



Problems related to the Protection of Property Rights - The case of Mestia



This Report is prepared within a framework of the project "Protection of Property Rights in New Touristic Zones of Georgia" by four Non-Governmental Organizations: Association "Green Alternative", "Georgian Young Lawyers' Association", "Transparency International - Georgia" and "Georgian Regional Media Association".



The Project is implemented with financial support from the "Open Society - Georgia" Foundation. The views, opinions and statements expressed by the authors are theirs only and do not necessarily reflect the position of "Open Society - Georgia" Foundation. "Open Society - Georgia" Foundation is not responsible for the content of the information material.

CONTENT

Definition of Terms.....	3
About the Project	4
Summary of the Report.....	5
Traditional possession of land and registration-related difficulties	5
Infrastructural projects vs. interests of the local population.....	5
Selective justice	5
Prospects for Tourism Development in Svaneti	6
A Few Things About Svaneti.....	7
Traditional Possession – Issue Beyond Statutory Regulation	9
Difficulties related to Registration of Title to Land Plots.....	10
Registration of Title to Land Through Selective Justice and Confiscated Land Parcels	12
Mestia Public Registry - Incompetence or Political Mission	15
Political Project of Tourism Development in Zemo Svaneti.....	17
Contradictory Approach of Authorities towards Traditional Possession	18
Conclusions and Recommendations	20

DEFINITION OF TERMS

Land in lawful possession (use) - Agricultural or non-agricultural land plot in state ownership with or without buildings/constructions (completed, in the building process or demolished), in respect of which (land plot or building-construction) the right of lawful possession of a physical person, legal entity of private law or other organizational entity under law has originated prior to enactment of this Law, as well as land registered in the technical inventory archive and occupied arbitrarily prior to 1994; (5.12.2008 N 614)

Arbitrarily occupied land - Agricultural or non-agricultural land plot in state ownership arbitrarily occupied by a physical person prior to enactment of this Law, with a residential house (built or demolished) or a non-residential building (built) on it, as well as an arbitrarily occupied land plot (with or without a building) adjacent to a land plot under the ownership or lawful possession of an interested physical person, the area of which is smaller than the area of land plot in ownership or lawful possession, as well as an arbitrarily occupied land plot adjacent to a land plot under the ownership or lawful possession of a legal entity of private law with a non-residential building (built) on it, the area of which [land plot] is smaller than the area of land plot in the ownership or lawful possession, and which at the moment of requested recognition of the right to ownership had not been disposed of by the state.

Traditional possession of land - Traditional land-related proprietary rights established historically based on the political, economic and social system, which [the rights] are defined by the customs of the indigenous population.

ABOUT THE PROJECT

The infringement of property rights in Georgia has become more frequent in recent years. The absence of concrete legal regulations for the protection of citizens' property rights, mechanisms of respective compensation for the injured persons, and a uniform state policy on "resettlement" in general, as well as the non-awareness of citizens of their own rights and obligations enables interested parties to breach property rights through improper application or interpretation of law.

For this very reason, at the initiative and financial support of the "Open Society – Georgia" Foundation, the project "Protection of Property Rights in New Touristic Zones" was launched in 2011. The project is implemented by four local non-governmental organizations (NGOs): "Transparency International – Georgia", "Georgian Young Lawyers' Association", "Georgian Regional Media Association", and the Association "Green Alternative".

The project aims to promote property rights protection in new touristic regions (namely Samegrelo-Zemo Svaneti and Adjara); promote the application in practice of property rights protection guarantees recognized under the law, Constitution, and international norms; minimize the threats of property violations and render legal assistance to already injured population; raise public awareness on the legalization and protection of property by a relevant media campaign; and initiate the development of a "resettlement" policy.

Within the project framework, the first report¹ was prepared in 2011, which concerned legalization of the property of 271 residents in the village of Gonio and subsequent revocation of ownership certificates. In addition, a report on breaches of property rights in Anaklia is planned. The current report describes the facts of infringement of property rights and obstacles encountered by the local population registering their ownership rights to land plots in the district of Mestia (Zemo Svaneti).

¹ Report: "Problems related to the Protection of Property Rights - The case of village Gonio" http://www.osgf.ge/files/publications/2011/Gonio_GEO_WEB.pdf

SUMMARY OF THE REPORT

As of today, obtaining and protecting the ownership rights to real property in Mestia is a considerable challenge. Registration of land in ownership is hindered, mainly by artificial barriers set up by state agencies for protracting the registration process. The Commission for Recognition of Right to Ownership, which is authorized to register ownership to land plots, is non-functional owing to strict legislation requirements. Land plots in possession of the local population are being massively dissected and decimated due to various construction works. Citizens are deprived of the possibility to register - based on lawful possession - ownership rights to land plots their families have possessed for centuries and which they have documents required under law for registration purposes.

TRADITIONAL POSSESSION OF LAND AND REGISTRATION-RELATED DIFFICULTIES

Land plots have in fact never been legally registered in the high mountainous regions of Georgia, such as Svaneti. For centuries, the local population has owned property by inheritance and disposed land plots as distributed (or re-distributed) based on agreements between ancestors.

Residents in Mestia have encountered special difficulties in registering traditionally owned land plots (covering approximately 80% of the Mestia district). The two grounds of the legalization of ownership rights prescribed under Georgian legislation - "arbitrary occupation" and "lawful possession" - in most cases, do not conform to the ownership form found in Mestia (and in Svaneti generally) - traditional possession.

INFRASTRUCTURAL PROJECTS VS. INTERESTS OF THE LOCAL POPULATION

Infrastructural projects designed and implemented in Zemo Svaneti (airport, ski-run, cable-way, hotel) have been mostly carried out on land plots in traditional possession.

The construction of infrastructural projects (airport, ski-run) were initiated in such a way that locals were deprived of the possibility to register ownership rights to land plots in traditional possession in these territories. Compensation has not been disbursed to the local population because this requires registration of land plots in the citizens' ownership. According to our data, as a result of the construction of Hatsvali skiing complex, at least 20 families are unable to register land in ownership, therefore, they cannot be compensated.

SELECTIVE JUSTICE

The Mestia Public Registry has imposed restrictions, and a so-called "forbidden" registration zone ("other side of water" territory, see below) exists. The registry does not accept documents for the registration of parcels within this zone. However, there are cases when the public registry registers land plots in the "forbidden" registration zone in the citizens' ownership. In one case, land which had been in traditional possession for centuries ended up in the hands of a Parliamentarian's son, who built a hotel on the plot.

Persons engaged in the business of tourism and infrastructure development in Mestia do not feel obliged to compensate the local population for divided and destroyed land. They determine the issue of compensating victims at their own discretion.

PROSPECTS FOR TOURISM DEVELOPMENT IN SVANETI

Both local and international experts have reiterated that tourism may become the potential backbone of Svaneti development and economy. They also stated that the basic infrastructure for tourism development required substantial investments from the state.² The Government has followed this recommendation and a new airport and runway were built in Mestia, along with an 8 kilometer road to the Hatsvali skiing complex, a 1400 meter ski-run and chairlift; the center of Mestia center was renovated and the Zugdidi-Jvari-Mestia-Lasdili road was launched, etc.³ In short, major technical and infrastructural problems were solved.

However, substantial research in the attitude of local population towards development of tourism in Svaneti, has not been carried out. One study of the sustainable development capacity of Zemo Svaneti (2006)⁴ revealed that the majority of local residents saw less prospects that the development of tourism would improve their lives - in their words, engaging in the tourism business requires certain capital investments, which only certain individual families can afford. Hence, development of tourism for them would be associated with the further strengthening of already wealthy families and not the development of the region in general.⁵

Unfortunately, the authorities did not consider potential conflicts and adverse effects related to the development of tourism,⁶ including the issue of land, which for Svans⁷ is an inseparable component of their identity. The disruption of relations built around ownership of land by the subsequent loss of land plots, which were the sole means of subsistence throughout the centuries, were completely ignored.

2 Strategic Options towards Sustainable Development in Mountainous Regions. A Case Study on Zemo Svaneti, Georgia. Centre of Advanced Training in Rural Development. 2006

3 <http://www.mrdi.gov.ge/?page=news1&id=139&lang=1>; <http://www.1tv.ge/News-View.aspx?Location=14322&LangID=1>

4 Strategic Options towards Sustainable Development in Mountainous Regions. A Case Study on Zemo Svaneti, Georgia. Centre of Advanced Training in Rural Development. 2006

5 Hotel "Tetnuli" has emerged in 2010 as a serious competitor of Svanetian guesthouses. Over 2 million Dollars have been invested in construction of this four-star hotel. The project was implemented within a framework of "Millennium Challenge Georgia" Fund and one of its founders is Tezo Japharidze - former local sportsman and currently active businessman in Russia - "New hotel in Svaneti aims to develop tourism and economy", The Financial, Tbilisi, 16 July 2010, 15:02, <http://www.financial.ge/>; "First world-class hotel opened up in Svaneti", The Financial, Tbilisi, 16 June 2010, 16:50, <http://www.financial.ge/>; "The Svans do not believe in "urbanization" of Mestia", Internet.ge Society, 23 December 2010, 18:05, <http://www.internet.ge/>.

6 For instance, a significant practical aspect for development of ski tourism, such as climate change, has not been foreseen either. Pursuant to the UN environmental program survey, skiing industry is among the sectors experiencing strong adverse effects of climate change, reasons being increasingly unpredictable volume of snow due to climate change and reducing economic profitability of this business field with respect to resorts located within the sea level - 2000 meter altitude range (Filka Sekulova, The discourse of skiing: Kabul-Ezerata-Panichishte a social cost benefit analysis, Vrije Universiteit, Amsterdam). Mestia is located at the altitude of 1500 meters, which means that there will be a need to cover ski-runs with artificial snow.

7 <http://liberali.ge/turizmis-ganvitareba-sakutrebis>

A FEW THINGS ABOUT SVANETI

Diverse factors determine Svaneti's individuality and uniqueness: geographic location and climate, rich natural resources and landscape, cultural-historic monuments, distinguished traditions and customs.

Svaneti is divided in two major parts - Zemo (upper) and Kvemo (lower) Svaneti⁸. Zemo Svaneti is located in northwestern Georgia at an altitude as high as 2,200 meters. Its administrative center, Mestia, is 140 km away from Zugdidi, the capital of the Samegrelo-Zemo Svaneti region and 540 km from Tbilisi. There are two roads to Zemo Svaneti – one from Zugdidi via Khaishi, and the other from Lentekhi (Kvemo Svaneti) via Ushguli, which is closed during the winter.

The majority of the population in Svaneti is ethnically Georgian - Svans, who adhere to age-old customs and lifestyle. They have their own language – Svanetian⁹ - which is used in everyday life. Presumably, their unique nature was caused partially by geographic "isolation"¹⁰ and severe natural conditions. Its remoteness made it less exposed to external or internal threats. –For example, the country's secular and ecclesiastical treasures would be brought to Svaneti for safekeeping, as conquerors rarely reached the region. However, Svaneti constantly had to protect its uniqueness – and maintain its social and cultural identity, which is favorable and exotic to some, and "wild", and "unclear" to many others. Tsarist Russia tried to "tame" this distant province by imposing taxes and forcing military conscription. During the Communist period, the Svans were deprived of ownership rights to their patrimonial heritage, as it had become the collective property of the Soviet authorities. Nevertheless, the Svan's traditional land ownership principle proved to be quite effective. When lands confiscated by the Communists were returned, the Svans regained their patrimonial land plots absolutely painlessly and without any conflicts among themselves, despite the fact that most did not have official documentation confirming ownership rights.¹¹ The Svans settled this issue and available land resources were distributed among families and the ownership rights to land is inherited from the fathers.¹²

Svaneti's rich natural resources attracted the attention of the Soviets – the Enguri hydroelectric power plant was built on Enguri river and began operations in 1987. It is the highest concrete arch dam in the world and has a total capacity of 1320 MWs¹³. The successful project, however, brought about serious ecological and social problems for the locals – forest tracts were flooded, a "dead" water reservoir was created, humidity increased considerably, which had an adverse effect on the agricultural activities of the local population, as well as on their health.¹⁴ Implementation of a second similar project was put on the agenda – construction of the Khudoni hydroelectric power plant, however, gradual fading of the Communist rule and a serious wave of protests in the 1980s have suspended this process temporarily.¹⁵ Construction of the Khudoni Dam is still on the agenda and despite negative attitude of environmentalists and the local population, a political decision on implementation of this project has in fact been already made.¹⁶ If the Khudoni Dam is built, the village of Khaishi and adjacent villages will be flooded and some 2000 local residents will have to be resettled. The local ecosystem will also be significantly damaged.¹⁷

Zemo Svaneti is a highly active avalanche region. Of the 338 settlements in Georgia exposed to avalanche, 107 are in Svaneti (Zemo, Kvemo Svaneti and the Dali Gorge). 96% of the Zemo Svaneti territory is in an avalanche zone, while 41% of the territory is entirely exposed to avalanche.¹⁸ Many experts believe that developing large infrastructure projects in such complex zones without properly calculating the risks of environmental impact and natural calamities poses a threat to both the local population and tourists.

8 <http://ka.wikipedia.org/wiki/Svaneti>

9 There are differing opinions in the Georgian society about the Svanetian being a language or dialect, which at a certain degree are caused by dissent between linguists. Discourse over this subject is beyond the scope of our report, however, we note hereby that on the official web page of the Government of Georgia, the Svanetian is mentioned among the Georgian language-dialects: http://www.government.gov.ge/index.php?lang_id=GEO&sec_id=193##7

10 Which was often accompanied by cultural, social, and economic "isolation" as well (T.P)

11 Meeting with the local population, CTC office, Mestia, 26 March 2011.

12 It is hard to clarify from the locals exactly when had the ancestors received their land. The locals' belief in fairness of mechanism of land inheritance is so strong that they never doubt it (T.P).

13 <http://www.engurhesi.ge>

14 <http://www.open.ge/index.php?m=94&y=2002&art=12602>

15 The Khudoni Dam: A Necessary Solution to the Georgian Energy Crisis? Green Alternative. 2007

16 <http://www.radiotavisupleba.ge/content/article/9502735.html>

17 The Khudoni Dam: A Necessary Solution to the Georgian Energy Crisis? Green Alternative. 2007

18 Expeditionary and archive materials of the Hydro meteorological Institute.

The Georgian authorities' current program to develop the tourist infrastructure put Svaneti in a complex dilemma. Attractive opportunities for the country in terms of economic development are pitted against the socio-cultural of a people that have inhabited the region for centuries. In addition to the potential loss of inherited property, many Svaneti residents are concerned that they are left out of the decision making process. No one is against the development of the region and the emergence of additional sources of income, but a sense of unfairness clearly exists among the locals who feel their future is being decided by outsiders who are not allowing locals to participate in the process, let alone considering their opinions and interests.¹⁹

¹⁹ Meeting with the local population, CTC office, Mestia, 26 March 2011.

TRADITIONAL POSSESSION – ISSUE BEYOND STATUTORY REGULATION

„We have not bought this land... it's patrimonial...“

75 percent of the world's poor populations live in rural areas. For most of these people, their natural resources are the means of subsistence. For those countries dependent on agriculture, key importance is given to ensuring access to land and the possibility of adopting decisions on the use of land.

Compared to other regions of Georgia, Zemo Svaneti has rather scarce land resources – its total area is 3045 sq.m, only 6.7% of which is agricultural land. The latter is divided in the following main categories: arable land (7%), hayfields (9%), and pastures (84%). According to 2005 data, 41.4% of the Zemo Svaneti territory is covered by woodlands.

Scarce land resources are of special concern considering that agriculture is a main source of income for the locals, - cattle breeding and farming in particular. Svans are totally dependent on land.²⁰

Unfortunately, governments in developing countries often do not recognize the rights of indigenous populations to land. Furthermore, governments often make decisions on the use of land and other natural resources without consulting the people directly dependent on these resources. Owing to the absence or lack of official documents confirming ownership rights, the risk of losing the land and having it taken away by a “foreigner” is especially high in those communities where relations are based on traditional and custom-oriented rights. Infrastructure projects planned and already implemented in Zemo Svaneti are mostly being carried out on land in traditional possession, mainly pastures and hayfields. Since most locals have not registered land plots in the public registry, or have registered but lack electronic versions of property boundaries, it has become difficult to protect the interests of traditional land owners. Meanwhile, all attempts to register land or acquire electronic versions of property lines have failed. The registry simply refused to accept documents and rejected citizens' applications. Mestia residents blamed the registry's refusals on “phone calls from Tbilisi,” adding that refusals to register lands had followed the President of Georgia's first televised speeches concerning tourist infrastructure development in Mestia.²¹

A meeting with the residents of Zemo Svaneti, several people who actually had registered their land and had their ownership rights recognized, stated they weren't interested in only receiving compensation. “We did not buy this land... it's patrimonial... we want to leave it with us”, a Zemo Svaneti resident²² asserted. Moreover, locals claim potential compensation is so insignificant²³ that it will by no means compensate losses incurred by the deprivation of land. Locals have their own remedy for this complex situation. Their main demand is to have the opportunity to register land plots in traditional possession,²⁴ and then they will be able in certain cases to either receive single compensation for land plots or keep it and reach an agreement with an investor on seasonal use of land.²⁵

20 Strategic Options towards Sustainable Development in Mountainous Regions. A Case Study on Zemo Svaneti, Georgia. Centre of Advanced Training in Rural Development. 2006; The Khudoni Dam: A Necessary Solution to the Georgian Energy Crisis? Green Alternative. 2007

21 Meetings with the local population, Mestia, August-September 2010.

22 Meeting with the local population, CTC office, Mestia, 26 March 2011.

23 2.5-3 GEL per one square meter.

24 Registration fees are also a concern - as usually each family has many small parcels, registering them separately is very expensive. It is desirable to impose an integrated fee per one family (household).

25 Brief report on Mestia Situation. Green Alternative. 2010

DIFFICULTIES RELATED TO REGISTRATION OF TITLE TO LAND PLOTS

An overview of the history of land plot registrations in Mestia on the public registry web site demonstrates that the process has intensified since 2008. Prior to that, out of a population of about 15,000 in the Mestia municipality, virtually no one had registered ownership of land plots.

Since 2007, after the creation of the Commission for Recognition of Right to Ownership,²⁶ the Mestia Municipality Commission for Recognition of Right to Ownership has vigorously begun to register ownership to land plots. The Commission's heightened activities in Mestia can to a certain degree be related to the 2008 parliamentary election campaign and facilitated by newly simplified procedures for land registration.

Since the elections, legislation has been subjected to considerable amendments. The procedure of registration of ownership to arbitrarily occupied land plots²⁷ has become stricter, while the National Agency of Public Registry of the Ministry of Justice has become an authorized body registering ownership to land plots in lawful possession.²⁸

The Mestia population encountered particular difficulties in registering land plots in traditional possession (comprising around 80% of the Mestia district). The problem is that in most cases the two grounds of legalization of ownership rights prescribed under Georgian legislation - "arbitrary occupation" and "lawful possession" - do not relate to the form of ownership found in Mestia (and in Svaneti generally) - traditional possession.

To register ownership rights in case of "arbitrary occupation" of land, some kind of building-construction (built or demolished) should be located on land or a land plot should be adjacent to another land plot in the ownership or lawful possession of an interested person. There are very few such plots in Mestia and Svaneti in general, as the land plots of the population (mainly hayfields and pastures) are located mostly in mountainous areas and "some kind of buildings" have ever existed there.

In order to register ownership rights to land in lawful possession, the above-described requirements no longer have to be met, however, a documentary proof of the right to lawful possession is required. As a rule, the population lacks such documents. The legal registration of land plots had virtually never taken place in high mountainous regions such as Svaneti. For centuries, the local population possessed and disposed of land plots by inheritance, based on the agreement of ancestors.²⁹

Some residents, however, do have old yet perfectly legal documents to land parcels and residential houses in Mestia. These consist of certificates issued as a result of land reform, tax invoices, gardener's books, etc. Pursuant to legislation, registration of ownership to land plots or residential houses through such documents is possible on the ground of lawful possession, with the registration carried out by the National Agency of Public Registry.

Initially, numerous local residents have requested the registry to register ownership to land plots on the grounds of lawful possession, but the registry had refused and asked for electronic cadastre drawings of land plots.³⁰ At the time such services were not available in Mestia. Citizens had to go to Tbilisi, hire specialists and bring them to Mestia to prepare electronic drawings of land parcels. Compared to real prices, these services cost almost three times as much. Despite these people's efforts, the registration process was hindered from 2008 to 2009. Several law firms appeared in Mestia that provided measuring services at the beginning of 2009, and the problem should have been resolved, but a new problem appeared. The issue of registration of ownership to land plots located on the territory of an "electronic net" and the "other side of the water" emerged. The Mestia Public Registry defines this as: "if land to be registered in ownership is located

26 Commission for Recognition of Right to Ownership - a body authorized to register ownership to arbitrarily occupied land plots

27 Sub-paragraph "c", Article 2 of the Law of Georgia on Recognition of Ownership Right to Land Plots in Possession (Use) of Physical Persons and Legal Entities of Private Law.

28 Sub-paragraph "c", Article 2 of the Law of Georgia on Recognition of Ownership Right to Land Plots in Possession (Use) of Physical Persons and Legal Entities of Private Law.

29 Makhvshi (community leader elected at a general meeting of the community) used to regulate the issues of using hayfields-pastures and forests, alternation of pastures, distribution of land, determining land plot borders. See: <http://svanetitrekking.ge/>

30 Article 28 of the 15 January 2010 Order N4 of the Minister of Justice of Georgia on the Approval of Instruction on the Public Registry.

on the territory of the other side of the water, I cannot register ownership to it, as an electronic net of that section is not ready... registration on the territory of “this side of water” is not a problem...”

An electronic net is a map that clearly shows the land plot borders and is sort of a manual for the public registry to compare the borders of a cadastre drawing submitted by a citizen to the borders reflected in the coordinate system, in order to avoid overlapping of land plots. According to the legislation, the absence of electronic net is not grounds for rejecting registration requests.

The “territory on the other side of the water” refers to the Mestiachala River, which is joined by the Mulkhura River and cuts the central part of Mestia in half, where the vast majority of the population lives. The term, “other side of the water”, refers to the side that overlooks the main settlement and cultural monuments of Mestia. This very side is where the village of Hatsvali is located, where a new ski area was built.

However absurd such explanations of the Mestia Public Registry might seem, the current reality is that should a land plot be located on the “other side of the water”, it will be impossible to register ownership to it or any other amendment thereto.

REGISTRATION OF TITLE TO LAND THROUGH SELECTIVE JUSTICE AND CONFISCATED LAND PARCELS

If one follows the logic of the Mestia Registration Service of the Public Registry then the registration of ownership to land located on the “other side of the water” should be impossible for everyone. However, reality is different. There are several land plots located on the “other side of water” that are registered in ownership. It is hard to assert whether the public registry applies selective justice at its own discretion or on the instructions of superior officials or interested persons. Nevertheless, considering the political “weight” of the Mestia Public Registry, it should at least be able to make any decision independently.

Mestia residents whose land plots were located on the territory of the newly built airport have been victimized by a construction boom in Mestia. According to the locals, before construction was initiated they had attempted to register their ownership to land plots, but the registry rejected applications based on above-described grounds. At a meeting held in Mestia, locals mentioned registration of ownership to land were “orders issued from above” or based on the private interests of some officials.

According to Mestia residents, the plot of David Phaliani, husband of the Deputy Head of the Mestia Registration Service of the Public Registry, was included among registered land plots on the airport territory. People objected to the fact that although the Mestia Public Registry had refused to register the land to others, neither the “electronic net” or the “other side of the water” had created any obstacles for the Deputy Head of Service.

The public registry web site reveals that on 22 November 2010, David Phaliani requested the Public Registry to register ownership to a land plot on the grounds of lawful possession. On 25 November 2010, the registration service approved his application. At first glance, there is nothing illegal or strange about this case, but upon examination of a public registry extract the archive certificate issued on 23 November 2010 had been submitted as documentary proof of the right, i.e. the document was issued on the day after documents to the registry were submitted. For further clarification we addressed the public registry and requested a copy of certificate issued by the archive.

During a visit to Mestia, the public registry office satisfied our request and the Deputy Head of the Mestia Registration Service confirmed David Phaliani was her husband.

A letter from the public registry confirmed that the archive certificate (extract from the household book) had indeed been issued on 23 November 2010 at 16:41:28, which means that on 22 November, David Phaliani had submitted a certificate issued on 23 November with the Public Registry. How he managed to submit a certificate issued in the future is a subject of separate research, but it helps explain why locals mistrust the authority of the public registry.

Eter Khaptani is among the airport construction victims, who had registered ownership to a land plot on 4 November 2009. Expansion of the airport borders had also engulfed her property. When she registered ownership to the land plot, she submitted a paper (hard copy) document of a land cadastre drawing, which was acceptable under legislation effective at the time. Incidentally, most citizens had registered land plots based on these very hard copy cadastre drawings.

When it became necessary to prepare electronic cadastre drawings, which reflect the land plot area and its borders by point precision, Eter Khaptani had her drawing prepared and applied at the Mestia Registration Service on 20 December 2010 to register respective amendments. Registration proceedings were suspended on 24 January 2011 due to overlapping with the registered data. Overlapping cadastre data is the comparison of real property cadastre data with the cadastre data of another person's registered real property. In the case of Eter Khaptani, this meant that her land was registered under the ownership of another person - Mestia airport.

In accordance with information available on the Public Registry web site, the Ministry of Economy and Sustainable Development has addressed the Mestia Registration Service with a request to register the ownership rights on 13 December 2010, while Eter Khaptani had registered her land plot in the same territory one year earlier, on 4 November 2009.

The public registry stated that originally, Eter Khaptani had not submitted an electronic cadastre drawing of the land plot, therefore, it was technically impossible to compare the hard copy and electronic versions for overlapping purposes. The registry applied only the electronic data system and did not verify the data base of land plots registered on hard copy versions. , The Ministry's ownership right was registered to a real property.

According to legislation, submission of an electronic version of land drawing was not mandatory then or now. When Eter Khaptani registered the land plot in her ownership, Order N800 of the Ministry of Justice of Georgia - "on the Instruction concerning Registration of Titles to Immovable Things" - was in force. Observing the rules stipulated in this instruction, Eter Khaptani submitted hard copy versions of land cadastre drawings and registered ownership right to land.

The above order was invalidated on 15 January 2010 by Order N4 of the Minister of Justice of Georgia on the "Approval of Instruction concerning Public Registry." The new order is silent about the submission of digital (electronic) cadastre drawings. Under this order it is still permitted to submit hard copies of cadastre maps.

Hard copy or electronic version of land drawings submitted by citizens, provided that they meet rules established by the Instruction, warrant that citizens register land in ownership by full observance of law. If the public registry does not have a mechanism to compare these two versions, then why is it still permitted to submit hard copy versions?! Eter Khaptan's registered ownership to land was absolutely legal. If hard copies of drawings submitted by her did not meet the requirements of effective legislation, the registry should have established a flaw or not registered land plot in her ownership, which had not been the case.

As far as we are aware, Eter Khaptani intends to petition the court and regain ownership over the confiscated land plot, however, in view of the negative court rulings established in these types of cases, her chance of success in court is slim.

Stories of victims' losses as a result of construction of the Hatsvali skiing complex are a good example of land registration through selective justice. According to information on the Public Registry web site, only 15 citizens possess registered ownership to land plots in the Hatsvali territory, where the construction of a skiing complex is underway. These plots are located on the road leading to a ski area and are cut in half by the newly built Hatsvali road. Before road construction, citizens addressed the Mestia Public Registry and requested registration of title to land on the grounds of lawful possession. The registry explained that land plots were located on the "other side of the water," therefore it was impossible to register them. Furthermore, the registry refused to accept applications and "instructed" the people that they would lose 50-GEL public registry service fees, should the registry reject registration requests. As 50 GEL was a substantial amount of money for locals (in view of their income), they all preferred to wait until the "electronic net" of the territory on the "other side of the water" would be set up.

When construction of the Hatsvali road started, the locals were deprived of the opportunity to register ownership titles to land plots. The construction firm promised the local population to pay them compensation, but this required registration of land plots under citizens' ownership. The population stated, in the case of registration of ownership title to land plots, several of them could have refused to surrender the land, which would have delayed construction works for a certain period of time. Therefore, the construction firm opted to start construction without any negotiations. In addition, they were all warned that because none of them had officially registered titles to land plots, any attempt to obstruct construction would be a lawful offense and would have invoked respective sanctions.

After the completion of the road, some of the victims (15 families) were offered compensation in exchange for damaged land - 3 GEL per 1 sq.m of land. They were also warned that refusal would leave them without land and compensation. According to our data, at least 20 families remain victims today as a result of the construction of the Hatsvali skiing complex, because they are unable to register titles to land and compensation is not planned. The population explains this as follows: "We all have documents ready for registration, but they won't do it... they can't turn a blind eye to those who make bigger noise... but not everyone can make noise and fight..."³¹

31 Meeting with the local population, CTC office, Mestia, 26 March 2011.

Hotel "Hatsvali", located several meters from the chairlift, is considered to be the jewel of the Hatsvali skiing complex. Prior to construction, the land on which the hotel was built was in the lawful possession of three local residents. Although they all had documents in order, the public registry still rejected the registration of their titles. Like other people's land plots, theirs ended up in the hands of an interested entity - Hotel Hatsvali's owner.

According to the entrepreneurial registry base available on the public registry web site, Akaki Kvitsiani is registered as 100% shareholder of Hotel Hatsvali, and is the son of Kandid (Kakha) Kvitsiani, the single-constituency member of Georgian Parliament from Mestia. Akaki Kvitsiani is also registered as assistant specialist at "Enguri 2006" LLC, 50% of which is owned by MP Kandid Kvitsiani. Pursuant to the letter received from the Ministry of Regional Development and Infrastructure of Georgia, in line with the Resolution of the Government of Georgia, the construction of the Mestia airport and runway was carried out through negotiations with one entity - "Enguri 2006" LLC.

It appears that persons engaged in the construction of Mestia airport and businesses in Hatsvali do not feel obliged to compensate the local population for sectioned and destroyed land parcels. Such actions are fostered by existing political will and the freedom to personally decide on the issue of compensating the victims.

On 3 May 2011, based on the application of the Ministry of Economy and Sustainable Development of Georgia, the Mestia Public Registry has registered in state ownership the 11,310 sq.m land plot located on the territory of the "other side of water". According to the population, the President's residence and new road will be built on this territory, and it will be connected only to the Mestia airport. Presently, we are aware that "Sakhelmtsipo Uzrunvelkopa" (state securing/provision) LLC became the land owner on 16 May 2011. According to official data, "Sakhelmtsipo Uzrunvelkopa" LLC is carrying out the construction and reconstruction of government buildings.

MESTIA PUBLIC REGISTRY - INCOMPETENCE OR POLITICAL MISSION

It is a sad reality that the Mestia Public Registry has skillfully managed to mislead citizens wishing to register land plots by reassuring them that after the “electronic net” is set up, all land registration problems will be solved. Eter Khaptani, who had already dealt with the public registry concerning a confiscated land plot on airport territory, had demanded the Registration Service to specify borders according to the electronic version of a land plot registered in Hatsvali, which is in her lawful possession.

Finally, on 25 February 2011, after the application was submitted, the Mestia Registration Service refused to register amendments to her title to land plot based on Sub-paragraph “g”, Article 23 of the Law on Public Registry and Article 64 of the Instruction on Registration of Titles to Immovable Things approved by the 13 December 2006 Order N800 of the Minister of Justice of Georgia.

Sub-paragraph “g”, Article 23 of the Law on Public Registry states the following: “During registration proceedings a registering authority shall decide on rejection of registration, provided there are other grounds prescribed under the legislation of Georgia.” Yet the grounds have been the Mestia Registration Service applied in its decision is unclear. The 13 December 2006 Order N800 of the Minister of Justice of Georgia, had already been invalidated by the 15 January 2010 Order N4 of the Minister of Justice.

Thus, the Mestia Public Registry rejected Eter Khaptani’s above request without legal justification. Furthermore, it applied an invalidated order as the basis for refusing the registration of amendments. It also made the invalid decision late- decisions must be made in 4 days, the Mestia Public Registry made it in 17³²

An appeal of the decision of the Mestia Registration Service has been submitted to the National Agency of Public Registry, which has not yet rendered any decision on this issue. Currently the dispute is being reviewed by the Mestia District Court. Despite the law’s clear requirements, the Mestia Registration Service has not submitted any position concerning its decision in court.

The Public Registry web site reveals that in most cases, the invalidated 13 December 2006 Order N800 of the Minister of Justice of Georgia was indicated as one of the grounds the Mestia Registration Service used to suspend and reject individual requests for land plot registration. .

We conducted a small experiment and downloaded one such decision³³ from the Public Registry web site. We copied the number of this decision to a separate sheet of paper and asked one of the Tbilisi Registration Services to provide a copy of the decision according to this number.³⁴

Tbilisi Registration Service provided us with an absolutely identical decision with one minor exception - Order N800 was deleted as a ground for suspending the registration proceedings. In this particular case, Tbilisi Registration Service “remedied” the errors of the Mestia Public Registry.

Another effective means the public registry uses to manipulate citizens is the “other side of the water” deception. If the land plot in question is on the “other side of the water” where there is no electronic net, the registry cannot register a title to it, and the 50 GEL service fee will not be refunded to the applicant, according to law.³⁵

Numerous examples of similar cases attest to the degree of impropriety and impetuosity of the Mestia Public Registry. The only achievement at this stage is that owing to efforts of several citizens to register complaints on the Public Registry’s hot line, the Mestia Registration Service no longer refuses to accept applications. Prior to this, locals thought that the Registry was entitled to do so.

32 Sub-paragraph “c1”, Paragraph 1, Article 31 of the Law of Georgia on Public Registry.

33 Annex №1.

34 Annex №2.

35 Paragraph 1, Article 34 of the Law on Public Registry.

The attitude of the Mestia Municipality Sakrebulo towards these problems must be noted and welcomed as well. In the letters sent to the Ministry of Economy and Sustainable Development of Georgia³⁶ and to the Ministry of Regional Development and Infrastructure of Georgia, the Mestia Sakrebulo requests high officials of these Ministries to compensate the population for damaged land in their possession and to simplify the list of documents necessary for registration of title to land. So far, however, there has been no response to these letters

Apart from the numerous artificial obstacles, the registration of title to land is further complicated by high fees payable for preparation of registration materials. For instance, to register title to land on the ground of lawful possession, a person needs: (1) land plot certificate from the archive - 42 GEL; (2) electronic cadastre drawing of land plot - 60 GEL per land plot up to 500 sq.m; and (3) the Public Registry service fee - 50 GEL, which is not refundable if the application is rejected. In total, the registration of title to one land plot up to 500 sq.m costs a minimum of 152 GEL, which is a quite large amount for the local population in light of their income. Moreover, the local population in Mestia typically possess a minimum of 3-4 land plots as pastures or hayfields, which are scattered all around Mestia without bordering each other. According to the law, if registration is requested in respect of several land plots, each must be registered separately.³⁷ Accordingly, if one family possesses 3-4 or more land plots, their title registration costs increase directly pro rata.

³⁶ Annexes №3,4.

³⁷ Paragraph 17, Article 14 of the 15 January 2010 Order N4 of the Minister of Justice of Georgia on "Approval of Instruction on Public Registry".

POLITICAL PROJECT OF TOURISM DEVELOPMENT IN ZEMO SVANETI

The Ministry of Economy and Sustainable Development officially announced the concept of tourist infrastructure development in Zemo Svaneti in January 2010³⁸, however, this announcement was preceded by numerous statements by the President of Georgia in Zemo Svaneti, and Mestia in particular, concerning the vast potential of tourism development. For example, at the opening ceremony of Hotel Radisson on 2 September 2009 in Tbilisi, the President talked about pending and planned infrastructure projects, the construction of roads and the development of new resorts, including projects in Mestia. According to the President, after a criminal network in Svaneti was destroyed by his order in March 2004, the “Sighnaghization of Mestia” - its formation as a tourist center³⁹ – has now become possible. The President of Georgia explained that he had come up with the idea of renovating Mestia after receiving a letter from the local population.⁴⁰ Some people believe this initiative is related to Sochi, Russia and the 2014 Winter Olympic Games. It is a demonstration that Georgia also possesses dramatic landscape, climate and tourist potential that is equal if not surpassing that of Russia’s. Presidential comments verify that this opinion is not groundless: in July 2010, during a visit to Mestia, the President compared Mestia to Sochi and noted that “Mestia, ‘unlike Sochi’, where the 2014 Winter Olympics will be held, has better climate conditions, ‘mountain slopes, and hills’ and ‘has prospects to develop serious resorts’”.⁴¹

Either way, the idea of tourism development in Mestia is the President’s and the initiative is not based on any document defining state strategy in the field of tourism - such a document simply does not exist in Georgia. Furthermore, although the initiative was disseminated by media at the end of 2009, it seems the idea had been taking shape back in 2008. This is confirmed by the 24 April 2008 Decree N254 of the Government of Georgia,⁴² which was adopted specifically for allocating 10 hectares of land from the state forest fund for construction of the Mestia-Hatsvali chair lift and ski-run.

There are two more known acts related to skiing infrastructure development in Mestia; while contents of one are publicly available, the contents of the other had been confidential.

The publicly available act was adopted by the Mestia Municipality Sakrebulo on 4 August 2010⁴³ and concerns the issue of constructing the chair lift and road leading to the slopes on Hatsvali-Zuruldi Mountain. Obscured from the public is the second act - 30 March 2010 Decree N418 of the Government of Georgia. This act issued by the Government of Georgia had not been officially published until today.⁴⁴

38 <http://www.economy.ge/?category=4&lang=geo&item=258>; <http://www.economy.ge/?category=4&lang=geo&item=243>

39 “Saakashvili talks about ‘Chance to Make Drastic Economic Breakthrough’”, Civil Georgia, Tbilisi, 3 September 2009, 12:28, <http://www.civil.ge/>

40 “In [President’s] words, it is planned to build dozens of hotels in Mestia, while he has come up with an idea of renovating Mestia after receiving a letter from the local population. ‘I came up with an idea about Mestia. I received a letter from the Mestia residents in 2008, which was signed by 200 local residents - please build a ski resort in Mestia. We are not only building it, but hundreds of millions have been invested in this region. Most probably additional 400-500 million will be invested in development of Mestia as a ski resort’, the President has stated. ‘Mikheil Saakashvili: there is much more philosophy beyond revival of a mountain than simply skiing’, Tbilisi, 19:50, 1 February 2011, GHN.

41 “Saakashvili Talks about Mestia’s Potential”, Civil Georgia, Tbilisi, 14 July 2010, 18:20, <http://www.civil.ge/>

42 24 April 2008 Decree N254 of the Government of Georgia on “Allocation of 10.0 hectares of land from the state forest fund for construction of cable-way and ski-run in the Mestia Municipality”.

43 The Act was available in September 2010 on the official web page of the Mestia Municipality Sakrebulo: <http://www.mestia-sakrebulo.ge>

44 According to our information, the Decree concerns allocation of funds from the 2010 state budget for various projects to be implemented in regions.

CONTRADICTION APPROACH OF AUTHORITIES TOWARDS TRADITIONAL POSSESSION

Georgian authorities have contradictory approaches towards existing traditions in mountainous regions of Georgia, natural resources in traditional possession including land, and the rights of indigenous populations. On one hand, the authorities do not recognize traditional possession and believe that proprietary rights emerge only with the registration of property in the Public Registry, while on the other hand, they successfully use traditions to achieve their own set objectives.

On 7 July 2010 in Mestia, the Ministry of Internal Affairs (MoIA) arrested the following local residents for extortion⁴⁵: Davit Japharidze, Taniel Japharidze, Shota Japharidze, and Neli Naveriani. The case concerned a land plot (22 thousand sq.m) located in Mestia including the unused, amortized tourist destination, "Ushba," an A Canadian investor planned to build a hotel complex on this plot. The MoIA explained that the arrested persons had asserted that the land in question had belonged to their ancestors and according to local traditions, no one could build a hotel there without their consent.⁴⁶ They requested 220,000 GEL compensation. The Canadian investor, William James Simpson, maintained that he had bought the disputed land and building in 2010 from Giorgi Svanidze⁴⁷ (the land purchase agreement was registered in the Public Registry), who had privatized this land plot a few years earlier.

The MoIA stated: "Unfortunately, this case proves that Georgia still experiences corruption-related problems and to solve them, joint efforts by everyone including the state, media, and NGO sector are required." Shota Utiashvili, Head of Analytic Department, also criticized the statement⁴⁸ of NGOs made on 10 July and reminded them that "Georgian legislation does not recognize any other document confirming title to real property other than the Public Registry extract, and that this legislation equally applies to highlands and lowlands."

The President of Georgia also echoed this incident at a meeting with regional governors and Gamgebelis on 14 July 2010:

"... Some people have showed up - local cool guys saying that this land is their ancestors' and should we want to build something here we should split our shares with them...over the next several years they will learn well in the European-style Georgian prisons how is it to split shares with foreign investors..."

"Should someone react badly to investors... this would mean that their children and grandchildren will be permanently doomed for poverty, misfortunes and the closed circle where they have been for last decades, and probably centuries."⁴⁹

As the above-described case illustrates, the authorities not only refuse to recognize traditional possession to land and legality of transactions related to such property, but they qualify the attempts of realizing ownership rights as criminal activities. However, we also have contrasting examples of how the authorities and the ruling party use Svanetian traditions for their own benefit, and namely the tradition of taking an oath.⁵⁰

45 Information and commentary of the Ministry of Internal Affairs of Georgia about the operation carried out in Mestia on 7 July, 14 July 2010, <http://www.police.ge/index.php?m=8&newsid=1179&lng=geo>

46 In August-September 2010 "Green Alternative" and its partners have conducted a survey in borough Mestia. 60 percent of households living in Mestia have been interviewed. Interviews have revealed that 94 percent of owners of lands not registered in the Registry are confident that no one (including the state, neighbor, or co-villager) can dispose of their land without their consent.

47 In the phone conversation with "The Financial", Giorgi Svanidze has denied the fact of purchase of disputed land and stated that he had known nothing about this case. "The Financial" clarified further that the Canadian Jim Simpson worked as Manager in the investment company "Capital Partners of Georgia", one of the founders of which is Giorgi Svanidze („Arrests over Investor's Land in Mestia - Controversy over Canadian investor's land in Mestia", The FINANCIAL, 19/07/2010, <http://www.finchannel.com/>). According to information posted on the web site of "Capital Partners of Georgia" (<http://www.cpg.ge>), the company was founded in 2008 and currently "works on several large projects such as "King's Garden", "Bathhouse", "Churchland", "Sheikhland", "Kolkhida Valley", and the Kolkheti lowland agricultural project".

48 In their statement non-governmental organizations expressed opinion that Neli Naveriani's arrest might have been connected to her political activities, and called for the authorities to conduct investigation impartially and make a politically unbiased decision. The statement is available at: <http://www.transparency.ge/post/press-release/arasamtavrobo-organizatsiebis-ertoblivi-gantskhadeba-mestiashi-7-ivliss-gankhorts>

49 "Saakashvili Talks about Mestia's Potential", Civil Georgia, Tbilisi, 14 July 2010, 18:20, <http://www.civil.ge/>

50 "In mountainous regions of Georgia, religious beliefs and traditions have big impact on people's spiritual lives. They mostly predetermine human behavior. Oath becomes a means of future control of human behavior."

According to the Public Defender of Georgia,⁵¹ the police chief in the Mestia Municipality forced his subordinates to take an oath before an icon as a form of control of electoral will. Prior to the parliamentary elections of 21 May 2008, the Head of the Department of Internal Affairs of Mestia forced his subordinates to swear before an icon that they would vote for the ruling party and its single-constituency MP candidate and that they would not disclose that they had voted for Mikheil Saakashvili during presidential elections. Meliton Pakeliani, staff member of the Department of Internal Affairs of Mestia, village Becho, agreed to everything except voting for the single-constituency MP candidate of the “National Movement”. The single-constituency MP candidate of the “united opposition” was Pakeliani’s nephew, and he could not have voted against his close relative. Meliton Pakeliani was dismissed from the private staff of internal affairs for refusing to swear an oath before an icon.⁵²

51 Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia, first half of 2008.

52 Public Defender clarifies in his report that at the time of elections any ruling party always relied on the police. By threatening law-enforcers with dismissal from job, forces in power secure not only their support, but additional votes. In the police structures, like in the military service, special importance is paid to subordinate relations. Ruling political force relies on the level of chief police officers. This element represents mechanism of coercion on subordinates, which eventually secures the victory of ruling political team in the elections.

CONCLUSIONS AND RECOMMENDATIONS

The case of Mestia examined in the present report reveals numerous systemic problems:

1. The study provides substantial grounds to conclude that the staff of the Mestia Registration Service of the Public Registry abuses official powers and on several occasions discloses official negligence; furthermore, they abuse citizen trust towards public servants. Examples cited in the report demonstrate that the legality of their decisions needs to be reviewed.

Recommendation: to check the competence of the staff of the Mestia Registration Service of the Public Registry of the Ministry of Justice and review the legality of their decisions.

2. Legal registration of land plots has virtually never taken place in mountainous regions like Svaneti. For centuries, local populations possessed and disposed of by inheritance land plots as distributed based on the agreement of ancestors. Current legislation does not provide citizens living in such places with the possibility to register titles to traditionally owned land plots. A list of mandatory documents to be submitted for the land registration purposes is in fact absent in mountainous regions, as a respective data base had never existed there.

In light of the above, a legislative amendment is required that will enable citizens living in mountainous regions and territories, where information based on land owners has never existed, to register title to land plots through simplified procedures.

Recommendation: to simplify statutorily required list of documents confirming ownership right for the purposes of registration of title to land plots in mountainous regions.

3. High fees fixed under the legislation for registering title to land considerably hinder the process of registration of titles of land plots. Families residing in Mestia usually possess 3-4 or more land plots, which increases the costs of registering titles to land on the ground of lawful possession directly pro rata. It is also problematic that the 50 GEL paid by the applicant for services are not refunded if the Public Registry rejects the registration request. High fees are also established for the registration titles to arbitrarily occupied land.

Recommendation: to reduce fees established for registration of titles to land plots in mountainous regions.

4. The population affected by tourist infrastructure development projects, like the public at large, are underinformed about pending and planned projects. Local populations are deprived of the opportunity to express their opinions and exert influence on decisions that have a direct impact on their lives and means of subsistence.

Recommendations:

To secure maximum participation of the local population, as well as other interested parties in decision-making over development projects, especially at the initial phase – when making a choice is still possible;

To base the decisions made about development projects on detailed socio-economic and environmental studies. These studies must also be available to the public and become a subject of public discourse.

5. Tourism may indeed contribute to the country's economic development, and positively transform specific regions, but only if both positive and negative economic, social, and environmental results of the tourism development are clearly acknowledged. Decisions that ignore these aspects (at the policy level and specific projects) may lead to degradation of the natural environment and social medium (landscape, nature, culture and mode of life), on which tourism depends.

Although tourism (along with infrastructure and agriculture) is considered to be a driving force of Georgia's economy, Georgia still does not have a state policy or at least a short-term strategy in this field, nor are there regional strategies and plans of tourism development.

Recommendation: to develop state policy and strategy of tourism development with participation of all interested stakeholders – only such a process will secure public support for the authorities’ decisions and avoid potential conflicts.

6. The experience of various countries worldwide illustrates that alienation of land by ignoring traditional rights may lead to a degradation of means of subsistence of the local population, as well as a delay in the implementation of investment projects, thus compromising the investors’ reputation and threatening stability. Today, Zemo Svaneti faces these very threats because traditional possession has been ignored.

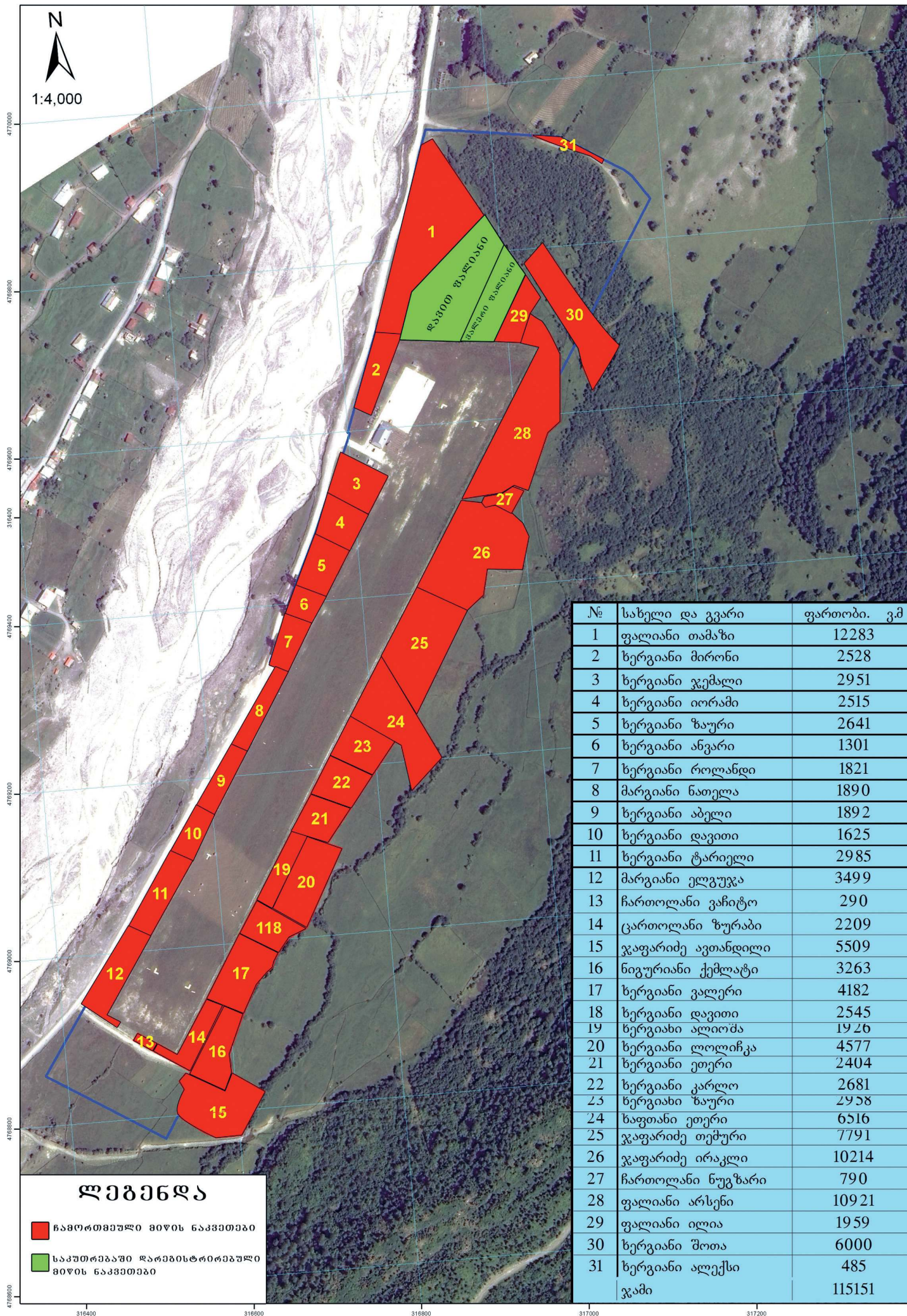
Recommendations:

At the time of planning and implementation of infrastructure/tourist or other development projects, maximum consideration must be taken into account of local realities, traditions and customs, including traditional attitudes of indigenous populations towards land and other natural resources;

To take into account issues of availability of natural resources, including the interests of various social, gender and economic groups towards land resources and potential damages inflicted by development projects;

In cases where resettlement is inevitable, to secure maximum protection of property rights and offer compensation mechanisms that are effective and fit the local population needs.

მესტიის აეროპორტი



მესტიის კავშირი

1:3,500

