

Progress in Implementation of Certain Areas of ENP EU - Georgia Action Plan in Georgia for a Period December 1, 2011-October 31, 2012



Striving for environmental and
social justice in Georgia

Introduction

This document shortly describes progress in implementation of certain priority areas defined under the ENP EU-Georgia Action Plan for the period of December 1 2011 – October 31 2012¹.

The Parliamentary elections 2012, October 1, will have important impact also on environmental protection and sustainable development fields in Georgia, due to the fact that incumbent coalition “Georgian Dream” announced environmental protection as one of the major priority, in its election platform and confirmed it after election.

The situation is critical in lots of the fields including environmental protection and natural resources. Meanwhile, Georgian society requires fast and drastic changes from newly elected Parliament and newly formed government. In order to show results, the new government may also rush to implement the reforms in the environmental protection sector. However, it should be done through thorough discussions and revision of proposed reforms and wide public participation in order to avoid the mistakes of past.

Priority Area 3

- **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”.**

Environmental Governance

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.

¹ For previous years reports please visit www.greenalt.org



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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. The agreement will be void only if the investor exceeds the fixed payment timetables by 10 days.²

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 enterprises 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.

² Russian Capital Group took Madneuli and Quartzite off the hands of another Russian company GeoProMining [owning companies starting 2005] in June of 2012

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 National 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 List³.

Kolkhety National Park reduction

According to the amendments to the law on creation and management of Kolkheti Protectea 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 amendment on „law on creation and management Kolkheti National Park," states clearly that consultations have not been undertaken with NGOs and/or independent experts, or with international organisations. The document itself admits 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 Convernition already when idea of the project appears, however, it has not been done at all.

³ http://www.greenalt.org/webmill/data/file/Progress_in_Implementation_of_Certain_Areas_of_ENP.pdf

Although we still do not know where exactly the Lazika will be constructed, President in his speeches stressing the importance of drying the wetlands and constructing 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, meanwhile Environmental Impact Assessment law is very weak and government could override it on all stages (like exempt EIA requirements). Therefore, all of 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.

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

Forest Policy Reform

The initiative presented by Ministry of Energy and Natural Resources (MENR) in mid-summer 2011 MENR on forestry sector reform in autumn 2011 never has been finalized during 2012. It has been result of increased public pressure and interest the donor community due to the number concerns, including disbalance between forest use and conservation, introduction of the clear cuts, impossibility to establish the new protected areas, inventory carried by leaser and no EIA requirements, the risks of land-use change and non-transparent privatization, due to the wider sense of forest lease.

On that background, in front of forthcoming parliamentary elections, in mid-September, MENR introduced the changes of forest utilization rules. It includes abolishment of the document of origin, the electronic accounting of exploited resources, the limits of forest cutting areas, the limits for fuel wood quantities of social cuts (for family use). In addition, it was allowed that people can use resources utilized during the social cuts for commercial purposes. In number of the regions, including mountain areas, in front of Parliamentary election 2012 and afterwards during so called transition period, uncontrolled and unsustainable forest cuts were fixed. That raised quite big concerns among the people.

We considered the changes of forest resources utilization guidelines prior to the election, represent the tool for governing party to get more supporters during the forthcoming elections. It should be mentioned that the same type of activity through so called presidential gift - voucher, was introduced in front of Presidential election 2008, that has devastated impact on state of Georgian forests.

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 kms). 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, that 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, participation of the President of Georgia in ceremony 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.

Kintrishi HPP

Implementation of the Kintrishi HPP Project was envisaged by the memorandum of understanding signed between the Georgian Government and Adjara Energy 2007 LLC on February 28, 2008. Besides the Kintrishi HPP, the memorandum also envisaged the construction of seven hydro power plants (Kobuleti I HPP – 13.30 MW; Kobuleti II HPP – 14.30 MW; Kirnati HPP – 14.40 MW; Khelvachauri HPP – 22.40 MW; Chorokhi I-II HPPs – 48.00 MW). According to media reports, Adjara Energy 2007 refused to construct three hydro power plants envisaged by the memorandum, including the Kintrishi HPP, citing its proximity to the Kintrishi Protected Areas and other environmental considerations⁴.

Georgian media reported in late January, 2012 that the Georgian Government and the Hydro Development Company signed a memorandum of understanding, according to which the company will construct a 5-megawatt Kintrishi HPP on the Kintrishi River in Adjara. According to the information posted on the website of the Ministry of Energy and Natural Resources of Georgia, the company should have launched the construction on March 25, 2012. In spring 2012 the company already carrying out construction works, although by then it did not obtain either construction permit or environmental impact permit⁵. The EIA was published for public review only in August 2012.

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, Agreement on Compensation of environmental damage, and so on was taken without any involvement of stakeholders. This raises a serious doubt that the decision serves the financial interests of a particular group having close ties with the authorities.

There were no progress in implementation of Aarhus Convention on all stages access to information, public participation and access to justice on environmental matters, and public rights were permanently violated. The access of information is still an issue. Even governmental decrees, especially those that includes information about funds available for the projects in the regions of Georgia, that should be published in a routine way, sometimes is not accessible even through the court cases.

The Requirement from Action Plan: “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”

⁴ Newspaper “Bankebi and Financebi”, June 27, 2009; “Tavisupali Sitkva”, April 17, 2012; newspaper Batumelebi, May 28 – June 3, 2012

⁵ “Tavisupali Sitkva”, “Batumelebi”, the Association of Regional Broadcasters of Georgia, Maestro TV

⁶A letter from the local city council of the Kobuleti Municipality dated May 16, 2012 and a letter from the Ministry of Environmental Protection dated April 23, 2012

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 Tbilisi⁷, we never get any response.

This undermines the Covenant of Mayors on local sustainable energy initiative that commits towards of Aalborg Commitments, as the basis of many ongoing urban sustainability efforts and Local Agenda 21 processes; The Sustainable Energy Action Plan City of Tbilisi For 2011- 2020⁸, 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.

Some of other issues related to good governance

The appointment of new ministers once again highlight the insufficiency of law, how it regulates the issues of conflict of interests and revolving doors. It appears that newly introduced minister of Energy and Natural Resources, Mr. Kakhi Kaladze holds shares in number of energy companies and it was not spelled out properly during his introduction. The shares include 45% of company Sakhidroenergomsheni, the largest hydro builder one, as well as shares in Kala Energy and Natural Resources LTD. Since information was leaked to media, Mr.Kaladze stated that, in accordance with Georgian law on conflict of interests and corruption, he will sold its shares in these companies within the ten days after his approval by the Parliament.

The issue of revolving doors and conflict of interests should be addressed more properly and persistent way on policy level. There were number of cases when representatives of government, that issuing licenses and permits for particular companies for operation, later quitted with public service, and moved in to high level positions in very same companies. Despite there is the requirement of the law that limits these type of activities for 3 years, there is no cases of any liability in this regards. Even in cases, when CSOs publicly raise the concerns and requesting Prosecutor office to take an action.

Meanwhile, situation is really serious, as the governmental officials do not even consider the conflict of the interests as an issue that needs to be taken into account. E.g. it becomes public, that former first deputy minister of Energy and Natural resources, Mrs. Mariam Valiashvili has been simultaneously working as the

⁷ <http://transparency.ge/en/blog/expense-trees-baratashvili-street>

⁸ http://helpdesk.eumayors.eu/docs/seap/1537_1520_1303144302.pdf

director for company TOT Energy, since June 16 2008 till September 16 2011, when company liquidation documents was submitted to public register. It is interesting that Income and Property Declarations of Mrs. Valishvili during these years does not mention this position at all. It should be noticed that 25% of shares of TOT ENERGY belongs to Kala Energy and Naturals. Meanwhile, Mrs. Valishvili has been appointed as deputy Minister to new Minister of Energy Mr.Kaladze.

Energy and Transport

The energy balance of Georgia is still issue of concern, as 65% of Georgia energy consumption covered by imported fuel and gas, 20% by electricity produced by HPPs, and 15% by fuel wood. Another side of the problem is that energy intensity in the country is still more than twice the world average. Energy production is still highly extensive in Georgia. The share of energy in the country's GDP is three times higher than the EU average. That is added with increased domestic consumption of electricity, with an annual rise of 9.7% in 2011 and 3.6% in 2012.⁹ The pattern required development of energy policy that would address all bottlenecks in energy system of Georgia, including integration of environmental requirements, ensuring energy efficiency to reduce losses of energy and waste of energy, security of supply and ensuring

The main efforts of the Georgian government are focused on the development of energy infrastructure (transmission lines, construction of new HPPs). Despite commitments to harmonise energy legislation with EU directives little progress has been made in that direction, as well as to support the inclusion of Georgia in the EU Energy Community¹⁰.

There is also no public debate on how Georgia's energy sector should develop further. In recent years the Georgian government has tried to position the country as a future regional renewable energy hub. The government announced that it would support the construction of 18 HPPs in 2012, however, looks like that almost all construction are connected with some types of violations of law and best practices.

Dariali HPP

Dariali Energy launched the construction of the HPP in September 2011 without a relevant clearance documents. Green Alternative has reported to the Ministry of Environmental Protection and the Ministry of Energy and Natural Resources on the construction works, requested to investigate the legality of construction works and to take relevant measures. Initially, the both public agencies responded that they would investigate the case. Only two months later, after the relevant agencies hastily issued permits, the both ministries declared that the company had obtained all the necessary permits for the construction. It should be noted that launching of the HPP construction without a relevant permits, as well as neglecting of such violation is punishable under the Criminal Code of Georgia. Since not a single agency reacted on violation, there is a huge probability that the public agencies will again close their eyes on possible violations committed by Dariali Energy in the process of construction and operation in future. Furthermore, tolerance demonstrated by the enforcement authorities is likely to prompt Dariali Energy to commit other violations and to neglect its environmental and social commitments. This assumption is further strengthened by the amendment made to the environmental legislation of Georgia in March 2012. Currently the legislation enables a violator and the Ministry of Energy and Natural Resources to conclude an agreement, according to which the Ministry, in exchange for payment of a certain amount by the violator, will declare the latter's illegal actions as legal.

Association Green Alternative challenged Dariali Energy and Ministry of Environment in court, the construction of HPP starts before the environmental and construction permit and inability of ministry to act in accordance with legislation.. However, the court case is still not over by the end of October and had again postponed. Meantime, after Parliamentar elections, Dariali HPP announced that it stops construction works due to the unknown reasons.

⁹ First nine months of 2011 and correspondingly 2012

¹⁰ Georgia expressed its desire to become a member of the EU Energy Community (it currently has observer status).

Bakhvi HPP3

On 30th September of 2012, the landslide damaged fully the main machinery building of Bakhvi HPP, that has been constructed since 2009. According to project sponsor it invested already 8 million USD in the construction and was supposed to finalized it by the end of this year. It should be noted, while environmental and construction permit was issued, over the years environmentalists protested regarding the HPP Cascade construction on river Bakhvitskali.

The major concerns in relation of Bakvi 3 HPP was the geology of the site, existing landslides in area and increased forest cuts on the slope of mountain for construction. The landslide developed on the clear cut slop directly behind of machinery building and destroy the bakhvi gorge near the village Ukanavi¹¹.

Taking into account, the practice existing in Georgia, that companies often hurried start of construction, as the day of beginning and finalizing construction were stipulated it in Memorandum of Understanding and/or Agreements with Georgian Ministry of Energy. Also the ministry of environment often issuing so called conditional environmental permits, requesting to carry out geological and hydrological research just before construction. However, Ministry of Environment definitely lacks the capacity to monitor implementation of conditional permits.

Khudoni HPP

The construction of Khudoni HPP was announced to be started in March 2012, in accordance with agreement with Transelectrica LTD and Ministry of Energy, ignoring the fact that Environmental and Construction permit was not issued. Even more, only in late November, Company carried out the scoping meetings with public. According to local citizens, the construction activities were carried on the site since late autumn 2011. However, in February 2012, it was announced that due to the flooding, Ministry of Energy and Natural resources postpones implementation of the agreement in six months. In late September the EIA study was published by TransElectrica LTD, as well as the public hearings was announced by the end of October. However, after Parliamentary Elections 2012, company announced that it will shifted the public hearing by the end of December, in order to give time to new government become accustomed to the project.

Namakvani HPP

In October 17, 2011, in accordance with Decree of Ministry of Energy and Natural Resources, was formed 100 % stated owned joint stock company Namakvani on the basis of JSC "Georgian Oil and Gas Corporation". The purpose of the newly created JSC Namakvani is to construct the Namakvani HPP Cascade, worth of 800 Million USD.

During May-June 2012, the Namakvani HPP Cascade areas has been visited by unknown persons, who claim that they make inventory of the lands and property belong to local population, often against of will of owners. In July-August the unknown persons approached local citizens with proposal to sign agreements on selling of the land, potentially for Namakvani Cascade (the signed agreements copy never had been left to signatories). In few cases, the people proposing to sign contracts, present themselves as representatives of Ministry of Energy, claiming that namakvani HPP is state project, and only those who will sign the agreement will receive the houses in Poi, Anaklia or Kutaisi, as well as compensation for their losses, while those who will not sign the agreements would not get any compensation. The majority of local people signed the given agreements with a fear that they may lost everything. According to the media reports, there were also visits of high ranking officials from Ministry of Energy and Natural Resources, promoting construction of HPPs and proposing to local people alternatives for resettlement.¹²

¹¹ http://www.guriismoambe.com/index.php?m=68&news_id=4666

¹² <http://www.netgazeti.ge/GE/105/News/10443/>

In August 10, 2012 Association Green Alternative requested explanations from Ministry of Energy and Natural Resources, as well as JSC Namakvani to investigate the above mentioned cases, as there were no public hearings regarding the Namakvani HPPs and follow up resettlement of local inhabitants, and to prevent potential cases of

In September 12, after numerous reminders to answer the letter, the JSC Namakvani director Mr. respond to the letter. According to him, the above mentioned activities were carried out by the representatives of Namakvani company, in accordance with a governmental decree from September 6, 2012, that obliged to elaborate involuntary resettlement plan for Namakvani Cascade.

Mtkvari HPP

The Mtkvari HPP construction that started in April 2009. However, the construction is halted since April 2012. According to official information, due the fact that the investors left the project, but reasons of leaving of the investors is not known.¹³

¹³ <http://sknews.ge/index.php?newsid=673#UJFJf29mLKt>