

18 June, 2012

EU Georgia Action Plan under ENP:

- **Take steps to ensure that conditions for good environmental governance are set and start implementing them”;**
- **Take action for prevention of deterioration of the environment, protection of human health and achievement of rational use of natural resources in line with the commitments of Johannesburg Summit”.**

During the given time period, environmental governance in Georgia has not been improved. The amendments of environmental legislation passed by the Parliament significantly weaken environmental protection framework and protected areas system laws. The process represents a logical continuation of environmental governance system reform over previous years, owing to which the current environmental management system is extremely fragile. Among the most recent alarming governmental initiatives, the following should be highlighted: allowing hunting on Red-listed rare and endangered species; planning and implementing development projects within or in close vicinity of Protected Areas without due environmental considerations; and initiating and promoting energy and infrastructure projects hazardous to the environment and the population without taking environmental, social, and economic risks into consideration.

Agreement against the Environment

The amendments of environmental framework law in March 2012, allows the conclusion of an agreement of unlimited duration between an interested party and the Ministry of Energy and Natural Resources of Georgia in a field of environmental protection and Natural resource use. Based on agreement, in exchange for paying compensation in favor of the state the interested person is exempted from liability for the violations committed in the sphere of environmental protection and natural resources. At the same time, a signatory interested person will be released from any obligation, fines and/or compensation for damage, including the obligation to pay the fee for the usage of natural resources. The law also forbids inspection of the activities of an interested person by enforcement authorities.

According to the expert’s opinion, the law contains significant risks of environmental, corrupt, economic, social and political nature. The law, as well as follow up regulation issued by prime minister does not agree precise criteria’s and conditions in what cases the agreement could be done, leaving large scope for doubts and concerns. It should be also stressed, that according to law the third parties have no right to challenge the agreement in court, that represents a violation of article 42 of Georgian Constitution.

The first agreement was signed between Ministry of Energy and Natural Resources of Georgia, JS company "Madneuli" and Ltd "Kvartsiti" exploited Gold- copper- barite-polimetal deposit in Bolnisi municipality. According to the agreement, all activities and actions undertaken by JS company "Madneuli" and Ltd "Kvartsiti" during 1.04.1994 and 14.05.2011 has been recognized lawful. For that companies supposed to pay to state budget until the end of 03.2014 up to 13 mln GEL and implemented number of environmental mitigation activities.

There are two major problems - 1) that all activities of companies recognized as lawful and 2) that nobody will control the implementation of mitigation measures. In addition, the agreement will be considered to be canceled only in case of non payment in accordance with the given schedule, while there are no conditions, what will happen if the companies do not implement the proposed mitigation scheme according to the given schedule? Thus, it means that proposed mitigation measures is just formalities. Taking into account the problems related to environmental performance of the given deposit exploitation and its drastic environmental impacts the situation is unjust.

According to the Ministry of Energy and Natural Resources, the reason for the amendments to the law was to improve environmental performance of local enterprises, without penalizing them heavily. However, the tool for that already exists within the legislation.

However, as the situation with Madneuli deposit shows, the Ministry of Energy and Natural resources rather using the article 10 of environmental law, on agreement in the field of environment protection and Natural resource use, could use the article 9 on compensation of environmental damage. The article 9 gives possibility to enterprisers to negotiate with government environmental damage payment, instead of agreeing on the mitigation plan. In this case, the implementation of the agreed mitigation plan according to the schedule will be monitored by inspection agency. In addition, all activities of the interested person, that signed agreement with the ministry of Energy and Natural resources under the article 9 would not be recognized as lawful, just because of developing agreement and paying the money to state budget.

Environmental legislation amendments that negatively affecting protected areas system and biodiversity

During the given period, the Parliament adopted number of amendments to environmental legislation that negatively impacted protected areas system.

Kazbegi National Park reduction

In February 2012, the parliament adopted the changes of the law on the protected areas system that decrease the Kazbegi National Park area up to nine ha. due to the planned construction of Dariali HPP.

The amendments represent the green washing exercise for the Ministry of Environment, that already in November 2011, issued positive environmental permit for construction of Dariali HPP on National Park territory, despite it represents the violation of article 5 and article 20 of the law of the protected areas system.

In addition, the reduction amendment was initiated by Ministry of Energy of Natural resources, although according to the article 14.2. Of the law on the protected areas system, the permanent or temporary reduction of Natural park territory could be initiated only by Ministry of Environment.

It should be mentioned that Dariali HPP project will irreversibly change the Dariali Gorge landscape, as the major river to the region – Tergi - will actually remain without water, that would fully undermine its

historically established cultural-ethnographic and tourist values. The project will lead towards extinction of stream trout, that is listed in Red List¹.

Kolkhety National Park reduction

According to the amendments to the law on creation and management of Kolkheti Protected Areas, the 842 ha of was withdrawn from traditional use zone. The reason for the withdrawal was the need of the territory to construct Anakli-Poti highway.

It should be stressed, that in October 2011, Parliament adopted the amendment's that change the zoning of the above mentioned 842 ha, and from strict protection zone it was transferred to traditional use zone. However, taking into account, the fact that in traditional use zone construction of highways and airports are also prohibited, government through initiating the amendment solve the previous "mistake."

The explanatory note of the amendment on „law on creation and management Kolkheti National Park," states that consultations have not been undertaken with NGOs and/or independent experts, or with international organisations. The document admit the fact that government of Georgia violates the requirements of Aarhus Convention on access on environmental information, public participation and access to justice on environmental matters.

The amendment means that this 842 h would be withdrawn from the middle of the Kolkheti National Park, that will have a significant impact on existing biodiversity, that meantime is also protected by the Ramsar Convention on Wetlands, against of Bern Convention, as well as EU directives on habitats, bird protection and environmental impact assessment.

Lazika and Kolkety National Park and Ramsar Convention

In addition, the issue of the city Lazika becomes more and more problematic. Despite the fact, that there will be amendments in Constitution of Georgia, that will define the special status of the city Lazika, the main problem of location of city is unresolved and there is not exact indication where it will be constructed.

The area that is proposed by government for Lazika (where actual construction of Justice House and road already starts) is in vicinity of Kolkhety National Park, on territories protected under the Ramsar Convention. In general, the Georgian government was obliged to notify the Ramsar Convention already when idea of the project appears, however, it has not been done at all.

Although we still do not know were exactly the Lazika will be constructed, President in his speeches stressing the importance of drying the wetlands and construct the large city. The political decision is already made. In addition, the Strategic Impact Assessment is not used as a tool in Georgia's decision making practice, while Environmental Impact Assessment law is very weak and government could override it on all stages (like exempt EIA requirements), therefore, all it creates the danger that some ecosystem services of Black Sea Coast wetlands may be disrupted in an irreversible way that itself will have drastic impacts on the coastal zone economy and local society.

Amendments to legislation allow hunting on the endangered species.

At the end of December 2011, the Georgian Government issued a number of legal acts allowing the hunting of endangered species included in the Red List, without developing any mechanisms for law enforcement, monitoring, combating poaching, protection and reproduction of animals on the territories allowed for hunting; there are no data about the number and populations of the species included in the list of hunting species. The decision will cause an irreversible harm to Georgia's unique biodiversity; the

¹ http://www.greenalt.org/webmill/data/file/Progress_in_Implementation_of_Certain_Areas_of_ENP.pdf

populations of wild goat, eastern and western Caucasian turn, chamois and brown bear may decrease to a critical level soon.

Public participation in environmental legislation amendment processes.

All changes in environmental legislation, including the allowing the hunting of endangered species included in the Red List, changes in Kazbegi and Kolkheti National Parks legislation, amendments for introduction of Agreement in the field of environmental protection and natural resources use, was passed without any stakeholders involvement. This raises a serious doubt that the decision serves the financial interests of a particular group having close ties with the authorities, while constitutes a flagrant violation of the Aarhus Convention.

The practice of starting of the projects without permits has been continued.

Nenskra HPP

23rd April, 2011, President Saakashvili participates in official opening ceremony of Nenskra Hydropower project. It involves construction and operation of hydropower plant with the installed capacity of 300 MW. The construction will commence in two stages: at the first stage, 210 MW hydropower plant with rock fill dam of 140m height and the reservoir with storage capacity of 200 million m³ at 10 km distance from Tita village (Chuberi community) will be constructed on the Nenskra river. At the second stage, it is planned to divert water from Nakra river to Nenskra river through 11.8 km long diversion channel and thus increase capacity of the plant by additional 90MW.

The project will have a significant negative impact on both Nenskra and Nakra valleys, as well as their ecosystems. 400 hectares of virgin forest will be cleared up in high mountains of Svaneti thus totally changing the local landscape. The reservoirs of Nenskra and Khudoni HPPs will have a cumulative impact on local climate and therefore on human health and agriculture practices. Melting of ice glaciers will be activated in the areas directly affected by the project (due to 2.30C rise in annual average temperature within a radius of 5 km). The project also involves disposal of 330 000 m³ waste rock at the valley adjacent to the project site and clearance of valley slopes from vegetation.

At the public consultation meeting held on 23 February 2012 in Mestia the majority of the local population expressed their negative attitude towards the construction of Nenskra HPP.

The project has not yet been granted either environmental consent or construction permit. Thus, the President of Georgia participation in ceremony, that marking illegal construction, points out that president is exerting pressure on permitting authorities; he is also neglecting fair concern of Georgian population over construction of large dams.

Concerns related to the urban planning and green areas of the cities.

The problems of Green Areas become the problematic issue also for all major cities of Georgia, including Tbilisi, Kutaisi, Batumi, Zugdidi. Local population is complaining against the activities of local municipalities that leads towards cutting of the trees, squares and parks in the middle of the cities.

These activities never have been consulted with local peoples, while appealing to the legal mechanisms is problematic and not worthy.

The activities, including the cutting of trees in Zugdidi Botanical garden for construction of Velotrace, construction of houses on Batumi Boulevard, police station in Kikvidze Square and justice house in Deda Ena square in Tbilisi and, etc.

It should be noted that 11 September, 2011 the Tbilisi Sakrebulo despite the resistance from citizens changed the status of almost twenty recreational zones, including the Digmis Park, to public business and public-residential areas. Despite the numerous petitions and court cases from CSOs side returning of the recreational zone to major green areas of Tbilisi becomes impossible.

Despite the numerous request to meet with CSO organizations with Tbilisi Major, in order to discuss the situation within the capital, including the problems of corruption that accompanies of the processes of cutting of old trees and its substitution with young not native species and replanting trees in Tbilisi², we never get any response.

This undermines the Covenant of Mayors on local sustainable energy initiative, which commits to Aalborg Commitments, the basis for many ongoing urban sustainability efforts and Local Agenda 21 processes; The Sustainable Energy Action Plan City of Tbilisi For 2011- 2020³, developed by Tbilisi's municipality under the Covenant of Mayors also commits, development of Green Spaces, as creation of "Environmental Islands" and extensive tree-planting exercise. However, behavior of Tbilisi's municipality, including ignoring of public participation and widespread tree cutting all around city raises our concerns also towards implementation of the plan.

² <http://transparency.ge/en/blog/expensive-trees-baratashvili-street>

³ http://helpdesk.eumayors.eu/docs/seap/1537_1520_1303144302.pdf