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Sustainable Management of Biodiversity, South Caucasus

Forest Law of Georgia
Analysis and Recommendations

საქართველოს სატყეო კანონმდებლობა

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Introduction

The main focus of the present paper is on substantive flaws and lacunae of the Forest Law of Georgia. In addition, attention is also being paid to formal aspects such as precise language and the distribution of matters on the level of the law or sublegal acts.

It is not the aim of the paper to describe every article. Instead, the approach is to address thematic areas of strategical importance.

The analysis is structured according to the following common scheme:

Step 1: Status quo of the respective issue in Georgian law,

Step 2: Comparative analysis of relevant provisions in international, EU and selected national law,

Step 3: Identification of substantial problems,[1]

Step 4: Recommendations for amendment/improvement of Georgian law.

[1] In this part we take the reports by Mann, Remarks and Recommendations on the Forest Code of Georgia, 2007, and Garforth, Changes to Legislation to implement the Government's reform concept, 2006 into account.

Contents

I. Overview of existing legislation

The main act regulating forest and forest management issues is the Forest Code of Georgia of 22nd June 1999 (*in the following:* Forest Code *or* Code). It contains the following parts and chapters:

Title I. General Provisions: Chapter I. General Provisions; Chapter II. Objects and Subjects of Forest Relations; Chapter III. Property Rights to the Forests of Georgia.

Title II. Management of the State Forest Fund: Chapter IV. General Provisions for Management of the State Forest Fund; Chapter V. Institutional Governance of the State Forest Fund; Chapter VI. Establishing Boundaries and Categories of the State Forest Fund; Chapter VII. Categories of the State Forest Fund; Chapter VIII. The State Forest Fund Registry System; Chapter IX. Management of Lands under the State Forest Fund; Chapter X. Participation of Public Organizations in the Governance of the State Forest Fund.

Title III. Forest Protection: Chapter XI. General Provisions for Protection of the Georgian Forest Fund; Chapter XII. Forest Protection.

Title IV. Forest Use: Chapter XIII. System of Forest Use; Chapter XIV. Obtaining the Right for Forest Use; Chapter XV. Timber Production; Chapter XVI. Forest Plantations; Chapter XVII. Producing Wood Products and Secondary Wood Materials; Chapter XVIII. Use of Non-wood Resources of the State Forest Fund; Chapter XIX. Agricultural Use of the State Forest Fund; Chapter XX. Special Use of the State Forest Fund; Chapter XXI: Forest Use for Scientific Research and Education; Chapter XXII: Forest Use for Resort, Recreation, Sport, and other Cultural and Health Improving Activities; Chapter XXIII. Allocation of Hunting Ranges; Chapter XXIV. Presence of Citizens in the Forest; Chapter XXV. Special Features of Forest Use; Chapter XXVI. Taxation and Charges for Forest Use; Chapter XXVII. Timber Harvesting Certificate.

Title V. Forest Restoration and Tending: Chapter XXVIII. Forest Restoration; Chapter XXIX. Forest Tending; Chapter XXX. Thinnings; Chapter XXXI. Funding of Forest Tending, Protection and Restoration.

Title VI. State Monitoring and Supervision of Forest Protection and Enforcement of the Forest Legislation: Chapter XXXII. State Monitoring and Supervision of Forest Protection and Enforcement of the Forest Legislation.

Title VII. Settlement of Disputes of Tending, Protection, Restoration, Afforestation and Forest Use and Liability for Infringement of the Forest Legislation: Chapter XXXIV. Settlement of Disputes of Tending, Protection, Restoration, Afforestation and Forest Use; Chapter XXXV. Liability for Infringement of the Forest Legislation.

Title VIII. Transient and Final Provisions: Chapter XXXV. Transient Provisions; Chapter XXXVI: Final Provisions.

In addition, there is a great number of sublegal acts covering different substantive, procedural and organizational questions in detail. The sublegal acts can be divided into the following categories: Decrees of the President, Resolutions of the Government, Orders of the Minister of Environment Protection and Natural Resources and Orders of the Head of Forestry Department. They probably form a hierarchy such that the higher normative act sets aside any contradictory lower rank act. However, as most sublegal acts cover different issues or fill in lacunae of higher rank acts such situations of conflict appear to be of no practical relevance. Only the most important sublegal acts have been taken into account in the present analysis.

Of major importance are the following:

- Resolution #132 of the Georgian Government "on the licensing of timber harvesting and of hunting industries" of 11th August 2005 (*in the following:* Resolution #132),

- Order #76 of the Minister of Environment Protection and Natural Resources "on approval of "the Charter of the Sub Agency – Forestry Department of the Ministry of Environment Protection and Natural Resources" of 30th January 2007,

- Resolution of the Georgian Government #96 "on the inclusion and exclusion of certain areas within the State Forest Fund" of 10th May 2007,

- Decree of Georgian Government #105 on the determination of the forests of local significance of 23rd May 2007,

- Order No 10/39 of the Head of the Forestry Department on competences of restricting the use of forests of 15th March 2001.

Alongside with the Forest Code, certain cross-sectoral and sectoral laws have considerable impact on the Forest legislation, such as

- the Law on Licenses and Permits of 25th June 2005 which has established that all uses and activities requiring a prior authorization must be listed by this Act and must follow its procedural and substantive requirements; this excludes that sectoral laws introduce additional authorization requirements and leaves them with regulating details,

- the General Administrative Code and the Court Procedure Act which contain general rules on the right to be heard, rules against bias, possibilities of appeal against administrative acts to be submitted to the administrative bodies or the courts,

- the Law on Protected Areas, the Law on the Animal Kingdom and the Red List Act the protection rules of which are also applicable in forests.

As for legislation of other states consulted for advice it is important to note that the specific traditions and conditions of forest use and management must be taken into account. It needs substantial grounds if regulatory concepts from other countries shall be recommended for transfer into the Georgian system.

A major source of inspiration for Georgian law reform generally is pertinent EU legislation, not the least because by adopting the acquis communautaire Georgia can prepare itself for membership in the EU. In the forest sector the EU has however not developed a genuine concept. There are legal acts addressing certain aspects of forest management such as the fight against forest fires,[2] marketing of forest reproductive material,[3] and the subsidization of forest protection measures.[4] More important in the present context are the EU legal acts aiming at the protection of habitats and species. In general, however, EU law only touches upon side aspects of forest law.

In the absence of EU harmonization in the forest sector the comparison on the level of states is more telling. We consider legislation of Poland, Armenia, France, Germany and the USA. Germany will be looked at in some more detail as compared to the other states, first, because German law serves as a model for many sectoral administrative laws developing in Georgia, and second, because German law is the cradle of the juridification of the principle of sustainable use and thus has an old tradition of forest management. Forest issues in Germany are a subject matter of the concurrent legislation. In the forest area there is a federal law which provides a common framework for further specification by Laender laws. On the federal level forest issues are regulated by the „Gesetz zur Erhaltung des Waldes und zur Förderung der Forstwirtschaft (Bundeswaldgesetz (*in the following:* BWaldG)." For the analysis on the state level the „Niedersächsisches Gesetz über den Wald und die Landschaftsordnung from 21. March 2002 (Nds.GVBl. Nr.11/2002 S.112), (last amended by Gesetz of 26.3.2009 (Nds.GVBl. Nr.7/2009 S.112) (*in the following:* NWaldLG) has been selected.

II. General observations on the Georgian forest legislation

The Georgian Forest Code is quite comprehensive and detailed. It therefore does not need to be replaced by a brand new law. However, a thorough revision appears to be necessary.

There are flaws of a more technical character such as the following:

- In many cases the provisions are unnecessarily detailed, incorporating issues which would be better regulated on the sublegal level
- The internal structure of the Forest Code consisting of titles, chapters and articles is rather complex, in that substantially related provisions (e.g. regarding management standards, or the – functional – classification of forests) are dispersed across different chapters and even titles. This impairs the transparency of the whole code.
- As the Code has not been amended for a long time, some of its parts became obsolete in the course of the introduction of new legislation in other areas, the most striking example being the Law on Licenses and Permits of 2005.

In addition there are two basic flaws of a more substantial character.

[2] Council Regulation (EEC) 2158/92 on protection of the Community's forests against fire.
[3] Council Directive 99/105/EC on the marketing of forest reproductive material.
[4] Besides actions by the structural funds see e.g. Council Regulation (EEC) 269/79 establishing a common measure for forestry in certain Mediterranean zones of the Community.

Generally, when legislating on forest related issues, two legal relationships should be separated:

- Rights and obligations of the owner of forests in relation to other persons interested in the use of the forest (the **civil law dimension**),
- Rights and obligations of forest owners as well as other users in relation to public administrative agencies that are in charge of regulating forest use in the public interest (such as ensuring common use, sustainable use, nature protection and specific functions of the forest (the **administrative law dimension**).

This separation of issues is the standard approach in many West European countries. Differences between countries exist as to the degree in which state owned forests are subjected to a special regime that is - as compared to genuine private property – stricter both in relation to exploitation rights and environmental protection duties. For instance, in France state owned forests are considered as “service public” and as such subjected to particularly strict management requirements. Such requirements do however also exist in Germany although not in terms of “service public” but rather as self-binding commitments of the state. In the US state forests are subject to particularly stringent rules of exploitation and environmental protection. Special federal laws have been enacted, most importantly the Multiple Use Sustainable Yield Act and National Forest Management Act. But also in the US there are privately owned forests whose management is regulated by law. These laws are not federal but state based. In addition, there are of course federal laws from the nature protection perspective which must be respected by both public and private forest owners.

Looking at countries in transition, it is of interest that the approach of separating property based rights and duties under civil law from public law requirements in the public interest is also underlying the Armenian Forest Code of 2005. The rules of sustainable management established by this act apply both to state and private forests. The same approach is taken by the Polish Forest Act, and certainly by the forest legislation of many further transition countries we have not checked.

The Polish Act on Forests (Dz.U. 2005 nr 45 poz. 435) was adopted in 1991 and thenceforth many times amended. It consists principally of administrative law provisions. Their major goal is to lay down the rules of sustainable forest management and production in line with respect to environmental issues. The provisions shall be respected by state management units which are responsible for state owned forests as well as by any natural or legal person performing the tasks of forest management and regardless whether it is a private property or leased forest. The Act includes also some civil law provisions. They regulate the buying and selling of state owned forests as well as other forms of transfer of property. They take precedence over general rules of the Civil Code. The law is thus an exception from general rule that administrative and civil law provisions are contained in separate laws. Another relevant part of the Polish Act on Forestry contains provisions on the operation of the state forest management unit ‘PGL Lasy Państwowe’. It is responsible to exercise the duties and rights addressed to forests’ owners in the name of the state with regard to the state forests as well as some tasks regarding to general strategic planning of forestry regardless of forest’s ownership.

By contrast, in the Georgian Code ownership and administrative regulation are widely combined. This may be appropriate, as long as the forests are largely state property, forming the Georgian State Forest Fund. However, already now land may be forested which is in private property. Land owners may be interested to afforest land for various reasons including pro bono nature protection or measures in the framework of the Clean Development Mechanism (CDM) under the Kyoto Protocol. It could also be that in future some of the state owned forests are privatized. At any rate, the Georgian church owns substantial areas of forest and needs to be regulated in its use.

Therefore it is suggested that the civil law and the administrative law relations are separated in the Forest Code, and the administrative law rules on sustainable use shall be applicable for both state owned and private forests.

Another major substantial flaw concerns the **principles of forest management**. The Forest Code is still widely characterized by an approach which sees forests primarily as an exploitable good triggering private and state economic income.

In contrast, both the property rights/obligations and the administrative powers should be alerted to ensuring sustainability. This was also proposed by a Forest Policy document of the Georgian Government which identifies three main objectives of reform, i.e.

- protection of the forests' ecological values and their maximal conservation;
- effective (rational) use of the forests' economical potential in a long-term perspective;
- implementation of social forest functions.

These new goals will have to be incorporated in appropriate individual provisions of the Code.

Besides these rather general recommendations, the focus of the reform should be made on the topics discussed below.

III. The Code´s introductory provisions (goals, scope of application)

1. Status quo Georgian Law

Art. 1 of the Code states that the Code "establishes legal grounds for conducting tending, protection, restoration, and use of the Georgian Forest Fund and its resources." The goals are further specified by Art. 3 to be (a) protecting human rights and law enforcement (b) forest management with the purpose of climate-regulating, recreational and other usable properties of the forest (c) conservation of unique natural and cultural environment (d) establishing rights and obligations of forest users (e) meeting the needs of the population (f) defining the principles of forest management. (See Box 1).

Box 1. Introductory provisions of the Forest Code

Forest Code.
Article 1. Legal Grounds Established by the Forest Code

The Forest Code of Georgia establishes legal grounds for conducting tending, protection, restoration, and use of the Georgian Forest Fund and its resources.

Article 3. Goals of the Forest Code of Georgia

Following are the goals of the Forest Code of Georgia:

a) protecting human rights and law enforcement in the field of forest relations;

b) conducting forest tending, protection, and restoration with the purpose of conserving and improving climate-regulating, recreational, and other useful natural properties of forests;

c) conserving and protecting unique natural and cultural environment and its specific components - flora and fauna inclusive, biodiversity, landscape, cultural and natural monuments located in forests, and the endangered plant species; regulating harmonized interrelations between these components;

d) setting rights and obligations of forest users;

e) meeting environmental, economic, social, and cultural needs of population through providing access to the forest resources in the scope compatible with scientifically defined allowable norms;

f) defining main principles of forest management.

2. Comparative Law

EU law has not yet introduced harmonised forest legislation. Therefore national laws shall be consulted. According to the German BWaldG and NWaldLG the goal of forest law is defined as being: 1. Preservation, propagation and sustainable management of the forest because of its economic value and its ecological importance 2. Enhancement of the forest economy and 3. Balancing of public interests with the interests of the forest owners. This means that three problems of forest management are tackled: the balance between exploitation and preservation, a more efficient forest economy, and distributional justice between various forest users.

The scope of application of the forest laws is comprehensive: all forests, not only those owned by the state are addressed.

Polish law is similar in terms of goals and scope. The general goal of the Act on Forests is, according to Art. 1, the preservation, protection and expansion of forests' territories as well as (sustainable) forest management compliant to other elements of environment and to the national economy.

According to Art. 2 of the Act on Forests the act is applicable both to private and public ownership of forests.

Box 2. Scope of application of the BWaldG

§ 1 BWaldG.

Zweck dieses Gesetzes ist insbesondere,
1. den Wald wegen seines wirtschaftlichen Nutzens (Nutzfunktion) und wegen seiner Bedeutung für die Umwelt, insbesondere für die dauernde Leistungsfähigkeit des Naturhaushaltes (, insbesondere als Lebensraum für wild lebende Tiere und wild wachsende Pflanzen- Ergänzung aus § 1 NwaldLG), das Klima, den Wasserhaushalt, die Reinhaltung der Luft, die Bodenfruchtbarkeit, das Landschaftsbild, die Agrar- und Infrastruktur und die Erholung der Bevölkerung (Schutz- und Erholungsfunktion) zu erhalten, erforderlichenfalls zu mehren und seine ordnungsgemäße Bewirtschaftung nachhaltig zu sichern,
2. die Forstwirtschaft zu fördern und
3. einen Ausgleich zwischen dem Interesse der Allgemeinheit und den Belangen der Waldbesitzer herbeizuführen.

3. Problem identification

While the objectives laid down in Art. 1 and 3 sufficiently stress environmental protection as well as concerns of allowing public uses, they appear to hide one major de facto goal of forest management, the exploitation of forests for the sake of public income. The formulation of goals is also not well structured and repetitive (e.g. Art. 3 (b) and (c)).

4. Improvement suggestions

It is proposed to use Art. 1 to clearly define the scope of application of the Forest Code. Here a distinction could be made between objects and subjects to whom the Code is applicable. The object should be the "Forest" itself rather than the "Forest Fund". This would solve the problem of interpretation mentioned above. The term "Forest Fund" shall form part of the "Forest" definition later in the Code text. For the definition of subjects of the Forest Code these should be all those persons who own or use the forest.[5]

As for Art. 3, it should be restructured and simplified. Repetitions should be avoided. In this way it will be possible to consolidate the goals and reduce their number. As a main message the conflict between economic exploitation, social use and ecological functions should be addressed and bridged by reference to the principle of sustainability. The long-term ecological function of forests should be given priority over economic and social interests.

[5] The definition proposed by Garforth: "Persons that have ownership or lawful possession of forest land; and persons whose rights are determined and obligations imposed by this Law and other regulatory enactments regulating forest management and utilization" (Garforth, 2006, p. 2) is somewhat circular because it makes the law applicable on those persons on which the law be applied.

IV. Definitions of Forest and (State) Forest Fund

To avoid misunderstandings and create clarity for a number of different issues in the Forest Code it is crucial to have proper definitions of some basic terms. In our case such crucial definitions are those of Forest and State Forest Fund (SFF).

A. Definition of Forest

1. Status quo Georgian Law

The definition of forest is given by Art. 5 (a) of the Forest Code. According to it, a forest is "a part of geographical landscape, comprising trees attributed to forest by Georgian legislation, land under these trees, as well as shrubs, grass, animals, and other components biologically linked in the process of their development, affecting each other and the environment". Further, Art. 19.2 (a) introduces the category of "forest lands", which are defined as "lands under open plantations and nurseries, clear-cut areas, fire damaged and dead stands, 0.1 ha and larger fields and forest farm yards".

2. Comparative Law

Compared to Georgian Law, which distinguishes the terms „forest" and "forest lands", German law unitarily uses the term of Forest (§ 2 BWaldG, § 2 Abs. 3-5 NWaldLG) which contains the enumeration of areas considered as forest, including also paths and roads serving the forest management as well as meadows and clear areas connected to the forest. Helpful for delineating the content of the term forest are phenomena not regarded as forests such as "other free landscapes" (§ 2 Abs. 1 and 2 NWaldLG) and a list of areas not considered as forest such as single small groups of trees (§ 2 Abs. 2 BWaldG, § 2 Abs. 3 BWaldG with § 2 Abs. 7 NWaldLG). Such approach makes it possible for the interested parties to easily define whether the area in question is forest and whether it falls within the scope of application of the Code.

Of interest is furthermore § 2 Abs. 6 NWaldLG which specifies that forest areas do not loose their forest quality as defined by law through damages by wind or fire, clear-cutting, uprooting or illegal commutation into areas with different types of use.

In Polish law, the legal definition of forest according to Art 3 of the Act on Forests covers two types of areas and has two main parts. The first part includes areas of compact structure and size of at least 0,10 ha. The areas must also be covered with - or may only temporarily be devoid of - forestry vegetation (forestry crop) of trees and bushes as well as undergrowth. The area must also be assigned by local authority (commune) for purposes of forest production in a land-use plan or in administrative decision which replaces the plan or/and be designated as, or being a part of designated, nature reserve or national park or be listed in the list of monuments. The lack of forest vegetation does not exclude, as a rule, the area out of the definition of term 'forest'. It must be noted that for qualification of area as a forest or not the records in land-use plans are significantly relevant and often deciding. The second part includes areas and objects

that are connected with or/and necessary to exercise the tasks of forest management and production. These areas are enumerated in Art. 3 no. 2 of the Forest Act. They comprise buildings and structures, land improvement devices, lines of forest's territorial division, forest-ways, areas where the power supply lines are built, nurseries, places where timber is being stored, areas used as forest-parking and devices used for tourism.

3. Problem identification

The Georgian definition of forest has often been criticized by different commentators. So, Garforth states that "the definitions of forest and forest land in the Forest Code are such that it is not possible to distinguish an objective criteria whether a certain area of land is to be considered forest or forest land and therefore whether the law is applicable to that area or not".[6]

A common criticism is also that the definition of forest is narrowly based on biophysical, ecological and or vegetation parameters, which, besides the above-mentioned problems bears the risk that once cleared forest will fall out of legal requirements, management and protection.

4. Improvement suggestions

The search for the proper definition of the forest should be guided by the main functions and goals pursued by the Forest Code, such as e.g. maintaining permanent forest cover, sustaining a good ecological situation of other nature goods etc.

So far, there is no agreed definition of forest. One possible suggestion has been prepared in 2008 during the work of WWF with the MEPNR of Georgia. According to it, forest is defined as "tree and bush species of 5 meters and higher (and those that may reach this height), occupying more than 0.5 hectares of a forest fund land, projection of crowns of which exceeds 10 percent of the area and also stratums with the height of 1 meter with more than 40 percent of projection. Isolated targeted plantations of trees and bushes planted for the purposes of temporary usage are not considered as forests."

However, under this definition the forest as hitherto defined would decrease significantly.

Besides defining the core of forests, i.e. tree and bush cover, paths and roads serving the forest management as well as meadows and clear areas connected to the forest should also included into the term. In addition, it should be specified that forest areas do not lose their forest quality through damages by wind or fire, clear-cutting, uprooting or illegal commutation into areas with different types of use.

[6] Garforth, 2006, p. 2.

B. Definition of the State Forest Fund

1. Status quo Georgian Law

The definition of the State Forest Fund (SFF) is crucial because the SFF covers almost the entirety of Georgian forests. The SFF is defined as “integrity of State Forests of Georgia, as well as lands and resources attributed to these forests”. This definition is further specified by Article 19, which aims at providing a categorisation of the SFF.

Art. 19.1 states that the SFF comprises the State forests and the SFF lands and proceeds in part 2 by naming lands, agricultural lands, other non-forestry lands and lands of special use and idle lands as possible categories of the SFF. Additionally, the Code introduces the categories “Georgian Forest Fund (GFF)” and “Local Forest Fund”. (Art. 5 (c), (e) and (f) subsequently).

The establishment of boundaries of the SFF is regulated by Art. 18 and 19 of the Forest Code. Art. 18 describes the relevant procedures, while Art. 19 mentions categories of SFF lands which are attributed to the SFF in addition to forest in the narrow sense.

In relation to defining the boundaries of the SFF, relevant sublegal acts are of utmost importance, such as:

- Resolution # 96 of the Government of Georgia on Approval of Regulations on “Exclusion and Inclusion of Areas from the State Forest Fund Grounds” of 10th May 2007,and
- Decree # 403 of the President of Georgia on Approval of Regulations on “Regulations for Establishing Boundaries of the Usable State Forest Fund” of 12th September 2000.

2. Comparative Law

German Law does not use the concept of a state forest fund. It however does acknowledge the existence of forest owned by the state, forest owned by corporations including local communities and foundations, and forest owned by private persons.

Contrastingly, in the US law a special regime has been created for national forests most of which are also put under special protection as national parks. They are regulated by two acts, the Multiple Use Sustainable Yield Act and the National Forest Management Act. But there are private forests as well, which are regulated by state forest laws.

Polish Law distinguishes between two categories of forests: the category of forests that are property of the state and the category of all other forests. As far as the second category is concerned the Act on Forests does not distinguish between types of property and attributes or legal form of its owners. This category simply covers all forests that are not property of the state. They can be for example: communal, municipal, corporate and private forests as well as any other types of forests. The fact that a forest falls within one of the two categories determines the authority competent for the supervision of the forest use and management as well as some duties and rights of forest managing persons as well as the manner of its exercise. The state-forests belong to the state’s treasury, like the majority of other public properties. There is no

special external fund created, like the SFF in Georgia. The different components of the public treasury are managed by different public and also sometimes private units.

3. Problem identification

The main problems of the definition of the SFF are the following:

- The scope of the SFF is not tied to the definition of forest. Both should go together such that any existing forest is either part of the SFF or property of the church or of private persons.
- The SFF in its current definition includes not only forest and forest lands, but also agricultural lands, idle lands and "other non-forestry lands and lands of special use with hard surface roads and passage ways of various purpose, power and communication lines, oil and gas pipelines, allocated areas for mining, ponds, farm yards and gardens" (Art. 19.2 c)). The problem here is that areas which have nothing to do with forest fall under the regulation scope of the Forest Code. For instance, it does not make sense to apply principles of sustainable forest management to oil and gas pipelines and hard surface roads.
- Although two sublegal normative acts address the problem of delimitation of the SFF they are not clear enough to produce a satisfactory and uncontroversial inventory. The procedures and criteria to be established are so important that they are misplaced in sublegal acts.

4. Improvement suggestions

We suggest that the category of a Georgian Forest Fund should be abandoned. The term does not help to structure related regulations.

It should be considered that the Local Forest Fund is conceived as property of the relevant local community, and that the state should transfer property to them. This may contribute to that the local communities develop long-term interest in the preservation of the forests. In any case the supervisory competences of the state could ensure that misuses are excluded.

Regarding the inclusion of highways, pipelines etc. into the SFF it is suggested to exclude them from the SFF and attribute it to the responsible institutions, such as the Road Department, Ministry of Energy etc.

The criteria of delimitation of the SFF should be specified in the Code and not left to the sublegal level. A certain date of reference for inventarisation should be set and the material criteria of inclusion should be pragmatic. A conflict resolution body should be established. In cases of legitimate trust of private persons using lands for their purposes the land should be excluded or compensatory payments should be provided.

It should be made clear that private land which has become or becomes de facto forested does not fall under the definition of the SFF. The fact that land is turned into forest does not change the ownership but merely the applicable legal regulatory regime.

It should be considered to hand the decision-making competence about the inclusion or exclusion of lands, which is currently resting with the Government of Georgia, over to the MEPNR.

V. Forest categorisation

1. Status quo Georgian Law

Three articles (Art. 20-22) of the Forest Code are devoted to issues of forest categorisation. Art. 20 contains a list with different existing/possible categories, whereas Art. 21 and 22 are supposed to outline the rationale (basic principles) for establishing categories of the SFF and rules for assigning categories to the areas of the Usable SFF. As of today, there are two main groups of forest categories: Categories of protected areas and categories of the usable State Forest areas, which are further broken down into subgroups. Additionally, Art. 20.5 regulates the possibility of establishment of so called “areas with special function and landscape areas” within the categories of Usable SFF.

As for basic principles of categorisation, the Forest Code contains detailed and somewhat bulky definitions for categories of usable SFF and a reference to the law of Georgia “On the System of Protected Areas” with regards to other categories. As to the sublegal level, rules for “… Allocating Territories and Assigning Them Categories of Areas with Special Functions and Landscape Areas” exist, issued by the State Department of Forestry. Apparently there is no comparable regulation for categorization of Usable SFF areas. However, Art. 22 defines competencies for assigning categories of Usable SFF.

2. Comparative Law

Apart from normal forest German Law has introduced the two categories “protection forest” (Schutzwald, § 12 BWaldG) and „recreational forest” (Erholungswald, § 13 BWaldG). This division is in line with the division into the main functions of the forests, as outlined in § 1 BWaldG and NWaldLG. For these forest categories, special rules may apply, e.g. with regard to the restriction of conversions (Umwandlungseinschränkung) (See § 9 Abs. 1 BWaldG, § 8 Abs. 3 NWaldLG). In addition, forests can be part of protected areas and thus fall under one of the categories used for nature protection. This however is regulated by nature protection legislation, not by the forest legislation.

The same approach is also applied by Polish Law. The Act on Forests introduces two categories of forests. The main category is normal forest, it is however not directly named in The Bill. The second category was named ‘protected forests’. The forest is being designated or declassified as protected forest by administrative act issued by the public supervisory authority. An application by the highest representative (Director) of the public forests management unit “PGL Lasy Państwowe” is required if state owned forests shall be classified as protected forest. For any other kind of forests the classification procedure is undertaken *ex officio*. However the opinion of the forest owner is invited. In both cases an opinion of the commune council is required.

Besides the rules of Art. 15[7] on types of possible protected forests, further provisions were adopted by the Ministry of Environment in the Ordinance of 25.08.1992 on detailed rules and procedure of designating protected forests and rules of its management (Dz.U. 1992 nr 67 poz. 337). Standard forest and protected forest can share its territory with protected areas of natural conservation and other types of special areas. In this case corresponding regulations of another field of law apply and have, as a rule, precedence over the Forest Law.

3. Problem identification

The way forests are categorised in Georgia has been subject to criticism by different expert groups. Two main problems can be delineated: The first problem concerns the inclusion of protected areas categories in the Forest Code. These categories are within the application scope of the existing Law on the System of Protected Areas. In fact, they are subject to a different legal framework (nature conservation law) and even from the point of view of administration, under the governance competence of the Department of Protected Areas. This raises doubts about the reasonableness of their inclusion in the Forest Code (see also Mann, 2007, p. 17).

The second problem is the method of categorisation/existing division within the remaining Usable SFF categories. The definitions seem bulky and overloaded, at places lacking clear criteria which would allow the attribution of a certain forest to a category. Furthermore, e.g. areas with special functions can only be assigned within one of the other three categories and cannot be attributed a category themselves. A further problem rests with the wording of Art. 21.4, according to which "the category of forests with soil protection and water regulation functions is assigned to all other areas of the State Forest Fund, where all types of forest use are allowed in accordance with Georgian legislation." This way, this category loses the importance it deserves because no restrictions apply to its use.

One more issue is the delineation of categorisation competences in Art. 22. First, it is quite bulky and complicated, and it should be considered, whether the requirement of presidential approval is an appropriate means of this procedure. Second, such a detailed competence division is not suited to the level of the Forest Code.

4. Improvement suggestions

As Protected Areas categories are currently regulated both by the Law on Protected Areas and the Forest Code, an overlap and potential for conflict emerges. It is suggested that the Forest Code should simply refer to the Law on Protected Areas and its sublegal normative acts insofar a protected area comes to lie in a forest.

The further categorization should be critically reviewed. For this purpose it is advisable to consider experiences from some European countries (e.g. Germany). The distinction between

[7] According to Art. 15 a protected forest can be designated because of its special protective function for soil, water, protection from expanding and moving of sand. Within this category can fall also forests that are permanent degraded by industry, are of special importance for protected animals and plants, and are of special importance for science or national defense or/and security. The category includes also forests located within borders of cities and towns and within the distance of 10 km from the borders of cities with population of more than 50'000; forests located within the protected area of health resorts and elements of normal forests located at its top border.

non-usable and usable forests appears to be too rough. On the one hand there can be uses of protected areas, on the other hand not every use of usable lands can be permitted. The distinction should be replaced by new categories which should be more in line with the different forest functions. Further, it is more advisable to have three or four categories with clear attribution criteria than many unnecessarily complicated types.

In addition the following more specific changes are suggested: Consolidate the categories of “green zone forests” and “resort forests”, as, according to current definitions, they seem to serve similar purposes. Attribute the “area with special functions” the status of a category in itself. However, here a specification is necessary as to what can be these functions. Further, “forest with soil protection and water regulation functions” of Art. 20.3 (c) should be attributed not to all forests which do not fit within the other two, but only in cases where the degree or necessity of soil protection and water regulation is higher than it is the case in general. The rest of the forests should rather be those which serve the mere use function. It could make sense to consolidate the soil protection and water regulation category with that of areas with special functions, adding other functions such as e.g. climate protection etc.

As for establishing category specific regimes the existing Regulations for “Allocating Territories and Assigning Them Categories of Areas with Special Functions and Landscape Areas” should be repealed and one unified regulation should be adopted, with clear criteria of attribution and simplified procedures.

VI. Ownership

1. Status quo Georgian Law

Ownership issues are regulated in Chapter 3 of the Forest Code. According to Art. 9.1 the following ownership categories are provided: the State, the Patriarchy of Georgia, and a physical or legal person of private law.

The issue of privatization of Georgian forest has often been discussed in the past. The Forest Code (Art. 9.2) contains a provision, stating that the Georgian SFF is the State property and its privatization is regulated by the law of Georgia “On Privatization of Georgian Forests”. Thus while state ownership is the normal case the Code also provides the possibility of private ownership. However, the procedure and criteria of privatization have not been regulated in the Code; it only contains the reference to a separate law. Such law did not exist at the time of adoption of the Code, but is foreseen as an item on the list of supplementary normative acts to be passed “after enactment of this Code” (Art. 116 a). According to Art. 117.1, the term for issuing this law was January 1, 2002. However, it has not been adopted neither until then nor later on. Hence, as verified by the representatives of the Forestry Department, there are no legal mechanisms or facts of privatization of land out of the SFF.

The Code does not say anything about other modes of obtaining private property in forests.

Art. 10.1 specifies in some detail the rights and obligations of “Forest-Owning Physical Bodies and Legal Bodies of the Private Law”:

a) using the owned forest in accordance with Georgian legislation;
b) terminating illegal use or ownership of the forest or areas of the forest owned by these bodies in accordance with Georgian legislation and demanding reimbursement of costs for damage if done through these illegal actions;
c) hiring professionals, consultants and other personnel, guards inclusive, for managing the owned forest in the minimal quantity defined by Georgian legislation;
d) conducting forest protection measures against pests, diseases, fire, and all other adverse effects for terminating and liquidating these factors;
e) disposing of the owned forest in accordance with this Code and Georgian legislation;
f) submitting information on the condition of the owned forest and other required statistical information to the authorized State entities;
g) rationally manage the owned forest;
h) creating favorable working conditions for the State officials, submitting them all requested documents on forest management, conforming to all lawful directions and requests of these officials.

Art. 10.2. is concerned with the rights and obligations of the Patriarchy of Georgia and states that they shall be “defined in an agreement signed between the State of Georgia and the Patriarchy in conformance with this Code and Georgian legislation”. Hence, it appears that the Code itself is applicable only via the mentioned agreement.

There are no provisions in the Code acknowledging the right of the state and of local communities to use the forest and its natural resources commercially. They are under the constraint to award rights of use to third parties. Whereas the Code specifies a number of different license and permit types, the new Law on Licensing, which entered in force in 2005, abolished most of them. As of today, the Law on Licensing regulates three types of licenses for forest use, all of them so called use licenses - general license on forest management, special license for production of wood products and special license on establishment of a hunting range (Art. 7.4 Law on Licensing). Rights of use are awarded in a specially designed bidding procedure. However, the Law on Licensing and Resolution No 132 on one side and the Forest Code on the other regulate the procedure of awarding licenses in different ways. The Forest Code states that licenses shall be awarded either by tender or auction (Art. 57.1) by the MOE (Art. 57.6), whereas according to the Law on Licensing and Resolution No 132 the abovementioned licenses are awarded exclusively by auctioning (Art. 18.1 Law on Licensing, Art. 4.1 Resolution No 132) by the Ministry of Economy (Art. 3.1 Resolution No 132). Additionally, the Law on Licensing prescribes that as long as the respective laws have not been amended, rules and criteria for awarding licenses shall be prescribed by normative acts of the government (Art. 40.1). In the case of forest such an act is Resolution No 132, which contains detailed auctioning procedures.

2. Comparative Law

In Germany, § 3 BWaldG, as well as § 3 NWaldLG introduce three different types of forest ownership, including State Forest (Staatswald) owned by the Federation or a Land, Corporation Forest (Körperschaftswald) owned by local communities, foundations etc., and Private Forest (Privatwald) owned by private natural or legal persons. The NWaldLG specifies these categories by separating out the categories of Land Forest (Landeswald), Communal Forest (Kommunalwald), Foundation Forest (Stiftungswald) and Cooperatives´ Forest (Genossenschaftswald). Taking into account the fact, that unlike Germany, Georgia is not a federal country, there can only be State Forest in Georgia. Forests of Foundations and Cooperatives could however be categories also in Georgia. It is interesting to note that German forest law does not have the separate category of a church forest. Church owned forest is just one subcase of the category of Corporation Forest (Körperschaftswald), because the churches in Germany are corporations under public law.

Furthermore, § 4 BWaldG introduces the term forest possessor (Waldbesitzer), which can be forest owners and forest users having direct possession of the forest. This category allows to address obligations of administrative law to those persons who in effect control the use of forests.

In relation to the rights and obligations of owners German law is tacit about the civil law dimension. This issue is regulated by general civil law on the use of private property. Both property in public and private hands are treated equally in this respect. This means that both private and public land owners can exploit the forest, defend themselves against illicit use from other persons, can employ personnel, etc. Of course, however, they are subject to administrative law restrictions (see below Ch. VII).

In Poland, as already mentioned, the law distinguishes only between state owned and all other forms of property. Issues of change of ownership are regulated in the Civil Code with some little exceptions regarding the matters of selling public forests. Owing to the rules of Art. 38 of the Act on Forest we cannot speak in principle of forest privatisation in Poland at all. The sale of state forests is strictly limited and, as a rule, forbidden. Only timber and other goods can be a subject of sale contract. Despite this the rate of private managed forests has since 1989 constantly grown. Forests can be leased, according to Art. 39. It is here to mention, that the term “owner” used by polish forest law has a different scope comparing to its definition based and used in civil law. The main goal of the definition is to comprehensively cover the addressees of administrative duties and rights of forest management. Thus as owner is not only treated a person who owns a forest land but also person that *de facto* possesses it, even in case when this fact is a result of illegal action.

3. Problem identification

a) Private ownership of forests

Although Art. 9.1 foresees the category of private forest, privatization has not been enacted. Under the current situation, the state can only sell forest uses, but not the property. There is

legal uncertainty, because on the one side privatization is declared possible, while on the other side it is not enacted. There is a need to discuss the issue politically and take a clear decision.

At the moment, in Georgia there is a clearly defensive attitude towards the concept of privatization. This is due to the fact that privatization of forests in Georgia is generally associated with large-scale and mostly uncontrolled forest use by big foreign investors. However, this is not the only possible way the privatization of forests could strike. For instance, forests could be privatized similar to the pattern which had been applied in East Germany after the reunification or following the model pursued in Georgia for agricultural land in the 1990es, when the government gave peasants small agricultural lands with the size of up to 5 ha. The generally feared negative consequences of forest privatization can be avoided by creating a number of preconditions ensuring that the forest does not fall prey to unsustainable foreign investors. Such preconditions could e.g. specify that only small and local firms can become forest owners, that the maximal size of privatized land per owner should be 5 ha or else, etc. Additionally, provisions could be established controlling any resale of privately owned forests, such as by requiring that the subsequent buyer must fully comply with the criteria the first buyer had to comply with. In addition, the state could be given the right of pre-emption in the case of resale.

Apart from privatization, private forest property can also emerge by other means: If a private person owning a non-forested land decides to let forest grow on it, it is unclear if this would be acknowledged as private forest in the sense of the Code. We believe it should be and the rules of the Forest Code should be applicable, in particular, because later on a valuable ecosystem may develop with functions and components deserving protection.

The provision of Art. 10.1 which sets out rights and obligations of private forest owners is without basis as long as there are simply no acknowledged private forests.

It is doubtful, that there is necessity for the Church to have a special status in regard of forest use and that there is a need for a separate agreement, which would define rights and obligations of the Church, instead of regulating them in the Forest Code.

b) Administrative vs. civil law

The list of rights and obligations of forest owners and users does not adequately distinguish between civil and administrative law dimensions. For instance, while the rules on forest use, sustainable management and information of authorities (Art. 10.1(a) and (f)-(h) must be regarded as administrative law, the rules on illegal use, disposal of property and employment of personnel (Art. 10.1(c)-(e) belong to civil law.

c) Allocation of rights of use

The regulation of transferring use rights must be distinguished from the regulation of limiting use rights in the interest of environmental protection. Although both kinds of regulation are administrative law they pursue different goals: Ensuring state income by fair procedures in the first case, and ensuring environmental protection in the second. For instance, if a user wishes to clear-cut a forest area he should have to ask for both, the granting of the use right at fair prices, and the permit to cut subject to certain environmental protection conditions. The Forest Code does not separate these two legal perspectives. It only talks about the authorization provided on the basis of a tendering procedure/auction supposing that this authorization also covers the environmental dimension.

Of course, for the sake of simplifying bureaucracy both dimensions could be integrated in one authorization. But then it would have to be ensured that both concerns are checked in the tendering procedure.

d) Own use by the state and local communities

It seems that the state and the local communities shall be excluded from their own use of the forest. The use shall be allocated to private persons, if necessary by auction. This is also reflected in the fact that the Forestry Department is only one organisation with decentral sub-units but lacks units which actually work the forests. It is submitted that this situation should be reconsidered. This was also the position of the representatives of the Forestry Department we interviewed. The exclusion of commercial use leads to bizarre situations such as the following: In the municipality of Dedoplistskaro part of the Local Forest Fund consists of degraded forests where firewood is collected by the local population. The municipality is prepared to develop the area into a productive forest. The community could however not use the wood commercially and thus does not have an incentive to care for the forest.

At the moment there is lack of respective financial/investment means, personal and equipment. However, it should be possible to provide for financing in some areas through creation of mixed-ownership limited liability companies (GmbH, Ltd.). As a reference model Latvia should be consulted, which applied similar approaches in the past. Implementation of this and other similar approaches would enable a long-term sustainable forest management.

4. Improvement Suggestions

a) Private ownership of forests

There can be several pro and contra arguments with regard to privatization vs. non-privatization of forests. A category of private ownership should however be retained. Even if there is no general privatization policy it should be acknowledged that private forests may be grown on private land.

The separate treatment of the church forest may be justifiable by the special status of the church in Georgia, but even the church should be subject to rules of sustainable use. It seems

rather advisable to unify it under another more covering term, which would enclose other entities able to own forests in the future.

In the further future various forms of ownership may emerge such as ownership of cooperatives of small landowners, ownership of large companies and ownership of foundations. It should be considered to introduce further categories of ownership to reflect these varieties of forms and allow to tie specific regulatory regimes to them.

b) Administrative vs. civil law

Use rights and obligations of private forest owners under civil law should be separated from rights and obligations under administrative law. Civil law rights and obligations do not need to be specified in the Forest Code. Rather reference should be made to the relevant provisions of civil law.

However, there must be provisions on specific rights of the state as forest owner, which he has as a bearer of obligations under public law. One core aspect to be regulated would be the tendering of use rights.

c) Allocation of rights of use

The Law should include a clear differentiation between tendering procedure on the one side and environmental permission to use resources on the other. It could be considered to integrate both but it would have to be ensured that during the tendering procedure environmental protection concerns are fully respected.

d) Own use by the state and local communities

Rights and obligations of the state and local communities to work on and exploit their forests should be introduced and specified.

It should be considered that local communities are made owners of their Local Forest Funds.

VII. Sustainable Management of Forests

It is the major task of a Forest Code to establish an administrative law regime that sees to that the forests are managed in a sustainable way. This requires

- a proper definition and specification of the substantial criteria of management
- proper instruments of supervising sustainability.

A. Principle of Sustainable Use

1. Status quo Georgian Law

Art. 4 of the Forest Code states: “The principles of protection, sustainable development, and management of the forests of Georgia are based on the Georgian Constitution, the Declaration on Forest Principles of Sustainable Development adopted at the United Nations Environmental

Summit in Rio de Janeiro, 1992, and Article 5 of the Georgian law 'On Environmental Protection'". The article thus does not establish any material provisions itself but refers to the Constitution, international soft law and the general Law on Environmental Protection. The reference to Art. 5 of the latter law means that the long list of principles including prevention, precaution, polluter pays, waste recycling etc. are applicable. In some of the provisions of the Code there are references to sustainable management, e.g. sustainable timber cut in Art. 68, however these references are scattered and unsystematic. Further, Art. 10 stipulates obligations of private forest owners, which are also important in this context, such as conducting forest protection measures against pests, diseases, fire, and all other adverse effects for terminating and liquidating these factors.

Chapter 28 contains provisions on afforestation and reforestation. The chapter seems to aim at defining the terms and largely refers to sublegal acts. It does not clarify under what conditions and by whom afforestation and reforestation shall be undertaken. Two important sublegal acts - "Regulations for Restoration and Afforestation of the State Forest Fund" #10/161 from 4th December 2002 and "Regulations for Selection and Use of Plant Species for Restoration and Afforestation of the State Forest Fund" #75 from 5th August 2003 – are of relevance in this context. If the issue of afforestation is at least mentioned in the law text, the term reforestation is missing. It can however be argued that it can be partly subsumed under the concept of restoration.

Art. 95.4 Forest Code.

Forest restoration implies the following:

a) thinning or removing underbrush with the purpose of stimulating natural regeneration of forests, also carrying out tending, protecting, cleaning, planting, and sowing in the managed forests, forest edges, and subalpine open woodlands;
b) improving species composition, age structure, quality, productivity, protecting capacity and other values of the forests.

Even in this case, the ties to cases of conversion, clear cutting etc. are still lacking.

2. Comparative Law

Art. 11 of the German BWaldG and the pertinent Land Laws set out as a core requirement of sustainable management of forests that cut and lighted forests shall within appropriate time be reforested or complemented if the natural regeneration remains insufficient. Furthermore, the transformation of a forest to other use is not allowable if the public interest in the ecological, recreational or economic function of the forest is preponderant in relation to the interest of the user. There are specific provisions in relation to the management of forests with a protective function (Schutzwald). Forests having the status of nature protection areas must be managed in respect of the rules established for the protected area. Forests owned by the state, municipalities, foundations and associations are subjected to specific requirements which attains a higher degree of sustainability than reqired by private owners (§ 15 NdsWG).

In Polish law, the Act on Forests contains provisions similar to the above mentioned German regulations. Forest owners and possessors are obliged to exercise sustainable forest management and timber production with respect to environment and nature. The term of sustainability regarding these issues was however not exhaustively defined. The legislator has used only some examples to illustrate it (see Art. 13 of the Act on Forests). For example, the forest owner shall keep forest crop, natural swamps and peat bogs within the forest area. He is obliged to reforest the area within 5 years after removing forest crop, timber production shall be exercised in a way not exceeding the forest's natural production capacities. Thus the use of natural resources (e.g. the cutting of timber) shall be conducted in the way, that is not harmful to the process of natural wood regeneration and regeneration of undergrowth.

3. Problem identification

There is no definition of sustainability tailored to forest management in the Georgian Forest Code. General principles of forest management are not sufficiently specified

In particular there is no requirement that any cutting must be accompanied by reforestation and that under certain conditions land must be afforested. Only in relation to protected areas and species there are obligations to respect the relevant rules.

Although in the definition of restoration in Art. 95.1 reference is being made to the GFF, there are many aspects which speak in favor of the interpretation, that only SFF is addressed, such as: in course of the articles 95 and 96 there is often a reference only to SFF, the described restoration measures are often tailored to the specifics of State actions, and the two regulations refer to SFF only (Art. 3.2. of the Regulation Nr. 75 even explicitly mentions that it doesn't apply to other Forest owners besides the State). There is a risk that other forests suffer from this inconsistency. Two possible examples could be: Private/church etc. forests do not receive the restoration treatment specified for state forests; there are no rules for how afforestation initiated by non-state actors should be carried out and no control mechanisms of such.

Lack of a clear concept of reforestation and obligations to reforest is a serious deficit of the Forest Code. The practice knows some cases, where reforestation has been negotiated in a contract between state and private sector. For example, BP has been obliged to carry out reforestation along the deforested sections of the Baku-Tbilisi-Ceyhan pipeline: In this case, the compensation obligation and the compensation areas in question have been negotiated with BP, as there was no legal basis per se for such measures. Lack of reforestation provisions is an even bigger problem in case of clear-cutting of forest areas under license. Here the argumentation by state officials has often been, that because of the rather small size of the affected areas, there is no need for reforestation, as reforestation emerges by itself. This argumentation is unsound – first, because it is the general principle of reforestation which matters, second, because it takes quite a long time for a new forest to grow, if this process is not being supported. And finally, the question arises, what will happen with non-state forests if there is no obligation and no control mechanisms concerning reforestation.

4. Improvement suggestions

Sustainability should be a mandatory requirement of all activities concerning forests. A clear and more specific definition on what sustainability means for forest use should be developed. Furthermore, general obligations should become more diversified and structured, among others such obligations as inspection and collection of data should be regulated.

It is proposed to clearly define the concepts of afforestation and reforestation. The term restoration is quite similar to that of reforestation, so it is recommended to stop using it in this context. The condition under which afforestation or reforestation is due should clearly be laid out.

Both concepts should equally apply to all types of forest ownership.

Furthermore, it is reasonable to change the systematic placement of the provisions within the law text. A consolidated chapter should be created that contains principles, basic standards and best practices of close-to-nature, multi-purpose sustainable forest management.[8]

Unified sublegal acts should be developed, removing all technical and scientific details from the text of the Code.

B. Management Tools

1. Status quo Georgian Law

Many different uses of the forest are defined by the Code. Some are free, such as scientific research and common use by the citizens. Others are subjected to a variety of control tools. These include:

- For any of the uses of forests of the SFF the Code requires a license, contract or ticket which are based on a public bidding procedure.
- The Code provides that management plans must be developed for the uses of forests.
- For some uses specific regulations are set out on the sublegal level, such as for the plantation of forests (Art. 75, 76) and the production of wood and secondary wood materials (Art. 77, 78).
- For some uses the Code requires that a permit must be obtained, such as for agricultural use of SFF land (Art.81 (2)) and for scientific research in the SFF (Art. 83, 84).
- The conclusion of a contract with the Forestry Department is required for the managing of a hunting range (Art. 87) and for “special uses” (Art. 82).
- For timber harvesting a certificate for timber transportation is required which certifies the property of the timber. It is issued by the Forestry Department for wood from the SFF and by the local authority for wood from the Local Forest Fund (Art. 93).
- The Forestry Department is also empowered to intervene in cases of illegal use.
- Voluntary certification is acknowledged (Art. 94).
- Charges must be paid for forest use (Art. 91).
- There is an obligation to maintain a forest cadastre, which is part of the SFF registry system (Art. 23). The goal of the forest cadastre is to evaluate ecological, economic, and

[8] Mann, 2007, p. 68.

other values of the SFF for providing the State entities and the public with the information required for carrying out tending, protection, restoration, rational use of forests, keeping track of qualitative and quantitative changes of forest resources, and for developing forest management plans (Art. 25.1) The data for the forest cadastre is obtained by means of monitoring of the SFF (Art. 25.3).

Most of the uses and the related administrative tools controlling uses are tied to the SFF. There are hardly any provisions on supervising uses in private or church forests.

2. Comparative Law

It appears that the kinds and preconditions of management tools are in other countries better structured and less diverse than in Georgian law.

Forest use and management plans are standard instruments of forest management in many countries. They have attracted particular legislative concern in the US in form of the National Forest Management Act. In Germany the Laender laws provide for regular forest planning. Both countries include publicly and privately owned land into the forest planning.

Certain activities are subject to special supervision by public authorities. In Germany, for instance, the change of forests into other uses and the afforestation are in principle subject to authorization. The law specifically sets out reasons to be considered by the public authority. In addition, the slash cutting of areas above certain sizes must be notified to the authority which under certain conditions has the power to prohibit the activity (see §§ 8 – 13 NdsWG). The supervisory authority is endowed with the power to order appropriate measures in cases of unlawful behaviour or omission (§ 14 NdsWG).

Also in Poland the exercise of forest management and timber productions both in private and public forests must be conducted according to ‘the plans of forest management’ which are included in land-use planning. As far as state forests are concerned the state forest management unit “PGL Lasy Państwowe” must bear the costs of the planning. As far as other forests are concerned simplified plans are to be created on the order of the public supervision authority and at the cost of the state. However private owners have the right to be heard in the planning procedure. Whether their comment shall be respected or not is however up to the administrative decision of the supervision authority. When a legal remedy against such a decision has been filed it becomes a subject of verification within administrative complaint and finally court procedure.

Timber production and forest management can be exercised only when plans were adopted and a state license was obtained issued by the Ministry of Environment. The license has, as a rule, no expiry date (vide Art 18, 19, 19a of the Act on Forests).

The land-use change from forest to another type of activity e.g. agriculture is seen by the Act on Forests as an exception and must be motivated and justified by special important owner’s interest. The change must be authorized and is discussed within a administrative procedure. NGOs can participate in the procedure. When taking its decision the authority must consider

environmental, public and private interests. The issues of afforestation are covered by the National Program of Increasing of Forest Coverage of the State. According to Art. 14 of the Act on Forests the forest management plans must respect guidelines of the program.

3. Problem identification

As outlined before the Code lacks a clear concept of distinguishing between civil law rights and obligations and administrative regulation of forest management. If this separation was introduced supervisory powers could be extended to private forests.

A chapter on actions subject to authorization should follow. Such activities are for instance clear-cutting, afforestation, construction of forest ways, conversion of uses, cultivation of a new (tree) species etc. In order to enable a reasonable decision about whether the requested activity shall be permitted, it is important to define appropriate material criteria and procedures. On the example of afforestation such criteria could be the requirement the land to be fallow land, considerations of biodiversity and landscape protection etc. On the example of conversion to agricultural use a primary criteria should be non-existence of rare species in the forest and particular value of the land for agricultural use. Additionally, existing requirements of landscape planning should be taken into account.

The Code lacks a systematic concept of matching controlled uses with specific tools of control. For instance, it is unclear why sometimes a permit, in other cases a certificate and in yet other cases a contract is required. In general there is a lack of criteria which must be fulfilled if a permit/ contract/ certificate shall be granted.

With regard to those provisions which introduce an authorization requirement it is unclear if this requirement remains in force even though the Law on Licensing only allows those licensing requirements which are listed in this very law. As the Law on Licensing is the more recent law its claim for monopoly must be understood to set aside all other non-listed authorization requirements. Moreover, it could be doubted that certification or contract requirements are not also set aside by the Law on Licensing. As of today, if new authorization requirements shall be introduced, they also must be included in the Law on Licensing.

In regards to the forest cadastre, clearer provisions are necessary on the process of and requirements to data collection. At least for large forest owners collection of certain data should be compulsory. Detailed obligations on this matter are better suited for the sublegal level.

4. Improvement suggestions

The tools of administrative supervision should be made applicable to both forests in public and private property.

On the level of administrative law a few new administrative regulations need to be introduced, addressed at owners and users, such as the obligation to grant inspectors the right of access to

the forest, the obligation to conduct management planning by forest owner, prevention of spreading of alien species etc.

The Forest Code should be complemented by a comprehensive listing of basic obligations of owners and licensees.

It is suggested that if the state and local authorities are given the right of economic use of their forests they should establish separate entities entrusted with the forest works and use. They would be subject to the administrative regime enforced by the supervisory entities of the ministry.

A more systematic approach should be developed which matches administrative tools with various forest uses and sets out criteria of granting or refusing uses. The Law on Licensing should be amended if for certain uses a permit requirement shall be introduced.

Afforestation (of non-forest land), reforestation, clear-cutting, transformation of use from forestry to other uses (for instance, agriculture), construction of forest ways, cultivation of alien (tree) species- all these activities should be subject to a permit requirement.

For the needs of the forest cadastre, a provision should be introduced, regulating the collection of certain data by forest owners on the basis of a management plan.

VIII. Common use of Forests

1. Status quo Georgian Law

This issue is regulated in Art. 88 of the Forest Code, which bears the title “Presence of Citizens in the Forest”. Presence of citizens in the forest is not regarded as forest use in the legal sense (Art. 88.1) and therefore not subject to permit requirements. The main message of this article is, that besides such rights as to “enter and freely move around the forest” and “use forest environment for recreation, tourism and aesthetic enjoyment”, every citizen also has the right to “collect non-wood resources and secondary products for the personal use”. Furthermore, the Code imposes active care obligations on the citizens and allows to restrict all the above mentioned rights in cases specified by law.

2. Comparative Law

The equivalent of Art. 88 in German Law is § 14 BWaldG, which stipulates the right to enter the forest for the purpose of recreation. More detailed provisions are left to the state level. The NWaldLG contains detailed restrictions on the right of free forest entry as well as obligations private persons need to observe on the territory of a forest. Important is also the fact, that different kinds of entry are regulated - such as horse-riding, use of motor-vehicles, camping etc. No comparable right to collect resources for private use can be found here although in fact the collection of non-wood resources for personal use is widely practiced.

The matters of common use of forests are regulated quite widely and comprehensively in Polish Law. They are the subject of regulations of 5th chapter (articles from 26 to 31) of the Act on Forests. Art. 26 par. 1 stipulates that state forests are made available to the people. This is the major and general rule. It has however been specified by regulations on exceptions and details can be found. The state forests are opened for personal as well as for commerce use. In the framework of common use everyone is permitted to gather undergrowth and to place an apiary in public forest free of charge. Rules of exercising this right are specified the Ministry of Environment Ordinance (Dz.U. 1999 nr 94 poz. 1096 and Dz.U. 1999 nr 94 poz. 1096). The commercial gathering of undergrowth however requires a contract with the state forest authority. There is a permanent prohibition of entrance to the areas covered by forest crop with trees less than 4 m high, to the areas of experimental forestry and intended for seed production, to areas of crucial habitats of wild animals, springs of streams and rivers, and to areas endangered by processes of erosion. Also a temporary prohibition of entrance can be ordered in some cases in the interests of environmental protection or/and safety of people. Everywhere where entrance to forests is prohibited the forest must be signed by proper sign according to the graphic pattern established through respective ordinance of the Ministry of Environment (Dz.U. 1998 nr 11 poz. 39), a note on cause of the prohibition must be also provided on the sign. Private owners of forests can prohibit entrance for any reason. Persons enjoying the common use of forests must obey furthermore many rules of behavior on the forest territory in the interest of environmental protection and safety (e.g. no littering, no disturbing of animals, holding dogs on leash, do not make a noise, do not set fire etc.). Vehicle traffic is only permitted on public roads, however it can be permitted by authority on forest roads as well. Parking and camping is allowed only on selected and signed forest areas. Horse riding is permitted only on forest roads. The organization of public or sport events requires a permit of forest owner.

3. Problem Identification

There are doubts about the realm of personal use, in particular if the use for the family is included. The answer should be in the positive.

It is unclear what the requirements are if a person wishes to collect non-wood resources (such as mushrooms or seeds) for the market on a small scale. According to the Code, (see Art. 51.1 (c), which only addresses the production of seeds etc.) collection of this kind is not a use in the sense of the Code and thus not subject to a bidding and permit requirement. On the other hand it is not allowed by Art. 88 as a common use. In the actual practice such uses are frequent without the possibility of supervision by the ministry. The ministry sometimes issues a declaration that the activity is not against the law.

This approach hinders a regulated exercise of small scale commerce in this field. To change the situation, the ministry should be able to issue a permit on small scale collection of forest products for the market. According to general opinion of lawyers, this is not possible due to the Law of Licensing, which states that the only permits that exist in Georgia are those defined therein, namely timber extraction and hunting (for the forest), and that no new permit types shall be introduced. However, if we look at the Law of Licensing from the background of the goals the legislator wished to achieve with its adoption, we will see that this law seeks to regulate free activities and activities subject to approval, rather than prohibited activities. Where there is a

general prohibition of a certain activity, there should also be the possibility to impose a kind of dispensation from a basic prohibition. Such a dispensation would not be covered by the reach of the Law on Licensing.

In our opinion, the best solution would be to enable small scale commercial use by means of a permit, which would be subject to prior approval, however, would not require tendering.

4. Improvement suggestions

Personal use should include use by and for a family. This should be clarified by the law.

A special permit should be introduced for small scale collection of forest products for the market. It is suggested that this would not breach the Law on Licensing: the small scale economic collection is prohibited and can be exceptionally permitted by the authority. Insofar the MOE is by law empowered to completely prohibit an activity, it is by implication also empowered to prohibit the activity only in principle and make exemptions dependent on a permit. It is suggested that this kind of permit is not covered by the reach of the Law on Licensing.

Allowable means of transportation for the common entering of forests should be specified.

Common use of forests should include the SFF, Local Forest Funds as well as private forests above a certain size.[9] This approach would ensure customary access rights in the event of a change in ownership.

IX. Trade in forest products – Transportation permit and Export

1. Status quo Georgian Law

The transportation of timber requires a timber harvesting certificate. It is issued to all vehicles carrying out primary transportation of timber extracted from the State Forest Fund (Art. 93.1) The timber harvesting certificate is issued by the Forestry Department for wood from the SFF and by the local authority for wood from the Local Forest Fund.

Next to the function of a transportation permit, timber harvesting certificate fulfills a number of other functions:

1. It is a single mandatory and sufficient document which certifies property on the extracted timber (Art. 93.2);
2. Holding of a timber harvesting certificate is mandatory for primary timber processing and selling products of primary timber processing (Art. 93.3).

The timber harvesting certificate shall be presented to the body authorised by the Georgian legislation upon request.

[9] Garforth, 2006, p. 15.

Decree #380 of the Ministry of Environment "On rules of issue of certificate on timber origin and legality" regulate the abovementioned issues in more detail. Decree #566 of the Ministry of Environment of December 20th, 2005 established a similar certification system for fuel wood.[10]

The Forest Code does not contain any special provisions regarding timber exportation.

2. Comparative Law

In the German forest law there is no requirement of authorisation for the transportation of wood other than general legislation on the safety of lorries and the qualification of drivers.

The Polish Law (Art. 14a) imposes on forest owners an obligation to mark timber gained from his forest with a mark of legality provided by authorities. Timber from private forests shall be marked already in the forest by the supervision authority which issues also a certificate of legality. Only general traffic rules are of relevance for timber transportation.

3. Problem identification

It appears to be a somewhat strange construction to use the same document at the same time as a certificate of origin (with a view to check against illegal logging), transportation permit and proof of ownership. The three issues – ownership, origin and transportation should be treated separately.

As to proof of ownership the showing of other documents such as the license to harvest the timber and possibly a contract if ownership was transferred would be more appropriate proofs. As to certifying the origin and thus controlling the legality of logging a separate certificate of origin would be preferable. In relation to the transportation it should be sufficient that the lorry is licensed and the driver possess a drivers license.

That the Code does not contain provisions on the exportation of timber must be considered as a flaw, because exportation is a major cause for the loss of biodiversity through deforestation.

4. Improvement suggestions

The practice of using the concept of timber harvesting certificate to prove ownership, enable transportation and control the origin of timber should be abolished.

With regards to the control of illegal logging, an overarching approach should be adopted in the form of a certificate of origin. Anyone possessing raw timber exceeding a specified quantity (which also shall be specified), should have a certificate of origin. This requirement would equally apply to timber transportation, processing, storage, sawing, and commercialization. The certificate of origin would accompany the timber on its way through different production modes. This way, the traceability of origin can be ensured.

A new chapter should be introduced concerning exportation and importation of timber from endangered species.

[10] Garforth, 2006, p. 27.

X. Towards a new structure of the Forest Code

It is suggested that the Forest Code should be restructured along the following lines:[11]

1. Purpose and scope
2. Definitions (e.g. forest, State Forest Fund etc.)
3. Ownership and ownership rights
4. Special provisions on public ownership
    - physical exploitation
    - management entities
    - leases
    - alienation I and II
    - tending
5. Common use rights (access for recreation, collection of product for personal/family consumption)
6. Generally applied obligations of forest users
    - potentially harmful practices (use of chemicals, lighting of fires, no littering, no noise, planting of non-native species)
7. Functional categories of forests
    - Categories
    - Protected areas
    - Powers of designation
    - Specific management obligations
8. Generally applied obligations of forest owners and lease holders
    - collection and provision of data
    - facilitate access of inspectors
    - management planning
    - codes of practice of civil culture, environmental management, combat of pests and diseases, management of biodiversity

[11] Based on Garforth, 2006.

9. System of authorising and controlling forest exploitation
    - activities subject to licensing or contracts
    - criteria of granting or denial of license
    - certification of legal harvest
    - procedure
    - competent agency
10. Controls over the trade in forest products
    - Need to show certificate of origin when transporting, storing or processing of wood
    - importation and exportation of endangered species
11. Forest Cadastre
12. System of support to private forest owners
13. System of supervision and enforcement
    - Responsible agencies
    - Powers of inspection
    - Duties of inspection
14. Financing
15. Offenses and penalties

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