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Natural Resource Management and Factors Conducive to Elite Corruption



The study has been prepared by Green Alternative with the support of Open Society Georgia Foundation within the framework of the coalition project Detection of Cases of Elite Corruption and Governmental Pressure on Business. Partner organizations in the coalition project are: Economic Policy Research Centre, Green Alternative, Transparency International Georgia and Georgian Young Lawyers' Association. The opinions expressed in the present publication represent the position of Green Alternative and do not necessarily reflect the positions of Open Society Georgia Foundation or partner organizations.

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Photo@ Green Alternative Khde Gorge, River Brolistskali drained due to construction of the Kazbegi Hydropower station

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NATURAL RESOURCE MANAGEMENT AND FACTORS CONDUCTIVE TO ELITE CORRUPTION

Preamble

In developing countries natural resource management is often accompanied by corruption and this issue is well documented¹. A lot of studies conducted worldwide confirm that the correlation between utilization of natural resources and corruption levels is largely determined by the quality of democracy in the country². A phenomenon that seems strange at first glance has been revealed – under lack of democracy and rule of law, the countries rich in natural resources are developing more slowly than the resource-poor countries³. The main reason is that abundance of natural resources provides a breeding ground for corruption, which in turn lowers economic performance⁴. In addition, the studies make it clear that democratization may become a powerful tool in the struggle against corruption even in the countries dependant on the exploitation of natural resources.

In any country, corruption poses a huge political threat to the statehood. The threat further aggravates when corruption is associated with natural resource management: as a rule, social and ecological issues are neglected in order to earn maximum profits in a short period of time that ultimately results in degraded ecosystems, squandered and damaged natural resources; human rights, among them property rights, rights to participate in decision making, access to information, living in a healthy and safe environment and other rights are violated. Degradation of ecosystems, first and foremost, has an impact on poor, indigent population dependant on ecosystem services⁵; it causes reduction of their incomes and probably their forced resettlement. Ultimately, all these have a painful impact on the country's economy. Thus, corruption associated with natural resources strikes a destructive blow to national interests.

Generally, corruption may be spread in the entire system, from permitting to lawmaking. Political corruption may be spread in any type of government. The forms of corruption are different and most widespread among them are patronage, bribe-taking, extortion, influence peddling (making “necessary” decisions in exchange for desirable benefit), swindling, embezzlement, misappropriation of budgetary funds, nepotism⁶ and cronyism⁷.

The following factors conducive to corruption may be distinguished in the country:

- Poverty and grave social background;
- Great financial incentive;

¹ Charles Palmer, The Nature of Corruption in Forest Management World Economics, Volume 6, Number 2, 2005, p. 1 – 10.

² Sambit Bhattacharyya & Roland Hodler, Natural Resources, Democracy and Corruption OxCarre Research Paper No. 2009-20, available at: <http://www.oxcarre.ox.ac.uk>;

³ Erwin Bulte, Richard Damania, Resources for Sale: Corruption, Democracy and the Natural Resource Curse, The B.E. Journal of Economic Analysis & Policy. Volume 8, Issue 1, ISSN (Online) 1935-1682, DOI: 10.2202/1935-1682.1890, February 2008 <http://www.degruyter.com>

⁴ Leite and Weidmann, 2002; Sala-i-Martin and Subramanian, 2003; Isham et al., 2005.

⁵ Ecosystem services are the direct and indirect contributions of ecosystems to human well-being (for example, food, construction materials, firewood, potable water and air quality control, flood prevention, etc. For details, please, visit www.teebweb.com.

⁶ Nepotism – prevailing of relatives' personal interests over state interests; favoritism granted by officials to their relatives.

⁷ Cronyism – partiality to long-standing friends, especially by appointing them to governmental positions.

- Scarce financing of public servants;
- Existence of closed groups affiliated with the government, whose private interests are portrayed as “public interests” (so called “revolving door” and “Old Boy network”);
- Low political, legal and environmental awareness of a significant part of the population;
- Controversial legislation, the requirements of which are frequently impossible to be fulfilled;
- Low level of law enforcement;
- Neglecting the principle of rule of law;
- Restriction/neglecting of freedom of speech, expression or press;
- Incorrect planning and management of branches related to utilization of resources;
- Neglecting local traditions and peculiarities of natural resource utilization;
- Insufficient transparency of the government and lack of accountability;
- Faulty legislation and institutional arrangement, which fails to rule out conflict of interests;
- Lack of political will for eradication of corruption and for law enforcement;
- Imperfect electoral processes (expensive election campaigns, costs of which exceed the sources set by the law on political party funding);
- Imperfect legislation/control of donations for election campaigns.

Along with the above mentioned issues, there are specific problems in various sectors related to use of natural resources in Georgia (forestry, hunting, energy, extraction and processing of minerals), which largely determine unsustainable management of these resources and create the opportunities for corrupt deals. Among such problems there is the absence of reliable data on the amount and condition of natural resources. Since no comprehensive forest inventory, hydrological observations, flora and fauna surveys, exploration and assessment of mineral resources have been carried out in Georgia for decades, the key issues of land ownership and land use are obscure. Absolutely groundless decisions were being made and are still being made concerning utilization of natural resources or implementation of such projects, which may have an irreversible impact on natural and social environment. Besides specific problems of separate sectors, there are some open-ended problems, which are common for all sectors: bad legislation and practice concerning public involvement in decision making; deplorable level of monitoring and control of fulfillment of license and permit conditions; faulty environmental impact assessment system; impunity of environmental crimes, etc. Lack of professionals equipped with modern knowledge (in the issues of forest and hunting management, hydro-ecology, energy, mining, natural resource management, etc.) leads to extremely negative consequences.

A lot of studies have been conducted in Georgia covering the issue of corruption in the field of natural resource management (forestry, energy and mining industry). In his book *Who Owned Georgia 2003-2012*⁸, journalist Paul Rimple describes the situation before 2004 as follows: “When I arrived in Georgia in 2001, authorities and businessmen were pillaging the country’s resources silly. The entire country was on the take, like a huge 1930’s Chicago on overdrive. The police protected nobody but themselves as they extorted money from random citizens to make their daily wages. The Ministry of Energy sold off what little energy assets there were and kept the nation in the dark and frozen in the winter. Everybody knew who the criminals were because they flaunted their nepotism with pride. Nobody got rich legitimately in Georgia”.

⁸ Paul Rimple, 2013, *Who Owned Georgia 2003-2012*, Transparency International Georgia

Following the Rose Revolution in 2003, the government set building of strong democracy based on human rights and rule of law as well as eradication of systemic corruption as its top priority. Unfortunately, in separate spheres, including in the issues of natural resource management, the struggle against corruption had merely a declarative nature and as expected, it did not yield any tangible results. The struggle against corruption was identified only with repressive measures (such as dismissal of corrupt officials and/or bringing charges against them) and endless structural changes in government agencies accompanied by relevant steps aimed at increasing government's transparency and accountability. Contrary to this, legislation and practice ensuring public participation and transparency in the environmental decision making process has further aggravated⁹.

Various studies note that despite reforms implemented in Georgia in 2003-2012, elite corruption still remains one of the main problems in the country¹⁰. There are such characteristic features of elite corruption in Georgia, as: tendency to abuse official powers; favoritism on the part of the state and internal deals between separate representatives of the business; the judiciary is under a political influence; the influence of the government on court decisions is strong. Decisions taken by courts under the government pressure are in a number of cases illegal, which means that the judiciary is not independent in the country. Lack of transparency of the judiciary impedes the inflow of foreign investments into the country and raises mistrust among international investors¹¹.

The book "Who Owned Georgia 2003-2012" by Paul Rimple reads that since 2004, laws have sometimes been quickly passed that just so happen to accommodate friendly business owners¹². One example, according to the book, is a 2012 law which lifted the ban of hunting endangered animals. "This law was passed before anybody could do an adequate population count of the endangered species and before any means to enforce hunting laws was established. But it's a good law for Saba Kiknadze, the former Head of the Tourism Department, who is now the CEO of several tourism-related businesses, including the high-end hunting outfitter Caucasian Safari, which provides guides for the hunting of endangered species", the book reads. Along with other cases of elite corruption, the book also discusses the issues related to Chiaturmanganumi, Zestaponi Ferroalloy Plant and Madneuli.

Green Alternative prepared three research reports within the framework of the coalition project Detection of Cases of Elite Corruption and Governmental Pressure on Business¹³ implemented with the support of Open Society Georgia Foundation. Three problematic sectors were identified: utilization of mineral resources; forest use and hydropower. One company operating in each respective field was also identified according to the following criteria: quality of negative impact of the activities carried out by the subject on natural and social environment; preferential position in the sector; frequency and scale of violations; nepotistic links; initiatives/amendments made in favor of a particular business and frequency of exceptions made. Three reports were prepared in frames of this project: 1. Madneuli above the Law, which discusses the activities of the companies involved in extraction of non-ferrous metals in Bolnisi district; 2. The report Energy Projects and Corruption in Georgia discusses

⁹ I. Macharashvili, 2012, Problems and Challenges of Forest Governance in Georgia:, Tbilisi, Green Alternative, available at <http://www.greenalt.org>

¹⁰ The 2011 report of Transparency International Georgia on corruption perception index; Economic Policy Research Center, 2012, Detection of Cases of Elite Corruption and Governmental Pressure on Business

¹¹ Economic Policy Research Center, 2012, Detection of Cases of Elite Corruption and Governmental Pressure on Business

¹² Paul Rimple, 2013, Who Owned Georgia 2003-2012, Transparency International Georgia

¹³ Partner organizations in the coalition project are: Economic Policy Research Center; Green Alternative; Transparency International Georgia and Georgian Young Lawyers Association.

the activities of the company Peri and other companies affiliated to it; 3. The report Hunting of Endangered Animals describes Georgian government's attempts to introduce commercial hunting of endangered species included in the Red List and the activities of the companies associated with this issue. Unfortunately, these reports have once again highlighted various characteristics of elite corruption; we have seen systemic problems, which create a fertile ground for the development of elite corruption. At the same time, it appeared that in a number of cases the same persons appear in the studies related to various sectors.

The present document has generalized the problems outlined in the above three reports and the recommendations were prepared concerning the measures to be implemented in the above discussed sectors and the struggle against corruption.

Company-Tailored Legislation

Adoption of legal acts tailored to particular groups or persons is quite an acceptable practice in Georgia. As a rule, such acts are approved without proper substantiation and even through neglecting multilateral international agreements and national legislation. Such facts were observed in the three researched cases.

In November 2011 the Parliament made amendments to a number of laws to help certain companies invite foreign hunters to hunt endangered species. The Government and the Ministry of Energy and Natural Resources even issued subordinate legislation to pave the way for immediate launch of hunting of the Red List species.

Other companies mentioned by us in the reports also seized the opportunities created by the above mentioned amendments to the Law of Georgia on the Red List and the Red Data Book of Georgia. On May 14, 2012 the Government of Georgia issued decree No 928 "On the Measures to Ensure Unhindered Construction of Shilda HPP¹⁴." According to the decree, to ensure unhindered construction of the project of public and state significance - Shilda HPP - near the village of Shilda in the Kvareli municipality, JSC GGEDC (identification code 406046130) was granted the right to remove from the environment 27 units of endangered walnut trees existing on 9378 sq/m of land owned by the company.

Although pursuant to the amendments made on November 8, 2011, the Law of Georgia on the Red List and Red Data Book of Georgia allows extraction (removal from the environment) of wild endangered plants, there are no legal criteria for defining "public and state significance." Claiming that construction of a 5-megawatt Shilda HPP on the River Chelti has simultaneously "public and state significance" is beyond any logic.

Legal acts related to the construction of Dariali HPP are most notable among unlawful decisions made in favor of the companies. The Ministry of Environment Protection issued a positive conclusion of ecological expertise on the project of construction and exploitation of Dariali HPP submitted by Dariali Energy Ltd in spite of important violations. The project documents submitted by Dariali Energy Ltd clearly noted that a part of the planned hydro power plant would

¹⁴ According to the text of the decree, it has been issued pursuant to article 24, paragraph 1, subparagraph "f" of the Law of Georgia on the Red List and Red Book of Georgia and paragraph 23 of the same article, as well as paragraph 5 of article 12 of the rule approved by decree No 242 of the Government of Georgia dated August 20, 2010 "On Approval of the Rule of Forest Use."

be located in the area of the Kazbegi National Park that is prohibited by Georgian legislation¹⁵. Actually, Dariali Energy was asking for a permit to carry out an unlawful action. The Ministry of Environment Protection did not dare to agree on this explicit violation (construction of HPP inside the protected area). Therefore, to meet this requirement, initially the government issued a decree and later (after the construction permit was issued with violations), the Parliament amended the law. In particular, the Government of Georgia issued decree No 2247 on November 18, 2011 by which it allocated 87737 sq/m of land area to Dariali Energy Ltd for the construction of Dariali HPP in the area of the Kazbegi National Park prior to obtaining the construction permit. Thus, Prime Minister Nika Gilauri exceeded his official powers (because it is the Parliament's competence to solve this issue) and adopted an absolutely illegal decision. It should be noted (as it turns out from the materials of administrative proceedings) that then Head of the Law Department of the Georgian Government, Zaza Nanobashvili had some questions about whether it was justified to allocate a part of the protected area for the construction of HPP through using the provision on the approval of the rule of forest use¹⁶. But finally everything was solved as the company and the Energy Ministry wanted it. Noteworthy that the Department of Ecological Expertise and Inspection of the Ministry of Environment Protection (then led by Nikoloz Chakhnokia) obtained the text of the decree by means of the company representatives. Such solution was so much incorrect from legal point of view that even the Parliament got involved in the process: On March 13, 2012 the Parliament of Georgia, upon the Energy Ministry's initiative, approved the Law on Making Amendments to the Law of Georgia on the Status of Protected Areas, through which 20 hectares of the area were cut from the Kazbegi National Park. According to the law, only the Parliament was authorized, upon submission of the Ministry of Environment Protection, to make an amendment on reduction of the protected area and this could only happen in emergency situations envisaged by law (catastrophic and irreversible destruction of the protected ecosystems, need for large-scale restoration works)¹⁷.

Another unprecedented legal act approved in favor of the company Peri was decree No 460 of the Government of Georgia on exempting from providing an environmental impact assessment report concerning the construction of Khadori 2 HPP on the River Alazani. A month earlier, on May 22, 2009 the Minister of Environment Protection issued order No 292 on refusal to issue an environmental impact permit to Peri Ltd, citing that the report submitted to the ministry was of extremely low quality. According to the decree signed by Nika Gilauri, "because of common state interests it is necessary to begin the activity and to take a decision duly." The law does not explain what this provision means or what particular conditions should exist to prove the existence of common state interests.

Another non-transparent and doubtful action by the authorities is the decision made in favor of the same company concerning the construction of Kazbegi HPP in Khde Gorge. Without any substantiation and calculation of any positive or negative consequences and in order to satisfy the desire of the owners of Kazbegi HPP Ltd, various governmental structures made a decision within a week about construction of a new, at least 5-megawatt HPP on the River Brolistskali (presidential decree was also issued – No 04/06/02, June 4, 2012).

¹⁵ Article 5 and paragraph 4 of article 20 of the Law of Georgia on the System of Protected Areas

¹⁶ Decree No 242 of the Government of Georgia dated August 20, 2010 on Approval of the Rule of Forest Use

¹⁷ Law of Georgia on the System of Protected Areas, article 14.2

Government agencies had to make decisions on the construction of HPP in Khde Gorge twice. In spring 2013 the Ministry of Environment Protection issued a negative conclusion of ecological expertise that was followed by a serious pressure on the ministry from the Prime Minister and the Energy Ministry. Moreover, the term of validity of the memorandum on the construction of Kazbegi HPP was prolonged for the company Peri without any substantiation. This term was violated because of failure to obtain the construction permit due to preparing a low-quality environmental impact assessment report.

Especially noteworthy is the law adopted by the Parliament of Georgia in March 2012, according to which in exchange for paying compensation in favor of the state, a person will be discharged from liability for the violations committed in the sphere of environmental protection and natural resources. It was clear from the very beginning that the law contained environmental, corruption, economic, social and political risks and threats and contradicted the Georgian constitution, undertaken international commitments, all key environmental principles secured or defined by international and national environmental legislation. Madneuli JSC and Quartzite Ltd seized upon this opportunity and in exchange of paying GEL 13 million to the state budget, all their violations and offences committed in a period between April 1, 1994 and May 14, 2012 were forgiven without assessing the harm caused to the environment during these 18 years or other consequences of their violations¹⁸.

After the 2012 parliamentary elections, the law was abolished by the Georgian Dream parliamentary majority and the Constitutional Court ruled that it was illegal. Despite it, the tradition of issuing illegal acts in favor of the company RMG – legal successor of Madneuli JSC and Quartzite Ltd – still continued. In particular, by order of the Minister of Culture and Monument Protection¹⁹, an illegal requirement of this company was satisfied and the status of immovable monument of national importance was removed from the archaeological site in the village of Sakdrisi of Bolnisi municipality, which, according to scientific assessments, is older than 5000 years and is the world's oldest gold mine (that was popularized by RMG before 2012 and even used for advertising its own activities). Five days after issuing this order, the President of Georgia also issued an illegal order, according to which the monument was removed from the list of immovable cultural monuments of national importance²⁰.

It should be noted that while blocking all the initiatives submitted by Georgian Dream, President Saakashvili was giving his consent to all the projects prepared by the opposing political team associated with environmental degradation and lobbying of company interests. One more natural monument – Khde Gorge²¹ faced a serious risk as a result of synchronous actions of the Georgian Dream's government and Mikheil Saakashvili. By joint efforts of the Government and the President, the validity of memorandum was prolonged for the company Peri until it obtained a permit on the construction of Kazbegi HPP in this gorge.

¹⁸ The same agreement cost Sakhshiri Ltd only GEL 40 000. For details, please view: N. Gujaraidze, 2013, Secretly Concluded Agreements Against the Environment, Green Alternative, www.greenalt.org

¹⁹ Order No 03/108 of the Minister of Culture and Monument Protection dated July 5, 2013

²⁰ Order No 563 of the President of Georgia dated July 10, 2013

²¹ K. Gujaraidze, 2013, Energy Projects and Corruption in Georgia, Green Alternative, www.greenalt.org

Political Donations

As already mentioned in the preamble, one of the factors conducive to elite corruption is non-transparent electoral process and imperfect legislation and monitoring over political donations. A number of surveys give a good description of donations made by the company Madneuli (presently RMG Copper) to the ruling political party. For example, three senior executives from the company Madneuli, including its financial director, procurements director and production director, donated to the ruling party total of GEL 180,000 (GEL 60,000 each) and one former senior executive, Giorgi Devadze, who at the time of donation in May was Madneuli's CEO, contributed GEL 60,000²². Madneuli was the main source of financing for the United National Movement and during the first six months its several executives donated a total of GEL 240 000 to the party.

Our study has also highlighted that those companies in favor of which the government was making quite controversial decisions, were donating significant funds to the ruling political team. For example, during the 2010 local elections the company Peri donated GEL 50 000 to the ruling National Movement party. By the 2012 parliamentary elections Georgian legislation had already banned for political parties to receive donations from companies. Therefore, the persons associated with Peri Ltd and its affiliated companies became the National Movement's donators, among them: Zurab Alavidze, director of JSC Dariali Energy – July 30, 2012, GEL 35 000; Lasha Iordanishvili, former director of JSC Dariali Energy, co-owner of Kazbegi HPP Ltd - July 10, 2012, GEL 40 000; Ioseb Mchedlishvili, owner of 96% of shares of Peri Ltd - July 10, 2012, GEL 60 000.

Selective Enforcement for Government Favorites

The companies selected by us (Peri Ltd and its subsidiaries, RMG) are operating on the basis of natural resource utilization licenses and/or construction permits²³. As a rule, monitoring or control over fulfillment of permit or license conditions is not carried out at all or is carried out with great shortcomings. For example, in connection with the construction of a 19-megawatt Larsi HPP on River Tergi, the Ministry of Environment Protection issued a positive ecological expertise conclusion to Energy Ltd (N28, 21.11.2011). The conclusion set a number of obligations including carrying out of environmental monitoring per year and self-monitoring per quarter; waste management; carrying out a detailed botanical research; fulfillment of river bank reinforcement works; development of environmental management plan within 3 months after obtaining an ecological expertise conclusion, involving fire prevention measures and reaction on emergency situations during the period of construction and exploitation; biodiversity monitoring and impact mitigation measures, including restoration of habitats equivalent to damaged ones; planting of endangered species to conservation centers, etc.

As it appeared the Ministry of Environment Protection had no information whether these conditions were fulfilled at all, because "according to the terms of No 28 ecological expertise conclusion, the project developer has no obligation to submit additional reports to the

²² Political Party Donations, Civil Georgia, Tbilisi, 21.06.12, <http://civil.ge/>; Paul Rimple, 2013, Who Owned Georgia 2003-2012, Transparency International Georgia

²³ According to Georgian legislation, if the activity requires construction permit, no environmental impact permit is issued for it. During the second stage of construction permit issuance the Ministry carries out the project's state ecological expertise and issues a relevant conclusion that is envisaged by the construction permit issuing agency (proceeding from the project content, it may be the Ministry of Economy and Sustainable Development or a local municipality). The conditions of ecological expertise conclusion represent the binding conditions of construction permit as well.

ministry²⁴". This circumstance becomes more regretful as EIA reports related to various activities repeat exactly those sentences, which define Larsi HPP's obligations (including in Khudoni HPP, which is the largest project). As it appears, the project developers hoped that the Ministry of Environment Protection would not traditionally examine the fulfillment of permit conditions.

No sanctions were imposed on Madneuli for 11 months delay in the fulfillment of environmental obligations defined by the privatization agreement. Later, to cover its inaction, the Ministry signed "the memorandum" with the company in order to fulfill the so called environmental obligations. As it turned out later, the government agency did not pay any attention to the fulfillment of obligations set in the memorandum, because, according to the Ministry's written explanation (letter N06-13/265, 15.04.2008) "the memorandum does not represent a legally binding document."

As we have already mentioned above, the agreement was concluded between the state and the two companies – Quartzite and Madneuli, according to which in exchange of paying GEL 13 million to the state budget, all their violations and offences committed during 18 years were forgiven. An obligation was imposed on the companies to carry out certain measures. However, imposing an obligation of implementing the above mentioned measures was a mere formality and no sanctions were envisaged in case of non-fulfillment of this condition. Later, Green Alternative clarified²⁵ that the Ministry of Energy and Natural Resources (which was the party to the agreement) did not have any information about the fulfillment of the plan envisaged by the agreement and neither had it implemented any measures to obtain this information. The situation did not change after 2012 change of government. According to Ministry of Environment and Natural Resources (the issue of structural changes fell under its competence) the Ministry had no information on the implementation of commitments under the Agreement²⁶.

Inaction of government agencies is also important in the context of selective enforcement, when clear and rough violations punishable under criminal code are quite obvious. In particular, neither the Ministry of Energy and Natural Resources, nor the Ministry of Environment Protection and local self-government bodies reacted on the fact that construction of hydropower plants was launched in the Kazbegi district before the completion of the environmental impact assessment process as well as before issuing a relevant permit, that according to Georgian legislation, is a criminal offence. It should be noted that Green Alternative submitted materials related to this issue to the parliamentary committee for environment protection. Committee chairman, Gia Tsagareishvili supposed that there were signs of criminal offence and sent the issue to the prosecutor's office for further reaction. Green Alternative also applied to the prosecutor's office in November 2012 (and later in December – with additional circumstances) and demanded the prosecutors to investigate wrongdoings related to the Dariali HPP construction project. However, the complaint has yielded no results so far except of long questioning of Green Alternative's representative²⁷. The Ministry of Environment and Natural Resources Protection of Georgia neglected the fact that RMG Gold (former Quartzite Ltd) submitted EIA report to obtain an environmental impact permit for the construction of platform for alkali treatment only after the company had already constructed these platforms. Similar offences with controlling authorities closing their eyes on them have acquired a regular nature.

²⁴ The ministry's letter N286507.11.13

²⁵ On December 6, 2012 Green Alternative received an answer from Irakli Khmaladze, the head of the Law Department of the Ministry of Energy and Natural Resources; the organization was requesting information about the fulfillment of the plan of actions agreed on the basis of the agreement signed with Madneuli JSC and Quartzite Ltd on May 15, 2012 in the sphere of environmental protection and natural resources (most part of actions envisaged by the plan should have been fulfilled already).

²⁶ N. Gujaraidze, 2013, Madneuli Above the Law, Tbilisi, Green Alternative

²⁷ As of March 3, 2015

Judicial Practice

During the last years Green Alternative has repeatedly applied to various government agencies with lawsuits and/or administrative complaints. Along with other issues, Green Alternative had to launch court and administrative disputes over the Bolnisi non-ferrous metal deposit, hunting of animals included in the Red List of endangered species and construction of HPPs in the Kazbegi district.

It should be noted that traditionally the courts of various instances were repeating the assertions provided in the counterclaims of government representatives and were actually making unjustified decisions on rejecting Green Alternative's lawsuits. In one concrete case, Green Alternative submitted the Georgian Ombudsman's conclusion²⁸, but not only the court did not take the ombudsman's conclusion into consideration, but it even did not consider it. The quality of judicial independence is put under serious doubt as a number of government decisions, annulment of which was demanded by Green Alternative, were cancelled or amended upon the government's and/or the parliament's initiative in the period after the government changed following the October 1, 2012 parliamentary elections. Court disputes related to energy issues were the only exception. It should also be noted that practically nothing has changed at the Ministry of Energy as a result of elections, in terms of staff issues.

During the last years Green Alternative has experienced a number of cases in its judicial practice, when in the process of considering administrative cases in common courts, during an admissibility hearing the defense filed a motion to recognize Green Alternative as a wrongful claimant citing that no immediate and direct harm was caused to the organization. However, there had been not a single case, when after referring to relevant articles of the Aarhus Convention by Green Alternative, any administrative authority and/or court took this demand into consideration and rejected complaint/lawsuit as inadmissible. In this context, the situation aggravated following the 2013 October elections. Green Alternative filed a lawsuit to the Government's Chancellery, demanding cancellation of the order issued by the Minister of Culture and Monument Protection, by which the latter revoked the status of cultural heritage monument from Sakdrisi's oldest gold mine. By decree of October 3, 2013, the Government of Georgia made a decision to reject Green Alternative's administrative complaint. The explanation about refusal notes that Green Alternative is a wrongful claimant, because the dispute is about public participation in decision making, and according to the Aarhus Convention, "a person has the right to appeal only against the issues related to access to information²⁹." The Prime Minister's representatives continued this tradition during other court hearings too – they were demanding to recognize Green Alternative as a wrongful claimant and not to discuss the lawsuit on the case, when Green Alternative was demanding to annul the government's decree³⁰ on the construction of hydropower plants³¹. This issue is more regretful taking into consideration the fact that in the period of making this decision, the Prime Minister's adviser was the former chairperson of Georgian Young Lawyers Association (GYLA), Tamar Chugoshvili; deputy chairperson of the Parliament's human rights committee was Tamar Kordzaia, former member of GYLA board (who was representing Green Alternative's interests at a number court hearings), while Khatuna Gogaladze, former head of the Aarhus Center, held the position of the Minister of Environment Protection.

²⁸ On the basis of Green Alternative's statement, the Georgian Public Defender studied the issue of legality of issuing forest use license; it considered Green Alternative's requirements legal and concluded that in the discussed cases public interests were prevailing over the private person's interests and the disputable acts should have been annulled.

²⁹ <http://greenalt.org/> Court disputes: Administrative complaint filed by Green Alternative and Irina Gambashidze on revoking the status of immovable monument from the oldest gold mine of Sakdrisi-Kachagiani.

³⁰ Decree No 214 of August 21, 2013 of the Government of Georgia

³¹ After hearing Green Alternative's explanations, Judge Inga Kvachantiradze rejected the government's request.

Another problem of access to justice is long delays in court proceedings, frequently for unclear reasons. In its reports, Green Alternative describes the cases, when the trials related to issuing timber licenses lasted for even two years. The Tbilisi City Court has commenced proceedings over Green Alternative's lawsuit, in which the latter requested cancelation of the government's decree No 2247 of November 18, 2011, by which, as already mentioned above, a part of the Kazbegi National Park had been allocated to JSC Dariali Energy before it obtained Dariali HPP construction permit. The court commenced proceedings in early 2013; however, no trial on the merits of the case has been launched so far³².

“Revolving Door” and “Old Boy Network”

The 2011 assessment of National Integrity Systems conducted by Transparency International in 26 countries of the European Union identified the revolving door phenomenon (movement of individuals between positions in the public and the private sectors) as one of the primary current sources of corruption risks in the region³³.

Another term used in relevant surveys to describe the factors conducive to corruption or one of the types of corruption is the so called “Old Boy Network”³⁴, an exclusive network that links members of a profession, social class, or organization through which the individuals assist one another in business, politics, etc. This term is probably most suitable for Georgian reality and the mentality of its citizens; however, according to various studies, such “networks” represent a problem even in those countries, which are believed to be an example of decency and welfare, among them Japan, Finland, Switzerland, USA, etc. “The Old Boy Network” is considered the way of doing business by elite. As a rule, members of such networks do not pay money to each other for the services rendered. The networks exist on the basis of firm personal and informal links. Most of these mechanisms are unjustified from ethical point of view even if legislation is not violated³⁵.

Green Alternative focuses on the revolving door phenomenon in all its three reports. “Business relations” between the company Madneuli and Quartzite and MP Koba Nakopia is thoroughly described in a number of reports³⁶. After being elected as a member of the Georgian Parliament, Koba Nakopia formally cut his relations with the company, but his numerous media statements or other information, including about the sponsors of the film dedicated to the 2008 August war, as well as the fact that Koba Nakopia's son at the age of 22 held the position of director general's consultant at Quartzite Ltd and his salary exceeded GEL 5 million per year, prove the contrary. Today top positions in RMG are held by those persons, who during their tenure in public service were responsible for granting licenses to this company and controlling the fulfillment of their conditions³⁷. For example, top positions in the company were held by Zurab Kutelia (former head of mineral resources protection and mining department at the Ministry of Environment and chairman of Interagency Experts' Council under Ministry of Environment until 2004) and Solomon Tsabadze (until 2003 he was head of environment permits and state environmental expertise department at the Ministry of Environment and Natural Resources

³² As of March 3, 2015

³³ Transparency International Georgia, 2013 “Businessmen in Politics and Politicians in Business: Problem of Revolving Door in Georgia”

³⁴ U. Schaede, 1995, The “Old Boy” Network and Government Business Relationships in Japan, Journal of Japanese Studies, Society for Japanese Studies

³⁵ Finland afflicted with old-boy networks, European Commission views, 4 Feb, 2014; [Old snakes in the garden, 26 Jul, 2012](#); [Old boy networks have a strong foothold in Finnish municipalities, a study suggests, 16 Jul, 2012](#); [Old boy networks a Finnish problem, says corruption organization 26 Apr, 2012](#) <http://www.helsinki.fi/>

³⁶ See publications at: www.greenalt.org; www.transparency.ge etc.

³⁷ Legal successors of Quartzite and Madneuli are RMG Gold and RMG Copper, respectively.

Protection). Besides them, other former employees of the Ministry of Environment Protection are also holding various positions in the company.

Director of Dariali Energy Ltd, Zurab Alavidze was the deputy minister of economic development. Just this ministry is responsible for issuing permits on the construction of small and large hydropower plans and controlling the fulfillment of their conditions.

Some persons affiliated with the company set up to allow hunting of animals included in the Red List of Endangered Species, among them Saba Kiknadze (former chairman of the Department of Tourism and Resorts under the Ministry of Economic Development) and Datuna Rakviashvili (former deputy minister for reintegration and later deputy ambassador of Georgia to the United States) held top positions in government agencies.

“Revolving Door” has never been and still is not a strange phenomenon in business and government agencies associated with utilization of natural resources. The most noteworthy among them is Zviad Cheishvili’s “movement” between the largest company involved in timber business and top positions regulating this very field (Head of the Department of Licenses and Permits; Head of the Forestry Department; Deputy Minister of Environment Protection; Deputy Minister of Economy and Sustainable Development)³⁸; a consultancy “Gutidze, Damenia, Chantladze Solutions”³⁹ set up by David Chantladze (former first deputy minister of environment protection; minister of environment protection; deputy head of the Georgian President’s administration) in association with former Deputy Economy Minister Kakha Damenia, which was developing quite doubtful documents as a result of expensive state contracts (for example, Environmental and Social Impact Assessment of the Tbilisi Railway Bypass Project; new Forest Code).

It is worth noting that according to article 65 of the Law of Georgia on Civil Service, “a civil servant dismissed from the service may not for three years from the day of the dismissal serve in an agency or start working in the enterprise he/she has been systematically supervising for the last three years. He/she may not receive any income from such an agency or enterprise during those three years.” The above mentioned cases represent a clear example of neglecting this part of legislation.

Replacement of one and the same persons on top positions in energy companies and government agencies is especially obvious. Deputy Minister of Energy and Natural Resources (2011-2012) Giorgi Kavelashvili was the financial director of Kala Capital Ltd and Arsenal Development Ltd (the both companies are owned by Kakha Kaladze). After Kakha Kaladze was appointed as the Minister of Energy and Natural Resources, Giorgi Kavelashvili quit the post of deputy minister. But Mariam Valishvili, who also worked for the companies affiliated with Kaladze, retained her post of deputy minister. Valishvili was the head of energy group at Kala Energy and Natural Resources Ltd and director general of JSC SakHidroEnergoMsheni. What is most interesting, according to the data of the Registry of Entrepreneurial and Non- Entrepreneurial (Non-Commercial) Legal Entities, in parallel with serving as the deputy minister in 2008-2012, Mariam Valishvili also worked as the director of TOT Energy Ltd (the company, where Kakha Kaladze also owned a share)⁴⁰. Immediately after coming to power, Kakha Kaladze appointed one more his business partner, Gia Kavtaradze as his deputy. However, the latter resigned shortly after the appointment in response to conflict of interests accusations voiced against

³⁸ Macharashvili, 2012, Problems and Challenges of Forest Governance in Georgia:., Tbilisi, Green Alternative; Transparency International Georgia, 2013, “Businessmen in Politics and Politicians in Business: Problem of Revolving Door in Georgia”, Tbilisi

³⁹ <http://www.solutions.ge>

⁴⁰ Registry of Entrepreneurial and Non- Entrepreneurial (Non-Commercial) Legal Entities, <https://enreg.reestri.gov.ge>

him in social networks and media by non-governmental organizations (Green Alternative; Transparency International Georgia).

Prior to this nomination, Kaladze had a direct or indirect stake in the companies operating in the energy sector. As Transparency International Georgia notes in its survey, “Kaladze formally gave up control of these assets after joining the government, although it is impossible to rule out the possibility that he retains indirect private interests in the sector (since Georgian officials are not required to disclose beneficial ownership of companies)”⁴¹.

Although Kakha Kaladze has repeatedly announced about giving up his business interests, according to the data of the Registry of Entrepreneurial and Non- Entrepreneurial (Non-Commercial) Legal Entities, his father, Karlo Kaladze is a member of the Supervisory Board of SakHidroEnergOMsheni.

Erekle Urushadze of Transparency International Georgia explains that Kaladze cannot be openly accused of corruption, because it requires the prosecutors’ involvement, investigation and court ruling. He, however, emphasizes that there is at least conflict of interests and at most, the risk of corruption. Pointing at the shortcomings of Georgian legislation, he recollects the term “legalized corruption”, when a certain action is corrupt in its essence, but since the legislation itself contains shortcomings, the law is not violated⁴².

There is one more interesting fact – Nika Gilauri, who held top positions for years (Energy Minister; Finance Minister; Prime Minister; Head of Partnership Fund), shortly after quitting the government position (on October 3, 2012), established Gilauri and Company Ltd, where he was the director and the only partner. This company, in turn, established Caucasian Energy Company Ltd, which signed memorandums with the Government of Georgia on the construction of several hydropower plants in Samegrelo – Zemo Svaneti Region (on the rivers Adishchala, Dolra, Tviber-Tsaneri, Tekhuri, Mulkhura and Jejora). But after the political force unfavorable to Nika Gilauri came to power as a result of the parliamentary elections, the memorandum was abolished through the agreement between the parties, upon the company’s request. “After the situation was settled”, the investor “appeared” again willing to construct the same hydropower plants and relevant memorandums were signed with the government. This time, the Ministry of Energy reached an agreement on the construction of actually the same hydropower plants (7 HPPs: Dolra 1, Dolra 2; Mestiachala 2, Mulakhi, Adishchala, Jejora and Somitso) with the Bank of Georgia, which is led by Nika Gilauri’s brother, Irakli Gilauri.

It was revealed during the study that the same persons are figuring among various, sometimes radically different project developers and supporters/lobbyists (for example – gold extraction in Bolnisi district and construction of small hydropower plants in Kazbegi district). In addition, “Old Boy Network” phenomenon, which, as a rule, means informal links, has acquired legal and organizational forms in certain cases in Georgia. Various investors and experts affiliated with them actively started to set up non-governmental organizations. This process further intensified after then Prime Minister Bidzina Ivanishvili said that he planned to move to the civil sector and take care of its strengthening from there.

Omar Kutsnashvili is the father of MP Zakaria Kutsnashvili, one of the leaders of the ruling Georgian Dream coalition. He frequently appears in media as “an expert”; he actively participated in lobbying the Dariali HPP and Larsi HPP projects, as well as in lobbying the construction of

⁴¹ Transparency International Georgia, 2013, “Businessmen in Politics and Politicians in Business: Problem of Revolving Door in Georgia”, Tbilisi, <http://transparency.ge>

⁴² Erekle Urushadze: “Operation of anti-corruption center is needed”, Liberali magazine, 21.02.2014.

Kazbegi HPP on the territory of Khde Gorge, a natural monument. We also remember Omar Kutsnashvili for his contribution to revoking the status of cultural heritage monument from the archaeological site in the village of Sakdrisi of Bolnisi municipality. He was a member of the commission set up by Order №03/82 of the Minister of Culture and Monument Protection dated May 28, 2013 that was instructed to study the documents on granting the status to this monument and to develop necessary recommendations for its relocation. According to Green Alternative's report⁴³, the commission included at least two representatives of RMG contactors i.e. of the interested party: 1. Omar Kutsnashvili, owner of Geoengineering Ltd. 36% share. He, on request of license-owner, carried out mining-geological studies in Sakdrisi territory; he also participated in preparing an environmental impact assessment of construction of platform for alkali treatment; and 2. Vakhtang Licheli who, on request of the Company performed archeological research in Sakdrisi territory, as is clear from RMG Director General's letter of 27 May 2013 (#341) to Georgian Minister of Culture and Monuments Protection⁴⁴. When revoking the status of the monument, the commission completely based on the report prepared by two commission members – A. Tvalchrelidze and O. Kutsnashvili. And their report, in turn, is based on A. Tvalchrelidze's previous publications and views on the monument, which gives rise to doubts about the reliability of conclusion⁴⁵. Omar Kutsnashvili's Geoengineering Ltd was also hired by Peri Ltd, which is implementing Dariali HPP, Larsi HPP and Kazbegi HPP projects in Kazbegi district. According to investigative reports (Studio Monitor; Different Accents by Rustavi 2 TV⁴⁶), various representatives of the 11-member commission, among them Davit Lomitashvili, Alexander Tvalchrelidze, Guram Kipiani and Guram Grigolia, also had conflict of interests.

In addition, Omar Kutsnashvili is the founder of National Association of Energy and Environment, a non-entrepreneurial (non-commercial) legal entity founded on May 23, 2013. Besides him, among the founders of this non-governmental organization there are: Paata Tsereteli, director of Khudoni HPP project developer Trans Electrica; Gia Arabidze, dean of the Energy and Telecommunications Faculty at Georgian Technical University; Varlam Pantsulaia, head of Telasi Public Relations Department; Valerian Kankia, one of the heads and financial director of Enguri HPP Ltd; Zurab Alavidze, director of JSC Dariali HPP; Revo Mshvidobadze, deputy chairman of the trade union of workers involved in small business of Georgia and chairman of the union of Georgian energy veterans; Enver Chichua, former employee of the Georgian Energy Ministry and JSC Georgian Energy System; Nikoloz Javshanashvili⁴⁷, co-founder of the Association of Young Professionals in Energy of Georgia (AYPEG), employee of the company Telasi, founder of the Youth Organization for Supporting Effective Utilization of Energy and Natural Resources, and Gaioz Ugrelidze, director of Energy Ltd. During the inaugural meeting, Omar Kutsnashvili was elected the president of the organization, and Guram Nikolashvili – the executive director. The following persons became the members of the organization's executive board: Omar Kutsnashvili, Guram Nikolashvili, Gia Arabidze, Lasha Iordanishvili (Peri), Baadur Ukleba (a hydrologist, author of a number of environmental impact assessment reports in the energy sector), Volkan Birinch and Sergei Kobtsev (General Director of JSC 'Telasi'). Noteworthy that Kobtsev, who replaced Devi Kandelaki on this position, previously served as the director general of Sangtudinskaya HPP 1 (Tajikistan). Former director general of JSC Telasi,

⁴³ N. Gujaraidze, 2012, Madneuli Above the Law, Green Alternative, www.greenalt.org

⁴⁴ The members of the commission were: Alexander Tvalchrelidze, Omar Kutsnashvili, David Lomitashvili, Vakhtang Licheli, Guram Mirtskhulava, Besik Matsaberidze, Temur Cikhradze, Lali Akhalaia, Paata Gafrindashvili, Guram Kipiani, and Guram Grigolia.

⁴⁵ N. Gujaraidze, 2012, Madneuli Above the Law, Green Alternative, www.greenalt.org

⁴⁶ Different Accents, Rustavi 2 TV, 27.02.2015

⁴⁷ Along with Nikoloz Javshanashvili, among the founders and employees of the Association of Young Professionals in Energy of Georgia there are the members of organizations working on various energy projects (the company Deloitte; World Experience for Georgia Foundation; Hydropower Investment Promotion Program (HIPP) – see <http://www.aypeg.ge/about-us/our-team/>)

Devi Kandelaki took the position of the director general of Mtkvari Energy Ltd, Khrami HPP 1 and Khrami HPP 2 at Inter RAO UES. JSC Telasi, as well as Mtkvari Energy Ltd, Khrami HPP 1 and Khrami HPP 2 are owned by Russian energy company Inter RAO⁴⁸.

Later the association was joined by various private and state-owned organizations: JSC Georgian State Electrosystem (100% state-owned); JSC Khrami HPP 2; JSC Khrami HPP 1; Mtkvari Energy Ltd; Enguri HPP Ltd; JSC Dariali Energy; Energy Ltd; Kazbegi HPP Ltd; Youth Organization for Supporting Effective Utilization of Energy and Natural Resources. According to the statute of the National Association for Energy and Environment, its source of incomes may be membership fees, financial donations, international and local grants and other incomes defined by legislation. Besides membership fees, the association founders and members (including the above mentioned state-owned and Russian companies) are authorized to grant donations to the association at their personal discretion.

It is difficult to say how legal it is when the members of a non-commercial, non-profitable legal entity – non-governmental organization are the state-own Ltd and the state-own JSC, or how fair is the law allowing this. From ethical point of view, it is unjustified when a commercial organization is directly interested in the welfare of those non-governmental organizations that are lobbying its business. It discredits the entire non-governmental sector especially as during lobbying various energy projects, the members of the organization are often confronting environmental organizations and even trying to insult them (for example, Nikoloz Javshanashvili “Why do we need hydropower development” www.for.ge: “The environmental organizations know it very well, but instead of supporting the development and progress in the country, by their activities they hamper the processes, which are strategically important for the country’s development that is expressed in the following: environmental organizations are trying - and they are quite successful in their attempts – to mislead local population in order to trigger their discontent towards HPP construction project...”⁴⁹; Omar Kutsnashvili: “If we recollect the history of past 25 years, we can easily suppose that ill-wishers of our country’s development will again use the so called environmental “greens” against energy and mining industry, reward them abundantly with grants...”⁵⁰). It is at least strange when the “experts”, who are trying to cite the argument of gaining energy independence from Russia to justify their insults against environmental organizations and substantiate commercial projects, do not refuse to accept money from the Russian state energy company.

Omar Kutsnashvili was actively involved in lobbying the construction of hydropower plants in Kazbegi district by the company Peri. In frames of this campaign, he visited Kazbegi district on August 30, 2012 and held a meeting in the building of the local government (Gamageoba). According to the information disseminated by the local authorities, “the Institute of Sustainable Development of Georgia and a special group of scientists” visited the district. In particular, among the guests there were: Omar Kutsnashvili, Alexander Tvalchrelidze, Davit Arevadze and others, whose transportation was provided by Lasha Iordanishvili, the head of Peri Ltd. The Gamageoba website provided no information about the fact that this “Institute of Sustainable Development of Georgia” is a newly created non-government organization. It was registered on June 14, 2013 in the office of Omar Kutsnashvili’s Geoengineering Ltd (15a, Tamarashvili St., Tbilisi). According to its statute, the institute is authorized to create branches, working groups and commissions that may incorporate members of “the Georgian Academy of Natural Sciences and invited persons.” This latter – the Academy – also is a non-governmental organization

⁴⁸ <https://www.interrao.ru/>

⁴⁹ “Why we need Hydro-power development” 2013-09-26, www.for.ge

⁵⁰ An extract from the brochure: Taniel Kharkhelauri, Omar Kutsnashvili, 2013 “Who we are... where we should go, i.e. about development strategy of Georgia”. The brochure is free. It was distributed at the meeting held in the Kazbegi municipality.

registered as far back as February 8, 2008. It is led by Paata Kervalishvili, a member of the board; Davit Aladashvili, also member of the board, the President of the Academy; Academician Secretary Manana Khachidze, member of the board. The academy's office was located in Paata Kervalishvili's residential area in the Vake-Saburtalo district of Tbilisi (Panaskerteli St., block No 6, apartment No 30). It should be noted that the above mentioned Institute of Sustainable Development of Georgia and Georgian Academy of Natural Sciences have the same circle of managers. In particular, among the founders of the Institute there are Manana Khachidze, member of the Academy's board, and the son of the Academy President, Giorgi Kervalishvili, as well as Roman Gotsiridze, Davit Arevadze and Omar Kutsnashvili; this latter simultaneously is the director of the Institute.

Along with the persons, associated with the issue of hunting of species included in the Red List, including Datuna Rakviashvili, Sopio Mamardashvili, Nikoloz Erkomaishvili and Saba Kiknadze, shareholders of CTS Ltd are Taras Nizharadze and Revaz Adamia (partners of the company Aragvi Energo)⁵¹. Revaz Adamia, who came into politics from Greens Movement and held a lot of top positions (he was the chairman of the Parliament's defense and security committee, Georgia's permanent representative to UN), also chose the tactic of attacking environmental organizations in order to lobby the company Peri: "I think that current campaigns are mostly carried out due to ignorance. They do not look through conditions well and moreover, someone may have own interests in it. There are a number of organizations that are actually against electric power on the earth and against any progress generally, and they have money and respectively, they are financing those non-governmental organizations that are hampering the development and progress in the country" (the style is observed; the story was prepared by Channel 9 and it was dedicated to issuing a negative ecological expertise conclusion by the Ministry of Environment Protection on the construction of hydropower plant in the Khde Gorge)⁵². Revaz Adamia's father, Shota Adamia, former environment minister, was actively participating in the campaign of revoking the status of the Sakdrisi archaeological site and discrediting the essence of this monument⁵³. Despite it, as it appears Shota Adamia was providing impartial information to students about the importance of Sakdrisi that is confirmed by the works prepared under his guidance.

"Bolnisi ore district has been attracting the attention of those interested in minerals since ancient times. It represents Georgia's oldest metallurgical center that is confirmed by the remains of metal melting furnaces and written history. During the 3rd and 2nd millennium BC, this district was one of the centers of extracting iron ore and processing placer deposits. The Damblukdi gold polymetal deposit, the Sarkineti and Demursu iron ore deposits were being processed in the 12th -17th centuries. Processing tools discovered in secondary quartzite of the Madneuli, Sakdrisi and other fields confirm about significant scales of gold extraction. By the end of the 19th century and the beginning of the 20th century the scales of processing manganese ores in Tetrtskaro were also quite extensive. Processing of stones for residential or other buildings was also launched from ancient times."

The Ivane Javakhishvili Tbilisi State University, Giorgi Zurabashvili, Geology of Imedi Site of Bolnisi Ore District; MA thesis has been prepared to obtain an academic degree of Master of Geology. Supervisor: Professor Shota Adamia, Tbilisi, 2013.

⁵¹ HPP under construction on River Aragvi; the project is being implemented by Peri Ltd – K. Gujaraidze, 2013

⁵² New 9/Ecological Dilemma of HPPs/23.03.13 TV9

⁵³ Rustavi 2 TV program Archevani – Sakdrisi gold – 28.01.2014

Prime Minister above the Law

It was revealed in the above mentioned cases that separate political figures, including those, who were slamming previous authorities for injustice and came to power with the slogans about restoration of justice, were putting themselves above the law “in case of necessity”.

For example, during his tenure as the Prime Minister, Bidzina Ivanishvili roughly interfered in legal procedures, when the question was about “restoration of justice” in respect of revoking the status of cultural heritage monument from the Sakdrisi-Kachagiani gold mine. On August 5, 2013 Green Alternative and archaeologist, Irina Gambashidze (the author of archaeological study based on which in 2006 the Sakdrisi-Kachagiani gold mine was granted the status of immovable monument and later the status of national monument) filed an administrative complaint to the Georgian government against the order issued by the Ministry of Culture and Monument Protection of Georgia, by which the status of immovable monument was revoked from the Sakdrisi-Kachagiani gold mine. Davit Sakhvadze, Marine Tsintsabadze, Jumber Khantadze, Gigo Jandieri, Raul Gvetadze, Givi Inanishvili, Vano Tvalavadze, Revaz Kanashvili also filed an administrative complaint to the government containing the same demand. The hearing of the administrative complaint was scheduled at the Government Chancellery at 4pm on September 26, 2013. On the same day at 11am, PM Bidzina Ivanishvili held a meeting at his business center concerning the issue of Sakdrisi-Kachagiani gold mine. Government members, representatives of the Georgian Academy of Sciences, members of the Sakdrisi-Kachagiani archaeological expedition, representatives of the company RMG Gold and Irina Gambashidze were invited to the meeting. After the meeting Culture Minister Guram Odisharia told reporters that a decision was made at the meeting with the Prime Minister to relocate the monument and set up a commission that will study this issue. “The monument will be relocated to a relevant landscape area, 2-3 kilometers away from its current location; it will be in Bolnisi and it will become one of the interesting places for tourists,” Guram Odisharia said⁵⁴.

The Prime Minister had no power to make a decision through negotiations or any other form on the issue with administrative procedures still underway. Although Shalva Tadumadze, head of the Law Department of the Government Chancellery, said in the process of discussing the administrative complaint that he was not aware about the meeting with the Prime Minister and that this meeting meant nothing from legal point of view, and later during five hours he was carefully listening to the arguments from the authors of complaints, the result proved to be the same as announced by the Prime Minister and the Culture Minister in advance: on October 3, 2013 the Prime Minister signed the decree (No 1430) of the Government of Georgia “on the refusal to satisfy the administrative complaint filed by Davit Sakhvadze, Marine Tsintsabadze, Jumber Khantadze, Gigo Jandieri, Raul Gvetadze, Givi Inanishvili, Vano Tvalavadze, Revaz Kanashvili, Green Alternative and Irina Gambashidze.” The partiality of the Prime Minister and his legal service was confirmed later, when initially the Tbilisi City Court and then the Court of Appeals annulled Order No 03/108 of the Minister of Culture and Monument Protection dated July 5, 2013 by which the status of immovable monument was revoked from the Sakdrisi-Kachagiani oldest gold mine.

In addition, PM Bidzina Ivanishvili and Energy Minister Kakha Kaladze announced the issue solved though the company Peri had not submitted environmental impact assessment report on the construction of Kazbegi HPP in the Khde Gorge and administrative proceeding had not

⁵⁴ Guram Odisharia: “Sakdrisi monument will be relocated to Bolnisi,” September 26, 2013 <http://www.epn.ge/>

been launched. On September 16, 2013 PM Bidzina Ivanishvili, together with Deputy Prime Minister Kakha Kaladze attended a groundbreaking ceremony for the construction of the Shuakhevi hydro power plant in the Adjara Autonomous Republic, where he said: “I invited Georgian Patriarch Ilia II on Friday and they [opponents of the project] even bothered the Patriarch and sent two requests with him not to build hydropower plants in two places: one – in the Khde Gorge, where the gorge will, as if, suffer water shortage and the other – Khudoni HPP, where water surplus will be expected. I explained to the Patriarch comprehensively and he understood, and I asked him to support the project... of course, something will be covered with water somewhere. We will take into consideration the interests of each local; we will satisfy everyone, but it is impossible to hamper the country’s development strategy. Do not believe the opponents; they only make a noise; they can’t do anything else but to stir noise⁵⁵”. This statement, which regretfully was not the only statement with the same content, is a clear example for complete neglecting of legal procedures set by legislation in respect of making decisions on the planned project and of exerting pressure on competent authorities and project-affected population, as well as an attempt of discrediting environmental non-governmental organizations⁵⁶.

It is no surprise that the Ministry of Environment Protection failed to endure such pressure and spared no efforts to defuse the Prime Minister’s and Deputy Prime Minister’s anger caused by a negative ecological expertise conclusion issued by the Ministry in March 2013 concerning this project⁵⁷. Feeling hopeful after the Prime Minister’s and Deputy Prime Minister’s statements, Kazbegi HPP Ltd (subsidiary of Peri Ltd) submitted the environmental impact assessment report again to receive a permit on the construction and exploitation of Kazbegi HPP in the Khde Gorge⁵⁸ and although the both reports were actually identical in terms of environmental impact, this time the Ministry of Environment Protection issued a positive conclusion. The following factors were conducive to issuing a positive ecological expertise conclusion:

1. The Ministry completed administrative proceedings related to preparation of ecological expertise only within two weeks, unlike spring 2013, when stemming from the topicality of the issue, the Ministry guided itself by the Law of Georgia on Licenses and Permits and prolonged the term of administrative proceeding by up to three months;
2. Because of tight timeframes, only three organizations (non-governmental organization Green Alternative; NACRES - Centre for Biodiversity Conservation and Research and non-government organization Stepantsminda) managed to submit comments at the stage of preliminary discussions and administrative proceedings unlike the previous case, when the comments of 17 organizations and experts were sent to the Ministry. During the discussion held at the Ministry one of the participants (Lasha Chkhartishvili) cited the pressure exerted on civil society organizations by the Prime Minister and the Deputy Prime Minister as the reason for small number of comments;
3. Public discussion held at the Ministry at the stage of administrative proceeding had a formal nature – it was held a day before issuing the conclusion meaning that the issue had already been solved;

⁵⁵ <http://netgazeti.ge> 2013.09.16 “Ivanishvili: They even bothered the Patriarch and send two requests with him”

⁵⁶ 54 non-governmental organizations released a joint statement on this issue – “The Statement of Civil Society Organizations on the Khudoni HPP Project”, October 15, 2013, www.greenalt.org

⁵⁷ The rejected EIA report was prepared by a scientific research institute TbilTskalGeo.

⁵⁸ The new EIA report was prepared by GAMMA Consulting Ltd.

4. Unlike the first project, the Ministry actually did not reflect even a single remark made by independent experts and non-governmental organizations and moreover, it did not even provide the reason for neglecting these remarks;
5. The Kazbegi HPP project basically has a negative impact on fauna. Despite it, the Ministry did not involve even a single zoologist and animal ecologist in the process of preparation of ecological expertise conclusion⁵⁹;
6. The Ministry involved those experts (ministry staff members: Teimuraz Tbelishvili, Zaur Dolidze, Teona Karchava) in the expert commission, who had prepared an absolutely unfair and groundless positive conclusion on the Dariali HPP EIA report⁶⁰. In its time, the expert commission studying the Dariali HPP EIA report was fully composed of the experts from the Ministry of Environment Protection. The Ministry did not take into consideration what type of influence the project would exert and did not provide invitation of experts with relevant specialization and qualification to the commission. There was not a single botanist, zoologist, ecologist, landscape and protected areas expert in the commission capable to discuss real impacts of the project on biological and landscape diversity. The expert commission and their tasks were composed so that the project was “foredoomed” to a positive conclusion.

Unchangeable Public Servants

Development of almost all the above mentioned legal acts, which were tailored to the interests of particular companies, is directly linked with Irakli Khmaladze, who led the Law Department at the Ministry of Energy and Natural Resources under the National Movement’s rule. Although after coming to power as a result of the 2012 parliamentary elections the new government cancelled all the above mentioned normative acts, no political or legal assessment was given to this; in addition, Irakli Khmaladze was advanced and appointed as the Deputy Energy Minister⁶¹. Khmaladze was replaced by Zaza Nanobashvili, who led the Law Department at the Government Chancery under the previous authorities and respectively, all those decisions, which were slammed by Georgian Dream, were actually made upon his consent. Taking this into consideration, it is no surprise that citing unjustified “public and state interests”, the tradition of developing legal acts that would have pleased private persons and companies, still continued following the 2012 parliamentary elections. Along with the above mentioned Sakdrisi case, another clear example for it is making of amendments and supplements to the Law of Georgia on Transit and Import of Waste to the Territory of Georgia upon the request of the Turkish company Adjarenergy 2007; according to these amendments, it was allowed to import flying and heavy ash waste to the territory of Georgia⁶². Just Irakli Khmaladze was entrusted by the Government of Georgia to defend the bill in the Parliament and during public discussions. Despite the resistance from environmental organizations and a part of the parliamentary majority group, the Ministry of Energy still managed to garner enough votes in the Parliament.

⁵⁹ The composition of the expert commission approved by the minister and the conclusions prepared by the commission members were made public after the conclusion was released, pursuant to legislation.

⁶⁰ The commission composition approved by the minister and the conclusions developed by its members have been public since the approval of the final conclusion.

⁶¹ Khmaladze was replaced by Zaza Nanobashvili, who led the Law Department at the Government Chancery under the previous authorities and respectively, all those illegal decisions, which were annulled by the new government, were actually made upon his consent.

⁶² “Whom the Energy Ministry Requests Ash Import For”, 2013.07.17 <http://www.netgazeti.ge>

Conclusion

Shortly about how the situation developed in a period after Green Alternative published its reports.

Sakdrisi oldest gold mine

The state completely lost the legal disputes related to the Sakdrisi oldest gold mine. On June 14, 2014 the Tbilisi City Court partially satisfied the request made by Green Alternative and a citizen, Davit Sakhvadze and annulled the decision made by the Ministry of Culture and Monument Protection on revoking the status of immovable monument from the Sakdrisi-Kachagiani oldest gold mine. The parties appealed against the court ruling in the Court of Appeals. According to the March 2, 2015 ruling of the Court of Appeals, the lawsuit of the Ministry of Culture and Monument Protection was not satisfied and it completely upheld the lower court's decision.

Moreover, by its judgment of May 30, 2014 the Tbilisi City Court accepted the motion from claimants Kakha Kozhoridze (chairman of Georgian Young Lawyers Association) and Dali Mamulashvili (local from Kazreti settlement) and suspended the March 13, 2014 decision of the Ministry of Culture and Monument Protection, according to which the company RMG Gold gained the right to carry out large scale works in Sakdrisi-Kachagiani. By the above mentioned court decision, the company was prohibited to carry out extraction activities in Sakdrisi-Kachagiani pending the final decision⁶³.

The wrongfulness of the state position was clearly confirmed in connection with historical importance of the Sakdrisi mine. In May 2014 the National Agency for Cultural Heritage Preservation invited international experts, including German archaeologist, Albrecht Jockenhövel and Bulgarian geologist, Venelin Zhelev Zhelev, to prepare a conclusion on Sakdrisi. The agency stated in advance that the conclusion would demonstrate that the hype around Sakdrisi-Kachagiani, "groundless and undeserved slander from separate agencies or persons", as well as accusations about destructing the world monument were groundless. However, contrary to the expectations of the Ministry of Culture and the National Agency for Cultural Heritage Preservation, the conclusion prepared by the two foreign experts clearly confirmed that "human traces are obvious in connection with extraction of copper and gold deep in 27-28 meters. The conclusion is clear – ore extraction really took place there." The scientists from the Janashia State Museum also emphasized the importance of Sakdrisi mine. The study about Sakdrisi, as the world's oldest gold extraction site, was published in a number of peer reviewed scientific publications and the conclusion prepared by the commission composed of RMG contractors cannot serve as a counterbalance. Over the past period the company RMG was forced to change its position concerning the archaeological importance of Sakdrisi and it started to talk about the necessity of its comprehensive archaeological investigation⁶⁴. According to the company's statements, the Ministry of Culture and Monument Protection and the National Agency for Cultural Heritage Preservation were also changing their positions. In late 2014, as a result of coordinated activities by the company and the government, accompanied by rough violations of legislation and neglecting of court decisions, RMG carried out explosions on Sakdrisi hill and rapidly started to destruct the monument and to extract gold⁶⁵.

⁶³ The Court Suspended the Right to Conduct the Broad-Scale Works at Sakdrisi-Kachaghiani, 2 June, 2012- See more at: <https://gyla.ge>

⁶⁴ Sakdrisi in legal labyrinth, 31.10.2014, www.liberali.ge

⁶⁵ Presently, Green Alternative has several disputes over the issues related to the activities of the company RMG – both administrative disputes and other disputes in the courts of various instances. Comprehensive Information about these disputes is available at Green Alternative's web site.

HPP projects implemented in Dariali Gorge

Green Alternative has stated repeatedly that environmental issues were neglected in the process of issuing construction permits and ecological expertise conclusions on Dariali HPP and Larsi HPP; besides the problems threatening the country's biodiversity, natural and social environment as a result of these projects, when projecting the HPPs, due attention was not paid to the threats posed to energy facilities and people employed there as a result of negative geological processes. The environmental impact document prepared by the consulting companies Gamma and Stucky Caucasus was approved and the project implementation was launched without proper investigation of hydrology and geology issues. The issue of changing the water and solid flow caused by accelerated melting of glaciers was not taken into consideration while developing the HPP project.

The EIA report did not contain even small doubts about how correctly the location of HPPs was selected. The report reads that "the risk of development of dangerous geodynamic processes in the course of HPP operation is minimal." The Ministry of Environment Protection relied upon the opinions of its employees and lobbyists of HPP construction rather than on Green Alternative's arguments. For example, Omar Kutsnashvili wrote that "it can only be welcomed that the mentioned facilities (Dariali HPP, Larsi HPP and Kazbegi HPP) have been projected considering modern construction technologies and standards. The projects completely meet local natural and tectogenic conditions. Environmental impact of the construction and exploitation of the mentioned HPPs is assessed adequately and impartially."

Neither the Tbilisi City Court, nor the Court of Appeals shared Green Alternative's arguments that Dariali HPP environmental impact assessment was carried out incorrectly and therefore, positive ecological expertise conclusion approved by the ministry should be annulled. The courts supported the Ministry of Environment Protection and JSC Darial Energy, a subsidiary of Peri Ltd, and did not satisfy Green Alternative's lawsuits.

On May 17, 2014 the landslide from the Devdoraki glacier hit the Dariali Gorge and damaged the completed Larsi HPP as well as Dariali HPP, which is still under construction. The landslide killed several persons, among them those working at the HPP construction site. On August 20, 2014 another landslide hit the gorge, which triggered graver consequences for the completed Larsi HPP. Two persons working at Dariali HPP died. All these were caused due to the mistakes made during projecting these HPPs and respectively issuing permit documents at which Green Alternative was repeatedly indicating: it was not taken into consideration that landslides of various scales periodically hit the gorge and sooner or later such tragedy should have inevitably happened.

Finally, both the construction company and the Ministry had to acknowledge their mistake. The Ministry of Environment and Natural Resources Protection of Georgia issued order No 612 on October 7, 2014 on the approval of ecological expertise conclusion on the construction and exploitation of a new transport tunnel in the underground building of Dariali HPP." The documents provided by the company as well as the Ministry's conclusion note that the initial project did not take into consideration a historical experience of landslides from Devdoraki, whereas the risk of reoccurrence of natural calamities was still high. Unfortunately, it has not been investigated so far how correctly the project developers fulfilled permit conditions; whether the harm and fatalities caused by geodynamic processes developed on May 17 and August 20, 2014 are linked with the quality of fulfillment of permit conditions.

Kazbegi HPP constructed on the River Brolistskali in Khde Gorge was put into exploitation on October 16. The hydropower plant was opened by Energy Minister Kakha Kaladze. In about a month after putting the HPP into exploitation, Green Alternative and Stepantsminda carried out monitoring and found out that despite the obligations set by the permit, the River Brolistskali was actually left without water in over a kilometer-long section. The organizations submitted relevant information and photo materials to the Ministry of Environment and Natural Resources Protection, which were also published in media. Despite the Ministry's statement that "with the purpose of rechecking the information, relevant authorized persons from the National Environmental Agency and the Department for Environmental Supervision will carry out hydrometric measurements on Khdis Tskali (Brolis Tskali) and respectively conduct monitoring of environmental flow to further react on it", actually no reaction followed.

During the rule of the United National Movement, exploitation of natural resources (timber production, extraction/processing of minerals, hunting, fishing, and hydropower) and privatization of enterprises associated with utilization of natural resources became one of the main directions of the country's economic development. Decisions on investment projects were made with giving due consideration to social and environmental consequences, on the basis of inaccurate data about the amount and conditions of natural resources designed for exploitation; actually no monitoring over fulfillment of license and permit conditions was conducted. Such policy encouraged unsustainable utilization of natural resources and aggravation of environmental situation. Under conditions of faulty legal mechanisms of public participation in decision making and government's accountability, various forms of elite corruption were observed in the spheres associated with utilization of natural resources.

During the 2012 parliamentary elections, the work of previous authorities was assessed negatively in the program of electoral bloc Bidzina Ivanishvili – Georgian Dream. It noted that the previous government set as its priority "not sustainable economic development, but mobilization of one-time financial, including corruption, resources through "legalizing" predatory exploitation of natural resources and destruction of the environment. Contrary to this, Georgian Dream believed that the country's economic development should be based on the principle of sustainable development, during which the environmental, economic and social issues will be balanced."

Despite its pre-election promises, unfortunately, the new government failed to find the ways for sustainable economic development and continued the practice established by the previous authorities; the projects initiated through neglecting environmental legislation were continued. Legislation and practice related to environmental impact assessment, public participation and governmental accountability has not been improved either. Respectively, the factors conducive to elite corruption have not been eradicated. The present publication has confirmed again that despite numerous pledges to carry out systemic struggle against corruption, to observe the rule of law, to restore justice, to declare the environmental protection as the state priority, to increase accountability to the public and social responsibility, the new government continues "a usual practice" launched by its predecessor. Moreover, under the new government, a tendency of pressure on those civil society organizations and local population, who may have dissent opinions about various projects, acquired larger scales.

Recommendations

Incorrect management of natural resources causes infringement of local population's social interests and environmental degradation. Infringement of social interests means infringement of property rights (when the project area covers the territory, which is legally owned and/or traditionally used by population) and aggravation of habitats (for example, aggravation of potable water, air, soil quality, destruction of public spaces – green territories, parks, recreation zones). In addition, incorrect management and irrational use of natural resources cause their quick exhaustion and strengthens the risk of natural disasters (human-caused landslides, mudflows, soil erosion, etc). It ultimately causes further impoverishment of local population dependent on natural resources and ecosystem services and increases social tensions. Social factors, such as poverty, lack of education and civil awareness create a fertile ground for corruption. Incorrect governance is expressed in legislative collisions, conflict of interests within state institutions, non-transparent decision making procedures, etc. All these promote the emergence of (elite) corruption.

Based on the above mentioned, we recommend to implement measures in selected spheres (forest use/hunting, use of minerals, hydropower), as well as to improve environmental governance and eradicate the problems related to corruption/conflict of interests:

- It is essential to specify legal criteria and procedures for defining “public and state importance” of various projects, where the opportunities for participation of all stakeholders will be provided. Introduction of these procedures will create a barrier for portraying private interests of certain individuals and/or companies as a public and state interest.
- To improve legislation and practice for monitoring and controlling over election processes and political donations.
- To monitor movement of individuals between positions in the public and the private sectors and to eradicate violations duly in order to ensure the fulfillment of the Laws of Georgia on Civil Service and on the Conflict of Interests and Corruption in Public Service; UN Convention against Corruption; Civil Law Convention on Corruption; Criminal Law Convention on Corruption.
- To improve the legislation related to property declaration, as well as to introduce the mechanisms for rechecking the declaration information.
- To develop and enact such institutional model, which will rule out conflict of interests. According to the existing model, the functions of issuing permits and/or licenses and monitoring/control over them are concentrated in one agency⁶⁶, and in some cases the agencies take regulation fees from those enterprises, which they are instructed to examine and to suspend their activities in case of revealing some violations⁶⁷.
- To develop and introduce legal mechanisms ensuring public involvement in the process of making decisions on privatization of enterprises associated with utilization and processing of natural resources as well as on utilization of natural resources. Involvement in decision making should be ensured from the early stage, when options are still open, as indicated in the Aarhus Convention, including in making such decisions, which are defined by articles 7 and 8 of the Aarhus Convention.
- To comprehensively revise/improve legal framework regulating environmental impact assessment system; to harmonize it with the requirements of multilateral international agreements (Aarhus Convention, Convention on Biological diversity, Bern Convention),

⁶⁶ Ministry of Economy and Sustainable Development, Ministry of Environment and Natural Resources Protection

⁶⁷ National Environmental Agency

as well as with relevant EU directives (including 85/337/EEC Directive) and the Espoo (EIA) Convention⁶⁸; it is also desirable to take into consideration the regulations of international financial institutions; to include extraction of minerals in the list of activities subject to environmental impact assessment/ecological expertise within the shortest period of time.

- To tighten monitoring over the fulfillment of conditions of environmental impact permits/construction permits; to develop and approve EIA monitoring methods for various activities (HPPs, minerals), as well as usage licenses monitoring methods (forest use, hunting, fishing); to create databases reflecting the reports on monitoring and fulfillment of conditions; to use these databases proactively; to tighten the responsibility for non-fulfillment of license and permit monitoring by controlling authorities; to tighten legislation in case of non-fulfillment of permits by companies;
- To develop and introduce effective mechanisms for public informing and participation in the discussion (at all stages of decision making) of issues related to natural resource management taking into consideration the requirements of multilateral international agreements and the best international practice; public participation should be ensured from the early stage, before making decisions on issuing a license on long-term use of natural resources, leasing them or making decisions on implementation of energy projects.
- To consider local traditions and needs in legislation related to natural resource utilization (for example, extraction of non-timber resources, use of secondary timber resources, hunting, falconry, etc.) stemming from the principles of sustainable use and the best international practice.

⁶⁸ Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) - the 'Espoo (EIA) Convention

Association Green Alternative is a non-governmental, non-profit organization founded in 2000. The mission of Green Alternative is to protect the environment, biological and cultural heritage of Georgia through promoting economically sound and socially acceptable alternatives, establishing the principles of environmental and social justice and upholding public access to information and decision-making processes.

We organize our work around six thematic and five cross-cutting areas. Thematic priority areas include: energy – extractive industry – climate change; transport sector and environment; privatization and environment; biodiversity conservation; waste management; water management. Cross-cutting priority areas include: environmental governance; public access to information, decision-making and justice; instruments for environmental management and sustainable development; European Neighbourhood Policy, monitoring of the lending of the international financial institutions and international financial flow in Georgia.

Green Alternative cooperates with non-governmental organizations both inside and outside Georgia. In 2001 Green Alternative, along with other local and international non-governmental organizations, founded a network of observers devoted to monitoring of development of a poverty reduction strategy in Georgia. Since 2002 Green Alternative has been monitoring implementation of the Baku-Tbilisi-Ceyhan oil pipeline project, its compliance with the policies and guidelines of the international financial institutions, the project's impacts on the local population and the environment. Since 2005 the organization has been a member of the Monitoring Coalition of the ENP (European Neighbourhood Policy) Action Plan. In 2006 Green Alternative founded an independent forest monitoring network. Since establishment Green Alternative is a member of CEE Bankwatch Network – one of the strongest networks of environmental NGOs in Central and Eastern Europe. Green Alternative closely cooperates with various international and national organizations and networks working on environmental, social and human rights issues; Green Alternative is a member of the Coalition Transparent Foreign Aid to Georgia founded in 2008. In 2010 Georgian Green Network was established on the initiative of Green Alternative. This is informal association of civil society organizations and experts dedicated to protecting environment, promoting sustainable development and fostering principles of environmental and social justice in Georgia.

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In 2004 Green Alternative received the Goldman Environmental Prize as the recognition of organization's incredible work for environmental protection, social justice and equity.