

GREEN ALTERNATIVE'S COMMENTS AND RECOMMENDATIONS ON THE DRAFT POLICY OF GEORGIA'S MINING SECTOR¹

20 June 2019

1. It is likely that the document under consideration will be subject to further changes until it is adopted, but even at this stage, it is very important that the Georgian language version of the document replicate the contents of the English language version. For example, the English language version states that “mineral ownership rights transfer from the State to the license holder upon extraction of the mineral” (paragraph 1.3); According to this paragraph, a license holder is granted the right of mineral ownership after the extraction. In the Georgian translation, this paragraph reads somewhat differently - “mineral ownership rights transfer from the State to the license holder through granting the right to extract mineral”. It is clear that the Georgian version of paragraph 1.3 has a rather different legal meaning than the English language document. In this regard, paragraph 9.2 also needs to be highlighted.

In view of legal consequences, it is important that the document maintain consistency in the terminology. Namely, in some cases, obligations are undertaken by the State while in others - by the Government. Similarly, in some cases it is directly mentioned that the State/the Government will carry out measures; in others, it is noted that the State/the Government will support to take measures, while, in principle, such measures can only be carried out by the State/the Government.

2. Paragraph 7.2 of the draft Policy refers to the distinction of roles within the municipalities, however, in fact, it makes no sense (“the Government will support ...”). It is important that in the policy document the State undertakes a clear and solid commitment to decentralization in the mining sector in line with the decentralization strategy and the principles stated therein, including the subsidiarity principle.

3. Paragraph 6.2 refers to the protection of Geodata and access to information. Again, though at a later stage paragraph 25 refers to access to information, we consider it is important in paragraph 6.2 to clarify a commitment of the State to ensure publicity of information on the mineral's reserves.

4. Paragraph 13.1 refers to the requirement of investment protection and gives a very general wording: “in order to support and attract investments, the Government will ensure improvements of the regulatory regime.” This proposal needs clarification – limitation of the scope of “improvements” – so that “improvements” do not sacrifice social and environmental mechanisms (Georgia has already accumulated a lot of such experience).

5. The content and wording of paragraph 14 (land access) and paragraph 15 (resettlement) are completely unacceptable. These paragraphs are clearly focused on facilitating mining companies start activities and

¹ These comments and opinions have been drafted on the basis of the draft policy on Georgian Mining Sector dated March 2019, which was posted for discussions on the [website](#) of the National Agency of Mines on May 31, 2019

do not take into consideration the experience that has been accumulated in Georgia and other countries over the world concerning the consequences of simplified and “single-window” procedures for obtaining ownership over the land. While most of the Georgian population does not have their rights registered in the public registry, the rapid growth of land rights significantly increases the risk of conflicts; this will eventually result in boomerang effect both for the company and for the Government.

These paragraphs, at least, should mention that: resettlement should be avoided by all means; it may be permitted only in exceptional cases and on the basis of reasonable grounds only; in case of resettlement, the victims should be provided with appropriate compensation. The resettlement process should be conducted in compliance with the requirements of International Covenant on Economic, Social and Cultural Rights.

6. Section 7 describes the provisions related to environmental protection, but somehow it begins with the monitoring phase and does not say anything about avoidance or reduction of pollution caused by the mining sector.

We consider this as the most important issue to remove the last paragraph – the paragraph that refers to so-called “historical pollution”. Today, it is impossible to single out and determine “an environmental impact of the historic practices”; consequently, the State cannot carry out “appropriate measures”. The wording in the policy document will lead to irresponsible environmental pollution and corruption deals.

7. Section 8 states that the State will promote “the development of alternate livelihood after the license holder has completed the work.” In our opinion, this should be done not after the completion of the work, but continuously. The State and the companies should constantly work to improve social issues and contribute to the social, economic and institutional development of local communities.

8. Paragraph 25 refers to community consultation and public information, but it is limited to very general wording. For example, nothing is said that the State should take measures to introduce mechanisms for ensuring public participation in the decision-making process. Today this is a very problematic issue; however, it is not reflected in the draft Policy.

9. Paragraph 30 - deep seabed mining- should be removed from this Policy document. The urgency of this paragraph – “study of the mineral resources available on the deep seabed” - is not ensured in the Policy document. On the contrary, in the Annex, in the substantiation of this paragraph, it is stated that “offshore deep-seabed mineral mining is not part of the Georgian mining regime”; “considerable research is still underway with respect to potential risks and benefits of deep seabed mining” and some countries even intend to introduce a moratorium on such activities. Why should Georgia begin to “study the mineral resources available on the deep seabed” in such conditions?

10. As mentioned in the document under consideration, 2500 licenses out of 5000 issued up to now have been issued to extract construction materials (quarry operations), and 2000 to extract groundwater operations. Due to the specificities of the two areas and economic, social and environmental risks of these activities we consider it necessary to develop the two so-called “sub-policies”.

11. In conclusion, we hope that comments and opinions given above will be considered in the next version of the draft policy; moreover: (a) the documentation required for the respective stage of strategic environmental assessment of the draft Policy (as provided by the Environmental Assessment Code) will be presented; and (b) a chapter (or an annex) will be added to the draft to assess the impact of the Policy document on Georgia's ability to achieve sustainable development goals.