

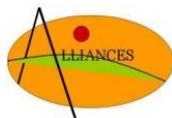
# Land Ownership and the Development of the Land Market in Georgia

A Report Commissioned by Alliances KK and Undertaken by a Private Consultant

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Translation edited by Helen Bradbury



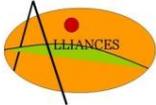
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This report was produced by a private consultant Alexander Gvaramia a legal expert on land laws and issues and a member of the Swiss Development Cooperation funded Mercy Corps Georgia implemented Alliances Kvemo Kartli Programme, Helen Bradbury, a market development programme working in the dairy, beef and sheep value chains in Dmanisi, Tetrtskaro and Tsalka municipalities of Kvemo Kartli. The International Centre for Conflict Negotiation (ICCN) a partner of Alliances KK was responsible for facilitating the concept and production of the report.

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# TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>4</b>
<b>CHAPTER I. PRIVATE OWNERSHIP OF AGRICULTURAL LAND.....</b>	<b>5</b>
1. THE SOVIET PERIOD AND THE LAND REFORM OF THE 1990s .....	5
<i>Size of Land Parcels .....</i>	<i>6</i>
<i>Geographical Limitations on Issuing Land .....</i>	<i>6</i>
2. RECOGNITION OF OWNERSHIP RIGHTS THROUGH REGISTRATION .....	7
<i>Creation of the Public Registry and its Mandate.....</i>	<i>7</i>
<i>Land Registration Pre 2004 (Public Registry) .....</i>	<i>8</i>
<i>Land Cadastre and Registration .....</i>	<i>9</i>
3. AGRICULTURAL LAND.....	9
<i>Rights of Ownership of Agricultural Land .....</i>	<i>10</i>
4. THE PRIVATISATION AGRICULTURAL LAND.....	11
<i>The Different Forms of the Privatisation of Agricultural Land .....</i>	<i>11</i>
Further Explanation of the forms of Agricultural Privatisation.....	11
<i>Lands Subject to and Not Subject to Privatization .....</i>	<i>12</i>
<i>The Privatisation Process .....</i>	<i>13</i>
initiating the process .....	14
announcing and participating in the auction .....	15
<i>The Price of Land .....</i>	<i>16</i>
<i>Challenges in the Privatisation Process .....</i>	<i>18</i>
Broker services .....	18
pasture land.....	18
5. MUNICIPAL OWNERSHIP OF AGRICULTURAL LAND WITH SPECIAL REFERENCE TO PASTURE LAND .....	19
The municipal role in the legislation of land privatization.....	19
<b>CHAPTER II: THE LEASING OF AGRICULTURAL LAND .....</b>	<b>23</b>
<b>CHAPTER III. ASSET TAX OVER AGRICULTURAL LAND AND TAX EXEMPTIONS.....</b>	<b>24</b>
Exemptions on Land Asset Tax .....	25
<b>CHAPTER IV. CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>26</b>
1. PRIVATISATION OF AGRICULTURAL LAND.....	26
2. TRANSFERRING PASTURE LANDS INTO USE .....	26

## INTRODUCTION

Land is Georgia's greatest resource and the correct planning of its use is a vital precondition for the socio-economic and political development of the country. Georgia is located in south-east Europe, between Russia, Azerbaijan, Armenia, Turkey and the Black Sea. The total area of the country is approximately 7 million hectares of which 3 million hectares is agricultural land. Private land ownership, the creation of land owners and the establishment of civic relations in the country are preconditions for the overall effective development of Georgian agriculture. Transparent and secure private land ownership is the main basis and guarantee of a country's stable development and is fundamental in allowing the development, growth and investment at all levels in the farming sector.

In Georgia, land is under state, private, municipal and church ownership and a large portion of the land is still under state ownership. Land privatisation processes officially started in 1992 and still continue to the present day. Previously, land in Georgia was in the sole ownership of the government whilst during the Soviet period, it was under common possession belonging to all people. After gaining independence in 1991, the government began the introduction of private institutions and the privatisation of state property became a priority.

Private land ownership in Georgia is based upon normative acts of the Executive Branch of the Government of Georgia, issued from 1992. The following list details the main legislation enacted to date related to ownership rights, land ownership, use and the transfer of fixed assets:

- Constitution of Georgia (24 August 1995)
- Law of Georgia on Ownership of Agricultural Lands (22 March 1996)
- Civil Code of Georgia (26 June 1997)
- Law of Georgia Using Alternative Land and Reimbursement of Damage in Case of Allocation of Agricultural Land for Non-Agricultural Purposes (2 October 1997)
- Law of Georgia on Local Self-Governance (16 December 2005).
- Law of Georgia on Recognising Property Rights Under the Possession (Ownership) of Physical and Private Legal Entities (11 July 2007)
- Tax Code of Georgia (17 September 2010)
- Law of Georgia on Public Registry (19 December 2008)
- Law of Georgia on State Assets (21 July 2010)<sup>1</sup>

The process and development of private land ownership can be divided into *two phases*.

The first comprises agricultural land reform which started in 1992 and continued to the end of 1998.

The second encompasses the privatisation of agricultural land that was initiated in July 2005 and is on-going.

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<sup>1</sup> Table 6 on page 22 also details normative acts which regulate the authority of State and Municipal Bodies in the Management of Agricultural Land. These regulatory documents are based on the core legislation listed above.

### 1. The Soviet Period and the Land Reform of the 1990s

There was no private land ownership during the Soviet period. The land belonged to the people in the Union of Soviet Socialist Republics (USSR). Citizens were given land for use but the government retained the right to confiscate the land with its assets from one entity and give it to another entity without any justification or explanation. Additionally, there was no tracking of land ownership or use. Only buildings, their owners and the number of people living within a particular dwelling could be tracked with this process only taking place in urban areas (on non-rural objects) and with only very few cases of asset tracking occurring in the regions. At this time, the *District Bureau of Technical Inventory* was the official agency for registering state assets.

Traditionally, families kept their own records in so-called “Household Book” that contained information about their own individual households such as, for example, the number of family members, their ages and other information. These “notebooks” also contained information about the total area of land used by a particular family. These records, of course, were for personal use and information and served no official or developmental purpose for the community.

In the USSR, the rural population worked mainly in the collective *Kolhoz* and other Soviet farm structures that were created specifically for agricultural activities. These collectives were also using agricultural lands that were not under their possession.

After the breakup of the Union in 1991 and Georgia becoming an independent country, the issue of land ownership was high on the socio-political agenda. With land in the possession of all people during the Soviet period it belonged to no one individually after the restoration of independence, thus all Georgian land was transferred into state property within the land reforms that began from the early 1990s.

The main purpose of instituting land reform in Georgia was to formulate private land ownership and develop agricultural production. The official start of Georgian land reform was on 18 January 1992 when the *Act<sup>2</sup> of the Cabinet of Ministers of Georgia* was issued and according to which agricultural land within the borders of Georgia was to be transferred to the ownership of the citizens of Georgia only. If a person were not a citizen of Georgia, he would only be able to use the agricultural land parcel without legal ownership. Private ownership of agricultural land was finally established in 1996<sup>3</sup> wherein it was defined that land ownership was a privilege of citizens and households of Georgia as well as legal entities registered in Georgia and operating in the agricultural sector. Household land, kitchen gardens and land attached to summer cottages of certain defined areas was also announced to be the free-of-charge property of those citizens to whom they belonged.

During the land reform process, the government divided agricultural land into two parts; namely: state land and reform land. This meant that households would receive additional land parcels alongside the land which had already been granted to them as their private property or land which they had been previously using. Within the framework of the reform, agricultural land would be provided to households<sup>4</sup> although there were also cases where land was granted to individuals which occurred in obvious violation of the terms of the reform. A “household” is defined as a family living in a village, community or other similar settlement or a family living in a rural area and engaged in agriculture.

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<sup>2</sup> Resolution No. 48 of the Cabinet of Ministers of 18 January 1992.

<sup>3</sup> Law of Georgia on Ownership of Agricultural Lands, 22 March 1996.

<sup>4</sup> Resolution No. 128 of the Cabinet of Ministers of 6 February 1992.

## Size of Land Parcels

The maximum size of these land parcels for households was defined as 1.25 ha and would be provided free-of-charge. At the start of the land reform, however, land under cultivation with perennial crops was required to be sold to the households which meant that the people had to pay for the crops which were growing on their land. The following year, however, this requirement was annulled with this category of land also provided to households free-of-charge.<sup>5</sup>

The population was divided into three categories for the issuance of agricultural lands as follows:<sup>6</sup>

- The first category included persons permanently living in rural areas and employed in agriculture.
- The second category included permanent rural residents and those working on the fields of other residents.
- The third category included persons living in urban areas.

Despite the stipulation by law that the size of land parcels should be 1.25 ha, differences existed between the various administrative territories. The maximum size of the land depended upon the total size of the agricultural lands within the borders of the given administrative unit but parcels exceeding the 1.25 ha limit were never granted. In mountainous areas, however, the maximum size of the parcel was higher – up to 5 ha for those from the first and second categories and up to 1 ha for those from the third category<sup>7</sup>.

Land parcels of the maximum size (up to 1.25 ha) were issued only to persons meeting the requirements of the first category. During the reform in 1996, households falling under the second category and working in the fields of medicine, education and culture were also equalised with those in the first category. Households belonging to the second category would receive a maximum 0.75 ha-sized land parcel whilst the limit for the third category was 0.25 ha. When transferring land adjacent to larger cities, households belonging to the third category of recipients would receive land parcels comprising 0.15 ha.

## Geographical Limitations on Issuing Land

Certain geographical limitations were imposed in the land reform process dating to its start in 1992. More specifically, issuing land was prohibited within the 21-kilometre corridor along the state borders of Georgia which meant that the land in these areas was only provided for use and not for ownership. Kitchen gardens, and household yards however, were able to be under private ownership. The same limitation was placed over the land located within a 3-kilometre corridor along the Black Sea coast.

Later, starting on 7 June 1992,<sup>8</sup> however, the privatisation of land within the 21-kilometre state border corridor was fully prohibited as well as the issuing of land for new household parcels and individual home construction in this area. The establishment of the state border line of Georgia and demilitarisation activities which included demarcating state borders and providing for their protection were the reasons for no further land privatisation activity. The change did not take place in all areas of the country, however, with limitations placed mainly upon the Kvemo Kartli and Samtskhe-Javakheti regions owing, most likely, to the large non-ethnic Georgian local populations.

The Constitution of Georgia states that everyone is free by birth and is equal before the law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin,

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<sup>5</sup> Resolution No. 39 of the Cabinet of Ministers of 16 January 1993.

<sup>6</sup> Resolution No. 290 of the Cabinet of Ministers of 10 March 1992.

<sup>7</sup> Resolution No. 66 of the Parliament of Georgia of 22 March 1996.

<sup>8</sup> Resolution No. 10 of the State Council of Georgia of 7 May 1992.

property and title or place of residence.<sup>9</sup> In spite of such principles of equality—not only in the Constitution but also in other legislation—a number of cases of the oppression of ethnic minorities took place during the first stage of Georgia’s land reform. First and foremost, there is the abovementioned example of land reform not being implemented within the state border corridor dating to 1992. The decision was justified by the necessity of implementing border delimitation activities but the limitation on land privatisation applied only to the Kvemo Kartli and Samtskhe-Javakheti regions with a clear connection to restricting the settlement of the predominantly non-ethnic Georgian local populations. However these limitations also applied to the ethnic Georgian population that lived within the border corridor. Beginning in 1994, however, this limitation was annulled<sup>10</sup> and the populations of Kvemo Kartli and Samtskhe-Javakheti, without any attention paid to ethnic origins, were able to receive agricultural lands in their regions through the land reform.

In 1998, the 21 kilometres were reduced to a 5-kilometre swath in which limitations upon certain activities remained such as, for example, the construction of certain objects that could be seen to threaten the protection of the state border. Additionally, activities with any implications for border security and protection also needed to be agreed with the border protection unit. The right to land ownership and farming therein, however, was not limited for the population.

The populations of Kvemo Kartli as well as Samtskhe-Javakheti expressed their discontent that the land reform concerned households and not individual citizens. There were cases when the Household Book registered several land parcels for the same household with each member of the household receiving a land parcel. Such violations were most frequently observed in Kvemo Kartli and Samtskhe-Javakheti. Interestingly, such land parcels registered through this violation of the law are in many cases still under the ownership of the population and are registered as their possession.

The date of 22 March 1998<sup>11</sup> was set as the deadline for the completion of the land reform in Georgia although it was later extended to 31 December 1998<sup>12</sup> owing to the fact that the allocation of land in the Kvemo Kartli region had not been completed. ***After the expiration of this deadline, the process of transferring land into private ownership became impossible as the state did not continue to privatise state-owned agricultural land. Such lands were only leased (see Chapter II and III).***

In light of the above information, it can be concluded that land reform was successfully implemented in Georgia in spite of the numerous gaps emerging in the process. Land granted for the use of the population during the Soviet period was recognised as the private property of the population and, in addition, citizens were provided with additional agricultural land within a certain limit. Even though there was the occurrence of numerous violations, the situation overall improved. Today, it can be said that the land reform has been implemented to a ‘satisfactory’ level. Privately owned land evolved into a land market. By the end of 90-ies land cultivation and livestock farming and a land market began a slow start.

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## 2. Recognition of Ownership Rights through Registration

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### Creation of the Public Registry and its Mandate

The Public Registry was created in autumn 2004 although the registration of property and other rights on land were implemented before this date. The recognition of property rights on land and other fixed assets in Georgia as well as the confirmation of such rights is ensured by the *National Agency for Public Registry of the Ministry of Justice of Georgia (hereafter Public Registry)* operating on behalf of the Georgian state.

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<sup>9</sup> Constitution of Georgia.

<sup>10</sup> Resolution No. 815 of the Cabinet of Ministers of Georgia of 29 November 1994.

<sup>11</sup> Law of Georgia on Ownership of Agricultural Lands of 22 March 1996.

<sup>12</sup> Law of Georgia on Making Changes to the Law of Georgia Ownership of Agricultural Lands of 20 March 1998.

From 1998 to 2004, the main registering agency for fixed assets was the *State Department for Land Management*, a state agency mandated to conduct a number of activities including the implementation of agricultural land reforms and the registration of rights for fixed assets. ***In 2004, this institution was liquidated with the registration of property rights, as one of its primary tasks, becoming the competence of the newly-created Public Registry.*** At this time the Public Registry dealt only with the registration of property rights for fixed assets and other items but today implements the registration of:

- Rights for fixed assets
- Public legal limitations
- Securities/guarantees
- Rights for liquid assets and non-material benefits
- Entrepreneurial and non-commercial entities
- Bank guarantees
- Debtors

The Civil Code of Georgia (approved on 26 June 1997, operational since 25 November 1997) explicitly states that the State should recognise and approve the rights and responsibilities of entities to any specific assets through the registration of rights for fixed assets and other items. Any transactions that are connected to fixed assets need to be registered in the Public Registry. None of the transactions would be considered legal unless registered in the Public Registry. The Public Registry registers rights to possession and other ownership of items as well as the rights to land use.

#### **Land Registration Pre 2004 (Public Registry)**

The registration of land (fixed assets) was first implemented in Georgia in January 1998<sup>13</sup>. Before this time, the only registration agency was the so-called *Technical Inventory Bureau* that only registered buildings and provided no data on land and agricultural land. Registering the ownership of land and agricultural land became possible only upon the completion of the first stage of land privatisation in Georgia in 1998.

The only document certifying ownership of land during the reform process was a handover document issued to citizens by the local self-governing units (the village *sakrebulo*) beginning in 1992. In certain cases, these handover documents would bear the seals of the Department of Land Management to certify that these lands were provided within the framework of the reform. These documents were issued for several land parcels and indicated parcels allocated before the reform as well as those transferred as a result of the reform. The handover document included three-to-five land parcels on average.

***Even today, the handover document is the only document certifying the legal right to land ownership.*** There were cases when citizens did not receive handover documents (30-35%) although registering ownership rights in the Public Registry even without submission of such certification remains possible. In these types of cases, the individual should apply to the Archive Unit operating in his relevant municipality that maintains information on the assets of each of the households and its members<sup>14</sup>.

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<sup>13</sup> The Law of Georgia on Land Registration, the first law to support the registration of land and fixed assets, was adopted in 1996. Later, in 2005, the Parliament adopted a law on the Registration of Rights on Fixed Assets. Today, the law on Public Registry, adopted in 2008, regulates the activities of the Public Registry as well as all issues related to the registration of rights.

<sup>14</sup> Citizens without possession of a handover document certifying the ownership of their agricultural lands are still able to register their property rights to the land based upon archival records. This process is regulated by the Law of Georgia on Recognising Property Rights under the Possession (Ownership) of Physical and Private Legal Entities and is referred to as

## Land Cadastre and Registration

In addition to the creation of the public registry and the increasing systemization of the registration of property rights in Georgia, the Government implemented a systematic land cadastre which included its registration. The *USAID-funded Land Market Development project (1999-2005)* also ensured a systematic cadastre measuring of up to 2.5 ha land parcels and their registration into the Public Registry. As a result, land owners were given land ownership documents that certified the registration of their land parcels into the Public Registry as private property.

Legislation changes were implemented in June of 2012 according to which the primary registration of property rights on land as well as registration for specifying the area became free-of-charge. Previously, a registration fee of GEL 50 was required to be paid for such changes to be adopted.

*Of particular note is that the Public Registry has started a new project from July 2012 in order to ensure the systematic primary registration of agricultural lands and the specifics of their borders.* After the completion of this project, there will be no unregistered agricultural land in Georgia with the population bearing no significant costs for the measuring activities and the registration owing. This will mark an important step for Georgia both in terms of registering rights as well as the development of the land market in general.

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### 3. Agricultural Land

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Private ownership of agricultural land in Georgia was made possible from 18 January 1992, when Resolution No. 48 of the Cabinet of Ministers was adopted upon which citizens were granted ownership over their yards, gardens and orchards.

Later, in 1996, the ownership of agricultural land was recognised by the Law of Georgia on Ownership of Agricultural Land. This law is a final expression of the legal acts, orders and resolutions that were created beginning in 1992 and focused upon recognising ownership and the formulation of the principles of ownership.

**Agricultural land is a land parcel of agricultural use, used for the purposes of crop production and animal (including poultry, fishery) production, with or without perennial plants or buildings attached.<sup>15</sup>**

Agricultural land in Georgia is divided into several categories:<sup>16</sup>

- Arable lands (with perennial plants, orchards, vegetable gardens)
- Hayfields
- Pasture land
- Personal plot

**Arable lands** can be used for the production of perennial as well as annual cultures.

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the recognition of property rights over lawfully possessed land. According to this law, the lawful possessor is a person who has possessed the land and attached buildings before 1 January 2007 and has one of the following documents: certification-characteristic (issued by the Technical Bureau Archive of the Public Registry), excerpt from the Household Book or the list of land distribution (to be found at the district archives), book of the gardener (document certifying membership of collective gardening) or certification on assets from district archives. Submission of any of the abovementioned documents enables a person to register his property rights into the Public Registry.

<sup>15</sup> Law of Georgia on State Assets, Article 2.t<sup>2</sup>.

<sup>16</sup> Law of Georgia on Public Registry, Article 2.e.

**Hayfields** are used mainly for hay production and are not used for arable purposes.

**Pasture lands** are used as pasture for animals and cannot be used for arable or hay production purposes.

**Personal plots** are used for household purposes – buildings or auxiliary production.

### Rights of Ownership of Agricultural Land

Private ownership of agricultural land means that the owner of the land is entitled to determine whether or not he/she wants to use the land according to its primary purpose, dispose (sell) or transfer the land to third parties for use. There are no restrictions for non-cultivated agricultural land under private ownership.

Agricultural land in Georgia can be owned by citizens of Georgia, households, legal entities registered according to the legislation of Georgia as well as foreigners and legal entities registered in foreign countries. At the same time, legal entities registered in foreign countries are only entitled to own land that they have inherited. However legal entities registered in foreign countries must transfer agricultural land under their ownership to Georgian citizens, households or legal entities registered in Georgia within six months after such ownership commences. Failure to comply with this requirement will result in a court decision to confiscate the given agricultural land from the entity registered in the foreign country in favour of the state and with the appropriate compensation. Regulations of the Law of Georgia on Confiscation of Property for Public Needs apply whilst confiscating the agricultural land.<sup>17 18</sup>

The table overleaf summarizes the entities that are entitled to ownership (purchase, inherit, gift) rights over private, state or municipal agricultural lands:

**Table 1: Entities Entitled to Ownership Rights over Private, State or Municipal Lands**

	Agricultural land		
	Private property	State property	Municipal property
Citizen of Georgia	◆	◆	◆
Legal entity registered in Georgia	◆	◆	◆
Citizen of a foreign country	◆	◆	—
Legal entity registered in a foreign country	◆ Upon the submission of inheritance certification within six months after registering property rights in the Public Registry	—	—

<sup>17</sup> Law of Georgia on Ownership of Agricultural Land, Article 4.

<sup>18</sup> It should be noted, however, that a decision of the Plenary of the Constitutional Court of Georgia ruled that several regulations of Article 4 of the Law of Georgia on Ownership of Agricultural Lands were unconstitutional and, therefore, void. According to such regulations, a foreign citizen was only allowed to become the owner of agricultural land in Georgia if such land was inherited or had been previously rightfully owned as a citizen of Georgia. At the same time, foreigners and legal entities registered in foreign countries were to transfer agricultural land under their ownership to Georgian citizens, households or legal entities registered in Georgia within six months after such ownership was initiated. Nevertheless, the Parliament of Georgia has not adopted any changes to the Law of Georgia on Ownership of Agricultural Lands at this stage.

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#### 4. The Privatisation Agricultural Land

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Ownership over agricultural land in Georgia was made possible from 1992. Before that, the land was state property and, even earlier during the Soviet period, it was the property of the people. Land in Georgia is currently under state, municipal, church or private property ownership. State-owned agricultural land can only be privatised by citizens of Georgia as well as legal entities of private law registered in Georgia.<sup>19</sup> As hitherto stated the process of land privatisation in Georgia is divided into two stages; namely, the first stage in the form of the 1992-1998 reform period and the second stage comprising the events taking place after 2005.

Despite the first stage of land reform, most agricultural land remained under state ownership. However, this period of reform laid the foundation for the creation and development of the land market. The second stage of land privatisation started in summer 2005 when the law on the Privatisation of State-Owned Agricultural Lands (in force from 29 July 2005 to 9 August 2010) was adopted. This law defined the rules and conditions for the privatisation of agricultural land plots. Currently, the Law on State Assets (in force since 9 August 2010) is in place and regulates the rules and conditions of the privatisation of agricultural land.

#### The Different Forms of the Privatisation of Agricultural Land

Currently the privatisation of state-owned agricultural land may take several forms:

1. Auction
  - 1.1 Electronic auction
  - 1.2 Public auction
2. Direct sales
  - 2.1 Direct sales based upon the decision of the President of Georgia (including free-of-charge transfer)
  - 2.2 Direct sales based upon the decision of the President of Georgia resulting from competitive selection process
  - 2.3 Direct sales of leased land<sup>20</sup>

**Note:** Another form of agricultural land privatisation was in force from 2005-2010; namely, privatisation through special auction. Only Georgian citizens living in specific villages and communities could participate in the auction. This regulation was been annulled on the 9<sup>th</sup> August 2010<sup>21</sup>. National minorities living in Kvemo Kartli (Marneuli, Gardabani, Bolnisi and Dmanisi districts) purchased 1-1.5 ha land plots in 2005-2006 through special auction.

#### FURTHER EXPLANATION OF THE FORMS OF AGRICULTURAL PRIVATISATION

The different forms of agricultural land privatisation merit a further brief explanation as follows:

1. **An auction** is a process of trade during which participants are ready to give their price to win the competition. The winner is the person who proposes the highest price.
2. The winner of the auction with special conditions is a person who takes the responsibility for satisfying the conditions and offers the highest price to the agency implementing the privatisation.

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<sup>19</sup> Law of Georgia on State Assets, Article 3.2.

<sup>20</sup> Such form of privatisation has not been in force since 1 May 2011.

<sup>21</sup> National minorities living in Kvemo Kartli (Marneuli, Gardabani, Bolnisi and Dmanisi districts) purchased 1-1.5 ha land plots in 2005-2006 through special auction.

3. The winner of the auction without special conditions is a person who offers the highest price to the agency implementing the privatisation.
4. The public auction can be an auction with or without special conditions and will identify a winner as the person who proposes the highest price. Any interested party can attend the public auction.
5. An electronic auction can be held with or without special conditions and will identify a winner as the person offering the highest conditions. The electronic auction is held through a web-page (at the moment the auction is held at [www.eauction.ge](http://www.eauction.ge)). Identities of participants are confidential.
6. Electronic auctions have been the most popular form for selling agricultural land for the past two years.
7. Privatisation through *direct sales* is one of the forms of privatisation when the decision is made by the President of Georgia based upon the proposal of the Ministry of Economy and Sustainable Development and, in special cases, the Government of Georgia.
8. The decision on transferring agricultural land through privatisation free-of-charge is made by the President of Georgia. This is for the citizens of Georgia who lived or still live on occupied territories and remain homeless. The proposal about such privatisation is prepared by the Ministry of Economy and Sustainable Development and is submitted to the President.
9. Direct privatisation of leased agricultural land is one of the forms of privatisation during which the leaser is given an advantage to purchase the leased land. It should also be mentioned that the leasers of state lands were entitled to use such a right until 1 May 2011. The leaser was to apply to the appropriate services of the Ministry of Economy and Sustainable Development in advance of a given deadline after which he is no longer entitled to request such privatisation.
10. Direct privatisation through competition is one of the forms of privatisation when a decision is made by the President of Georgia and property rights are granted to interested parties (potential investors) that will fully and duly comply with conditions set for a competitive direct sale of agricultural land. Direct competitive sales of agricultural land are implemented in the case of the existence of numerous conditions for investment and when the terms offered by the interested parties significantly differ.

### **Lands Subject to and Not Subject to Privatization**

The following agricultural lands *are subject* to electronic and public auctions, direct sales and competitive selection privatisation forms:

- Arable lands
- Hayfields
- Lands with perennial plants
- Artificial and natural watercourses/lakes for fisheries

Agricultural land with farming and other auxiliary buildings for plant production and animal husbandry are also subject to privatisation. The cost of the buildings is not included in the price of land.

In the case of direct sales of arable lands and hayfields to their leasers, pasture lands leased before 30 July 2005 are also subject to privatisation (2007-2011).

The following categories of agricultural land *are not* subject to privatisation:<sup>22</sup>

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<sup>22</sup> Law of Georgia on State Assets, Article 4.

1. Pasture land, except those pastures that, according to set regulations and acts issued by relevant local authorities, are attached to the buildings under the ownership of physical or legal entities or the state.
2. Animal transportation roads.
3. First level of sanitary zones of water supply objects (strict regime zone).
4. Land for historical, cultural, natural and cultural-religious monuments.
5. Land of protected territories, except protected landscapes and territories for multi-purpose use.
6. Land adjacent to Georgian rivers – Enguri, Rioni, Kvirila, Mtkvari, Khrami, Tergi, Ksani, Aragvi, Supsa, Bahvistskali, Khobi (Khobistskali), Tekhura, Tskhenistskali, Dzirula, Nenskra, Kintrishi, Jejora, Khanistskali, Gubazeuli, Paravan, Stor, Nakri, Kheleduli, Jonouli, Sakauri, Chakvistskali, Tsablarastskali, Samkuristskali, Magani, Pirikiti Alazani, Avaniskhevi, Dumala, Chelti, Chveshura (Chashura), Duruji, Chkhorotsku, Ivri, Lebarde, Tsachkhuri, Bzholiskhevi, Chanistskali, Merisa (Akavreti), Shavi Tskali, Uraveli, Khumpreri, Kvirilistskali, Jutistskali (Juta), Snostskali, Khidi (Khidistskali), Amala, Chkheri, Kesia, Mnaisistskali, Chorokhi and Ajaratskali – where new sources of renewable energy are scheduled to be built and X and Y coordinates are already approved according to the resolution of the Minister of Economy and Regional Development.

*Currently, there are no resolutions issued to identify the coordinates of the prohibited area which results in many cases of privatisation of agricultural land along these rivers.*

*Prohibitions clearly indicate that agricultural land of the ‘pasture’ category cannot be privatised but as an exception, in the case of implementing a certain investment initiative or a reasonably justified application of a person desiring privatisation, the agency responsible for privatisation is entitled to change the category of the pasture land and to auction it as ‘arable land’ or ‘hayfield.’*

*As of today, more than 400,000 ha of agricultural land have been privatised since 2005.* A significant amount of land, however, still remains under state property. The table below provides approximate data on privatised agricultural land in the Kvemo Kartli region:

**Table 2 approximate data on privatised agricultural land in the Kvemo Kartli region**

No.	Municipality	Unit of plots	Area (Ha)
1.	Gardabani	729	16039.78
2.	Marneuli	2549	27913.58
3.	Bolnisi	2238	11274.62
4.	Tetritskaro	964	13281.93
5.	Dmanisi	1222	32284.88
6.	Tsalka	982	18976.63
	<b>Total</b>	<b>8684</b>	<b>119771.42</b>

### The Privatisation Process

Privatisation can be initiated by any person who has the right to own agricultural land. Entities interested in buying agricultural land should apply to the agency implementing privatisation (see below) and, in the case of a land plot not registered in the Public Registry, obtain a cadastre map of the land plot. If the land plot is already

registered in the Public Registry as state property, it is sufficient to submit the cadastre code of the plot (i.e., a unique identification number assigned to each of the land plots/fixed assets by the Public Registry).

The decision on holding an auction for the privatisation of state-owned agricultural land is made by the appropriate agency in charge of implementing privatisation; namely, the Ministry of Economy and Sustainable Development and its territorial units or agencies to which the Ministry has delegated such authority. The responsible agency reviews applications within a two month (although there are cases when such a process lasts for three-to-five months) and makes a decision on the privatisation of the agricultural land plot through auction (announced mainly on-line).

#### INITIATING THE PROCESS

The privatisation of agricultural land through auction can be initiated by a citizen of Georgia, a legal entity of private law registered in Georgia as well as third parties.<sup>23</sup> The third party is a physical or legal entity or the union of such entities (broker) that finds those who are interested in the privatisation of state assets and supports the privatisation process of state-owned fixed assets and implements its activities in accordance with the agreement made with the Ministry of Economy and Sustainable Development. The identification of agricultural land, identifying the category and preparing detailed cadastre drawings is ensured by the authorised agency or the initiator.

In order to initiate the privatisation process, the initiator is responsible for the following:<sup>24</sup>

1. Selecting state-owned and non-leased agricultural land plot(s) and, if needed, division into plots of optimal size (no less than 3 hectares). Such a limitation does not apply if the area of the land plot is less than 3 hectares.
2. Preparing detailed cadastre measurement drawing(s) for the state-owned non-leased land plot(s) and finding information on the category of such land plot(s).
3. Submitting an application to the agency responsible for privatisation to show the interest in privatisation of state-owned non-leased agricultural land through auction.

During the process of the privatisation of agricultural land through electronic auction, the right of ownership of the land is granted to the entity offering the highest price to the agency in charge of privatisation. If, however, the auction is announced with certain terms, the right to ownership is granted to the person who takes the responsibility of meeting all requirements and offering the highest price to the agency in charge of privatisation during the bargaining process.

In order to privatise land within the 500-metre border area, the initiation of the privatisation for the given land plot should take place as a first step. Before the auction is announced, the agency in charge of privatisation is responsible for sending appropriate information on the land to be privatised to the Ministry of Internal Affairs for their approval. In the case of the granting of the approval, the Ministry of Economy and Sustainable Development is required to discuss the issue during a session of the Government of Georgia.

In the case when the Government of Georgia makes a positive decision to privatise land within the 500-metre border zone, the agency implementing privatisation is to carry out the privatisation process through the auction.

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<sup>23</sup> Law of Georgia on State Assets.

<sup>24</sup> Law of Georgia on State Assets, Article 8.4.

#### ANNOUNCING AND PARTICIPATING IN THE AUCTION

After a decision is made on allowing the privatisation of agricultural land, the information concerning the electronic auction is published on the web-site of the agency in charge of the privatisation or at [www.eauction.ge](http://www.eauction.ge) which is deemed as the official publication of electronic auction information and must include the following details:

1. Name of the agency in charge of the privatisation
2. Assets to be privatised
3. Start and end time of the auction
4. Starting privatisation price of the assets
5. Amount of unconditional and irrevocable bank guarantee/down payment
6. Conditions of holding the auction
7. Conditions for the privatisation (if any)
8. Size of the lot
9. Contact telephone number of the seller and the content of the contract to be signed
10. All other information deemed necessary by the agency in charge of the privatisation

The buyer is entitled to take a look at the agricultural land plot concerned following the formal announcement of the auction. The agency in charge of the privatisation sets deadlines for holding the auction from the date of its publication although in practice the deadline does not exceed 15 calendar days.

For participation in the electronic auction individuals must do the following:

1. Register as a participant on the appropriate web-site ([www.eauction.ge](http://www.eauction.ge))
2. Get to know rules of the auction and agree to them (electronically)
3. Pay down payment or submit bank security
4. Participate in the auction on the date and time announced

The down payment is an amount deposited to the account indicated by the agency in charge of the privatisation to ensure participation in the auction set usually at 30% of the total privatisation amount. The agency in charge of the privatisation, however, may set a different amount for the down payment for each individual case. In the case of an electronic auction, the down payment is paid by means of a bank card, internet banking or bank institution or through submitting a bank guarantee (Liberty Bank and its branches are deemed to be preferred for paying the down payment). The down payment can also be made through the web-site of the auction.

Making a down payment or submitting a bank guarantee to participate in the auction can be done at any time from the announcement (start) of the auction until two minutes before its completion.

Participants in the electronic auction make and raise their bids online with the price increasing in real time online.

If a new bid is made five minutes before the completion of the auction (the auction's exact time of completion should be identified in advance), the remaining time for bidding will be extended by an additional two minutes from the given moment. If another bid is made during that period, the remaining time will be extended by a further two minutes until the final price is reached. If a new bid is not made during the second extended two-minute period, the person having made the highest bid is the winner of the auction.

After completion of the auction, all of the participants are sent electronic information on the results as an official notification.

The winner is also notified electronically about the date for full payment of the amount and the conditions for transferring assets which is also considered as his official notification. It is also possible to physically provide the winner with the due certification upon completion of the auction (if requested) which will include all of the necessary details for completing his responsibilities and signing the agreement.

Those not winning have their down payment or bank guarantee returned to their original account no later than seven banking days after the completion of the action. The winner is responsible for paying the amount owing within one month from the date of the auction and submitting the payment document to the agency in charge of the privatisation. The winner's down payment will be considered as a part of the price for the purchased agricultural land. A sales agreement between the winner and the agency in charge of the privatisation is made within one month from the date of the auction. Such an agreement can also be made online. After making payment, the winner can print out the contract from the web-page and call at one of the Public Registry offices in order to register the agreement. Operators at the Public Registry office will immediately check the correctness of payment and certify the agreement on the purchase of the agricultural land through a signature.

### The Price of Land

The auction sales price for agricultural land is identified through 'Resolution No. 15 of Georgia of 13 January 2011 on 'Approval of the nominal price for the privatisation of state-owned leased agricultural land plots through direct sales and non-leased agricultural lands through auction privatisation according to administrative-territorial units'.

The tables below give the privatisation prices for the Kvemo Kartli region<sup>25</sup> (2005-present):

**Table 3: Land prices for the Kvemo Kartli region<sup>26</sup> (2005-present):**

<b>01.01.2011-Present<sup>27</sup></b>		<b>1 ha</b>		
<b>No.</b>	<b>Administrative-territorial unit</b>	<b>Arable lands</b>	<b>Hayfields</b>	<b>Pasture lands</b>
1	Marneuli	1000	200	135
2	Bolnisi	1000	200	135
3	Gardabani	1000	200	135
4	Dmanisi	1000	200	135
5	Tetritskaro	700	200	135
6	Tsalka	700	200	135

<sup>25</sup> Start-up privatisation price is approved according to Resolution No. 15 of the Government of Georgia of 13 January 2011.

<sup>26</sup> Start-up privatisation price is approved according to Resolution No. 15 of the Government of Georgia of 13 January 2011.

<sup>27</sup> Resolution No. 15 of the Government of Georgia of 13 January 2011.

**Table 4 Land prices for the Kvemo Kartli region<sup>28</sup> (August 2010- end 2010):**

<b>09.08.2010 to 31.12.2010<sup>29</sup></b>		<b>1 ha</b>		
<b>No.</b>	<b>Administrative-territorial unit</b>	<b>Arable lands</b>	<b>Hayfields</b>	<b>Pasture lands</b>
1	Marneuli	1140/620	160/120	80/60
2	Bolnisi	1040/540	160/120	80/60
3	Gardabani	1040/540	160/120	80/60
4	Dmanisi	780/420	160/120	80/60
5	Tetritskaro	760/400	160/120	80/60
6	Tsalka	680/380	160/120	80/60

\* Privatization prices for hayfields and pasture lands are given for the cases of cultivated and non-cultivated hayfields and pasture lands. The amount payable was determined according to the 20 times the annual land tax calculation set in accordance with the Tax Code of Georgia.

**Table 5: Land prices for the Kvemo Kartli region<sup>30</sup> (July 2005 - to August 2010):**

<b>29.07.2005 to 09.08.2010<sup>31</sup></b>		<b>1 ha/GEL</b>		
<b>No.</b>	<b>Administrative-territorial unit</b>	<b>Arable lands</b>	<b>Hayfields</b>	<b>Pasture lands</b>
1	Marneuli	570/310	80/60	40/30
2	Bolnisi	520/270	80/60	40/30
3	Gardabani	520/270	80/60	40/30
4	Dmanisi	390/210	80/60	40/30
5	Tetritskaro	380/200	80/60	40/30
6	Tsalka	340/190	80/60	40/30

**Note:** The amount payable was determined according to the ten times the annual land tax calculation set in accordance with the Tax Code of Georgia.

During the privatisation processes in 2005-2010, the buyer could purchase the desired land plot by paying 50% of the privatisation amount in cases of direct sales to a leaser and privatisation through auction. This meant that there were some payment options in place. In the case when a buyer did not have the full amount owing, he could make payments over a nine-year period. The first instalment had to be 20% of the total price with 10% being paid during each of the following years. A large number of farmers were able to purchase agricultural land through this scheme.

A 50% price reduction was put in place from 9 August 2010 to 1 May 2011 for direct sales to leasers. In the case of a payment by a leaser of 50% of the price, the land would be considered as redeemed.

<sup>28</sup> Start-up privatisation price is approved according to Resolution No. 15 of the Government of Georgia of 13 January 2011.

<sup>29</sup> Law of Georgia on State Assets.

<sup>30</sup> Start-up privatisation price is approved according to Resolution No. 15 of the Government of Georgia of 13 January 2011.

<sup>31</sup> Law of Georgia on Privatisation of State-Owned Agricultural Lands. This Law was annulled after adopting the Law on State Assets.

Currently, no price reductions apply and the buyer is obligated to pay the full price.

### Challenges in the Privatisation Process

The biggest problem now facing agricultural land privatisation is that ***the agency in charge of privatisation is unable to effectively and efficiently implement the process.*** There are frequent cases when initiators of requests for the privatisation of agricultural land wait for the announcement of the auction for several months before it takes place with bureaucratic processes significantly slowing down the process of the privatisation of agricultural land. ***Another serious challenge is a lack of awareness on the part of the population on the procedures for privatisation.*** There are frequent cases when the population does not or cannot participate in the auctions simply because of their lack of knowledge of the procedures for which they cite different reasons.

### BROKER SERVICES

Thus; the purchase and sales of agricultural land have developed however these have not been achieved through broker services which remain undeveloped with only a small number of individuals in the country dealing with these issues and without the existence of qualified brokers (companies) working with agricultural land. As for country-houses and household private plots, there are a number of brokers (fixed assets agencies) working in the sector.

***Developing broker activities in the regions and especially in Kvemo Kartli is highly desirable.*** Currently, there are only two brokers in Kvemo Kartli (LEPL Association for Protection of Rights of Land Owners, LTD Mamuli 2) which falls far short of the demand for the provision of this service .

***Improving broker services during the land privatisation process would simplify communication between the Ministry and the buyer of the land and would make the privatisation process more transparent. The growing tempo of privatisation would support the development of the land market as well as the agricultural sector in general.***

### PASTURE LAND

A further issue concerns the prohibition of the privatisation of pasture land. Currently, the state owns up to 1 million hectares of pasture land which are not under the use of any entities or subject to privatisation (there are frequent cases of illegal use, in fact). ***The lack of the regulation of pasture land significantly damages the agricultural sector in Georgia. It is also necessary to privatise animal transportation routes (if not privatised, serious management mechanisms need to be developed)*** and forest lands that are used for agricultural purposes (allowed by the law, but not actually implemented.<sup>32</sup>)

The issue of the privatisation of the abovementioned types of land is not high on the agenda at the moment but could become subject to privatisation.

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<sup>32</sup> Law of Georgia on State Assets.

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## 5. Municipal Ownership of Agricultural Land with Special Reference to Pasture Land

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All agricultural lands are under municipal ownership according to current legislation except for the following:<sup>33</sup>

- Pasture lands and animal transportation routes
- Agricultural land within the 500-metre border zone
- Land of protected areas
- Land of historical, cultural, natural, cultural-religious monuments
- State forest reserve land
- Land transferred to state-funded organisations and legal entities of public law through usufruct use
- Land of watercourses
- Private land
- Agricultural land subject to privatisation according to the Law of Georgia on State Assets
- Forest on the territory of the local self-governance with local importance and water resources of local importance

***Based upon the above stated, it could be concluded that agricultural land cannot be the property of municipality according to the current situation.*** It should also be mentioned, however, that a municipality can receive land which is subject to privatisation according to the Law of Georgia on State Assets.<sup>34</sup>

***Even though the legislation explicitly states that the Ministry of Economy and Sustainable Development of Georgia is the owner and manager of pastures, no specific acts have been currently instituted to recognise municipal pasture lands as state property by registering them into the Public Registry.*** This issue is currently open and lacks regulation. As from 2006-2010, legislation allowed agricultural land and, more specifically, pastures to be under municipal ownership and during this period, a great many pastures were registered into the Public Registry ***as municipal property*** which are still ***registered as municipal assets even today.***

### THE MUNICIPAL ROLE IN THE LEGISLATION OF LAND PRIVATIZATION

Municipalities take active part in the legalisation of state-owned agricultural land. This also concerns recognising ownership rights over the lands occupied illegally where committees created within the *sakrebulo*s of municipalities take an active part. Committees for recognising property rights over agricultural land implement their activities based upon the law.<sup>35</sup>

In the case of land that has been occupied illegally, a municipality-level committee makes a decision on whether or not the entity has been in rightful possession of the land plot and for the prescribed period of time and including the attached buildings (housing or those for other purposes) or if it owns the adjacent plot equal or less than the plot concerned and has no documents to confirm ownership over the land plot. The Law of Georgia on Recognising Property Rights under the Possession (Ownership) of Physical and Private Legal Entities authorises persons to receive ownership rights over illegally occupied land but only in cases of the following preconditions as follow:

1. A person has possession over the land plot before 1 January 2007.

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<sup>33</sup> Law of Georgia on Local Self-Governance, Article 47.1.

<sup>34</sup> Law of Georgia on Local Self-Governance, Article 47.2.

<sup>35</sup> Law of Georgia on Recognising Property Rights under the Possession (Ownership) of Physical and Private Legal Entities.

2. The land plot has to have attached buildings of household or other purposes.
3. It is possible for the land plot to have no buildings or other construction attached although in this case it has to be adjacent and should not exceed in area the land plot rightfully owned by a person.
4. There should be a notarised statement signed by at least two people to certify the ownership of the plot in question.
5. Illegally occupied land should be state property.

In the case of meeting all of these preconditions, a person can legalise or receive ownership rights to the land occupied illegally. In order to legalise ownership, a person will have to pay the price for the plot which is ten times the amount of the annual land assets tax set by the Tax Code of Georgia. As a result, the committee individually reviews applications of persons for the legalisation of land and issues an ownership certification document that is the basis for registering the land in the Public Registry as owned property.

Previously the local self-governance units—the village *sakrebulo*s—were the initial main implementers of the land reform. From 1992-1999, they worked together with the State Department of Land Management. At that time, the only document certifying the ownership, in the form of the handover document, was issued jointly by the *sakrebulo*s and the Department of Land Management. From 1996, the district government actively participated in the process of the use of agricultural land and, more specifically, the leasing of agricultural land. The Parliament of Georgia adopted the Law on Leasing Agricultural Land in 1996 upon which district *gamgeobas* leased agricultural lands and including pasture land. This law was annulled in 1998.

The local governments (district *gamgeobas*) were delegated the authority to lease out state-owned agricultural lands following Presidential Decree No. 446 of 2 August 1998 which they did until July 2005. *After this date, the gamgeobas were prohibited from doing any leasing out of arable lands and hayfields since these lands became subject to privatisation. It should be mentioned, however, that the leasing of pasture land continued until autumn 2006 after which the Law on Local Self-Governance entered into legal force and which annulled the gamgeoba as a legal governance body.*

*Between 2006-2010, a number of municipalities transferred into use agricultural land under municipal property even when pasture lands had been transferred to their ownership. Transfer for use was stopped in summer 2010 after amendments were made to the Law on Local Self-Governance and records about pastures as municipal property were annulled.*

It should be mentioned, however, that it is *still legally possible for municipalities to lease out pasture lands registered as their property.*

There is a presumption of correctness in the Public Registry which means that a municipality is entitled to manage its assets as it deems necessary until the land plot is registered as municipal possession. *Regulating the issue of pasture land as soon as possible is highly desirable alongside defining the competences of the state and municipality once and for all in terms of the management of pasture lands given the lack of clarity on this issue which creates serious obstacles for agricultural development. In Kvemo Kartli, for example, there are a number of farmers and other persons engaged in agriculture who have requested the buying or leasing pasture land for use.*

Table 6 below shows the respective authority of state and municipal bodies in terms of the management of agricultural land and the normative acts on which this authority is based.

Table 6: Showing the Authority of State and Municipal Bodies in Terms of Management of Agricultural Land				
No.	Entity	Authority for management of agricultural land	Normative Acts	Period
1.	Village (community) <i>sakrebulo</i> , local representative self-governance body	Implementation of land reform (identification of areas to be reformed, organising village meetings in respective administrative-territorial units, making appropriate decisions, holding voting and distribution of land, preparing handover document)	<ul style="list-style-type: none"> <li>- Resolution No. 48 of the Cabinet of Ministers of 18 January 1992</li> <li>- Resolution No. 128 of the Cabinet of Ministers of 6 February 1992</li> <li>- Resolution No. 290 of the Cabinet of Ministers of 10 March 1992</li> <li>- Resolution No. 39 of the Cabinet of Ministers of 16 January 1993</li> <li>- Resolution No. 148 of the Cabinet of Ministers of 24 February 1993</li> <li>- Decree of the Head of the Government of Georgia No. 249 of 30 December 1994</li> </ul>	1992-1999 1992-1999 1992-1999 1992-1999 1992-1999 1992-1999
2.	State Department of Land Management	<ul style="list-style-type: none"> <li>- Implementation of land reform (monitoring and management, issuing handover document)</li> <li>- Measuring of land plots to be issued through reform</li> <li>- Change of categories of agricultural land (moving to non-agricultural category)</li> <li>- Registration of property rights and other material rights</li> </ul>	<ul style="list-style-type: none"> <li>- Resolution No. 139 of the Cabinet of Ministers of 17 February 1993</li> <li>- All acts described in section 1 above</li> <li>- Law of Georgia on Using Alternative Land and Reimbursement of Damage in Case of Allocation of Agricultural Land for Non-Agricultural Purposes</li> <li>- Law of Georgia on Land Registration (1996)</li> </ul>	1992-1999 1992-1999 1997-2004 1998-2004
3.	District <i>gamgeoba</i> , local self-governance body	<ul style="list-style-type: none"> <li>- Identification of available agricultural land within the borders of the village <i>sakrebulos</i> whilst implementing land reform</li> </ul>	<ul style="list-style-type: none"> <li>- All acts described in section 1 above</li> <li>- Law of Georgia on Leasing</li> </ul>	1992-1998 1996-

		<ul style="list-style-type: none"> <li>- Identification of normative size of land (no more than 1.25ha) to be issued through the land reform</li> <li>- Leasing agricultural land (organising competitions for leasing, holding competitions and making lease agreements)</li> </ul>	<p>Agricultural Land</p> <ul style="list-style-type: none"> <li>- Decree of the President of Georgia No. 446 of 2 August 1998</li> </ul>	<p>1998</p> <p>1998-2006</p>
4.	Ministry of Economy and Sustainable Development of Georgia	<ul style="list-style-type: none"> <li>- Privatisation of state-owned agricultural land</li> <li>- Management of agricultural land use</li> </ul>	<ul style="list-style-type: none"> <li>- Law of Georgia on Privatisation of State-Owned Agricultural Land</li> <li>- Law of Georgia on State Assets</li> </ul>	<p>2006-2010</p> <p>2010-present</p>
5.	Municipal <i>sakrebulo</i> , local representative self-governance body	<ul style="list-style-type: none"> <li>- Recognising ownership rights to illegally occupied land</li> </ul>	<ul style="list-style-type: none"> <li>- Law of Georgia on Recognising Property Rights Under the Possession (Ownership) of Physical and Private Legal Entities</li> </ul>	<p>2007-present</p>
6.	Municipal <i>gamgeoba</i> , local self-governance body	<ul style="list-style-type: none"> <li>- Issuing municipal agricultural land for use</li> </ul>	<ul style="list-style-type: none"> <li>- Law of Georgia on Local Self-Governance</li> </ul>	<p>2006-present</p>
7.	National Agency of Public Registry	<ul style="list-style-type: none"> <li>- Registration of property and other rights on agricultural land</li> <li>- Recognising and registering ownership rights to agricultural lands as allowed by the law</li> <li>- Identification of categories of agricultural land</li> <li>- Change of categories of agricultural land</li> </ul>	<ul style="list-style-type: none"> <li>- Law of Georgia on Land Registration</li> <li>- Law of Georgia on Registration of Rights on Fixed Assets</li> <li>- Law of Georgia on Public Registry</li> <li>- Law of Georgia on Recognising Property Rights Under the Possession (Ownership) of Physical and Private Legal Entities</li> <li>- Law of Georgia on Public Registry</li> </ul>	<p>2004-2005</p> <p>2005-2008</p> <p>2009-present</p> <p>2007-present</p> <p>2009-present</p> <p>2009-present</p>

## CHAPTER II: THE LEASING OF AGRICULTURAL LAND

The practice of transferring agricultural land into use has been in existence since 1996. When the first stage of the reform process moved into its final phase, a decision was made by the State to transfer lands beyond reform into use for a certain period of time through the Law of Georgia on Transferring State-Owned Agricultural Land into Use as a first legislative act. The local governments—the district *gamgeobas*—were the implementers of the process of leasing of agricultural land with the leasing undertaken based on competition. The leasing periods ranged from a minimum of one year to a maximum of 49 years.

Changes and amendments made to the Civil Code of Georgia (27 November 1997) annulled the Law of Georgia on Leasing Agricultural Land. Decree No. 446 of the President of Georgia was issued on 2 August 1998 which finally set the rules and conditions for leasing agricultural land as well as fixing a responsible agency and granting its authority to manage the process. A standard leasing agreement form was made which served as a basis for a leasing right to enter into the Public Registry. This Decree stated explicitly that the right for the use of state-owned agricultural land could be granted by local government bodies in the form of the district *gamgeobas*.

As mentioned above, agricultural land was leased upon a competition basis with participants comprising any interested parties such as physical as well as legal entities and groups of persons. The winner of the competition would be the entity offering the best conditions for the lease and the highest amount to be paid. The normative lease amount for the land was a basic land tax fee, which, for example, was no more than 57 GEL per hectare in the case of good quality arable land. The minimum rent payment for pasture was 1.5 GEL per hectare whilst the maximum was 4 GEL.

As a part of this process, *gamgeobas* created permanent committees for the leasing of agricultural land composed of representatives of various governmental agencies including the State Department of Land Management and the Ministry of Agriculture of Georgia. Based upon the results of the competition, the *gamgeoba* of the district would issue a resolution that included all relevant information regarding the land concerned as well as the size of the leasing amount which served as the basis for the leasing agreement. Subsequently, the right to lease was registered in the Public Registry. ***It should be mentioned that the registration of leasing rights started in 1998 with no registration implemented before this time.***

In the case of the expiration of the leasing period, the leaser was entitled to extend the leasing agreement by means of the submission of a relevant statement to this end to the *gamgeoba*.

***The leasing of agricultural land was prohibited from 29 July 2005 after the Law of Georgia on Privatisation of Agricultural Land was adopted.*** This law explicitly stated that the land that was subject to privatisation was not to be leased. ***It should also be noted that land that did not fall under the privatisation category—pasture land, agricultural forest land and including arable land—could still be leased.*** After 2005, leasing continued but mostly for pastures which were leased until autumn 2006 when the Law on Local Self-Governance entered into its legal force and annulled district *gamgeobas* as local self-governance bodies and from which time no state-owned agricultural land was leased. With the new law, municipalities were no longer authorised to transfer state-owned agricultural land for use. The Ministry of Economy and Sustainable Development of Georgia, as the agency in charge of the management of state property, also withheld from transferring pastures into use. For the period 2007-2010, the reason stipulated for not transferring land for use was a lack of methodology for determining the lease amount. Resolution No. 15 of the Government of Georgia of 13 January 2011, however, identified the base amount for lease. It was first determined to be GEL 25 per hectare although reduced in June 2012 with the start-up lease amount for pastures set at GEL 15 per hectare. Hitherto there have been no precedents of the Ministry of Economy and Sustainable Development for the leasing of agricultural land.

***Of note is the leasing rate of GEL 15 which is considered to be very high for certain regions especially in consideration of the accompanying land asset tax of GEL 16 GEL per hectare, in case of Kvemo Kartli, which the leaser is also obliged to pay. This rate will create significant problems for future leasers.***

***Currently, there are no regulations to transfer state-owned pasture into use and, more specifically, there is no option of electronic auction.***

***The lack of the regulation of the use of pasture significantly damages local farming. The governments as well as municipalities are losing income that they could be generating from a leasing amount with municipalities further losing income from the land tax.***

In spite of the lack of a mechanism for leasing, certain persons continue to illegally use pastures which is a punishable action according to the administrative legislation. Penalty for illegal use of the state lands is between GEL 1000-3500.<sup>36</sup> ***No precedent for imposing a penalty over illegal use of land exists to this point.***

Some municipalities leased out pasture lands during 2007-2010 although generally ***no pastures registered as municipal property have been leased out for the past two years.*** Legally, however, ***they are able to lease such pastures since they are registered as municipal property.*** Several exceptions do exist, municipalities, such as the Municipality of Akhmeta, for example, who have leased pastures in the current year.

***It is important to regulate the issue of the management of state-owned and municipal pastures as soon as possible. Up to 1 million hectares of pastures are still under state ownership with the lack of management seriously damaging agriculture, in particular, as well as the economic development of the country overall.***

### CHAPTER III. ASSET TAX OVER AGRICULTURAL LAND AND TAX EXEMPTIONS

The use of land has been paid for in Georgia dating to 1992<sup>37</sup> with the introduction of a land tax for agricultural land taking place in 1995.<sup>38</sup> The Tax Code, from 1997, subsequently legally set the responsibility for paying land tax, currently referred to as the Asset Tax on Land.<sup>39</sup> The payer of an asset tax on land is an entity that owns the land as well as an entity that has the state-owned agricultural land under his use or actual possession (without relevant document and or illegal use).

Legal use of state-owned land (*leasing*) ***does not liberate the user from paying asset tax on the land which means that a leaser of agricultural land is also responsible for paying asset tax on land along with the lease rent amount.*** Obviously, this obligation created many issues of disagreement amongst land users especially given the fact that it was not uniformly implemented with land leasers in some regions paying only one of the taxes i.e. the lease rent, or just the land tax. The amount of the land tax does not depend upon a payer's economic profile but is determined as a fixed annual price for each area unit of the land.

The tax amount for the assets of the physical entities is calculated by the tax agency based upon the declaration submitted. The physical entity, therefore, in the case of purchasing land is responsible to submit a declaration on assets before 1 November of the given year. The delayed submission of a declaration or the failure to submit results in a penalty of 200GEL.

Tax on agricultural land in Georgia is differentiated according to administrative units. Following the resolution of the Government of Georgia, tax rates for 1 hectare of land are determined annually.<sup>40</sup> A municipality, therefore, determines the rate for the agricultural land assets within its borders every year with the amount not to exceed 150% of the annual basic rate.

As of 2012:

1. The maximum basic rate for arable (including land with perennial plants, gardens, vegetable gardens) and yard agricultural land categories is GEL 100 whilst the minimum rate is GEL 56.

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<sup>36</sup> Code of Administrative Violations of Georgia, Article 55<sup>2</sup>

<sup>37</sup> Resolution No. 48 of the Cabinet of Ministers of Georgia of 18 January 1992.

<sup>38</sup> Decree No. 398 of the Chair of the Parliament, Head of State of 18 December 1994.

<sup>39</sup> Tax Code of Georgia of 17 September 2010 and Resolution No. 50 of the Government of Georgia of 14 February 2010.

<sup>40</sup> Resolution No. 50 of the Government of Georgia of 14 February 2010.

2. The maximum basic rate for hayfields is GEL 20 and the minimum rate is GEL 16.

3. ***The maximum basic rate for pasture land is GEL 16 whilst the minimum rate is GEL 5.***

#### EXEMPTIONS ON LAND ASSET TAX

Since 2004 Georgia has instituted certain ***exemptions on asset tax on land***. More specifically, if a person owns up to 5 ha of agricultural land as of 1 March 2004, he is exempted from paying the asset land tax. This tax exemption was created to support local production and agricultural development.

At the same time, the Georgian legislation institutes exemptions which means that the following agricultural land is not taxed:

- Agricultural land plots that have partially or heavily damaged production layer as a result of natural disaster.
- Assets falling under the regulation of the Law of Georgia on Occupied Territories until conflicts are resolved and economic situation is improved.
- Land under the ownership of a person that is adjacent to the land falling under the regulation of the Law of Georgia on Occupied Territories for which the person cannot use the given land plot and this fact is certified by a document issued by a local self-governance agency.
- Agricultural land plots where more than half of the harvest was damaged by natural disasters (storm, hail, drought, flood) and other *force majeure* conditions. Tax relief is granted based upon the decision of the local self-governing body that is made in agreement with the local territorial agency of the Ministry of Agriculture of Georgia. The committee delivers a conclusion twice: within two weeks after the passing of the natural disaster and before the harvest.
- Unused arable lands, pasture lands, cultivation and storage lands under the ownership of the state.
- Lands that are used as safety zones for airfields, airports, helicopter fields and air navigation or underground communications as well as land plots fixed for the perspective development of ports unless they are used for economic activities.
- Physical and legal entities have received agricultural lands for first cultivation – within five years from receiving such land.
- Families settled in former village settlements as well as those resettled within the framework of state resettlement initiatives – five years within such settlement.
- Persons with disabilities from World War II and persons with equal status for lands obtained through privatisation.
- Land plots located on the territories of mountainous villages of northern and southern slopes of Caucasus mountain range, mountainous villages and settlements of the Ajara and Guria regions, defined in the Law of Georgia on Socio-Economic and Cultural Development of High Mountainous Regions. Inhabitants of mountainous villages of South Georgia have their asset tax on land reduced by 50%.
- Land plots attached to living houses or garages located in self-governing cities and municipal areas, within the limits set by representatives of the local representative self-governing bodies.

### 1. Privatisation of Agricultural Land

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The privatisation of agricultural land is regulated through legislation. There are, however, a number of issues that require refining and improving.

1. First of all, the activities of *the Ministry of Economy and Sustainable Development deserve mention. The structure of the services within the Ministry, responsible for the privatisation of state-owned land, cannot realistically meet the needs of the land market. More specifically, there is a greater demand upon land privatisation than the auctions announced by the Ministry for available land plots.* There are frequent cases when initiators of a privatisation are required to wait for a time period of several months before the electronic auction is announced. Bureaucratic processes that exist within the internal structures of the Ministry are unable to ensure a full satisfaction of the requirements. However changes are planned to improve the situation<sup>41</sup>.
2. *One of the important issues for working to refine privatisation is the development of broker services.* There are a maximum of five brokers working with the Ministry on the privatisation of land which is a very low number and falls far short of the demand. If more brokers were involved in the privatisation of agricultural land, there would be less discontent from the side of the local population regarding the transparency of these processes.
3. *It is highly desirable for the agency in charge of privatisation to conduct regular awareness-raising sessions with the population* in order to provide information on new procedures and regulations owing to the fact that regional communities typically have very little information on privatisation procedures and often precludes them from participating in the auctions announced.
4. It can be concluded that there have been significant improvements in the process of the privatisation of agricultural land in the past year as compared to previous years. *The process of reform needs to continue which also includes easing regulations and procedures and, most importantly, simplifying communication between farmers and state agencies.*

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### 2. Transferring Pasture Lands into Use

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The situation is more complicated when it comes to the use of pastures. As mentioned above, the changes made in 2010 have resulted in stasis and lack of management in the field of agricultural land and, more specifically, the use of pastures.

1. *Pastures currently lack sufficient and realistic management mechanisms.* Even though such management is legally delegated to the Ministry of Economy and Sustainable Development of Georgia, the Ministry is unable to adequately handle this issue. No procedures for electronic auctions are currently in place and the lease rent amount for the use of pastures is very high. Even though the rental amount was reduced to GEL 15, the price increases drastically with the accompanying land tax of GEL 15.

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<sup>41</sup> It should also be mentioned, however, that the Ministry is intending to make serious structural changes directly linked to land privatisation within the immediate future. More specifically, the National Agency of State Assets, a legal entity of public law is created which will be tested to implement the management of state assets including agricultural land. It is difficult to currently discuss the changes being planned but significant improvements are envisaged to be in place from autumn 2012.

2. ***The process of leasing pastures should start immediately.*** The market demand for this is real and apparent. There are dozens of farmers in Marneuli and Tsalka, for example, who go to different authorities upon a daily basis to request the leasing of pastures.
3. It should also be noted that as much as 1 million hectares of pasture still remain under state ownership. ***The regulation of the use of pastures will first of all support the development of specific socio-economic fields and create a mobilisation of money within the state budget as well as the budgets of local authorities (lease rent and tax payment for land assets).***
4. ***Another serious and so far unaddressed issue is pastures registered as municipal assets.*** First of all, it should be decided whether or not these pasture lands are to remain under the ownership of the municipalities. Until this issue is resolved, however, ***it is still unacceptable that municipalities do not lease out pastures when the demand is very high.*** This issue should also be addressed as soon as possible.
5. Finally, it bears emphasis that privatisation is the most important method for resolving the issue of pastures.