Cleaning Up Georgia's Environmental Law

Georgia's new government is rushing to repeal recent environmental legislation that critics say opens a door to corruption.

by Tsira Gvasalia
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TBILISI | Last May, the mining company Madneuli sat down with the Georgian Ministry of Energy to negotiate a deal to effectively pay its way out of liability for 18 years of environmental violations, eventually reaching a multimillion-dollar compensation package.

The deal wouldn't have been possible just a year ago. But in March, Georgia's parliament passed a succession of amendments to several pieces of legislation allowing polluters to negotiate retroactive amnesty from environmental protection fines in exchange for a lump payment to the state budget. The new legislation doesn't explain how compensation packages are calculated and gives the prime minister carte blanche to approve or reject deals.

The previous government, ousted in October elections by billionaire Bidzina Ivanishvili's Georgian Dream coalition, was known for ad hoc responses to key issues. It called the amnesties a flexible, expedient way for polluters to make amends without risking insolvency paying off fines under existing ecological regulations, which remain in force. Deals would be on a case-to-case basis, it said, and indeed the compensation figures negotiated vary.

But critics say the opaque legislation, which new Environment Minister Khatuna Gogaladze calls "witchcraft," is more about opening a channel for backroom deals than corporate interest or, certainly, environmental protection. Ivanishvili's government is working to repeal it.

A MURKY LAW

Because of the post-election government turnover, few people at the Ministry of Energy know much about the genesis of the new legislation. Irakli Khmaladze, head of its legal department and a holdover from the previous administration, said it aimed to protect companies from hefty back fines for exceeding government caps on air, water, and soil pollution. These regulations remain in place today but, some experts say, haven't been enforced consistently.

In effect, the new law offers polluters the chance for a clean slate. They can approach the Ministry of Energy to negotiate amnesty and, often, to suggest a compensation figure, which the prime minister may accept or reject without explanation. Led by President Mikheil Saakashvili's United National Movement, the previous government took a similar approach.

A open pit mine in Georgia. Photo: mm-j/Flickr
to corruption after the 2003 Rose Revolution, negotiating the release of jailed officials and business people in exchange for cash.

So far, Madneuli, coal mining firm Saknakhshiri, and Turkish construction company Polat Yol Yapi have negotiated deals. Madneuli's was the largest—13 million laris ($7.8 million) for an amnesty covering 1994 to 2012. The company, sold and renamed to Rich Metals Group in June, remains liable for future infractions under the parallel cap-and-fine legislation.

Madneuli's agreement, obtained by TOL, doesn't detail how the compensation was calculated because the new law doesn't require explanation or auditing. There is no pay scale, for instance, for the type or quantity of pollution, so the extent of Madneuli's violations isn't even clear under its amnesty deal.

The agreement was signed by former company Director Giorgi Devadze and former Energy Minister Alexandre Khetaguri, but neither would comment for this article. Rich Metals Group doesn't know who initiated the talks or how the compensation was calculated, according to Rich Metals Group spokeswoman Tamuna Liluashvili.

Soso Tsabadze, an environmental adviser to the company, called the deal a millstone for Rich Metals Group, which must pay the outstanding 10 million-lari balance by March 2014. He said Rich Metals wants the money spent on mitigating ecological damage caused by its mining and ore processing sites, such as upgrading pipe infrastructure to reduce water pollution caused by leakages.

"Despite the fact that the new management does not know where this figure came from, we are ready to pay," he said. "But we would like to spend it on the environment."

Tsabadze said he isn't optimistic, though. The government may spend the amnesty money as it pleases. That is why the new management wants to appeal to the new government to spend the compensation money solely for environmental mitigation.

A DOOR TO CORRUPTION?

Environmental watchdogs slam the new legislation for doing nothing to protect the environment while encouraging graft and misconduct through an opaque negotiating process. And indeed, the amnesty agreements of Saknakhshiri and Polat Yol Yapi are equally murky: lump payments, respectively, of 40,000 laris and 20,000 laris for unspecified infractions.

"The law does not clarify the criteria used to [determine the damage] or how the compensation is calculated," environmental lawyer Merab Barbakadze wrote in an April report by the NGO Green Alternative. It increases "not only environmental and economic risks, but also the risk of corruption."

Khmaladze, the lawyer at the Ministry of Energy, conceded that the methodology used to determine compensation should be clearer, but defended the changes.

"I totally agree with this argument — this part is a bit confusing," he said. "But with this law, we prevented some businesses from closing down. There are companies in Georgia that are notorious polluters, and if we had followed the previous laws, we would have closed them down."

This argument is dubious, though, because the Ministry of Environment's department responsible for monitoring pollution and leveling fines lacked the staff and technical capacity to properly monitor companies for years, according to its former head, Nelly Korkotadze.

As a result, there wasn't enough reliable information on environmental impact caused by Madneuli or Saknakhshiri, she said, "so I do not have information that would suggest there was an urgent need to close down those enterprises."

Since being privatized in 2005, Madneuli's fines amounted to less than 5,000 laris, Liluashvili said.

A SHORT SHELF LIFE

Many environmental experts are still scratching their heads.

"What was the purpose of the amendments?" asked Lia Todua, an environmental protection expert at the Centre for Strategic Research and Development of Georgia. "That was my first
question to the Ministry of Energy at a public hearing after they were passed. If the purpose
was waiving or rescheduling the payment of fines or environmental liability costs, or
extending [related] deadlines, that was already possible under existing environmental
legislation."

She continued, "The only conclusion I drew from the hearing was that the ministry staff was
not familiar with the existing environmental legislation."

Speaking publicly in November, Environment Minister Gogaladze said she was equally
mystified by the amendments, and hinted at skullduggery.

"Agreements [are negotiated] between the Ministry of Energy and the company," she said.
"According to the law, the Ministry of Environment could not take part in the process. So I
don't even know if it was voluntary or not. My intuition tells me it would not have been
voluntary."

Executives at Saknakhshiri and Polat Yol Yapi said the companies initiated the amnesty
talks. But, similarly to Rich Metals Group, they said they did not know who suggested the
respective compensation figures, or how they were calculated. Valeri Kukhalashvili, deputy
director of Saknakhshiri, referred TOL to the company's former director, who did not respond
to requests for comment. Nor did the lawyer who negotiated Polat Yol Yapi's deal.

Minister Gogaladze has vowed to repeal the amendments. Parliament will take up the
matter, along with proposed changes to several dozen other laws, in March. If approved, the
repeal will be effective immediately.

For his part, the Ministry of Energy's Khmaladze welcomed the legislative review.

"I'm not a lawmaker, I'm just an executor. But I'll be glad if the government reviews the law," he said. "If they decide that this regulation is to be annulled, I'll be happy."

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