use plans (management of license covered areas) approval process
4. In the case of protected forests:
 - 4.1 participation in decision-making on creation, abolition and change of status of protected areas;
 - 4.2 participation in the development of protected areas management plans

⁵⁶ Ministerial Conference on the Protection of Forests in Europe <http://www.foresteurope2011.org>

Regrettably national law does not provide for public participation in preliminary review of draft laws, programs and strategic working versions. This issue is covered in details in Green Alternatives' Aarhus Convention alternative report (2011)⁵⁷. It is stated there that in 2009 very important amendments were introduced with regard to adoption of administrative statutory acts⁵⁸. These amendments practically killed possibility of public information and public participation in the process of adoption of statutory administrative-legal acts by administrative agencies, thus even more straying from the provision of Article 8 of Aarhus Convention. In particular the provisions of the General Administrative Code, which ensured public participation in adoption of administrative-legal acts by Administrative agency through public administrative procedures,⁵⁹ were abolished. At the same time application of public administrative procedure is compulsory only with regard to statutory act of collegial agency. MENR in its December 2010 national report on implementation of Aarhus Convention not only did not mention these amendments but lied stating that "public administrative proceedings are applied for the issuance of statutory documents of executive power (Chapter 9 of the General Administrative Code). Public participation in the process is guaranteed under the law."

True it is a paradox, but the practices, which was applied in the process of approval of new law and the development of forest protection and forest use policies contradicts to multilateral agreements signed by Georgia but does not violate the acts adopted by Georgian Parliament and Georgian Government. The fact that international conventions take precedence over Georgian law does not mean anything in practice.

The analyses of the process of environment impact assessment, including protection and use of biodiversity is given in Green Alternative's several studies. So, we will not go into more details here. The provisions of Article 6 of Aarhus Convention should apply to the decision making on issuance not only of EIP, but also of forest use permit". In 1997-2005 forest inventory reports were subject to EIA and environmental permitting procedures. As mentioned above, in compliance with Article 27 of Forest Code forest use and forestry activities were not allowed without forest inventory. Forest inventory had to be carried out every 10 years (10 years cycle) by departments of Forest or Protected Areas. The requirements under the law of Georgia "On environment permit" applied to forest regulation too. Besides, Georgian forest code (1999) included two articles (35th and 36th), setting forth general norms of public information and public participation.

After 2005, when the list of required EIA procedures decreased significantly, "forest inventory reports "were also removed from it. Current EIA system does not meet the requirements of environment conventions and is too far from best international practices: it cannot ensure due participation of the public in decision making process, cannot avoid or mitigate possible negative impact of industrial activities and/or use of natural resources.

Under the Order No. 1440 of 2 October 2007 by Minister of Environment and Natural Resources the rule of registration of state forest fund was approved.⁶⁰ There are certain requirements in it with regard to public participation in decision making process. Para 10 of Article 2 provides that "the results of forest regulation, forestry arrangements and forest use shall be notified (through meetings, different sources of information) to local population, governmental agencies and NGOs, the statutory act together with the comments is submitted to appropriate legislative body, after the adoption of which it enters into force. The statutory act does not set the terms and procedures of discussion. It is mentioned there that the technical task of forest regulation activities are agreed with other government agencies, as well as local governments (Article 5); it is

⁵⁷ http://www.greenalt.org/webmill/data/file/publications/orhusis_angarishi_geo.pdf

⁵⁸ Legal act passed by an Administrative Agency on the basis of legislation, which contains general regulations of its permanent, temporary of multiple application

⁵⁹ Chapter 15 of the General Administrative Code had been removed

⁶⁰ The amendment introduced und ministerial order (23.09.2008 No. 664)

defined that the interests of local population should be taken into account on the planning stage(Article 11). Here also there is no procedure or indicator of assessing the “agreeing with local government” and “taking the interests into account”.

Decision on commercial forest use (selling licenses) is taken absolutely not transparently. With regard to licenses, issued in 2007-08 Green Alternative indicated in its suits that parties concerned were not able to participate in the process on an early stage, while the options are open i.e. when the choice is still possible and the public can participate in it efficiently. Government agencies did not ensure information of the public concerned about the auctions and their participation in it. The information about issuing licenses for 20 years term became publicly known only after the decision had been taken (through the announcements about the auction in “24 hours” newspaper). At the court trials government representatives partly admitted this violation, but “justified” it by the fact that there were no procedures set under by-laws. In August 2009 at the initiative and due to the efforts of Green Alternative the amendment was introduced into forest use regulatory act⁶¹. The amendment made possible public participation in decision making on forest use license auctions (obligation of applying the rule of public administrative proceedings was introduced)⁶². The amendment entered in force on 1 January 2010. It is noteworthy that in less than two months another amendment was introduced under which the enforcement of the norm on public participation was postponed until 1 January 2011.⁶³ This norm had never been applied in practice. On 21 January 2011 it was again postponed until 1 January 2012⁶⁴. Alongside with the above processes, in July 2010 the changes were introduced to Articles 35 and 36 of the Forest Code and similar norm of public participation appeared in the Forest Code too. In contrast with forest use regulatory act this norm is in force since 1 August 2010.

Thus, though the procedure for public participation in decision making on forest use improved, it had never been applied in practice. Appropriate public agencies “forgot” to apply these norms after “the postponement terms expired” – i.e. during 2012. Moreover, the rule of public information even deteriorated as a result of the amendments to the law⁶⁵: license issuance electronic auction became possible through ANR web-page or www.eauction.ge. In this case the ANR publishes information about the auction only on its own web-page or on www.eauction.ge.

The procedure of approval of forest use plans (forest-covered areas management plans) was governed by the Order No.672 of 26 September 2008 by Minister of Environment and Natural Resources. Forest use plans were published on Forest Agency official web-page. According to the regulations parties concerned could, within 30 days, present their proposals and comments. Further the Ministry would hold public discussion with participation of the parties concerned and the plan developers. In case of negative conclusion the plan would be returned to the developer and the revised plan underwent the similar procedure.

The above mentioned by-law had been substituted by Order No. 277 of 27 August 2012 by Minister of Energy and Natural Resources. This act further weakened public participation procedure and shortened the review time limits. Parties concerned can present their comments and proposals within 15 calendar days after the plan is put on the web-page. After expiration of this term comments and proposals will not be accepted.

The public does not actively participate in public discussions over the plans. About 40 public discussions have been held since 2009. In 8 of them, along with Ministry representatives, license owners and authors of forest

⁶¹ Resolution No. 132 of 11 August 2005 of the Government of Georgia

⁶² Amendments to Resolution No. 132 of 11 August 2005 of the Government of Georgia introduced on 19 August 2009

⁶³ Amendments to Resolution No. 132 of 11 August 2005 of the Government of Georgia on 19 February 2010

⁶⁴ Amendments to Resolution No. 132 of 11 August 2005 of the Government of Georgia introduced on 21 January 2011

⁶⁵ Amendments to Resolution No. 132 of 11 August 2005 of the Government of Georgia introduced on 18 November 2011 (Resolution No. 433)

use projects, participated independent experts and parties concerned, as well as representatives of NGOs and research institutions.⁶⁶ On the basis of the results of above mentioned discussions 7 forest use plans were returned to the authors for revision, and one plan was rejected. Much poorer is the situation with the discussions over hunting management plans: public representatives did not attend any of the discussions.

Public activity is low not only due to procedural deficiencies but also due to low level of public awareness on environmental issues and lack of specific knowledge, necessary for understanding and analyzing such plans. It should be mentioned herewith that public agencies make no efforts to involve the public in these processes. The information about the discussions over forestry and game management plans is not widely disseminated. This information may be available only to those who systematically and attentively check appropriate web-page. The information available on this web-page is not accessible for the rural population, where these plans are intended. The discussions over management plans are held only in Tbilisi, due to which local population (who are immediately affected by these activities) have very limited possibility to participate in them.

As mentioned before, Georgian legislation recognizes the right of its population, representatives of public organizations to participate in the discussion over the decisions, management plans, administrative resolutions and documents referring to establishment, development, reduction and elimination of protected areas, as well as care and management of protected areas and buffer zones. The issue of establishment of protected area never became subject of public discussions for recent years. In certain cases special committees, composed of representatives of appropriate public agencies, different environment protection organizations and research institutions, were being set up. After several sporadic meetings and discussions of draft laws on early stage, the process used to be closed for outsiders and continued only within public agencies. The ultimate fate of the draft law is usually unknown not only to general public, but also to members of the committee, set up under the order of Minister/Head of the APA. Such practices is harmful first of all to the very idea of protected areas, since it allows the opponents of protected areas declare that only environmental NGOs and Ministry of Environment, and not the whole public are interested in the creation of protected areas (see above). This non-transparent process also allowed ministries of Energy, Economy and Agriculture to obstruct the draft law, presented to the government by Ministry of Environment, or postpone it *sine die*.

Public participation good practice was not acceptable to the government also because it would not allow it to decide freely on elimination/reduction of protected areas in favor of destructive projects (construction of power stations, auto- and railway roads, Lazika etc.). There have been no public discussions for recent years on elimination, restriction or changing category of protected areas.

A number of protected areas management plans were approved during past years, though none of them was publicly discussed. Discussions with particular specialists, (even with participation of some NGOs) information of which is not available for general public, cannot be considered a public process.

⁶⁶ Materials of National Biodiversity Strategy and action Plan -2, prepared by NGO "Ecovision".

CONCLUSION

Public participation in decision making is one of the key aspects of good governance. Especially important this component is in forest protection and sustainable use issue. Transparency and participation of all interested parties is an effective tool against corruption. Transparent and participative decisions allow avoiding ecologically and socially harmful decisions. That is why the present monitoring report's emphasis is put on legislation and practices of public participation in decision-making process.

Chaotic changes of recent years led to collapse of forest sector of the country, due to dilettantism of decision-makers, conflict of interests, nepotism and protectionism: systemic corruption, weak institutional structure, lack of monitoring and control, contradictory legislation, large-scale unsustainable logging, etc. have become a norm.

New governance structure, established in 2011 allegedly with the purpose of solving the problems, created even more conflict of interests. Several functions, related to natural resources (minerals, water, hunting, fishing, timber, and non-timber resources) are concentrated within ANR: establishment of quota and terms of use, preparation of licensing/lease conditions, sale of license, license control, and suppression of illegal use. Functions under the Agency statute are impossible within the existing human and technical resources.

The national forest policy and strategy has not been adopted to date, which is one of the major hampering factors on the way to successful reform. During the years 2003-2012 several forest reform concepts were developed but none of them was finalized as a legal document.

Forest legislation became even vaguer: during the period from 1 January 2009 to September 2012 – about two hundred legal acts, related to forest sector were adopted by the Parliament and different government agencies. Half of these documents are regulatory acts (this number does not include protected areas and hunting issues). These changes often offered contradictory and conflicting regulations. Besides, recently adopted legal acts are less consistent with principles of sustainable development, which in Georgia are governed by law of Georgia on Environment Protection.

Summing up national policy regarding protection and use of forests we will see that biodiversity is facing strong threat of degradation, since commercial use of endangered species (hunting, felling), including within protected areas have been legalized. The creation of new protected areas is practically impossible due to the planned "reforms", since all river basins are intended for 49-years lease. The forests, which are not included in the list of protected areas, will acquire only commercial function regardless biodiversity value; clear cuts in natural forests will be allowed. To date no restriction or control mechanism is in force; as a result unobstructed total felling is going on in the regions; sawmills, which were closed since 2007, started working in full force on the eve of 2012 parliamentary elections. At the same time 69 long term (5, 10 and 20 years) logging licenses were issued as of September 2012. In addition, the boundaries of existing protected areas were changed, and creation of new protected areas was stopped (mainly by MENR) for the sake of implementation of infrastructural and energy projects. The practices of public information and public participation in decision making, and legal practices do not comply with Georgia's international commitments.

The rights of the public to receive full, objective and timely information on the state of forests are not fulfilled. The State is not aware of the real situation with forest fund since there have been no inventory carried out for recent 30 years. No attention is paid to legal requirements regarding issuance of environmental information. Quite often government agencies issue incomplete information, or even do not issue it at all when they are interested in hiding real interest of the authorities regarding the planned activities in forest sector. State agencies make not enough efforts for involvement of the public in decision-making; opportunities of local population to influence government decisions are very limited. There is an urgent need of development and

implementation of procedures for public participation in long-term planning and management of forests and protected areas.

Proceeding from the above, Georgian forest sector needs urgent and wide-scale reform and changes on political, legislative, institutional levels. The key objective should be finding the golden mean between conservation and use of forests. In order to avoid former mistakes it is important that each decision is taken as a result of intensive discussions with the public. If public considerations are not shared the authorities should publicly prove the reason for the rejection in each case. The authorities should aim at consistent implementation of international commitments in order to ensure sustainable development and adoption of modern forest management standards, the conservation of biodiversity and equitable sharing of the income.

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Association Green Alternative is a non-governmental, non-profit organization founded in 2000. The mission of Green Alternative is to protect the environment, biological and cultural heritage of Georgia through promoting economically sound and socially acceptable alternatives, establishing the principles of environmental and social justice and upholding public access to information and decision-making processes.

We organize our work around six thematic and five cross-cutting areas. Thematic priority areas include: energy – extractive industry – climate change; transport sector and environment; privatization and environment; biodiversity conservation; waste management; water management. Cross-cutting priority areas include: environmental governance; public access to information, decision-making and justice; instruments for environmental management and sustainable development; European Neighbourhood Policy, monitoring of the lending of the international financial institutions and international financial flow in Georgia.

Green Alternative cooperates with non-governmental organizations both inside and outside Georgia. In 2001 Green Alternative, along with other local and international non-governmental organizations, founded a network of observers devoted to monitoring of development of a poverty reduction strategy in Georgia. Since 2002 Green Alternative has been monitoring implementation of the Baku-Tbilisi-Ceyhan oil pipeline project, its compliance with the policies and guidelines of the international financial institutions, the project's impacts on the local population and the environment. Since 2005 the organization has been a member of the Monitoring Coalition of the ENP (European Neighbourhood Policy) Action Plan. In 2006 Green Alternative founded an independent forest monitoring network. Since establishment Green Alternative is a member of CEE Bankwatch Network - one of the strongest networks of environmental NGOs in Central and Eastern Europe. Green Alternative closely cooperates with various international and national organizations and networks working on environmental, social and human rights issues; Green Alternative is a member of the Coalition Transparent Foreign Aid to Georgia founded in 2008. In 2010 Georgian Green Network was established on the initiative of Green Alternative. This is informal association of civil society organizations and experts dedicated to protecting environment, promoting sustainable development and fostering principles of environmental and social justice in Georgia.

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