



AGGRESSIVE STATE PROPERTY PRIVATIZATION POLICY

OR

“GEORGIAN-STYLE PRIVATIZATION”



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**Authors : Nino Gujaraidze, Merab Barbakadze, Kety Gujaraidze,
Rusudan Mchedlishvili, Kakhaber Kakhaber.**

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INTRODUCTION

After “Revolution of Roses”, aggressive privatization of state property represents substantial part of the economic reforms in Georgia. Aggressively privatizing state-owned property Georgian government hopes to attract private capital to state owned assets in order to introduce efficient management, increase investment and boost economic growth.

Process of state property privatisation which is currently underway in Georgia and which was undergone by the number of the countries over the globe is the result of ongoing globalisation process. According to the World Resource Institute “the potential benefits of privatisation are both financial and practical. Privatisation brings sources of private capital to invest in systems that are often cash-starved and in poor physical condition. Done right, this can bring better and wider service, greater efficiency, and increased financial viability. But the reality of privatisation has been much more mixed and has prompted local backlash, even civil uprisings, in a number of locations. Decisions to privatise rarely involve public consultations, including job losses and price increases”¹.

It has been established that economic globalization brings benefits and at the same time increases environmental and social costs in the countries where the level of democracy is low and the environmental governance system is weak. The decisions on privatisation rarely involve public consultations or at least considerations of approaches/needs of the local population and frequently cause heavy social consequences, including elimination of jobs and increase of prices.

The aim of the presented research is to identify gaps and deficiencies of Georgian legislation to ensure transparency and provide opportunities for public to participate in and influence the decision-making process during the privatization process. The shortcomings of the existing legislation revealed during the legislation review are supported with description of several cases of state property privatization.

Chapter 1. of the Report briefly describes assessments of different international and national organisations regarding effectiveness of state property privatization in Georgia; Chapter 2. describes problems of transparency of the state property privatization process in Georgia; Chapter 3. is devoted to the assessment of the level of transparency of decision-making process in state property privatisation and possibilities of ensuring public participation in the mentioned process according to the Georgian legislation; Chapter 4. is dedicated to the necessity of consideration of environmental issues in decision-making process during the privatization process and weakness of Georgian legislation from this point of view; Chapter 5. describes legal means for obtaining environmental information in state property privatisation process and practical problems related thereto; Chapters 6.,7. and 8. describe cases of state property privatization in Georgia (Vartsikhe Hydro Power Plans, Chiaturmanganese and Madneuli); Chapter 9. contains conclusions and recommendations of the authors.

CHAPTER 1. AGGRESSIVE PRIVATIZATION POLICY

Process of privatising state property in Georgia started in 1992. Till 2003, more than 15,000 enterprises were privatised. The mentioned process took place on the background of heaviest and unstable social, economical and political situation that created the fertile soil for corruption and laundering local and foreign currencies.

In 2004, after “Revolution of Roses”, the new wave of state property privatisation has been launched in Georgia. New government declared that this process would last for 18 months and, unlike the previous stages, would be “maximally impartial and transparent”². However, like many other promises of the government, reality appeared to be absolutely different: three years passed, but the renewed privatisation process is still going on; transparency level, although higher than in the previous years, is still unsatisfactory, and this resulted in inefficiency of process dragged on in time.

This assessment is not shared by number of international and national organisations. The reforms, directed towards elimination of corruption and improvement of the investment environment in the country, were approved on by number of international organisations. For instance, Doing Business 2007, a report by

¹ World Resources 2002-2004, World Resource Institute, URL: www.wri.org

² URL: www.privatization.ge

International Finance Corporation, states that Georgia is one of the fastest reforming economies in the world and takes 37th place out of 112 countries from the standpoint of existence of business favourable conditions; according to the Economic Freedom Index Research by Heritage Foundation, Georgia is 35th out of 161 countries; International Monetary Fund and European Bank for Reconstruction and Development also make all manner of positive assessment and praise, and neither the government is very modest in evaluating its achievements. In consideration of all the above, the fact that the country is still experiencing the lack of investments and that Georgia still needs an advertising campaign³ to “get rid of old stereotypes and present its new economic possibilities” causes surprise, at minimum. According to the statement of the Minister of Economic Development of Georgia, “the advertising will be carried out through worldwide recognised editions like *Wall Street Journal*, *The Economist*, *The Financial Times*. TV advertisements will be broadcasted by CMBC and CNN Channels.⁴

It is noteworthy that, despite the above evaluations, US Department of State advises its citizens, in case they plan to invest in Georgia, to take into consideration the following: “While many privatisations have proceeded, smoothly and regularly, questions have sometimes arisen over the methods used in some cases, particularly the use of direct sale and the tendency to negotiate with buyers previous to auction procedures. It is the practice of the government to negotiate specific terms and conditions (the contract) with a successful bidder after award of the bid. Some privatisations have failed in the negotiation phase as previously unavailable information is brought to light (including for example, liabilities and debts). The current government has used non-fulfilment of performance requirements to rescind previous privatisations and re-privatise enterprises, usually for higher prices, and to the benefit of other interested parties. According to the Ministry of Justice, three foreign investors have cases pending in international arbitration against the government of Georgia, each over the rescission of previous privatisations by the current government, which then resold the properties to other buyers at higher prices. The total value of these three pending arbitrations is over \$400 million...”⁵

The deficiencies of the ongoing privatisation process are also witnessed by the results of revision conducted by the Chamber of Control of Georgia in the Ministry of Economic Development of Georgia in 2004-2005. According to the revision report on conditions in registration, management and privatisation of the state property and fulfilment of the commitments under sale-purchase agreements, number of organisations fails to comply with the commitments made under agreements on sale-purchase of the state property. The documents confirming investing were not presented. The buyers did not comply with commitments made in accordance with the business plans; the terms were violated; the structure of the presented investments did not comply with the initial operational plans. The Ministry did not take respective steps for protecting state interests. In particular, the sanctions envisaged by the agreements have not been applied⁶.

CHAPTER 2. TRANSPARENCY OF THE STATE PROPERTY PRIVATIZATION

Unfortunately, the monitoring of state property privatisation process and consequent monitoring of fulfilment of the privatisation agreement conditions at the privatised sites are not very efficient when carried out only by state authorities and increases the risk of corruption. In such circumstances, it is especially important to apply the mechanisms of public control, and this will be impossible without the transparency of the privatisation process.

The details on state property privatisation process in Georgia can be found at: www.privtization.ge

The similar indications can be seen at many national or foreign, official or unofficial web-sites and editions. To ensure impartiality and transparency of the privatisation process and world wide access to information, USAID helped the Ministry of Economic Development to develop a privatisation website (www.privatisation.ge). The website is the country’s main source for dissemination of privatisation information to local and foreign investors. According to the web-page, “Information on privatisation of the state-founded limited liability and joint stock companies as well as of the movable/immovable property under the state ownership is provided on

³ 2007 Budget allocates GEL 7.8 million for global advertising campaign of the country.

⁴ “Government of Georgia Starts Global Advertising of the Country”, newspaper *24 Saati*, April 6, 2007

⁵ *Doing Business in Georgia: A Country Commercial Guide for U.S. Companies*, 2005, US Foreign Commercial Service and US Department of State.

⁶ Report on Activities Carried out by the Chamber of Control of Georgia in 2005; www.control.ge

this site. Information on all auctions and competitive bids initiated by the Ministry of Economic Development of Georgia will be posted officially as well...”

Unfortunately, the mentioned web-site is less useful for the broader community interested in privatisation process. Information on privatised or to be privatised sites is shallow and, frequently, inaccurate and incomplete. The following examples are to illustrate the ‘deficiencies’ of information posted at the web-site⁷:

- The search engine of the web-site, which is designed only for searching information in the list of the sites to be privatised, is not functioning. User wishing to obtain information on any particular site, has to look through the entire list;
- Some privatised enterprises, for instance Chiaturmanganese, Georgian Ocean Shipping Company, etc., are not listed at all (neither in privatised nor in to-be-privatised lists);
- There are cases, when the site is included into the privatised sites list, while it have not been included in the to-be-privatised sites list; this was the case with Vartsikhe 2005 Ltd., which was privatised through direct sale, although, according to the information posted on the web-page, this company was sold through auction;
- In some cases the ‘News’ of the web-page announce information on sale of the site, but the Ministry of Economic Development of Georgia does not officially confirm this fact; this was the case with JSC Chiaturmanganese (see details below);
- Sometimes, the list of the privatised sites does not indicate the buyer. For instance: LLC "Akhali Ganatleba", LLC "Sakinteravtoservice", LLC "Tecnologist", LLC “small invasive surgical center”, LLC "Saknavtobtrans" (Petroleum Transportation Company of Georgia), etc;
- There are the cases, when web-page includes contradictory information on privatisation of some units. For instance, according to the sales details of sites included in the list of privatised objects, the assets of Lajanuri Hydro Power Plant (Installed capacity -112.5 mw, USD 66 500 000), Rioni Hydro Power Plant (Installed capacity - 48 mw, USD 44 700 000), Gumati Hydro Power plant Cascade (Installed capacity - 66.5 mw, USD 45 000 000), Shaori Hydro Power Plant (Installed capacity – 38.4 mw, USD 16 000 000), Dzevrula Hydro Power Plant (Installed capacity - 80mW, USD 20 000 000), Atsi Hydro Power Plant (Installed capacity -16mW, USD 5 120 000), United Energy distribution Company of Georgia (USD 85 000 000) and Energy Company of Adjara (USD 30 000 000) were sold to Energo-Pro A.S. at auction on June 20, 2006, while the ‘News’ of the website state that, according to the Ordinance No. 35 of President of Georgia on Privatisation of Assets of Hydropower Stations by the Direct Sale, dd. February 2, 2007, the assets of hydro power plants (Lajanuri, Rioni, Gumati, Shaori, Dzevrula and Atsi) were transferred to JSC Energo-Pro Georgia for USD 73,500,000⁸ in accordance with the rules of direct sale procedure. The assets of United Energy distribution Company of Georgia and Energy Company of Adjara were also transferred to Energo-Pro, in accordance with the conditions determined by these companies;
- Due to the unexplained reasons, whenever the buyer is the physical person, his identity is not indicated.

In September 2005, after several scandals related to the state property privatisation, the Committee for Sector Economy and Economic Policy of Parliament of Georgia created the working group for studying the course of state property privatisation and practices of conducting tender procedures in the country. The working group was ordered to find out the reasons for failure of sale of Tbilisi Airport, Marine Shipping Company and Chiaturmanganese. According to the statement of chairman of the Committee for Sector Economy and Economic Policy of Parliament of Georgia, “the commission has been created right because of the fact that the tender results were abolished. Such facts become too frequent. We also have certain claims regarding the tender formats themselves. The contest processes are unclear a little bit. Transparency is not ensured. Unknown companies are allowed to participate in tenders”⁹.

⁷ As of May 10, 2007.

⁸ It should be noted that according to the previously distributed information total price of the Hydro Power Plants was 197 320 000 USD, i.e. amount was reduced for more than 60 %.

⁹ We are Having Claims to Tender Formats, newspaper “*Akhali Taoba*”, No. 275, October 5, 2005; URL: <http://www.opentext.org.ge/05/akhaliTaoba/275/275-23.htm>

Along with the mentioned working group, on September 9, 2005, the Committee for Sector Economy and Economic Policy of Parliament of Georgia made a decision on creating the working group for studying status of implementation of investment projects in the country¹⁰. Later, only the report of working group for studying status of implementation of investment projects in the country has been posted on the website of the Parliament. Therefore, on November 16, 2006, association Green Alternative sent a letter to the chairman of the committee, in which requested the report of working group for studying the course of state property privatisation and practices of conducting tender procedures in the country. The reply on the mentioned request was not received by Green Alternative neither in time defined by administrative code of Georgia¹¹, nor afterwards. When association tried to find out the reasons for such delay, the head of the staff of the committee explained that, according to decision of staff office of the committee, the requested information does not fall under the competence of the Committee for Sector Economy and Economic Policy of the Parliament of Georgia and, therefore, the letter has not been considered. Unfortunately, the employees of the committee did not feel necessary to inform Green Alternative on the mentioned decision and, since the issue did not relate to them, they did not even bother to keep the letter (unfortunately, we do not possess any written evidence of the described facts, because all the explanations were made during the telecon). However, later, when the association repeatedly applied in written to the chairmen of the committee, one of its leading specialists stated (also during the telecon), that all the public information being in possession of the committee is posted at the web-page of Parliament of Georgia; while, the report of working group for studying the course of state property privatisation and practices of conducting tender procedures in the country does not exist at all, since the group was unable to obtain the sufficient materials.

Finally, after three month of the date of information request, Green Alternative received the written response from the chairman of Committee for Sector Economy and Economic Policy, which stated that “as for the working group for studying the course of state property privatisation and practices of conducting tender procedures in the country, we would like to inform you that, in order to study this issue, on October 21, 2005, the committee listened to information on the course of state property privatisation and practices of conducting tender procedures in the country presented by the Minister of Economic Development of Georgia, Mr. Irakli Chogovadze, and elaborated respective recommendations. The mentioned information is also publicly available and is posted at the web-page of Parliament of Georgia (Minutes No32, 21.08.2005)”¹².

It should be mentioned that the protocol of October 21 meeting of the Committee for Sector Economy and Economic Policy of Parliament of Georgia actually includes the comments and recommendations of the committee, but unfortunately, it does not include even the minor version of speech by the Minister of Economic Development, which would be of a special interest not only for the Committee, but also for the broader public. The Minutes just mention that “the committee listened to information on the course of state property privatisation and practices of conducting tender procedures in the country presented by the Minister of Economic Development, Mr. Irakli Chogovadze. The Minister informed meeting on the course of the tenders conducted for construction of terminal and development of infrastructure of JSC Tbilisi International Airport, privatisation of the assets of JSC Chiaturmanganese and Vartsikhe Hydropower Plants Cascade, and renting berths 9 and 10 of Marine Port of Poti”.

It should be mentioned that, as it seems, the chairman of the committee himself was not fully satisfied by the report of the minister. According to the minutes of the meeting he “mentioned that the committee wanted to hear about the vision of the Ministry with regard to privatisation process. For instance, with regard to the Ocean Shipping Company, how could it happen that the winner was announced the non-existing company. The similar was situation with regard the Airport, Port of Poti, Chiaturmanganese. In consideration of the abovementioned, he considers necessary to carry out analyses, which would allow preventing us from committing errors in the future. He also mentioned that it would be reasonable to introduce practices, which were applied to Chelebi

¹⁰ Minutes No 24 of the Meeting of the Committee for Sector Economy and Economic Policy of Parliament of Georgia, September 9, 2005; URL: <http://www.parliament.ge>

¹¹ According to the General Administrative Code of Georgia, a public agency shall release public information immediately, or not later than ten days. If release of public information requires the period of 10 days, the public agency shall immediately inform the applicant thereof upon his request. The applicant shall be immediately informed of the denial of a public agency to release public information. If access to public information was denied, the agency shall provide an applicant with information concerning his rights and procedures for filing a complaint within three days after the decision is rendered. The agency shall also specify those subdivisions or public agencies, which provided their suggestions regarding the decision.

¹² Letter of the Committee for Sector Economy and Economic Policy of Parliament of Georgia to Association Green Alternative, 20.03.2007

Company, when the capacities of the bidder were preliminarily studied and analysed". Besides this, a member of the committee asked the Minister "to develop, jointly with the committee, the concept and the list of the issues, which would be used for elaboration of the privatisation strategies. This would allow avoiding the various rumours on privatisation processes in the future. Also, the Minister was given recommendations to improve the practices of making publicly available the information on privatisation tenders and contests, as well as on preparing for privatisation the most important sites and potential investors".

We would like to remind you that the mentioned meeting of Committee for Sector Economy and Economic Policy of the Parliament of Georgia has been conducted in October, 2005. Unfortunately, since that, not a big progress has been achieved in improvement of the deficiencies revealed at the meeting. Nobody made any public explanations on scandal privatisation cases; on who and why violated the law; why the same mistakes are repeated; and was anybody punished for them or not. Besides this, the public (and apparently, parliamentary committee too) is still unaware of the strategies in state property privatisation and attraction of investments, as well as of the vision of government on in which sphere and how it is going to compete after accomplishment of the privatisation process.

CHAPTER 3. ANALYSES OF LEGISLATION REGULATING STATE PROPERTY PRIVATISATION

In order to assess the level of transparency of decision-making process in state property privatisation and possibilities of ensuring public participation in the mentioned process, below we consider the details of legislation regulating process of state property privatisation.

State property privatisation in Georgia is implemented in accordance with the Law of Georgia on State Property Privatisation¹³ and Law of Georgia on State Support to Investments¹⁴.

CHAPTER 3.1. THE LAW OF GEORGIA ON PRIVATISATION OF STATE PROPERTY

It can be said that the Law of Georgia on State Property Privatisation is main regulating instrument in this field.

This law determines legal, economic, organisational and social basics for state property privatisation, main conditions for its implementation and ensures privatisation of the state property by individuals, companies or their unions.

It shall also be mentioned that this Law does not cover privatisation of state lands; lands are privatised in accordance with the other laws, although, there are some exceptions. In particular, this Law sets provisions for privatisation of non-agricultural lands on which the state property is located.

The Law of Georgia on State Property Privatisation envisages four forms of state property privatisation: 1) privatisation through competitive bidding; 2) privatisation through auction; 3) privatisation through lease-redemption; and 4) purchase of property through direct sale methods.

Decision on privatisation form to be applied to any particular site is made by the Ministry of Economic Development of Georgia or its territorial units, while the decision on direct purchase can be made only by President of Georgia.

Application of the listed privatisation forms is mainly done on basis of the Law of Georgia on State Property Privatisation, although some other regulations can also be used in the process. In particular:

1) State property privatisation through competitive bidding is implemented in accordance with the Law of Georgia on State Privatisation and Ordinance No. 1-1/150 dd. October 19, 2004 of the Minister of Economic Development of Georgia on Approval of the Provisions for State Property Privatisation through Competitive Bidding. The purpose of sale through the competitive bidding is to transfer the ownership right to the buyer,

¹³ 30.05.1997; No 743-IlS

¹⁴ 30.06.2006; No. 3424-rs

who bids the best terms to the seller.

2) State Property Privatisation through auction is implemented in accordance with the Law of Georgia on State Privatisation, Law of Georgia on State Support to Investment and Ordinance No. 1-1/1244 dd. October 24, 2006 of the Minister of Economic Development of Georgia on Approval of the Provisions for State Property Privatisation through Auction.

The purpose of sale by auction is to transfer the ownership right to the buyer, who offers the best price in the bidding process, and in case if the conditioned auction has been announced – to transfer the ownership rights to the buyer, who makes the commitment on satisfying the stated conditions and offers the best price in the bidding process.

3) State property privatisation through lease-redemption is implemented in accordance with the Law of Georgia on State Privatisation and Ordinance No. 1-3/152 dd. March 31, 1999 of the Ministry of State Property Management of Georgia on Approval of the Provisions for State Property Privatisation through Lease-Redemption.

The aim of privatisation through the lease-redemption process is to provide the opportunity to independently manage economic and other activities, and before the redemption of the leased property to transfer the long-term paid possession and use right of the territorial value.

4) State property privatisation through direct purchase is implemented in accordance with the Law of Georgia on State Privatisation, Law of Georgia on State Support to Investment and Ordinance No. 1-1/102 dd. September 20, 2004 of the Minister of Economic Development of Georgia on Approval of the Provisions for State Property Privatisation through Direct Purchase.

The purpose of direct sale is to transfer the property rights to the person, who will comprehensively and directly comply with the conditions stated during the process of state property privatisation through direct purchase. The decision on direct sale of the state property is made and the respective conditions are defined by the President of Georgia.

Unfortunately, the Law of Georgia on State Property Privatisation does not set out the effective mechanisms for ensuring public participation in privatisation processes. The only provisions contained in the Law with this regard envisage just dissemination of the information on sites subject to privatisation.

In particular, according to Article 9 of the Law of Georgia on State Property Privatisation:

1. Information on the state property to be privatised through the competitive bidding, auction, lease-redemption and direct sale shall be published in the official publication of the Ministry of Economic Development of Georgia or in the local press (in case privatisation is carried out by a local unit of the Ministry of Economic Development of Georgia) and shall be posted at the Internet-page of the Ministry. However, other forms of media can be used.

2. Information on privatisation of state property through the competitive bidding, auction, lease-redemption or direct sale shall be published at least one month prior to the established date of privatisation.

3. Information published in press, at the web-page of the Ministry of Economic Development of Georgia and in any other information sources shall contain information on area of the land plot occupied by the object to be privatised, description of the facilities there, addresses and terms of sale of the enterprise/site. The Ministry is obliged to provide any information on the property under sale to the buyer upon the request; the information disseminated through public television shall contain title of the site to be privatised and the opening and closing dates for the submission of the proposals.

Along with the Article 9, one Paragraph added to the Law on Georgia on State Property Privatisation on December 8, 2006 also relates to the public availability of the information on state property privatisation. In particular, this is Paragraph 10 of Article 7. The provision relates to the cases, when only one proposal on purchase of the state property is submitted within the stated term and under stated conditions. In such cases, the Ministry of Economic Development of Georgia shall make a decision on transferring the state property to

the ownership of such singular bidder within one month of the date of the submission of proposal. According to the mentioned paragraph, “the Ministry of Economic Development of Georgia shall ensure public availability of the submitted proposal in accordance with the rules set out in legislation of Georgia”.

The requirements on dissemination of information contained in Article 9 of the Law of Georgia on State Property Privatisation are partly repeated in the respective regulations relating to the privatisation process. In particular:

1) Article 2 of Ordinance No. 1-1/150 of the Minister of Economic Development of Georgia on Approval of the Provisions for State Property Privatisation through Competitive Bidding of October 19, 2004 stipulates the obligation on dissemination of information on the sites subject to privatisation one month before the tender date.

This provision also envisages dissemination of the information in case of pre-qualification selection of the tender participants. According to Article 9 of the Provisions, in case of pre-qualification selection, “the ministry ensures publishing the information in central or local press, or using any other means”.

2) The ordinance No. 1-1/1244 of the Minister of Economic Development of Georgia on Approval of the Provisions for State Property Privatisation through Auction of October 24, 2006 also contains provisions setting the requirements on dissemination of information. Paragraph 3 of article 2 of the provisions states that “seller shall, in accordance with the paragraph 1 of article 9 of the law of Georgia on State Property Privatisation, ensure publishing information in official edition of the ministry, in the printed edition that is disseminated at the majority of the territory of the country or in the local editions (in case the privatisation is carried out by the territorial unit of the ministry) and placement at the official Internet-page of the ministry. If the privatisation is carried out by the ministry, the information shall be broadcasted by the Public TV Channel, and the other media means can be used as well”.

The ordinance also contains provisions on confidentiality. In particular, paragraph 19 of article 1 of the ordinance unambiguously states that “prior to the auction, the information on auction participants (including information on the number of participants) shall be kept confidential”. This restriction can be justified from the standpoint of protection of the commercial interests of the participants, but, on the other hand, the provision makes this stage of the privatisation absolutely non-transparent for the society.

3) According to the Article 3 of Ordinance No. 1-3/152 of the Ministry of State Property Management of Georgia on Approval of the Provisions for State Property Privatisation through Lease-Redemption of March 31, 1999, the Seller shall ensure publishing information on the state property subject to privatisation at least one month prior to the date of contest and “in accordance with Paragraph 1 of Article 9 of the Law of Georgia on State Property Privatisation”.

4) According to paragraph 3 of article 2 of the ordinance No. 1-1/102 of the Minister of Economic Development of Georgia on Approval of the Provisions for State Property Privatisation through Direct Purchase of September 20, 2004, “after the President of Georgia makes positive decision on privatisation of the state property through direct purchase, the ministry, in accordance with the rules set out in paragraph 1 of article 9 of the law of Georgia on State Property Privatisation, ensures publication of this information”. As it can be observed from this statement, information can be disseminated only after the President makes positive decision, i.e. after the primary decision is already made. As the practise shows, the decisions of President of Georgia on privatisation stay unchanged and are fully implemented. Practically, this means that first the decision on privatisation is made and, only after this, the public is formally informed. This clearly demonstrates that this form of privatisation is substantially non-transparent, even in compare with the other forms of privatisation.

CHAPTER 3.2. THE LAW OF GEORGIA ON STATE SUPPORT TO INVESTMENTS

Beside the Law of Georgia of State Property Privatisation, there is another newer instrument which is also very important from the standpoint of regulating the state property privatisation process. This is the Law of Georgia on State Support to Investments.

According to the article 2 of the Law of Georgia on State Support to Investments, the purpose of the law is to ensure support to the investments through improvement of business procedures and creation of special legal regime. This law actually sets out special legal regime and business procedures with the regard to investments in three main fields: (1) privatization of state property, (2) status of the investments and (3) regulation of activity/action through licensing and permitting.

1. Articles 6, 7, and 8 of the Law of Georgia on State Support to Investments regulate issues of purchasing state (local among them) property in connection with the investment process. These articles set out certain additional provisions for administrative proceedings with regard to purchase of the property, including the issues already regulated by special legislation - rule for initiation of state property privatization and privatization of property through the auction and direct purchase.

It is important to note that law also applies to the property of local self-governing entities and sets certain rules for privatization of this property through the auction and direct purchase. It should be considered that issue of disposal of the local self-governing entities' property is also regulated (in general terms) by law of Georgia "On Property of Local Self-Governing Entities" adopted in 2005.

It should be mentioned that, unfortunately, the law does not include any significant warranties for ensuring transparency of state property privatisation process, although, the law sets out certain obligations with regard to public availability of the information in case of direct purchase. For instance, according to sub-paragraph 4(c) of article 8, the direct purchase can be implemented "on basis of justification of necessity of using this form and with ensuring public availability of information". According to paragraph 8 of the same article, "in order to ensure competitive selection, Government of Georgia shall publish information on the property and respective conditions in national and/or international media means and shall determine the term for submitting the proposals, which, as a rule, shall not be less than one month. In case if the delay can adversely affect the state and/or public interests, this term can be reasonably reduced by the decision of the Government of Georgia, provided that availability of the information for public and investors will be ensured by other means". However, according to the paragraph 11 of the same article, the President of Georgia is entitled to make a decision on direct sale of the state property without taking into consideration the measures stipulated in paragraphs 7 and 8, according to which the proposals of the investors shall be considered by the Government of Georgia and decisions shall be made in order to ensure the competitive selection.

Transfer of the state owned shares in LLC "Vartsikhe 2005" to G.M. Georgian Manganese Holding Limited has been implemented right in accordance with the paragraph 11 of article 8 of this law (see below Chapter 6.1. The first attempt to privatise Vartsikhe HPPs Cascade).

Unfortunately, the mentioned provisions of the law on public availability of the information are formulated in such a general manner that their implementation will necessarily lead to deficiencies.

The Law of Georgia on State Support to Investments contains another article connected with availability of the information, but it is related to the investments of particular importance. In case of transaction being defined as "investment of particular importance" (see below), the Government of Georgia and investor shall conclude an agreement setting out the investment conditions. According to paragraph 4 of article 10 of the Law of Georgia on State Support to Investment, the conditions of such agreements shall be made publicly available.

2. The fact that the above-mentioned law grants certain investments the status of "investment of particular importance" is also interesting¹⁵. According to the Law, if the amount of investment exceeds GEL 8 million (about USD 4.5 million) or GEL 2 million (about USD 1.2) in the mountainous regions or if functionally and strategically the investment will have an important (in mountainous regions - positive) impact on the development of

¹⁵ Please see report of the association Green Alternative "Environmental governance in Georgia And how the EU can contribute to its strengthening", November 2006 for further information; URL: www.greenalt.org

the country's (local) economy and infrastructure, then the investor will have the right to ask the government to grant its investment the above-mentioned status.

It can be said with certainty that the law provides no answer to the following question: what particular privileges or help does the state provide to the investors holding such status? Indeed, if there are no privileges then why should an investor be interested in getting such status? The law simply does not say anything about it. However, two provisions in the law still give us some idea: according to the law, "in case of need" the Georgian government can decide to take additional measures for supporting the investments of particular importance, but the law says nothing about the nature of those "additional measures". The law also gives the investor the right (and there will be many investors who will use this right) to inform the National Investment Agency (the agency represents the state in the field of state support to the investments) on the state compliance control measures taken in connection with the investor's activities. At the same time the law a priori assumes that the Agency will find that compliance control measures were illegal and considers control to be a hindrance in the way of the investment.

In conclusion it can be said that the Georgian government offers the investors indirect, but certain protection from its own legislation and requirements of its state agencies. In fact, a reasonable investor should not be interested in being so dependent upon the country's government, because even a small investment (USD 4.5 million cannot be considered a big investment for even such a country as Georgia) may soon become a big loss for such an investor. The fact is that in March 2005 the Georgian President initiated amendments to the Law on Grants according to which, the Georgian government can receive grants from foreign commercial legal entities¹⁶. The amendment was not welcomed by experts and the public; one of the reasons for the disapproval was the fact that such a mechanism could be used for collection of informal "dues" from entrepreneurs and lobbying of various illegal businesses.

Also, prudent investor shall consider hindering factor the practices of requisition of investments, which recently became very popular in Georgia. Article 7 of the Law of Georgia on Investment Promotion & Guarantees of Investment¹⁷ Related Activities states "that investments can be expropriated by the State "by Court decision and on urgent necessity established by organic law and only with appropriate compensation." The compensation amounting to the "actual value" is granted according to Article 8. Recent 'voluntary' handovers of properties in Tbilisi (restaurants, baths), albeit only affecting domestic businesses, are a form of indirect expropriation without compensation and do not bode well for the protection of investments generally"¹⁸.

3. Also the very new for legislative practices of our country idea of preliminary license and permit introduced by the Law of Georgia on State Support to Investments is worth to attention.

According to that law, before launching the activity any person can apply to state agencies for a so-called preliminary license or permit. According to the law, the preliminary license/permit enables the person to proceed with the activity without a relevant license/permit on condition that in the future he/she will fulfill the requirements of the legislation set for obtaining a "real" license/permit. The following circumstances defined by the law are also noteworthy:

- The Law allows the state agencies to decide whether they will allocate any period of time for the investor for obtaining a "real" license/permit;
- There is no provision in the Law that would enable the state agency to refuse to issue a preliminary license/permit;
- The law does not define a concrete timeframe for making a decision on issuing such a preliminary license/permit neither does it ensure public participation in the decision making process; with regard to the procedures, Paragraph 7 of article 5 of the Law just mentions that "the terms and rules for issuance of the preliminary license/permit shall be determined by the governmental decree". Such decree has not been adopted yet by the Government of Georgia, although, it is less probable that

¹⁶ The president's initiative initially also included recognition of Georgian commercial and non-commercial legal entities as grantors, however, the Georgian Parliament rejected this proposition.

¹⁷ 12.11.1996, No473-Is

¹⁸ Direct Foreign Investments in Georgia: Will the Active Investment Promotion Policies be Efficient?, Michael Schmidt, Doctor of Economics; Quarterly Edition of Georgian-European Policy and Legal Advice Centre (GEPLAC) – Economic Trends in Georgia, January 2007 URL: <http://www.geplac.org/eng/trends.php>

even if adopted, it will include provisions ensuring the transparency of the process in addition to those contained in the Law;

- If after the preliminary license/permit is issued Georgian legislation is changed and those changes worsen the investor's position, those changes will not affect the investor for another 5 years without his/her consent;
- According to the law, any preliminary license/permit¹⁹ can be issued except for licenses on use (including use of natural resources)²⁰ and construction permits.

This means that the Law provides for possibility of issuing environmental impact permit and allows investor starting activity without carrying out Environmental Impact Assessment and complying with substantially weak, but still existing requirements on consultation with public. Carrying out Environmental Impact Assessment after commencement of the activities is absolutely meaningless.

The abovementioned clearly demonstrates that the government today is interested neither in receiving preliminary information on what can be the environmental or social results of the each particular investment, nor in the public opinion.

According to paragraph 4 of article 6 of Aarhus Convention, Georgia made commitment to provide for early public participation, when all options are open and effective public participation can take place. Issuing preliminary environmental impact permit (and making a decision on privatising state property in a number of cases) should be considered the early stage of environmentally important decision-making process and, accordingly, the fact that the Law of Georgia on State Support to Investments does not envisage public participation in licence/permit issuing and does not provide for transparency mechanisms (with regard to environmentally important decisions) in general, can be considered the deficiency of this Law.

CHAPTER 4. STATE PROPERTY PRIVATISATION PROCESS AND ENVIRONMENTAL REQUIREMENTS

Despite the fact that priorities of Georgian economic policies are focusing on massive privatisation, the existing legislation does not allow selling all the assets currently in state property. Article 4 of the Law of Georgia on State Property Privatisation lists the sites, which are not eligible for privatisation. In particular:

The following state property is not eligible for privatisation:

- a) Mineral resources, water resources, territorial waters, continental shelf, special economic and frontier zones, forest fund, air space, protected natural territories or territories to be used according to specific rules;
- b) Historic and art monuments approved under established order, cultural and arts premises without consideration of the stated conditions and approval by the Ministry of Culture, Monument Protection and Sports of Georgia. In case if the respective site has special public, historical-traditional value, the unavoidable condition for privatising such site, with the consent of Government of Georgia and after approval by the Ministry of Culture, Monument Protection and Sports of Georgia, is preservation of the profile of any such site.
 - b1) Religious and sacred buildings (active and not active), their ruins, as well as the land plots, at which they are located;
 - b2) State archives of historic and cultural importance, state collection of film, photo and phono materials, archives and collections of ministries of Georgia and scientific-research institutions, museum collections, funds, house museums of state importance;
- c) Objects of mobilization of stocks, state reserves, stores of precious metals;
- d) Power transmission and dispatch facilities except 35-110 kV transmission network serving as power supply for distribution network and not intended for system or/and intersystem transit of power;

¹⁹ The Law on Licenses and Permits defines 92 types of licenses and 52 types of permits that must be obtained for carrying out various types of activities.

²⁰ This exception is not surprising taking into consideration the state's clearly mercantile interests and also taking into account the fact that environmental licenses are auctioned.

- e) Institutions of the Academy of Sciences of Georgia working in fundamental sciences, state institutes of higher education and affiliated scientific-research and development institutes, all type educational and preschool institutions financed by the state;
- f) Ports and landing piers of national importance, hydro-technical facilities, lighthouses and signal lights, water area;
- g) Railways of national importance and related alarm, dispatch of telecommunication and power supply systems, gas pipelines, roads (in case of non-existence of parallel roads of equal importance), aircraft flight management systems and take-off and landing strips;
- h) Basic and reserve property of the Ministries of Security, Internal Affairs and Defence, Procurator's Office and the court system, Department of state Border Protection, special service of state security;
- i) Frequency spectrum, state postal communications, Channel I TV-radio technical and antenna feeder equipments, means of governmental communications and position of Georgia on the geo-stationary orbit;
- j) Enterprises producing radioactive materials and materials for military purposes, property of affiliated test-experimental and scientific institutions;
- k) State cemeteries and pantheons;
- l) Upstream facilities of state water supply system, water pumping stations and water disposal facilities, main collectors of sewage system and regional cleaning stations;
- m) State medical institutions of vital importance included in the lists approved according to established order;
- n) Administrative premises of state agencies;

As it can be observed from the list, privatisation of the sites of cultural environment is allowed, but with certain limitations (see item b)). Unlike the sites of the cultural environment, according to the Law of Georgia on State Property Privatisation, privatisation of mineral resources, water resources, territorial waters, continental shelf, special economic and frontier zones, forest fund²¹, air space, protected natural territories or territories to be used according to specific rules is prohibited in any circumstances.

During the years and what is most regrettable, even after "Rose Revolution" Georgian government considers that the fact that environmental sites are not eligible for privatisation in accordance with the Law of Georgia on State Property Privatisation means that privatisation process is not related to the environmental thematic. This is definitely wrong vision.

It is widely recognized, that consideration of environmental issues during the state property privatization is one of the major and in some cases, even determining precondition to ensure transparency and fairness of the process. Two aspects should be considered from this point of view:

First – information about state of environment and level of environmental pollution at area to be privatized. According to the Georgian legislation, the responsibility for past environmental damage is transferred to the new owner of a property as a liability, unless the two contracting parties provide other arrangements. In any case, information about past environmental damage is important and only way for obtaining such data is an environmental audit.

Identification of past environmental damage is important not only for clear distribution of liabilities between the contracting parties, but to estimate purchase price of the unit to be privatized. In most cases liability for past environmental damage is associated with increased costs. Therefore, having precise information about past environmental damage and present value of the cleanup cost is important for company considering the acquisition of the unit to assess efficiency of the acquisition. Having imperfect understanding of the extent of contamination at the facility and value of the cleanup costs, potential investor considers risk of hidden or unknown pollution problems existence at the facility. As a practical matter this finally ends up with reduction of purchasing price of the unit to be privatized.

²¹ It should be noted, that Forest Code of Georgia provides for possibility of State Forest Fund privatization, although the issue is not regulated by legislation yet.

Second important aspect in order to ensure effective protection of the environment and again, to reveal potential risks at early stage, is public (and especially communities affected by the unit to be privatized) participation in decision-making during the privatization process.

The current privatisation laws practically do not provide for necessary consideration of environmental matters in decision-making process. Only the Framework Law on Environmental Protection²² contains provisions setting certain list of environmental requirements to be considered in process of state property privatisation:

1. "An owner of the privatised unit is charged to fulfil all those obligations, which were imposed on the former owner of the economic unit.
2. Every new owner of privatised unit shall be charged to pay for damage resulted from violation of Georgia's laws of the activity, before the unit having been privatised, if other cases are not specified by law.
3. On the basis of a decision by the Ministry the environmental audit may be carried out in order to assess ecological situation at the privatised ecological units, to ascertain ecological risk of the activity and the costs for purification and restoration works which are to be carried out."²³

Unfortunately, according to the law, carrying out the environmental audit in state property privatisation process is not obligatory, and nor the Ministry of Environmental Protection and Natural Resources strives to exercise its legal rights. It also should be mentioned that even the conditions set obligatory by the law are not fulfilled.

Each particular case of the state property privatisation, as a rule, is related to commencement of certain activities, i.e. this is the first stage of new (or revised) activity. Accordingly, if such activity can potentially influence the status of environment, the environmental requirements shall be taken into consideration and publicity of the information shall be ensured from this very stage. In general, privatisation conditions can be established for any of the existing privatisation forms (auction, lease-redemption, competitive bidding, direct purchase), and whether this forms will be of environmental character or not, depends on the specificities of the particular site and interests of the person implementing privatisation. It is interesting, for example, that even direct purchase provides for possibility of establishing privatisation conditions (including environmental conditions) in consideration of the properties of site subject to privatisation. Furthermore, with regard to this form, the special provisions stipulate that "in case if after approval of the property rights the owner wishes to sell the newly acquired property, it shall be done with the consent of the Ministry and with the same conditions as set out in the direct purchase agreement". The special sanctions for non fulfilment of the conditions under agreement are also envisaged, and this can include the unilateral termination. Hence, in a certain form, the long-term mechanisms for controlling privatisation conditions are involved.

Even if the environmental conditions are not included into respective privatisation conditions, the legislation of Georgia envisages certain tools ensuring general compliance with environmental requirements in privatisation process. For instance, Article 69¹ of Administrative Violations Code of Georgia (15.12.1984) sets penalty for non-compliance with environmental requirements in privatisation process. However, this penalty is rather symbolic, since its amount varies between GEL 50 (about 30 USD) and 300, and evidently, this cannot be considered the sufficient warranty for buyer not violating environmental conditions in privatisation process. The administrative violations schemes set out in article 69¹ of Administrative Violations Code of Georgia shall be considered by the bodies of the Ministry of Environmental Protection and Natural Resources of Georgia within 14 days. Inefficiency of article 69¹ of Administrative Violations Code of Georgia is due not only to inadequate amount of penalty, but also to the fact that it provides insufficient mechanisms for ensuring effective monitoring by the Ministry of Environmental Protection and Natural Resources, while carrying out monitoring is substantial both during the privatisation and after its accomplishment.

Often, property privatisation is implemented with certain limitations; for instance, the purchaser might be restricted to certain activities or might be obliged to comply with the certain requirements, sometimes including environmental conditions. Unfortunately, monitoring compliance with such requirements only by the state authorities is often inefficient and provides for increasing corruption risks. In such circumstances, it is even more important to employ the public control mechanisms, although, this is impossible without ensuring transparency of the privatisation process. Unless the transparency of privatisation process is ensured, the

²² 10.12.1996, No. 519-Is

²³ Article 21 of Law of Georgia "on Environmental Protection".

public control mechanisms will be ineffective. Based on the above, the society will have no protection against corruption transactions, concealed privatisation of environmental sites with violation of legal requirements, violation of other environmental requirements and/or rights of the society representatives guaranteed by the Constitution of Georgia, international treaties, legislation, etc.

CHAPTER 5. LEGAL MEANS FOR OBTAINING ENVIRONMENTAL INFORMATION IN STATE PROPERTY PRIVATISATION PROCESS AND PRACTICAL PROBLEMS RELATED THERETO

The fact that public availability provisions are insufficiently reflected in standard acts regulating state property privatisation process does not mean that the society is deprived of other legal tools allowing obtaining environmental information related to the privatisation process.

In Georgia, right to the access to environmental information is guaranteed by the Constitution. According to paragraph 5 of article 37 of Constitution of Georgia, “person has right to receive full, objective and timely information on status of his/her working and living environment”.

The substantial legal instruments for ensuring transparency of environmental information in property privatisation process are provided by Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

We shall take into account the fact that, frequently, state property privatisation process can be related to the activities, which, according to the article 6 of Aarhus Convention, require necessarily ensuring public participation from the very early stages. In such cases, the society representatives will be fully authorised to require their participation in decision-making process, in accordance with the provisions of Aarhus Convention.

Issues of public availability of environmental information are also set out in General Administrative Code of Georgia. Chapter 3 of General Administrative Code of Georgia is fully dedicated to free access to information. According to this Code, ““Public information” means an official document (including chart, model, plan, diagram, photograph, electronic information, and video and audio records), i.e. information held by a public agency, or that received, processed, created, or sent by a public agency or a public servant in connection with official activities“; every person has right to receive public information and make copies of any public documents, provided that such information or documents do not contain state, professional, commercial or personal classified information. The decision designating public information to be classified may be rendered if law provides express requirement to protect such information from disclosure, establishes concrete criteria for such protection, and provides exhaustive list of classified information.

After classified information is declassified, any part of classified public information or protocol of the closed session of a corporate public agency that can be separated on reasonable grounds shall be publicised. In such cases, the person classifying information, justification for such decision and term of classification shall be indicated.

As for the information on environment, according to the General Administrative Code of Georgia, such information may not be classified at all.

Unfortunately, in practice, the requirements of General Administrative Code of Georgia are not fully satisfied. There are the cases, when society representatives face problems in their attempts to obtain information on privatisation of the important sites. Sometimes, public documents and even agreements on state property privatisation, in violation of legal requirements and procedures, are declared confidential, and society representatives are hardly able to obtain copies of the mentioned documents.

Often, even in cases when legislation of Georgia sets out very clear mechanisms for ensuring transparency of public (including environmental) information, compliance with them is far not perfect. The examples described in the following Chapters are clearly illustrating this.

CHAPTER 6. VARTSIKHE HYDRO POWER PLANTS CASCADE

Vartsikhe Hydro Power Plants (HPPs) Cascade unites four hydropower plants – Vartsikhe-1, put in operation in 1976; Vartsikhe-2, put in operation in 1978; Vartsikhe -3, put in operation in 1980; and Vartsikhe-4, put in operation in 1987. They represent derivation type unified power plants with identical capacity and generation. Design installed capacity of each plant is 64 (2x32) MW and generation 250 million kWh. They are located along 27 km distance from the village Vartsikhe to the source of the river Gubistskali. Common dam of the reservoir is situated on the territory next to the connection of the rivers Kvirila and Khanistskali. Hydro technical buildings are located on the right bank of the river. Currently, the water reservoir is almost fully silted and the regulation conditions are deteriorated. Aprons of the tailwater of the outlet dam are partly damaged. The ground is washed down into derivation channel; filtration is increased in scroll casing of the Vartsikhe HPP 3. All gates need restoring its compression²⁴. For more than decade, as a result of disorder of Vartsikhe HPPs Cascade drainage system, Village Bashi and its adjacent territories are regularly (twice a year in minimum) flooded, and this causes substantial damage to population and local agriculture.

Some rehabilitation works have been carried out at Vartsikhe HPPs Cascade under the Vartsikhe HPPs Cascade Rehabilitation Programme funded through the amounts allocated in accordance with the Loan Agreement between German Reconstruction Credit Bank (KfW) and Government of Georgia. By the end of 2004, Government of Georgia made a decision on privatisation of the HPPs assets, after which decision KfW ceased financing the rehabilitation works.

CHAPTER 6.1. THE FIRST ATTEMPT TO PRIVATISE VARTSIKHE HPPS CASCADE

In December 2004, the Ministry of Economic Development of Georgia announced Tender for Purchase of the assets of JSC Chiaturmanganese and LLC Vartsikhe HPPs Cascade. Five participants applied: Interpipe (Ukraine), Moravia-Georgia (Czech Republic), Kaz-chrome (Kazakhstan), Evrazholding (Russia) and Deco-metall (Austria; owner of the control stock in Zestaponi Ferroalloys Plant). Closing date for submission of the proposals was January 10, 2005, although, along with the official procedure, some unofficial negotiations with the participating companies were taking place and, what's the most astonishing, the results of such unofficial talks were openly disseminated by the officials through press. For instance, "Prime Minister Zurab Zhvania said that three companies – Ukrainian Interpipe Corp.; Austrian DCM and a Kazakh company - have expressed interest in purchasing the Chiaturmanganese/Vartsikhe package. On December 24, however, the Economy Ministry reported that the Kazakh Company will not participate in the privatization" ... "The Austrian company has even made a USD 10 million down payment [which cannot be accessed by Georgian officials until completion of the deal] in an attempt to demonstrate its serious intentions over this deal," Zhvania said."²⁵

On January 11 2005, after opening the proposals, instead of announcing winners, two proposals – submitted by Czech and Kazakh companies – were rejected, and the rest were invited for the individual negotiations. The closing date of the individual negotiations was also publicly declared.

After accomplishment of the negotiations, information on the new agreement has been published. In particular, Chiaturmanganese and Vartsikhe HPPs Cascade would be purchased by Russian Evrazholding and Austrian DCM, which would establish the joint enterprise – New Co., in which the 70.8% of Ferroalloy Plant shares and assets of Chiaturmanganese and Vartsikhe HPPs Cascade would be put up; this agreement left Ukrainian Interpipe off side, and it refused to continue participation on such conditions. On January 18, 2005, at the press conference arranged by Interpipe, chairman of the supervisory board of the company, Mr. Igor Jaroslavtsev spoke about unfair privatisation and 'double game': "until 18:00 of January 18 we knew that Interpipe and Russian Evrazholding were leaders, but half an our later, Prime Minister Zurab Zhvania informed public about submission of new proposal, and after this we refused to participate in such privatisation process. ... We, unlike other companies, who included in their proposals only prices, presented the detailed plan. We were proposing USD 117 million for Chiaturmanganese, and were ready to pay USD 20 million for Ferroalloy Plant, but our proposals were rejected"²⁶.

²⁴ Source: the web-site of the Ministry of Energy of Georgia, Major Generation Plants of the Power System of Georgia, URL: <http://www.minenergy.gov.ge>

²⁵ Privatization in Progress, 24.12.2004, Electronic Edition Civil Georgia; URL: www.civil.ge

²⁶ Interpipe Talks about Incorrect Privatisation; Electronic Magazine Civil Georgia, 19.01.2005; URL: www.civil.ge

Meanwhile, the memorandum on sale-purchase of control stock of shares of Chiaturmanganese and Vartsikhe HPPs Cascade has been signed with Evrazholding and shareholder of Zestaponi Ferroalloy Plant. But, the end of the scandalous process appeared to be more scandalous than one could ever imagine. In June 2005, one month before the expiration of term of payment of the first instalment, Evrazholding terminated the agreement. This, along with the official explanation, gave birth to many unofficial versions. Rumours had a substantial basis, since, Evrazholding lost USD 18 million due to such termination. According to the official version, after concluding agreement the company closely studied status of the installations and decided that they are unprofitable; accordingly, the company decided to refrain from investing in assets of Chiaturmanganese and Vartsikhe HPPs Cascade. Unofficial version was that Evrazholding received certain guarantees from Prime Minister Zurab Zhvania and, after the death of the latter (in February 2005), the government refused to reaffirm these guarantees; according to another version, Evrazholding was required to cover indebtedness of Chiaturmanganese, while this condition was not included into the initial agreement²⁷.

According to the information disseminated by the Budgetary Office of Parliament of Georgia²⁸ in July 2005, “instead of planned GEL 9.53 million of non-tax revenues, GEL 52.41 million were received, i.e. the plan has been exceeded by GEL 42.88 million. The mentioned amounts were mobilised to budget mainly under Paragraph 3.5.3 of Agreement on Sale-Purchase of Assets of JSC Chiaturmanganese and JSC Vartsikhe HPPs Cascade, according to which, Evrazholding made commitment on paying to state USD 64 million prior to confirmation of the transfer of 95% of state owned shares in Vartsikhe 2005. USD 18 million has been deposited in advance by the Ferroalloy Plant shareholder and Evrazholding. Release of the respective amount and its transfer to the state was depending on endorsement of the Sale-Purchase Agreement. In particular, according to the agreement, the deposited amount should be transferred to the state after endorsement of the Sale-Purchase Agreement, or in case the parties failed to timely endorse it. The necessary precondition for the release of the mentioned amount was issuance of Presidential ordinance by the President of Georgia on transfer of the 95% of shares owned by the state in Vartsikhe 2005 LLC to Votney LLC through the direct sale. In order to fulfil the above commitment, the President of Georgia issued respective ordinance, based on which the Minister of Economic Development of Georgia issued the decree. Based on the above, since Evrazholding failed to comply with the respective commitments, amount of GEL 32 849 945.25 equalling the mentioned USD 18 million was reflected on the treasury code 30002316 – other non-classified non-tax revenues”.

It seems that the conditions initially agreed with Evrazholding were subject to bargaining, and this is witnessed by the big number of ordinances and decrees issued with respect to this issue within the mentioned period.

For instance, ordinance of President of Georgia on Transferring 76% of the Shares Owned by State in Vartsikhe 2005 LLC. to Votney LLC through Direct Sale (No. 213; March 23, 2005). According to this ordinance, 76% of the shares owned by state in Vartsikhe 2005 LLC should be purchased by Votney LLC for the price of USD 48 million. At the same time, one of the preconditions for this transaction was participation of the mentioned company in purchase of Chiaturmanganese assets.

The above ordinance was cancelled by the new ordinance of President of Georgia (No315; April 28, 2005), according to which, 76% of the shares owned by state in Vartsikhe 2005 LLC should be purchased by Votney LLC for the price of USD 64 million, with the same precondition of participation of the mentioned company in purchase of Chiaturmanganese assets.

On May 11 2005, ordinance of President of Georgia No. 364 eliminated ordinance No 315 of April 28, 2005, and stated that 95% of the shares owned by state in Vartsikhe 2005 LLC should be purchased by Votney LLC for the price of USD 64 million. And again, one of the preconditions for this transaction was participation of the mentioned company in purchase of Chiaturmanganese assets.

Finally, ordinance No. 594 of President of Georgia dd. July 17, 2005 cancelled the ordinance No. 364 of May 11, 2005 on Transferring 95% of the Shares Owned by State in Vartsikhe 2005 LLC to Votney LLC through Direct Sale.

²⁷ “Chronicle of Privatization in 2005”, newspaper *24 hours*, 31.12.2005, URL: www.24hours.ge

²⁸ The Notice of Budgetary Office of Parliament of Georgia on State Budget Revenues in July, 2005 (operative information); www.pbo.ge

CHAPTER 6.2.THE SECOND ATTEMPT TO PRIVATISE VARTSIKHE HPPS CASCADE

After the breakdown of the agreement with Evrazholding, the Government decided to avoid the battles connected with tender and public procedures and separately privatise assets of Chiaturmanganese and Vartsikhe HPPs Cascade through direct sale, without attracting excessive attention. But, the Minister of Economic Development then, Mr. Irakli Chogovadze had different approach to this issue: “actually, we had announced an informal contest for purchase of Vartsikhe HPPs Cascade, and actively negotiated with all those potential investors, who intended to become the owner of the power station”²⁹.

On October 26, 2006, the President of Georgia issued ordinance No. 642, which, in accordance with the paragraph 5 of article 6 of the Law of Georgia on State Property Privatisation and paragraph 11 of article 8 of the Law of Georgia on State Support to Investments, transferred the 100% of shares owned by the state in Vartsikhe 2005 LLC to G.M. Georgian Manganese Holding Limited (the subsidiary company of British Stemcor) for the price of USD 57 million. It should be mentioned that, according to paragraph 11 of article 8 of the Law of Georgia on State Support to Investments, the President of Georgia is entitled to make individual decision on direct sale of the property without taking measures set out in paragraphs 7 and 8 of the same article, stating that the proposal of the investor shall be considered by the Government of Georgia, which consequently makes decision on taking measures for ensuring respective competitive selection. The above Presidential ordinance completely closed the process for the society. This was farther aggravated by the fact that the information posted at the web-site of the Ministry of Economic Development of Georgia stated that Vartsikhe 2005 LLC has been sold through auction, on December 21, 2006.

For the purpose of clarifying the situation and obtaining information on the commitments made by the investor, on December 25, 2006, association Green Alternative requested form the Ministry of Economic Development of Georgia the copy of agreement on transfer of the shares owned by state in Vartsikhe 2005 to M.G. Georgian Manganese Holding Limited.

Instead of the document, the association received the letter No 21/3002/9-6, which stated that the agreement on sale-purchase of the 100% of shares owned by state in Vartsikhe 2005 between the Ministry of Economic Development of Georgia and M.G. Georgian Manganese Holding Limited “is commercial classified information and, therefore, its disclosure requires consent of the buyer” and that M.G. Georgian Manganese Holding Limited has been sent the respective notification.

On January 18 2007, Green Alternative repeatedly applied to the Ministry of Economic Development of Georgia. This time, in accordance with the article 33 of General Administrative Code of Georgia, the organisation requested copies of those parts of the agreement on sale-purchase of the 100% of shares owned by state in Vartsikhe 2005 between the Ministry of Economic Development of Georgia and M.G. Georgian Manganese Holding Limited, which do not contain commercially sensitive information, as well as indication to the person classifying information, justification for such decision and term of classification.

It should be mentioned that Green Alternative had a full right to require such information in accordance with article 33 of General Administrative Code of Georgia, as well as in accordance with paragraph 6 of article 4 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). This provision obliges Government of Georgia to separate classified information from the remaining information, so that the confidentiality is preserved, and, at the same time, the respective environmental information is made publicly available.

However, the Ministry of Economic Development of Georgia neglected the requirements of General Administrative Code of Georgia and Aarhus Convention and refused to provide the copy of the agreement to the organization.

It should be mentioned that this action of the Ministry of Economic Development of Georgia roughly violated rights of association Green Alternative granted by Constitution of Georgia, Aarhus Convention and General Administrative Code of Georgia.

What is most important, the Ministry of Economic Development of Georgia, classifying the agreement on

²⁹ British Stemcor Wins the Informal Vartsikhe HPPs Cascade Contest, newspaper “24 hours”, 14.08.2006; URL: www.24hours.ge

sale-purchase of the 100% of shares owned by state in Vartsikhe 2005 between the Ministry of Economic Development of Georgia and M.G. Georgian Manganese Holding Limited, violated the requirements of Georgian legislation due to the following reasons:

1. The commercial classified information shall mean an information on beneficial plan, formula, process or means or any other information used for processing, production or preparation of goods or render of services and/or which may constitute an innovation or a substantial result of technical activity, as well as other information, disclosure whereof may inflict a damage to competitiveness of any person or entity. When speaking about the commercial classified information, it is always deemed as information delivered by any person to a public authority, whereby such person indicates that such information is commercial classified for his/her purposes. And information regarding an administrative body may not constitute the commercial classified information. The privatisation agreement may nowise be covered by the criteria of commercial classified information. It is hard to imagine as how any commercial classified information provided by the investor could be inserted in the agreement wording. Even if the agreement is attached any valuable commercial plans, classification of the whole agreement is inadmissible. In such case, any commercial classified information should be separated and a remaining part should be published according to the requirements of laws.

2. According to article 30 of the General Administrative Code of Georgia, “the decision designating public information to be classified may be rendered if law provides express requirement to protect such information from disclosure, establishes concrete criteria for such protection, and provides exhaustive list of classified information”. As with regard to the said privatisation agreement, the laws set no direct requirement for non-disclosure thereof; on the contrary, they state that the agreement should constitute the public document. In particular, transfer of 100% of shares owned by state in Vartsikhe 2005 LLC was performed through the direct sale. And according to paragraph 3 of article 8 of the Law of Georgia on State Support to Investments (No3424-RS) of June 30, 2006, “the direct sale is allowed on basis of justification of necessity of using this form and with ensuring public availability of information”. If a privatisation agreement is classified *per se*, it needs no argument that, in such case, the publicity requirement set under laws was ignored.

3. According to article 2 of the Aarhus Convention, the environmental information means “any information in written, visual, aural, electronic or any other material form on:

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

The agreement on transfer of the shares owned by state in Vartsikhe-2005 LLC to G.M. Georgian Manganese Holding Limited and the decision on privatisation *per se* constitute the plan, which presumably may affect the environment. According to article 2 of the Aarhus Convention, this document constitutes the environmental information. Accordingly, the public authority might not classify the privatisation agreement, and furthermore, according to article 7 of the Aarhus Convention and clause (f) of article 6 of the Law of Georgia on Protection of Environment, should ensure the public participation in decision-making and deliver all necessary information to the public.

4. According to paragraph 2 of article 10 of the Law of Georgia on State Property Privatisation, upon privatisation of the HPPs Cascade, right the privatisation agreement made by and between the Ministry of Economic Development of Georgia and G.M. Georgian Manganese Holding Limited should envisage “the purchaser’s responsibility for further use of the purchased property”; accordingly, a party responsible for further rehabilitation of the system and the damages inflicted to the population and the environment and rights and responsibilities of the parties should be determined. Conduct/non-conduct of rehabilitation

works and elimination/non-elimination of damages already inflicted to the population and the environment determines both the environmental status within the vicinity of the Vartsikhe HPPs Cascade and the safety of the local population. In other words, this proves again that the said agreement constitutes the environmental information and classification of such information is forbidden and unlawful.

On March 5, 2007, Green Alternative applied for the third time to the Ministry of Economic Development of Georgia, requesting disclosure of the agreement due to the facts above. On March 15, 2007, the Ministry of Economic Development of Georgia refused disclosure of the agreement and delivery of a copy thereof. Further, the Ministry stated “that the state privatised the state owned share and therefore, the said agreement includes no information on any risks to the human life and health. Despite the above, the agreement entirely envisages fulfilment of requirements of the environmental law of Georgia by the purchaser”. Thus, the Ministry of Economic Development of Georgia actually confirmed that the agreement classified by them represented the environmental information *per se*.

On March 13, 2007, the Green Alternative applied with the letter to the Ministry of Environmental Protection and Natural Resources of Georgia as well and requested for the information as follows: (1) whether the Ministry of Environmental Protection and Natural Resources participated in drafting the agreement on privatisation of Vartsikhe-2005 LLC.? (2) if yes, then based on which legislative act they did so? and (3) whether the environmental requirements/conditions were considered upon drafting the privatisation agreement? According to the response of the Ministry of Environmental Protection and Natural Resources of Georgia, “The officers of the Ministry of Environmental Protection and Natural Resources of Georgia have repeatedly participated in the consulting meetings held by the Ministry of Economic Development, which concerned compliance of activities of the newly established Manganese Georgia (which includes the Zestaponi Ferroalloys Plant, JSC Chiaturmanganese and Vartsikhe-2005 LLC) with the environmental laws”.

Thus, the fact that upon drafting the privatisation agreement, there were held the consultations with the Ministry of Environmental Protection and Natural Resources concerning compliance of activities of the new holder of Vartsikhe-2005 LLC with the environmental laws proves that the agreement includes the future action plans (activities and efforts) of the purchaser, which may affect the environment; and the response by the Ministry of Economic Development of Georgia confirms that the agreement includes the purchaser’s obligations on compliance with the environmental laws i.e. the said agreement constitutes the environmental information.

All the above proves that the agreement on transfer of the 100% of state owned shares to G.M. Georgian Manganese Holding Limited was classified unlawfully. On April 13, 2007, the Green Alternative, with the assistance from the NGO Article 42 of the Constitution, brought a claim at the Tbilisi City Court and requested for examination of the lawfulness of classification of the agreement and provision of the publicity of document. On 23 May, 2007 the court decided to accept the said claim to proceedings.

CHAPTER 7. CHIATURMANGANESE

CHAPTER 7.1. BRIEFLY ABOUT DEVELOPMENT OF THE CHIATURA MANGANESE MINE³⁰

Extraction of the manganese in Chiatura was started in 1879, on the initiative of Akaki Tsereteli - prominent Georgian poet and national liberation movement figure. Initially, he tried to start production by means of local sources; however, soon, he was forced to apply to foreign (including Russian) producers. In the beginning of 80s of the XIX century, there appeared lots of businessmen, who attempted to grab the plots with the ore through the lease or purchase. However, the alien entrepreneurs initially faced the resistance from local, mainly small producers. Due to the fact that extraction of the ore, as a result of the beneficial natural deposition thereof, was possible without any heavy machinery, the local minor entrepreneurs initially managed even to cut out major companies. And the latter preferred exporting the manganese purchased from the local producers. However, the major trusts represented by foreign companies, joint stock companies and local major entrepreneurs, gradually infiltrated into production.

Due to growth of demand at the world manganese market, extraction of the manganese in Chiatura developed rapidly. In 1887, there were extracted more than 250 tons and at least 230 tons were exported. At that time, there worked 1,156 labourers. By 1890, the extraction already exceeded 625 tons and the export reached 530 tons. The number of labourers made 2,600.

Despite such growth of the extraction, the machinery remained primitive for a long. Picks and spades remained the main tools in mines, and wheelbarrows were used for extraction. As per growth of demand for the ore, by the end of XIX century, some gadgets were introduced in production. Since 1894, the said sector was already provided with the steam railway. Later, especially during the years preceding the First World War, the industrial region of Chiatura was gradually covered by railway and cable-way networks. The manganese was mainly exported to England, Netherlands, USA, Belgium, Germany, France, etc. The small amount was exported to Russia as well. The share of manganese exported from Chiatura at world market reached 50%.

The French, as well as British companies prevailed among foreign companies engaged in Chiatura in the beginning of last century. Later, as a result of growth of expansion of the German capital, the situation changed drastically. The German JSC Gelsenkirchen Mining Company fundamentally established in Chiatura. It incorporated the German industrial and financial tycoons, including the Kaiser Wilhelm. The German company Caucasian Mines Partnership engaged in Chiatura was also important and the uncrowned king of Germany Krupp was one of the shareholders therein.

The German companies grabbed almost the third part of the best mines under operation and by means of loans they enslaved a part of local entrepreneurs. The German joint stock companies diligently equipped their enterprises, deliberately slowed down the operation of appropriated mines and took home the increasing volumes of the ore purchased from enslaved entrepreneurs against reduced prices.

After break out of the First World War, activities of the German companies were prevented in Chiatura. The competition between local, Russian and foreign capitals in order to appropriate enterprises subject to liquidation (in 1914-1917) reached the international scale and the governments of interested countries took a part therein as well.

The Russian industrial capital appeared in Chiatura as far back as in the beginning of the 80s of XIX century. Russia approached to the said sector only in terms of its narrow fiscal interests and support of the manganese industry (in Nikopol) of the empire and deliberately slowed down development of the manganese industry in Chiatura.

Later, after occupation of Caucasus by Soviet Russia, Lenin's government started the active exploitation of national natural resources of the Caucasian countries. On March 30, 1921, i.e. very soon after the complete annexation of Georgia, Lenin, on behalf of the Political Bureau, sent the telegram to Tbilisi: "...do you best for revival of former concessions and issue new concessions by all means and as soon as possible...". "We (the Soviet Russia) need the Baku oil and Georgian manganese – Lenin, 1921".

³⁰ Historical Essays of Georgia: Ivane Javakishvili Research Council. Institute of History, Archaeology and Ethnography of the Academy of Science of Georgian SSR – Tbilisi, 1970.

During the soviet period, Chiatura supplied the manganese to the steelwork in Soviet Union and Eastern Europe. Despite the intensive annual extraction of the manganese in Chiatura, even now, following to various experts' judgements, the manganese deposit in Chiatura remains one of the largest in Europe and makes up to 215 million tons.

CHAPTER 7.2. ATTEMPTS TO PRIVATISE CHIATURMANGANESE

In 1993, on basis of the industrial corporation Chiaturmanganese, in accordance with the decrees³¹ of the Cabinet of Ministers of Republic of Georgia, the Joint Stock Company Chiaturmanganese has been established. The decrees by the Cabinet of Ministers envisaged for Privatisation of JSC Chiaturmanganese, for the purposes whereof, the working committee for privatisation was established following the order of the director of the company.

According to the first statute of JSC Chiaturmanganese approved in 1994, the company issued 75, 924, 000 ordinary nominal shares and the nominal value of each share constituted USD 1.461899.

According to the privatisation plan, the state should retain the majority interest of 51% in JSC Chiaturmanganese. However, shortly, on account of the security of credit³² granted by the Russian party to Georgia, 10% of the state shares (USD 5,661,000) were pledged in favour of Russia.

According to the Privatisation plan, the certain part of shares became subject to sale through the auction. Sale of the shares through the auction was implemented by the Ministry of State Property Management of Georgia. In total, there were two auctions. 9,078,597 shares were sold for the amount of USD 13,272,802, including those sold to Industrial Corporation – 5,587,654 shares (USD 8,169,085), Vista Capital Corporation – 3,198,622 shares (USD 4,676,348), JSC Industrial Invest – 111,285 shares (USD 162,697) and individuals – 181,036 shares (USD 264,672).

In 1997, according to the ordinance of the Ministry of State Property Management of Georgia, it was decided to alienate more than 25% of the state shares in approximately 50 Joint Stock Companies. The privatisation list included JSC Chiaturmanganese along with other major enterprises.

The tender for privatisation of the majority interest (75%) in JSC Chiaturmanganese announced by the Ministry of State Property Management (April, 1998) was won by JSC Industria (Russia), which should pay one million dollars and invest additional USD 30 millions within 10-year period. As it appeared later, the company was able to pay only USD 100 thousands out of the agreed USD 1 million. After repeated postponement of the payment, in the beginning of November, the Georgian Government annulled sale of the enterprise, however, in the mid November, let another chance to the holder of Industria Nosta. In November, 1998, the Ministry of State Property Management announced the new tender on privatisation of the 75% of shares in Chiaturmanganese for the symbolic price of USD 20 000. However, the repeated tender has failed, because even the symbolic price of the 75%-shareholding in company could not attract any investor.

As an expert was writing later on "according to the unverified information, the Russian intelligence services used JSC Industria as an umbrella and they have deliberately collapsed the process of privatisation of Chiaturmanganese and consequent operation and rehabilitation thereof. As a result, JSC Chiaturmanganese faced the mass strikes of labourers in the summer of 1998."³³

On August 20, 1999, another tender was held; investors submitted their bids: the Manganese Corporation of Georgia/Pembroke International Corporation (the joint bid) and the Czech firm Saga Print. A winner of the tender on 75% of shares should pay the price thereof to the amount of USD 350,000 and cover the company's debt of USD 5 millions. Saga Print has won a tender.

³¹ The Decree No288 as of April 14, the Decree No445 and the Decree No571 of the year 1993

³² Based on the Memorandum executed by and between the Ministry of Finance of Georgia and the Ministry of Finance of Russian Federation on November 3, 1994

³³ "Money-Laundering Opportunities upon Privatisation", Davit Petriashvili; Economic Crime and Money-Laundering Project. URL: <http://www.traccc.cdn.ge>

After the certain progress of the investment program, Saga Print faced difficulties upon performance of the obligations envisaged under the tender conditions. On March 5, 2001, according to the ordinance of the Minister of State Property Management of Georgia, the agreement made with Saga Print was cancelled due to non-compliance with the tender conditions. On their side, the company denied existence of any causes for termination of the agreement. "We, acting as the holders of Chiaturmanganese, can settle all the problems of the enterprise, however, it is truly difficult for us to regulate the matters of the political and group pressing on our company in Georgia, which caused the present crisis in Chiatura"³⁴, stated the Vice-President of the company.

The governor of Imereti then Temur Shashiashvili blamed officials in the repeated scandal with regard to Chiaturmanganese. He blamed the Minister of Justice at that time and currently President of Mikheil Saakashvili and the Member of Parliament Davit Bezhuashvili for lobbying criminal groups and business interests respectively.³⁵ The Ministry of Security was instructed to conduct the investigation. Outcomes of the investigation remained inaccessible to the public, and the shares transferred to Saga Print were returned to the state.

On December 28, 2001, JSC Chiaturmanganese was shifted to the rehabilitation regime. According to data³⁶ provided by the Chamber of Control of Georgia, "The analysis clarified that none of the indexes set under the rehabilitation program met its rated values. Furthermore, instead of rapid improvement of the financial outcomes, gain of a profit and reduction of the liabilities set under the rehabilitation program, the enterprise remains permanently unprofitable for years, the budgetary debt is growing, the credit instruments and fines against unpaid credits are progressively increasing and the crisis with acquisition of floating assets and pay out of current salaries is continuing. Under such conditions, legal and natural persons of the private law were paid fully or in excess of their shares more than GEL 766 thousand in defiance of the profit sharing schedule; thousands of GEL were paid groundless and in advance; fines were imposed in favour of individual entrepreneurs against liabilities accrued prior to the rehabilitation regime; high-interest loans were raised in the same period, etc."

In fact, the Chamber of Control underlined the ignorance of fundamental rehabilitation principles and pointed out financial operations and economic transactions performed by the management of company, which led to liquidation and bankruptcy thereof.

The outcomes of the inspection completed by the Chamber of Control Georgia were forwarded for obtaining the legal opinion and further response to the General Prosecutor's Office of Georgia and the Board for Crimes Against State of Department of Investigations of the Ministry of Interior of Georgia.

By the end of 2004, Chiaturmanganese and Vartsikhe 2005 were intended for privatisation. In January of 2005, the economists of the State University sent the letter to the President, the Prime Minister and the Security Council, where they requested for immediate suspension of the privatisation process of Chiaturmanganese. They stated that "so far as the state is missing the economic development program, privatisation of Chiaturmanganese may ruin the economy. The economists are of opinion that for the purposes of formation of the medium stratum, the enterprise should be better acquired by shareholders than by any individual"³⁷.

In 2005 Chiaturmanganese shared the fate of Vartsikhe Hydropower Stations Cascade. Please refer to Chapter 6.1. The first attempt to privatise Vartsikhe Hydropower Stations Cascade for the facts, which occurred in the course of Privatisation of Chiaturmanganese at that time period.

It should be noted, that along with ongoing privatisation of the enterprise, on January 6, 2005, the Ministry of Finance of Georgia acting as one of the major creditors of Chiaturmanganese applied to the Chiatura District

³⁴ "Will for Protection of Foreign Investors or Specific Financial Interests: Cement-Salaries in Chiatura?!" newspaper "Meridiani 44", No15 (April 25, 2001).

³⁵ See the newspaper "Akhali Epoka", No201 (July 24, 2001), "Shashiashvili Requests for Termination of the Debauch of Politicians in Imereti from the President".

³⁶ The Resolution No17/1 "On outcomes of the complete extraordinary and topical inspection within July 1, 2001 and July 1, 2005 and the complete audit of financial and economic activity within the same period at JSC Chiaturmanganese" adopted by the Presidium of the Chamber of Control of Georgia on April 21, 2005.

³⁷ "Privatization of Chiaturmanganese", TV company Imedi, The News, January 8, 2005; URL: http://imedinews.ge/ge/news_read/5116/

Court and claimed for termination of the rehabilitation of enterprise and initiation of the bankruptcy proceedings. According to the resolution by the Chiatura District Court³⁸, rehabilitation of JSC Chiaturmanganese was terminated and on January 13, 2005, at 01.00 p.m., the bankruptcy proceedings were initiated. Therefore, Chiaturmanganese was forbidden to dispose of its property and the said right was assigned to the appointed bankruptcy manager Roin Migriauli³⁹ (later substituted by Davit Kakabadze). At the same time, creditors of Chiaturmanganese were requested to bring their claims against the enterprise to the court before February 14, 2005, since upon expiration of that term all amounts should be distributed upon ignorance of undelivered claims.

For the purposes of examination of the creditors' claims following the court resolution, the meeting of creditors should be held at the Chiatura District Court on March 15, 2005. On April 25, 2005, the bankruptcy administrator of Chiaturmanganese delivered the statement before the chairman of Chiatura district court, following whereto, "the meetings for examination of creditors' claims have been fixed and were held at court; however, the major part of creditors was absent. Despite their absence, we considered the said claims and determined the status thereof, which is attached hereto as annex". According to the renewed list of creditors, 1,540 individuals requested for payment of damages, and damages inflicted to 505 of them were deemed as proven and to 1,035 as disputable.

It is hard to believe that the majority of creditors were absent, if the procedure of prior notices established under laws were respectively followed, since the population aggrieved by the activities of Chiaturmanganese participated in the protest actions at that time and claimed for payment of damages from the new holder of Chiaturmanganese Evrazholding⁴⁰.

It is also strange that as the process of bankruptcy of the enterprise went on, the people started hunger-strike in front of the State Chancellery and asked for consideration and satisfaction of their claims from the Public Defender⁴¹, then from the Prime Minister Zurab Noghaideli and later from the Parliament Member Koba Khabazi⁴² instead of the bankruptcy administrator.

Among the other strange and shady fact, it shall be noted hereby that, for the purposes of improvement of the situation at Chiaturmanganese, the budgetary loan has been issued twice.

First, according to the Decree No973 of the President of Georgia dd. December 29, 2005 (a week before the Ministry of Finance brought the claim to the Chiatura district court requesting for initiating the bankruptcy proceedings due to growing budgetary debts of the enterprise), the Ministry of Finance assigned GEL 938 000 (USD 556 200) as a budgetary loan granted to Chiaturmanganese for the 6-month term against annual interest rate of 0.5%. It shall be hereby noted that according to the decree No. 440 of the President of Georgia dd. August 8, 2006, the loan repayment term was extended till December 31, 2006; and later, according to the ordinance No. 74 of Georgian Government dd. February 15, 2006, JSC Chiaturmanganese (already been under the bankruptcy regime) was assigned GEL 2,5 million (USD 1,4824 million) from the reserve fund of the Georgian Government as the 6-month budgetary loan against annual interest rate of 6.2%.

In 2005, following termination of agreement with Evrazholding concluded by unknown to Georgian legislation procedures, the Government decided to sell the enterprise through the "quieter" way as follows: first, they sold the Vartsikhe HPPs Cascade to Stemcor through the direct sale; Soon thereafter Stemcor acquired the shares (96.3%) in Zestaponi Ferroalloy Plant; thus, as the Minister of Economy stated, the Government was forced to sell Chiaturmanganese to Stemcor, since those enterprises were closely linked; however, the Government timely remembered the recent past, when been blamed for vague decision-making and

³⁸ The Court Award "On termination of the rehabilitation and initiation of bankruptcy proceedings" adopted by the Chiatura District Court on January 13, 2005, the Case No2/7.

³⁹ The Attorney of "Migriauli and Partners Attorneys".

⁴⁰ "The injured population held the protest action at mines within around two months as of sale of Chiaturmanganese", the TV company Imedi, The News, March 14, 2005, 2005, URL: http://imedinews.ge/ge/news_read/6800/

⁴¹ The fact of violation of rights of victims of the activity of Chiaturmanganese is described in the Summary Report by the Public Defendant "On Human Rights and Freedoms in Georgia", the first part of the year 2006. URL: www.parliament.ge/files/89_13749_252310_moxseneba2006_01%5B1%5D.pdf.

⁴² "Injured employees of Chiaturmanganese call for the Government's help", the TV company Imedi, August 21, 2005, URL: http://imedinews.ge/ge/news_read/9709/. "The eleventh day of the protest action in front of the State Chancellery", the TV company Imedi, August 1, 2005, URL: http://imedinews.ge/ge/news_read/9756/

backroom negotiations with companies and decided to bring to the tender held by the Ministry of Environmental Protection and Natural Resources for the license on use of natural resources at the manganese deposits of Chiatura the assets of the enterprise as well. Accordingly, the Government actually killed two birds with one stone: they enabled the transparent and competitive process (despite Stemcor constituted the only participant of the auction) and supported the investor in terms of facilitation. It is interesting that, nobody was thinking at that time whether the Ministry of Environmental Protection and Natural Resources was authorised to sell of assets of the enterprise or not.

Thereby, on November 11, 2006, following to the auction held in the Ministry of Environmental Protection and Natural Resources of Georgia, Georgian Manganese Holding Limited (Stemcor subsidiary company) obtained the license on extraction of natural resources at the manganese mine of Chiatura (includes 15 sites over the area of 16 430 hectares) and acquired the assets of Chiaturmanganese. The price paid for the license on extraction of natural resources made USD 5,5 million and the initial price of the assets of JSC Chiaturmanganese equalled to USD 14, 015 million.

The final amount and the price of the assets fixed by the auction winner at auction should be paid within the term of 30 calendar days as of execution of the protocol on auction results, within which term the assets sale-purchase agreement should be executed. With regard to the above, on December 25, 2006, the Association Green Alternative applied to the Minister of Economic Development of Georgia with the letter, where we requested for a copy of the agreement on transfer of the assets of JSC Chiaturmanganese to Georgian Manganese Holding Limited.

On January 8, 2007, the Green Alternative, instead of the requested documentation, received the clarification by the Deputy Minister of Economic Development, Kakha Damenia, According to which, "the Ministry of Economic Development of Georgia has not been in charge of alienation of the assets of JSC Chiaturmanganese".

And on January 5, 2007, the Ministry of Economic Development of Georgia disseminated the information, according to which, the Minister of Economic Development has vested the certificate of ownership to "Georgian Manganese Holding Limited" LLC. Accordingly the British company has become the owner of JSC "Zestaponi Ferrous", JSC "Chiatura Manganese" and "Vartsikhe 2005" LLC. Upon completion of the subscription ceremony, Giorgi Arveladze stated: "By signing the document the ministry has completed the three year work. Conclusion of the agreement means that Chiatura Manganese and Zestaponi Ferrous will survive, economic potential will increase in the region, new 1000 jobs will be created in 2 years in Imereti region, and working and safe environment for workers will improve. We have done everything to survive operational capacities which were in a very poor state."⁴³

Green Alternative took another attempt in order to clarify the situation and on January 17, re-applied to the Ministry now for the purposes of adjustment of the clarification by the Deputy Minister and with weak hope that we, at last, would receive a clear and direct response; for that time, the organisation requested for clarification regarding the privatisation form and the duly authorized body in charge of privatisation of the assets of JSC Chiaturmanganese. However, we got the same answers.

According to part 2 of article 41 of the General Administrative Code of Georgia, "if access to public information was denied ..., the agency shall provide an applicant with information concerning his rights and procedures for filing a complaint within three days after the decision is rendered. The agency shall also specify those subdivisions or public agencies, which provided their suggestions regarding the decision". And the response by the Ministry of Economic Development failed to comply with the mentioned requirements.

In compliance with paragraph I of article 2 of the Charter of the Ministry of Economic Development of Georgia, the Ministry of Economic Development of Georgia owns, manages and sells the State property on behalf of the State. On the basis of the mentioned it is not clear why the Ministry has no information on the person having privatised the enterprise.

In compliance with the information, disseminated on January 5, 2007 by the Ministry of Economic Development of Georgia: "In Tbilisi Marriott Hotel, the Minister of Economic Development of Georgia handed over the Georgian Manganese Holding LLC manager a certificate on ownership according to which the British company

⁴³ Please, apply for the "news" at the website of the Ministry of Economic Development of Georgia.
URL: <http://www.economy.ge/eng/main.php?news=80>

became a final owner of JSC “Zestaponi Nikoladze Ferroalloy Enterprise, JSC “Chiaturmanganese” and “Vartsikhe 2005” LLC.

In compliance with the ordinance of the Government of Georgia (No.64, August 6, 2004) On Approval of the Ownership Certificate, the Ministry of the Economic Development should have issued the certificate according the form given below:

<p>State Emblem of Georgia</p> <p>Georgia</p> <p>The Ministry of Economic Development</p> <p>Ownership Certificate</p>
<p>This is to certify, that _____ (the owner, its address and _____ bank account)</p>
<p>has been given in ownership _____ (name of the object, _____ address of the object)</p>
<p>land plot of _____ sq.m _____ (the form of land ownership)</p>
<p>on the basis of: _____ agreement _”_” _____ acceptance act _”_” _____ The Certificate is developed in 3 copies, one of which is given to _____</p>
<p style="text-align: center;">(the owner’s name, second name, surname, title)</p>
<p>The other copy is kept at the Ministry of Economic Development and the third – at the Public Register. The Certificate is valid together with the Agreement and Acceptance Act, representing an integral part of the Certificate.</p>
<p>Issued on _”_” _____, 200</p>
<p>The Minister</p>
<p>Seal</p>

According to the form of the ownership certificate, the certificate is issued and valid together with the agreement and acceptance act. Therefore, the Ministry, in any case, should have the information on the parties to the agreement and the agreement itself.

Due to the above-described, Green Alternative considers that the ministry just did not consider necessary to provide the stakeholders’ representative with a comprehensive and clear answer thus violating the organisation’s rights concerning public information. The association Green Alternative, with the help of NGO Article 42 of the Constitution, appealed to Tbilisi city court in relation to the mentioned issue.

CHAPTER 7.3. THE POPULATION DAMAGED IN THE RESULT OF CHIATURMANGANESE OPERATION

More than a century the Chiatura population is under negative impact of ore extraction (dust, noise, vibration, water and soil pollution, emission of toxic gases into the atmosphere). Damages and hazards to the health of local population resulting from operation of Chiatura mines and concentration plant have been the subject of many investigations for the number of years, though nothing has been done to improve the situation yet. According to the information of the Ministry of Environmental Protection and Natural Resources, no significant reconstruction, technical or technological updating has been implemented in Chiaturmanganese since 1997⁴⁴.

However, the Chiatura population is concerned rather with material damages incurred by and still not reimbursed to them, than environmental problems. During the years, thousands of people have lost their houses, pastures, lands, plants, cattle, etc due to manganese extraction. The damage incurred by the population due to the enterprise activities used to be evaluated during the years and the damaged persons used to receive an act on damage evaluation according to which act they should have been reimbursed for the incurred damage. It should be mentioned, that the process concerning the reimbursement for the damaged people was almost permanently kept on and, very often, used to become the subject of corrupt deals. The list of the present creditors still includes the people requesting damage reimbursement on the basis of an act issued in 1960.

According the report of the Chamber of Control⁴⁵, JSC Chiaturmanganese, “actually keeps no records on the settlement of the sums to be paid to the people on the basis of the mentioned acts. Accounting department does not have any data on separate damaged persons concerning either the sum defined on the basis of the initial act or the settlement of the reimbursed amounts by the periods. The list of the damaged population pointing out the sums to be reimbursed to them is the only document of payments which, practically, is excluding analysis of a real picture concerning the sums turnover and the amounts to be still paid to the damaged population”.

The damage incurred by the majority of the people is evaluated by a special commission in different periods and is reflected in the acts on damage evaluation. The main problem is acquisition of the reimbursement. Very often the damaged persons were given compensation for purchasing of a substitute buildings and constructions, but the sums were allocated in small portions and during several years (sometimes over decades). Accordingly, the damaged persons could not collect the money to buy a substitute home. The other problem was inflation, reduction of the sum in the result of calculation of the money in different currencies due to changing of a State monetary unit (coupon, Russian rouble, US dollar, GEL), etc.

During the years, thousands of claims have been submitted to Chiatura regional court against the Chiaturmanganese. Unfortunately, the court refuses to renew the cases for the majority of the claimants due to statute of limitation⁴⁶. Besides, there are the cases when the damaged people were appealing to the court in time and the court was deciding the cases in their favour, but Chiaturmanganese was not executing the majority of the court decisions. As a result, the majority of the court decisions have the statute of limitation (more than 10 years).

As we have already mentioned, the damage was evaluated by a special commission. According to the report of the Chamber of Control, “apart from drawing up acts on damage, the commission is also working on rechecking and cancellation of the acts on damage drawn up and approved in previous years. In this case, according to the resolution of the Board of Directors (Protocol # 29), the commission members and specialists who were to participate in rechecking of the acts on damage and damage cancellation, as well as the company managers were to receive an additional remuneration in the amount of 6% of the sum envisaged in the cancelled acts... Within the reporting period, for the encouragement of the process participants the enterprise was to pay additional amount in GEL equivalent to USD 137 thousand for 186 cancelled acts”.

⁴⁴ The answer of the Ministry of Environment Protection and Natural Resources, dated June 27, 2006, (#11/11-116) on the letter of the Association Green Alternative (dated June 7, 2006)

⁴⁵ The Chamber of Control of Georgia, Act on Inspection of JSC Chiaturmanganese Finance-Economical Activities from July 1, 2001 to July 1, 2003, Chiatura, December 25, 2004

⁴⁶ Three years from act development

According to the statements of the damaged people⁴⁷, the acts were cancelled on the basis of deals. Particularly, JSC Chiaturmanganese was refusing to pay the sum given in the act on damage and if a damaged person left a part of money in the company's favour, then JSC Chiaturmanganese promised him to give the rest of the amount. This is the very way the majority of the population was cheated. They wrote themselves, that they were leaving a certain part of the money (the largest part, in the most cases) in favour of Chiaturmanganese. With this Chiaturmanganese made the population to refuse the part of their sums, though it did not pay any money to the majority of damaged families.

On the basis of the ordinance of the Government of Georgia No127, dated April 17, 2005, the Ministry of Finance was obliged to establish a commission to study the requests of people damaged and injured due to an industrial accident. The commission was to identify a precise number of people damaged and injured due to industrial accidents and volume of their requirements before June 1, 2005. It is not clear why the Ministry of Finance was to clarify this issue as the enterprise was already in the regime of bankruptcy and clarification of the issue with the damaged persons was the competence of the bankruptcy manager.

In November, 2006, the Green Alternative requested the Ministry of Finance to provide them with the report of the above mentioned commission. Instead of the commission's report (which should have reflected a precise number of people damaged and injured due to industrial accidents and volume of their requirements), some months later, on March 14, 2007 the Green Alternative received a letter from the Ministry, according to which in order to satisfy the damaged persons' requirements by JSC Chiaturmanganese the Government of Georgia, on the basis of its resolution No123, dated March 7, 2007, allocated amount in GEL, equivalent to USD 1,681,539 and GEL 939,312 from its reserve fund. Later, an amendment⁴⁸ was introduced to the mentioned resolution, according to which the sum was increased and constituted amount in GEL, equivalent to USD 1,740,590 and GEL 965,412.

It should be mentioned that the sum was allocated only when Chiaturmanganese creditors blocked the railway (thus hindering the enterprise activities) and demanded debt reimbursement from its new owner.⁴⁹ At the same time, more than 1,000 creditors were refused the reimbursement as the damaged incurred by them was considered to be doubtful.

CHAPTER 7.4. COMPLIANCE WITH ENVIRONMENTAL OBLIGATIONS

Chiaturmanganese did not have any Environmental Permit issued by the Ministry of Environmental Protection and Natural Resources as the Georgian Law on Environmental Permit became effective in 1997 and Chiaturmanganese commenced functioning before effectiveness of the mentioned law. JSC Chiaturmanganese had only a license on use of resources, which, according to the terms of execution, can be amended only by decision of the Interagency Expert Council for Use of Natural Resources of the Ministry of Environmental Protection and Natural Resources of Georgia.

Monitoring of compliance of JSC Chiaturmanganese activities with the requirements of environmental legislation had formal character during the years, and this can be clearly seen from the state of Chiatura environment.

We know just one case, when corresponding measures were taken against JSC Chiaturmanganese for violation of requirements of environmental legislation. On April 16, 2003, Imereti Regional Unit of the Ministry of Environmental Protection and Natural Resources applied Chiatura regional court for permission for carrying out inspection in JSC Chiaturmanganese. The inspection carried out by the initiative of Regional Unit revealed that the object was using water without any license and performing without any limit for emission of hazardous substances into the atmosphere. A Protocol on administrative violation was drawn up on the basis of the above mentioned and was submitted to Chiatura regional court for its consideration and further response. The court defined the damage caused to the State due to emission of hazardous substances into the atmosphere by the enterprise and it was obliged to pay GEL 18,362,990.88. As Green Alternative has been informed by the Ministry of Environmental Protection and Natural Resources, "since, Chiaturmanganese refused to pay

⁴⁷ Interviews with local affected communities in June 2006.

⁴⁸ Resolution of the Government of Georgia # 175, dated April 5, 2007

⁴⁹ "Chiaturmanganese creditors have organized an action", the News, TV company "Imedi", February 7, 2007; URL: www.imedinews.ge

voluntarily the mentioned amount, on April 27, 2004, the Regional Unit appealed to Kutaisi Regional Court. Several processes were held. Then the case was passed to Chiatura regional court and on the basis of its decision (March 27, 2006) a complex expertise was appointed. Revision of the case is suspended up to expertise execution.”⁵⁰

The resolution No234 (December 20, 2006) of the Government of Georgia introduced an amendment to the decision approved by the resolution No154 (September 1, 2005) of the Government of Georgia On the Order and Conditions for Environmental Impact Permit according to which “the activity subject to Environmental Impact Assessment, implementation of which commenced before effectiveness of the Law of Georgia on Environmental Permit, is subject to acquisition of an environmental impact permit before January 1, 2009 according to the plan (program) agreed with the Ministry.” According to the amendments, in order to obtain a permit JSC Chiaturmanganese should submit an Environmental Impact Assessment Report reflecting both the analysis of the current state of the environment (ecological audit) and the plan of mitigation of the impact imposed on the environment due to the current activities.

As we have already mentioned above, on November 11, 2006, the Ministry of Environmental Protection and Natural Resources, with the purpose of issuing license on extraction of manganese ore, organised an auction. The initial price of the mentioned license was amount in GEL equivalent to USD 5 500 000. The winner of the auction was its only participant Georgian Manganese LLC (the British Stemcor affiliate company). On December 25, 2006, according to the license issued by the Ministry of Environmental Protection and Natural Resources, Georgian Manganese shall ensure production of, at least, 350 000 tons of the ore concentrate in 2007 and, minimum, 400 000 tones – in consequent years. At least 200 000 tons of manganese ore shall be annually re-processed on the territory of Georgia. The license is issued for 40 years.

It should be mentioned, that before 2006, the area of mines belonging to JSC Chiaturmanganese, according to the effective license, constituted 3,566.16 hectares, and Gora-Tke Veli, Naguti, Pasiety and Sareki deposits were on the State balance. According to the license issued in 2006 Chiaturmanganese property constituted 16 430 hectares and included the mines not belonging to it earlier.

In accordance with the addendum to the Law of Georgia on Expropriation of the Property for Unavoidable Public Needs (dated April 22, 2005), expropriation for unavoidable public needs can be carried out with the purpose of execution of the works related to ore extraction. The mentioned amendment was introduced in the period of attempting to sell Chiaturmanganese to Evrazholding. Sachkhere region majority deputy, Valeri Gelbakhiani, was publicly speaking about anti-constitutional amendment: “with the purpose of Chiaturmanganese privatisation, legal changes have been gradually introduced. As if technical mistakes were made in the laws approved in May and April... According to the memorandum, Chiatura and Sachkhere areas with ores should have been transferred to an investor. As the list of land plots subject to privatisation involved villages, it became necessary to change the laws. Actually, it was an expropriation, being done by the Government without any court. It concerned resettlement of the villages and violation of the rights related to private property. And all these were against the constitutional, fundamental principles”⁵¹.

In 2005, failure of agreement with Evrazholding saved about 3 000 Sachkhere region people from resettlement, though only temporarily... Sooner or later, Georgian Manganese will start development of the mines being its property and we will witness new protest actions and strikes.

⁵⁰ The answer of the Ministry of Environment Protection and Natural Resources, dated January 17, 2007, (#11/11-13) on the letter of the Association Green Alternative (dated March 25, 2006)

⁵¹ “The Government is tailoring the law for several persons”, “Akhali Versia” newspaper, No 364, August 14, 2005

CHAPTER 8. MADNEULI

Madneuli gold-copper-barium complex ore deposit is located in Bolnisi region, 80 km to the South-East from Tbilisi. Investigation of Madneuli deposit commenced in 40-ies of the last century. In 1956 the deposit was approved and in 1959 construction of one of the largest deposit of non-ferrous metals – Madneuli Industrial Complex – commenced in Georgia. As a result of construction of the large industrial complex, a settlement – Kazreti - emerged on an absolutely deserted territory. The Industrial Complex, commissioned in 1975, was extracting extraction of copper, barite and gold-silver bearing minerals from a complex ore body⁵²; among them, copper and barite ores were primarily processed, concentrated and the obtained product was sold.

Open pit mining is carried out through drilling-blasting method. The ore extracted from an open pit delivered to the blending facility and then for processing to the flotation plant. The waste from the flotation process (so called “tails”) is pumped via 3 km long pipeline to the tailing dams. The mining area belonging to the enterprise equals to 1,039 hectares. The enterprise works in non-stop regime. It employs about 780 persons.

On the basis of a resolution (dated December 26, 1994) of the Board of the Ministry of State Property Management of Georgia, the JSC Madneuli was established on the basis of ore mining and processing facility.

JSC Madneuli was granted a license for gold deposit complex processing and ore extraction (series 053 No11, registration No ESF) by the Ministry of Environmental Protection of Republic of Georgia. The certificate was issued on September 8, 1995 with the term of 20 years, from April 12, 1994 to April 12, 2014.

CHAPTER 8.1. MADNEULI ON THE VERGE OF BANKRUPTCY

On the basis of the resolution No 445 (dated June 7, 1993) of the Cabinet of Ministers of Republic of Georgia, JSC Madneuli was put on the list of the objects to be privatised. On the basis of the Ordinance, dated October 15, 1995, of the Head of the State of Georgia on Gross Violations Revealed in JSC Madneuli and Strengthening of the Measures against Corruption in this Organisation, the director of JSC Madneuli was dismissed and the material of investigation of the JSC economic-financial activities and information related to corrupt actions of separate persons were handed over to the General Prosecutor’s Office of the Republic. According to the same ordinance, “in the result of the inspections carried out by the Tax Service and the Chamber of Control of the Republic, gross violations of financial discipline and tax legislation were revealed. Particularly, the management of the industrial complex artificially distorted the cost of the exported products and reflected it in a reduced volume in income balance. As a result, they were obliged to pay additional USD 550 thousand in favour of the Industrial Complex budget.”

Later, in compliance with the ordinance No 830 of the President of Georgia dd. December 20, 1996, in the beginning of the year 1997 there was announced a tender on sale-purchase of JSC Madneuli majority interest for 5 years. The tender was won by Glencore International AG, which was granted an exclusive right to purchase Madneuli copper concentrates on the basis of several concessions. The company was to invest USD 7 million during the first two years and USD 3 million – in the third year. In the result of the mentioned investment, instead of improvement of the situation at the enterprise, operation of an open pit turned out to be under a question.

On the basis of a decision, dated May 16, 1997, of the Interagency Expert Council for Mine Extraction of the Ministry of Environmental Protection and Natural Resources of Georgia, the following organisations were fixed in the license as the JSC Madneuli partners in carrying out mine processing works: Quartzite LLC – in re-processing of gold containing secondary quartzite and Ecology LLC – in the issues of purification of open pit drainage waters.

Georgian-Australian Joint Venture Quartzite was established in January, 1994⁵³. The enterprise was

⁵² The barite mining stopped in 1990.

⁵³ After effectiveness of the Georgian law On Entrepreneurs the Bolnisi industry Quartzite was converted to Quartzite LLC, registered by Bolnisi regional court in August, 1995. In compliance with the resolution of Bolnisi regional court, dated January 29, 1997, the Charter Capital of the company was defined in GEL equivalent to USD 100 000. 50% of the Charter Capital belonged to “Madneuli” and the other 50% - to “Cropwood”.

established on the basis of a scientific-industrial amalgamation Madneuli and Australian company Cropwood Limited Levels (further Bolnisi Mining Operation NL).

The basic subject of the Joint Venture activities was execution of works for re-processing of Madneuli deposit secondary quartzite to be extracted and warehoused and extracting precious metals from them for further affinage; building capacities for gold affinage in Georgia and, before corresponding capacities are created for gold production, exporting alloy with admixtures for affinage on the basis of the permit of the Government of Georgia. Madneuli should have provided Quartzite with raw ore and necessary geological-technical information. The main obligation of the Australian party was allocation of investments in full volume, provision of necessary equipment and materials for organisation of re-processing industry, installation of advanced machines and introduction of modern techniques. Apart from the technological side the Australian party was responsible for environmental status of the installation, supervision of performance, assistance in receiving loans in foreign currencies, as necessary.

According to the act on inspection⁵⁴ carried out in 2004 at JSC Madneuli by the Chamber of Control of Georgia, "for several years the Australian party was making use of illegal concessions at Quartzite LLC, expressed in illegal appropriation of 2.5% of the cost of the realized products as the fee for management, conclusion of an agreement on disadvantageous terms with British "McWore Bank", unreasonable increasing of industrial costs. License conditions and technological regime were roughly violated; since commencement of production and up to now, the gold content constitutes 2.44 gr per ton, instead of the planned 1.3 gr per ton and in such conditions, instead of reducing the cost of the production, actually, it is twice increased. The International Auditing Company "PricewaterhouseCoopers" carried out an inspection, but could not interpret the spending of the investments made by the Australian party. And later, the Australian party did not give the investment interpretation to the International Auditing Company "Deloit & Touche", selected by the Ministry of Finance of Georgia on the basis of a tender. As a result, their audit report is not submitted up to present".

It should be mentioned, that the above audit report, in compliance with the obligations assumed by the Government of Georgia against the World Bank⁵⁵ and IMF⁵⁶, should have become publicly available (uploaded on the web-sites of the Ministry of Finance of Georgia and Ministry of Economic Development of Georgia). This is not done even today, despite the fact that the share of the Australian party, in October 2005, was purchased by the current owner of Madneuli and Quartzite⁵⁷. Unfortunately, non-execution of the mentioned obligation was not followed by any response from International Finance Institutions.

As to the JSC Madneuli, according to the above-mentioned conclusion of the Chamber of Control of Georgia, Glencore did not ensure compliance with the conditions envisaged by the Investment Agreement. Particularly, instead of the envisaged investment in the amount of USD 10 million in 1998-2002, total volume of investment made just USD 1.7 million. Despite the mentioned, Glencore applied to the Bolnisi regional court on initiating the case on bankruptcy against JSC Madneuli. According to the Company's application, JSC Madneuli owes Glencore International AG the amount of USD 2,873,469.03, which has originated, on the one hand, in relation to the commercial agreement concluded with JSC Madneuli and, on the other hand, as a result of non-compliance with the obligations envisaged in the Investment Agreement concluded on March 9, 1998.

The Bolnisi regional court, with its decision dated July 9, 2003, approved the JSC Madneuli rehabilitation and financial state improvement plan. Initiation of the case related to bankruptcy against JSC Madneuli was postponed by the term of rehabilitation plan (12 years). The decision of the Bolnisi regional court was appealed on the basis of private claim by the Ministry of Finance. It demanded cancellation of the mentioned decision on the ground that, as of July 9, 2003, JSC Madneuli had the debt in the amount of GEL 4,688,938 against the State Budget or, in other words, the Ministry of Finance represented the largest creditor of JSC Madneuli, which was not considered by the court at any of the stages.

⁵⁴ Non-prognosis thematic inspection of the issues of State property application effectiveness and advisability by JSC Madneuli from September 1, 2002 to July 1, 2004 (State share – 97.252%).

⁵⁵ Report No. 28548-GE, Program Document For a Proposed Reform Support Credit in the Amount of SDR 16.6 million (US \$24 million equivalent) to Georgia, May 27, 2004.

⁵⁶ IMF Country Report No. 04/165, Georgia: Request for three-Year Arrangement Under the Poverty Reduction and Growth Facility – Staff Report; IMF Country Report No. 05/1, January 2005, Table 2. Georgia: Status of 2004 Structural Performance Criteria (*) and Structural Benchmarks.

⁵⁷ Stanton Equities CORP. Acquires Australian's 50% Share in Gold Extracting Quartzite, Daily News: November 1, 2005, "Sarke" news agency

The private claim of the Ministry of Finance was not satisfied by the Bolnisi regional court decision dated July 26, 2004, and, together with the case materials, was submitted to the Civil, Entrepreneurial and Bankruptcy Affairs Appeal Chamber of the Tbilisi Regional Court. The Appeal Chamber satisfied the private claim of the Ministry of Finance. The Bolnisi regional court decision, dated July 9, 2003, was cancelled and the JSC Madneuli application on approval of the Rehabilitation Plan was returned to the same court for repeated revision. The Private Claim, concerning Civil, Entrepreneurial and Bankruptcy Affairs Appeal Chamber of the Tbilisi Regional Court, dated November 24, 2004, was lodged by JSC Madneuli. It demanded cancellation of the appealed decision and refusal to satisfy the request of the Ministry of Finance. The decision of Civil, Entrepreneurial and Bankruptcy Affairs Appeal Chamber of the Tbilisi Regional Court, dated March 7, 2005, did not satisfy the JSC Madneuli private claim and, together with the case materials, submitted it to the Supreme Court of Georgia.

CHAPTER 8.2. MADNEULI LAST PRIVATIZATION

For several years economic and environmental problems of Madneuli were the subject of investigation by different commissions and law enforcement agencies, though extremely hard situation at the enterprise could not be (or was not) improved.

In 2003, after the Revolution, the State Property Management Agency began appointing new Supervisory Boards at major enterprises. JSC Madneuli was the first on the list. The new Supervisory Board was to provide for elimination of corruption and replacement of management at the enterprise. But replacement of the Supervisory Board and appointment of a new general director was followed by a new scandal. In six months, one of the Members of Parliament was accusing the newly appointed director and asking the Prosecutor's Office⁵⁸ to investigate his case. The newly appointed director left the post by his own initiative. In October, 2004, Koba Nakopia, who, from 2003, was the Vice-President of the Russian Company Promishleni Investor, was appointed the General Director. According to the information uploaded on the web-site⁵⁹ of Promishleni Investor, Mr. Nakopia retained the post of Vice-President even after new appointment.

In May, 2005, the Ministry of Economic Development of Georgia published invitation for expression of interest for privatisation of Quartzite LLC (50%), JSC Madneuli (97,25%) and its affiliated companies: Georgian Mining Company LLC (100%, (the company owns mining licenses on the territory of Bolnisi's ore region)), Belaz-Kavkaztrans-Services LLC (100%, activity – transportation of extracted ore), Gardi LLC (100%, activity – transportation of extracted ore), Transpetkmzidi LLC (100%, activity – drilling and blasting activities), Ecology LLC (51%, activity – filtration and neutralization of water and obtaining of copper concentrate), Sioni Football Club LLC (50%), Trans Georgian Resource LLC (50%, the company has the license for mining activities in Sakdrisi deposit) and Tbilisi Jewellery Plant.

The mentioned announcement was accompanied by absolutely strange (not saying anything about compliance with the legislation) interpretation of the privatisation procedure:

“PRIVATIZATION PROCESS:

Privatization will be carried out through a competitive process. Interested investors are invited to submit their expression of interest in writing. The letters (in English) containing the expression in interest shall be sent – in time to be received by 18:00 h. of Monday, May 31 2005 (Georgian time) to:

Ministry of Economic Development of Georgia
12 Rustaveli Str., Tbilisi 0108, Georgia
Ref: Expression of interest/Company name

After the receipt of the expression in interest, the interested parties will be supplied with the information about the companies and with the letter of invitation to submit a purchase offer, containing the related instructions and a description of the further steps of the sale procedure. [According to the Georgian version of the announcement “Interested companies shall appoint the time and place of meeting in order to make an agreement concerning an object sale”.]

⁵⁸ “ONE BAR OF GOLD, ONE TON OF CONTROVERSY” Source: The Messenger, September 16, 2004

⁵⁹ <http://www.prominvestors.com/comp.htm>

The publication of this announcement the receipt of any expression of the interest do not constitute any obligation of, or undertaking by the Ministry of Economic Development of Georgia to sell any shares, stockholdings or assets to any of the parties interested in the acquisition, nor shall it give rise to any claim or right of action by such parties for the performance of any action by the same Ministry, on any ground whatsoever. The Ministry of Economic Development of Georgia reserves the right, at its sole discretion and at any time to: (i) withdraw from the sale procedure, or (ii) to interrupt or modify it, or (iii) to exclude any interesting party from the sale procedure without giving rise to any claim for compensation or damages whatsoever by the interested parties against the Ministry of Economic Development of Georgia.”

Despite the fact that the conditions of the announcement were quite obscure, it should be mentioned, that interests were expressed by 21 local and foreign companies. The Ministry negotiated with them during about three months. In September, 2005, the Ministry stopped negotiations (the right of which it was granted by the application document) and announced selling of the enterprises on the basis of competition.

On the basis of the Ordinance No. 1-1/1013 (dated September 19, 2005) of the Minister of Economic Development, on September 21, 2005 there was announced a competition on privatisation of 97.25% of the Shares Owned by State in JSC Madneuli (12,477,682 units of one dollar value shares) and the 50% of Shares Owned by State in Trans Georgian Resources LLC. The joint initial price of the enterprises was USD 32,500,000 and the competition conditions were as follows:

- Save of the profile of JSC “Madneuli” activities within 3 years;
- Partial payment by the purchaser of 50% of the privatization amount till November 15, 2005 and payment of the rest 50% till December 15, 2005;
- Not to decrease of JSC “Madneuli” engaged staffs salary fund within 3 years;
- Save of “Madneuli” engaged staff within no less then 3 years. (The number of the engaged staff-as of 2005 -- 842 persons);
- Provision of environment protection and implementation of set norms under the law for ore utilization in order to secure license and project indicators of ore utilization, to improve and eradicate existed violations, to prevent and decrease negative impact on the environment. Environment ecologic safety program should be elaborated and submitted to the Ministry of Environment Protection and Natural Resources within 3 months after the completion of privatization process of JSC “Madneuli”. The program includes air protection, cleaning of foul water, management of remains, prevention of emergency conditions, and development of environment management systems. Accepted program should be implemented by stages within no more then 21 months after its conclusion;
- The participant of the competition should submit in an envelope a specific fixed redemption amount.

It was also said in an application, that the Debit loans of JSC Madneuli amounted to GEL 43,614,831 and Credit loans – GEL 28,702,266.

It should be also mentioned here that the list of the privatisation sites did not include Tbilisi Jewellery Plant, which was tendered alone, later. Tbilisi Jewellery Plant LLC, with the Charter Capital of GEL 8,101,484, was purchased at USD 2,020,000 by the only auction participant – Goldinvest LLC, established by Koba Nakopia, the Chairman of the JSC Madneuli Supervisory Board then, at the auction held on May 16, 2006.⁶⁰

October 24, 2005 was the deadline for bid submission. On October 25, 2005, proposals were opened at the Ministry of Economic Development of Georgia. As it turned out, a long list of the companies interested in the first application, was significantly reduced. The Ministry had to choose among the proposals of just two companies – Stanton Equities Corporation and Energy and Industry Complex.

On November 1, 2005, the British company Stanton Equities Corporation was announced the winner of the tender. It should be mentioned, as it became clear after the company’s victory, Stanton Equities Corporation represented an affiliate company to the Russian company Promishleni Investor. We would like to remind you that the former (or acting, according to the information given on their web-site) Vice-President of Promishleni

⁶⁰ “Reviving the jewelry industry in land of Golden Fleece” by Misha Kobaladze, 10/08/2006, issue # 318, newspaper “Georgia Today”. http://www.georgiatoday.ge/article_details.php?id=1616

Investor was the general director of JSC Madneuli as from October, 2004 till publication tender announcement for JSC “Madneuli” privatisation⁶¹.

Former Minister of Economic Development Irakli Chogovadze explained the decision in the following way: “the winner company will pay 35 100 000 USD and additional 16 000 000 USD to pay Madneuli’s liabilities towards Georgia’s State Budget. According to the bidding proposal of the Georgian Company “Energy and Industry Complex” they would pay 36 000 000 USD only in case if the liability towards the state budget wouldn’t exceed 8,6 million GEL. Thus, the winner company “Stanton Equities Corporation” pays 10,5 million more in comparison with “Energy and Industry Complex”. Due to this proposal “Stanton Equities Corporation” has become the winner of the bidding.”⁶²

The company having lost the tender declared⁶³ that the Ministry granted advantage to the British-Russian Stanton Equities Corporation unfairly, as the Energy and Industry Complex proposed to the Ministry better and legally elaborated conditions. Energy and Industry Complex intended to sue the Ministry, but changed its mind soon due to future business interests.

The most interesting in this situation was that, according to the Ordinance No. 1-1/1013, dated September 19, 2005, of the Minister of the Economic Development of Georgia on Privatisation of 97,25% of the Shares Owned by State in JSC Madneuli (12,477,682 units of one dollar value shares) and 50% of the Shares Owned by State in Trans Georgian Resources LLC (on the basis of which Ordinance the tender was announced on September 21, 2005), the following were the criteria for revealing the best proposal: “(1) Maximal initial price exceeding the announced initial selling price and (2) Undertaking of the obligation to fulfil competitive conditions”. Taking the above into consideration, Energy and Industry Complex should have been the winner of the tender, as it was going to pay by USD 900 000 more than the Stanton Equities Corporation. Hence, the decision of the Ministry was made in violation of its own Ministerial Ordinance (# 1-1/1013). However, the mistake was later “improved” by the winner company: we read in the agreement concluded on November 11, 2005 between Stanton Equities Corporation and Ministry of Economic Development of Georgia – the Parties confirm that the total cost of the Property equals to amount in GEL equivalent to USD 35,100,000 (thirty five million and one hundred thousand), thus representing the amount proposed by the Buyer in the tender application, plus amount in GEL equivalent to USD 910,000 (nine hundred and ten thousand), which was additionally, voluntarily proposed by the Buyer and which in total equals to USD 36,010,000 (thirty six million and ten thousand)”.

Besides violating competition conditions, the Ministry should not have considered proposals made by the companies at all, for both of them declared debt reduction as a requirement for payment. Yet the competition demand did not provide for debt reduction issue at all. It may therefore be argued that the Ministry has changed competition requirements after unsealing competition proposals.

CHAPTER 8.3. COMPLIANCE WITH ENVIRONMENTAL OBLIGATIONS

Among recently privatised businesses, JSC Madneuli privatisation was first case of incorporating some environment protection obligations into competition requirements to be assumed by new proprietor. It should be noted at the outset that these were included not by will of the Government but thanks to lobbying undertaken by non-governmental organisations, Bolnisi based local group – Kvemo Kartli Public Informational Centre and local population impacted by the enterprise. According to Sale-Purchase Agreement between Stanton Equities Corporation and the Government of Georgia of November 11, 2005, the former has assumed obligations as follows:

- To ensure uncompromising execution of environment protection and use of minerals legislation requirements with regards to JSC Madneuli licensing, design objectives and prevention of currently present violations in order to minimize negative environmental impact;

⁶¹ From September 20, 2005 the obligations of the general director were executed by Lasha Akhaladze (on the basis of the Order No209).

⁶² Stanton Equities Corporation became the owner of JSC “Madneuli”, www.privatisation.ge, News, 2.11.2005.

⁶³ “Defeated competitor protests the results of JSC “Madneuli” Privatization tender”, 01.11.2005, Prime News Agency, URL: <http://geo.primenewsonline.com>.

- In three (3) months time from completion date to prepare on the basis of consultations with the Ministry of Environmental Protection and Natural Resources and present mentioned Ministry with the Environment Safety Program; The Program shall include protection measures against air pollution, measures for sewage treatment and waste processing, prevention of emergencies and implementation of environment protection management systems.
- Gradually, in the term of up to 21 months from the date of its approval by the Ministry, implement the Program.

Following all said, by March 15, 2006, the Company should have submitted the Environment Protection Program to the Ministry. On June 7, 2005, Association Green Alternative has requested from the Ministry of Environmental Protection and Natural Resources copies of mentioned documents and JSC Madneuli and Quartzite LLC related licenses and documentation reflecting discharge of respective obligations. In response, the Ministry has informed us that examination of license conditions' fulfilment hasn't been performed yet. As an attachment, Green Alternative has been provided with the Ministry Inter-departmental Experts Council's meetings minutes (44 pages). As for Environment Protection Program, Green Alternative has been informed that "mentioned document has been registered in the Chancellery of the Ministry under the number 662".

On receiving of this odd piece of data, Green Alternative has tried to learn the reason why it has been denied the document itself. As it has been found out, the Ministry expected us to submit the payment receipt of specific fee as provided for by virtue of the law on Fee for Copying Public Information, but funnily enough the procedure of payment haven't yet been established by the Ministry at the time. As a result, Green Alternative has received requested document only in six months time, on December 5, 2006. Strangely enough, absence of payment procedure was not a hindrance to providing us with the minutes of the Ministry Inter-departmental Experts Council's meetings as mentioned above.

As we've discovered when finally provided with the document, out of 110 pages only 6 dealt with the Environment Safety Program of JSC Madneuli. The rest (as Program Appendix) was an assessment (audit) of JSC Madneuli Environmental State as elaborated by Georgian Geological Service Centre LLC in 2006. What follows are some excerpts from mentioned document:

"With regards to environment protection, plant has two major soil-related problems: pollution with heavy metals and mechanical effect on soil layers and vegetation (revegetation issue).

Main sources of soil pollution are organised (tailing dumps) and unorganised industrial solid waste accumulation facilities (the latter in several places throughout the plant territory) as well as industrial waste waters (for instance, from lime tail collectors)".

"Tail collector discharge and filtration waters are collected into special collector at the foot of Pioneer Dam, whence they should be pumped into storage pond, yet as of today the pump is down and water waste is directly flowing into River Kazretula".

"Water is being polluted mainly by several installations such as open-cast mine, pipelines, tail collectors, dumps etc., due to constant leakage of acid waste water. Possible emergency discharges are hazardous as well".

"In order to collect drainage from dumps special dam has been erected. Dam is supposed to collect drainage waters and direct them into special concentrating facility. The dam has been built in 1988-1989 and as of today does not have usable storage of water as is almost entirely silted by river drift. Technical state of the dam is inadequate, heavy metal polluted water is permanently trickling through its wall down into River Kazretula 200 meters downstream. Besides that, emergency 'volley' discharges into Kazretula are to be expected during continuous rain".

"Potential emergency discharges due to inadequate technical condition of various installations constitute danger. It should be noted that according to plant plan, drainage waters are to be collected and returned into slag storages. In actual fact, those waters are flowing into River Kazretula through three pipes".

"In February and March 2004, Environment Pollution Centre of Hydrometeorology Service and Association-

Union EKSA have performed joint study of water quality in Mashavera and Kazretula Rivers. According to the conclusion of these organisations, Kazretula River sector (from the point of open-cast mine sewage and down to Kazretula junction with Mashavera river) holds almost no living organism”.

According to the Georgian Geological Service Centre, almost no records are kept with regards to environmental protection: no inventory of air polluting sources have been carried out; no primary accounting of hazardous substances emitted is being taken; no monitoring of water and air have been performed since 1998. Monitoring of the environmental impact of Madneuli Plant operation by the Ministry of Environmental Protection and Natural Resources of Georgia is solely expressed through quarterly checks of water quality in Mashavera and Kazretula Rivers.

Only small part of violations listed in the document has been presented above. Negligence of the Ministry of Environmental Protection and Natural Resources in the light of having such a document stored in the Ministry itself is beyond comprehension.

As to Environment Safety Program, this document (along with audit) has been presented by the Company to the Ministry on March 15, 2006. According to explanation provided⁶⁴ by the Ministry, “as Madneuli Management has been well aware of the responsibility of solving environmental issues accumulated over the years of Madneuli plant being in operation, it has been considered necessary to apply to the Ministry with the request of setting up joint commission in order to review draft Environment Safety Program and subsequently elaborate future action for Madneuli management to be charged with pursuit of”.

On May 25, 2006, for the attention of non-governmental organisations, Ministry of Environmental Protection and Natural Resources Announcement on Nomination of Non-governmental Sector Representatives for Candidate Members of Joint Commission on Environmental Issues within the framework of JSC Madneuli Environmental Safety Program has been distributed. Green Alternative has expressed the wish to participate in the Commission and has submitted all required documentation (as listed in the Announcement), though no official response has been received neither with regards to assignment to the Commission nor with the statement of refusal. As it has been explained later (In October 2006 and only following Green Alternative’s request) by the Ministry of Environmental Protection and Natural Resources, Commission set up has been Company’s initiative and following change of the management the issue has remained undecided. “Presently, JSC Madneuli new management has contacted the Ministry and expressed wish and readiness to establish close cooperation with it. Cooperation as planned shall be expressed in manifold and various activities directed at steadying industrial process and management improvement. Following mentioned circumstances, draft Environment Safety Program should be reviewed. Final Program containing particular measures and their implementation dates is to be presented to the Ministry”.⁶⁵

It may be argued that by this the Company has practically denied non-governmental organisations the participation in the process consequently renouncing its publicity. In December 2006, JSC Madneuli has presented to the Ministry of Environmental Protection and Natural Resources new Environment Safety Program, contrary to its predecessor made up of 6 pages, now counting only three. 17 sentences contain all measures to be taken. The step forward as compared to the previous edition of the document is dates of implementation included. The Program has been approved by the Ministry of Environmental Protection and Natural Resources of Georgia and on February 10, 2007 (11 months beyond the date provided for within the framework of the Privatisation Agreement) the Memorandum of Intentions on implementation of the Program with Stanton Equities Corporation has been signed.

We consider, that the Ministry haven’t made good use of the rights it had by virtue of November 1, 2005 Sale-Purchase Agreement between Stanton Equities Corporation and the Ministry of Economic Development of Georgia and did not react to incompliance committed by the Company with regards to Agreement conditions that come within the competence of the Ministry of Environmental Protection and Natural Resources of Georgia. Besides, grounds for signing the Memorandum are inexplicable as no new obligations have been assumed by the Company. Therefore, it have to be assumed that signing of a Memorandum is nothing else but PR related action designed to present Ministry’s and Company’s respective failures to meet their obligations as a result of work well performed by the Ministry and expression of good will by the Company.

⁶⁴ Letter #09-15/3463 dated October 27, 2006 of the Deputy Minister David Chantladze to the Green Alternative

⁶⁵ Letter #09-15/3463 dated October 27, 2006 of the Deputy Minister David Chantladze to the Green Alternative.

It should be noted, that in November 2006, JSC Madneuli has announced tender on repeated environmental audit of the plant. The competition has been won by the British Golder Associates Europe LLC⁶⁶. By the terms of the tender, the winning company was supposed to present final assessment in 10 weeks time. According to requirements specification as elaborated by JSC Madneuli, "The Company requires an environmental due diligence audit to identify deficiencies between its current operations and internationally accepted best practices with reference to World Bank / International Finance Corporation (IFC) environmental guidelines. Furthermore, JSC Madneuli wishes to identify the extent of the environmental liabilities associated with the previous operators." Besides, according to specification requirements elaborated by JSC Madneuli, environmental assessment "the audit shall be based on available information. Investigations and laboratory analyses are not foreseen."

Carrying of the repeated environmental audit in a short time period may have following reasons: First – company plans to attract financing from leading International Financial Institutions, therefore having an assessment of the well-known international auditing company is essential. Second – Madneuli may hope, that carried in a limited time period, repeated audit would not manage to fully reflect severe situation existing at the mining complex. This would give possibility to company to question or fully refute conclusions of the previous audit. In other words, company tries to avoid past environmental damage liability. This assumption is based of facts that (a) environmental audit prepared by Georgian Geological Service Centre LLC in 2006 is no more attached to the Environment Safety Program of the Madneuli approved by the Ministry, and (b) no investigations and laboratory analyses were foreseen for repeated audit.

As Chiaturmanganese, JSC Madneuli and Quartzite LLC too haven't been issued Environmental Permits, since the law on Environmental Permits has entered into force in 1997, and both companies started their operations earlier than that. By virtue of the Governmental Decree No. 234 of December 20, 2006 on Amendment to the Governmental Decree No. 154 of September 1, 2005, JSC Madneuli should obtain Environmental Impact Permit prior to January 1, 2009. In order to be issued the Permit, JSC Madneuli is obliged to present Environmental Impact Assessment Report containing both analysis of the state of the environment (environmental audit) and plan for decrease of negative environmental impact proceeding from the plant operation. Presumably, JSC Madneuli will submit to the Ministry of the Environmental Protection and Natural Resources of Georgia the assessment report by Golder Associates and action plan based on it.

According to JSC Madneuli management, environmental audit by Golder Associates should have been completed and made public by the end of March, 2007, yet there is no hint of this.

CHAPTER 8.4. THE SAME PICTURE FOR YEARS

The positions regarding the damage applied by Madneuli to the local communities and environment held by JSC Madneuli Management, Ministry of Environmental Protection and Natural Resources of Georgia, Non-governmental Sector and local population is far from being homogenous. To highlight this statement, let us provide you with some excerpts from the article published by *Informatori* Newspaper in December, 2006:

"Nowadays, the small river Kazretula flowing by the gold-mining plant is reputed to be 'dead river', considerably polluting the stretch of land around its junction with river Mashavera too. Local population points out increase in tumorous diseases, indicating that the danger does not affect locals solely but the capital too, as markets in Tbilisi are full of foodstuff produced in Bolnisi Region.

Bolnisi Region population has requested investigation of actual risks imposed by Madneuli... Mr. Zurab Jincharadze, Head of South Caucasus Waters Program of the USAID, speaks about pollution of rivers, indicating that, 'thanks to' Madneuli, about 7 types of heavy metals are being accumulated in Mashavera and Kazretula. Extinction of life is conditioned by the high pH levels. According to Mr. Jincharadze, river water is being used for household needs and for watering of plantations in summer time. "These metals are being accumulated in the body and constitute hazard to human health. There are reasonable grounds to believe that closed cycle waters are also occasionally discharged into rivers giving the water greenish hue". According to Mr. Jincharadze, he possesses relevant photo evidence to back up his statement. With the funds provided by the local budget, Bolnisi Gamgeoba has invited Davit Tatishvili Medical Centre experts

⁶⁶ URL: <http://www.golder.com/>

to examine 706 citizens of Bolnisi. 253 of the examined suffer from mammary gland fibrous mastopathy and chronic cystic mastitis. According to Executive Director of Centre, Mr. Nugzar Bolkvadze, “epicentre of the disease distribution has been localized near Kazreti Township”. Such statistics make situation equal to demographic genocide.”

Head of Water Resources Protection Office of the Environment Integrated Management Department of the Ministry of Environmental Protection and Natural Resources of Georgia Marina Makarova confirms pollution of Kazretula River. As for Mashavera, according to Ms. Makarova the river is dangerous only at the stretch of 500 meters. Downstream the water is being purified and constantly examined. Also according to Ms. Makarova, water examination results got by the Department are congruent with those of the JSC Madneuli analyses.

Pollution of the rivers by JSC Madneuli is vigorously rejected by the Deputy General Director of the plant Mr. Janiko Kaplanishvili. According to Mr. Kaplanishvili, the plant employs closed cycle of used water refinement and its discharge into the rivers is just an idle fancy – “Water is being analyzed by Madneuli labs and level of its pollution is found to be within limits”.

Deputy Minister for Environment Protection and Natural Resources, Ms. Sopiko Akhobadze has stated that the Ministry monitors environment impact on regular basis and has put considerable effort into imposing fines on enterprises in breach with requirements quite high. Simultaneously, in her address to the media, Ms. Akhobadze has stated that mining limits issued by the Ministry for the benefit of Madneuli have expired. Gold-mine management has denied any accusations. Head of Kvemo Kartli Public Informational Centre, Mr. Giorgi Demurashvili, having been long engaged in study of Madneuli environmental impact, has stated that overground storage of wastes is hazardous for local population, and people living nearby polluted river are totally unprotected.”

Finally, to draw more or less full picture of the situation existing in Bolnisi nowadays, with no particular commentary, let us quote the letter sent on 23 January, 2006 by Bolnisi Sakrebulo (Municipality) to the local healthcare institution:



A name of the letter recipient is hidden according his request.

“For the sake of interests of the Region, please coordinate with Public Relation and Information Analysis Departments of the Sakrebulo before passing any information you have at your disposal to the media”.Head of Bolnisi Sakrebulo, N. Sabiashevili.

CHAPTER 9. CONCLUSIONS AND RECOMMENDATIONS

This report shows that inefficiency of the state property privatization in Georgia is conditioned, on the one hand, by gaps and deficiencies of Georgian legislation to ensure transparency, provide opportunities for public to participate in and influence the decision-making and ensure consideration of environmental issues in decision-making process during the privatization process; and on the other hand, by the practice of selective application of Rule of Law principle established nowadays in Georgia.

Below are presented our recommendation on measures that in our opinion, should be taken to improve legislation and practice related to the state property privatization.

1. It is necessary to improve the laws regulating state property privatisation process and General Administrative Code of Georgia, in order to strengthen the provisions on transparency of the privatisation process. The laws shall clearly define that privatisation agreement, as well as privatisation conditions influencing (or potentially influencing) state of environment and population health, cannot be declared the classified information;
2. For the cases, which can be considered the early stages of decision-making on environmentally substantial activities, the privatisation laws shall simply and understandably guarantee public participation in such decision-making process (within the frames of Article 6 of Aarhus Convention). This, as a minimum, shall be ensured for the cases, when decision on privatisation can be considered the early (initial) stage of decision-making with regard to any of the activities included into Annex 1 to Aarhus Convention;
3. Participation of Ministry of Environmental Protection and Natural Resources in State Property Privatization process shall be obligatory;
4. In order to assess the environmental situation of the enterprise, to identify ecological risks of the activity and clean-up costs of the environmental damage from past pollutions, an environmental audit of the enterprise undergoing privatization shall be obligatory; The conclusions of the environmental audit about environmental situation of the enterprise shall be presented in enterprise privatization announcement; environmental requirements elaborated through the audit should be reflected in conditions of the competition during the privatization and finally in privatization agreement as an obligation; It is also important that agreement shall set schedule times for environmental obligations and sanctions on default on an obligation;
5. More effective mechanisms of monitoring, including mechanisms ensuring public control of compliance with environmental requirements in privatisation process, shall be incorporated into the laws on privatisation;
6. As the practice demonstrates, the public officials have extremely poor knowledge of Aarhus Convention and even legislation of Georgia with regard to requirements of transparency of environmental information (and public information in general). Accordingly, it is reasonable to arrange trainings on transparency of environmental and public information in general for all public officials having connection with state property privatisation process. The trainings shall also cover issues of introduction and application of Aarhus Convention provisions in practice;
7. The society shall seek the ways for more active use of the existing legal mechanisms ensuring availability of environmental and public information in general, and these instruments, certainly, include the Aarhus Convention. In case of violation of the requirements of Aarhus Convention, society shall protect its rights through administrative of court proceedings. In case of violation of requirements of the Aarhus Convention, along with the domestic protection mechanisms, the other procedures for ensuring the compliance with the Convention, like applying to the Convention Compliance Committee, shall be employed;
8. Against the background of the active disposal of the state property to the local self-governing entities, it is likely that soon, self-governing entities would commence intensive sale of their property – “aggressive privatization” at local level.

Taking into the account above-mentioned, it is extremely necessary to improve legislation defining the scope of competence, rights and responsibilities of self-governing entities, in order to ensure transparency and eliminate a possibility of corruption. It is also very important that, local self-governing entities shall have enough capacity to fully exploit authority delegated to them, while public (especially, local communities) shall be ready to be effectively involved in decision-making. Therefore, it is important to take appropriate measures for local capacity building in this direction.



Green Alternative

Visiting address: 5a Kipshidze Street, IV entrance, VII floor

Mailing address: 62 Chavchavadze ave., 0162, Tbilisi, Georgia

Tel: +995 32 22 16 04; Fax: + 995 32 22 38 74

E-mail: greenalt@wanex.net

Web: www.greenalt.org

