Progress in Implementation of Certain Priority Areas of ENP EU-Georgia Action Plan in Georgia

Sustainable Development and Environmental Protection, Transport and Energy, Privatization

30 November, 2010

GREEN Alternative

Striving for environmental and social justice in Georgia

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This document shortly describes progress in implementation of certain priority areas defined under the ENP EU-Georgia Action Plan for the period of January-November 2010[1].

General concerns related to ENP policy review process

The ENPI mid-term review in 2008-2009 and elaboration of NIP 2011-2013 for Georgia could be considered as one of the most institutionalized and participatory processes in Georgia. Number of issues raised during the consultation processes became part of the blueprint. Although NIP priorities for 2010-2013 do not change, the European Commission became aware of the need to more deeply integrate environmental, minority and IDP problems into the existing priorities and to reinforce the NGOs' role not only in designing a new plan, but also in monitoring the progress. At the same time, the Commission underscored that "the process of developing the new NIP should go beyond obtaining input from CSOs and promoting dialogue between the EC and CSOs, but also, more importantly between civil society and the government of Georgia".

However, the same success story cannot be spread over the ENP policy review process by EC in 2010. Even though Brussels-based organizations, as well as some national organizations were given opportunity to take part in different meetings organized by the Commission in Brussels (such as, for instance, meeting organized on 5 November, 2010), the majority of the groups in the neighborhood area lack understanding of how the things are practically arranged and how to share their concerns and opinions, or raise questions with the EC.

Developing plans and programmes for the environment

Plans and programmes that were developed in certain areas during 2007-2010 are still not formally adopted; their role in the planning system for country's development still remains unclear. Development of the second National Environmental Action Plan (NEAP) deserves special mention here.

The elaboration of the second NEAP for 2008-2012 was initiated in 2006 and the draft was finalized in mid-2007 to cover the period 2008-2012. The methodology used, the lack of procedures and the unclear decision-making framework, as well as the final draft document itself, received criticism by stakeholders. During 2010 new version of the second NEAP was being developed. It is asserted by the Ministry of Environmental Protection and Natural Resources, MEPNR (lead agency)

[1] For Green Alternative's monitoring report on progress in implementation of ENP AP in Georgia during 2007-2008, visit: http://www.greenalt.org/webmill/data/file/publications/ENP_Eng.pdf. For the progress report covering period of January-October 2009, visit: http://greenalt.org/webmill/data/file/publications/ENP_AP_progres%20in_priority_areas.pdf

that this time the plan was being developed with the broad participation of line ministries, the NGOs and various stakeholders, though the real picture is not as claimed to be. The draft version of the second NEAP was made public only in mid-July 2010 (during holiday season); the NGOs were invited to present comments within three weeks period. No other drafts were made public, neither any public consultation meetings have taken place so far. It is expected that the second NEAP will be finalized by the end of 2010.

Promoting the adoption of environmental legislation

Georgia continues to lack the framework law on ***waste***, while existing regulations are insufficient. There still no general strategies, policies or plans of action in waste sector.

The overall picture in waste management is not one of progress; however, some improvements (mostly within the scope of internationally funded projects) could be identified in certain areas: with the support of SIDA, the MEPNR has completed the concept paper for management of municipal solid waste, which outlines current needs in municipal solid waste management, proposes so called "centralized" (regional) approach to new landfills' development and prioritizes actions in this area for next five years. The concept paper become public only after it was finalized; no public discussions were organized either during drafting or after finalization of the document. It is not clear as well what should follow afterwards – will this paper be formally approved or it will become part of broader blueprint on waste management.

The site-selection guidelines for new landfills were developed with Dutch assistance, though not approved yet. The guidelines were made public neither during elaboration, nor after finalization.

More recently the Georgian government has approved (25 June 2010) the State Strategy for Regional Development of Georgia for 2010-2017 (developed with the support of the EU, Polish Aid, GTZ). The strategy identifies principles, objectives and major directions for creating favorable environment for the sustainable development of the regions and improving local livelihood. Improving municipal waste management system is identified as one of priority areas as a part of larger priority cluster directed at development of municipal services and infrastructure (please, also see below *"ensuring integration of environmental aspects in other policy sectors"*).

With the EU financial assistance it is planned to start twinning project in early 2011 which among other activities includes both, strengthening capacities of the MEPNR in waste management planning and drafting and approval of key regulations in the waste sector.

Water management legislation still contains contradictions and inconsistencies; there are significant contradictions with permitting and licensing legislation and sectoral legislation. There is still no framework law on water; it is asserted that the framework law was developed by the MEPNR, however the draft has not still been made public, neither any public consultations has taken place so far.

Both, general and thematic discussions on all-inclusive draft ***Environmental Code*** were organized by the MEPNR during reporting period; however, the process is rather blunt and it is not clear if adoption of the environmental code is still a priority for the MEPNR.

Unlike draft Environmental Code there were significant changes made in environmental (for instance, amendments made in October 2010 in EIA legislation) and natural resource management legislation (for example, Law on Establishment of Forestry Agency adopted in July 2010, amendments made into forest management legislation) which were not subject to any public discussions.

In our 2009 progress report we have noted the positive legislative changes made in August 2009 in the ***forest*** use regulating legislation which has allowed public participation during auctioning of forest use licenses[2]. That time changes were made through public consultations, and that was an exception in the practice of last years. It should be noted here that the amendments became effective 1 January 2010, however, in almost one and half month another amendment was introduced[3] which has postponed the date of effectiveness of specific provisions on public participation till 1 January 2011 (i.e. provisions on public participation were operative only 1.5 months and they have never been applied in practice). Contrary to 2009 amendments, legal changes introduced in 2010 were not subject to any public discussions prior to adoption.

Constitutional amendments adopted on 15 October, 2010 should also be mentioned here. The draft of the constitutional amendments was subject to public discussions during holiday season and this gave rise to public criticism. It should also be noted that the draft version that was open to public (during public consultations) did not include changes in the provisions related to the state's obligation to ensure sustainable development, safe environment and public access to environmental information (Article 37, paragraphs 4 and 5). It appeared at the end that the changes in these specific provisions were introduced after draft was submitted to the parliament for adoption.

"Economic Freedom Act" initiated by the President of Georgia in 2009 has been forgotten for some time, but it has recently became a topical issue again. Thus, there are still concerns that measures envisaged by the Presidential act, which should provide favourable environment for investments and "turn Georgia into a real flagship of the world's liberal economic ideology", will apparently trigger further weakening of environmental regulations and/or make it impossible to introduce environmental regulatory mechanisms in the future.

Preparing regular reports on the State of the Environment

There was a progress in this area. Specifically, with the EU financial assistance, the MEPNR has drafted a revised presidential decree on the rules for the preparation of state-of-the-environment reports. Also state-of-the-environment report for 2007-2009 was developed during 2009-2010 (not yet finalized, approved and published). Unlike other state-of-the-environment reports (prepared during 2000-2005) the process of drafting the last report was open for NGO and other stakeholders input. It is believed that the drafting process has strengthened Ministry's capacity to produce high quality reports, however, this can only be claimed as ministry produces reports independently, without external assistance.

In 2010 the UNEP and the OSCE, under the umbrella of the Environment and Security Initiative, have launched the „GEO-Cities Tbilisi" project. The project includes capacity development workshops, preparation of Integrated Environmental Assessment guidelines for urban areas, assessment of the state of environment in Tbilisi using GEO approach and fostering a multi-stakeholder forum and cooperation. For now, the process is open and participative though strong efforts are needed to build ownership to the process and the final output, especially at the local (Tbilisi) and national authorities.

Ratifying international environmental conventions and protocols

There is no progress in ratification of UNECE conventions since 2007. The Georgian government usually reports on successful fundraising and/or implementation of the projects together with international donors that could be considered as the preparatory phase for ratification of certain agreements. However, the preparation phase takes too long and that disadvantages Georgia to properly respond to the challenges faced by the country and its neighbours (for instance, delay in ratification of the ESPOO Convention makes it impossible to request from the Arminian Government to fullfill its obligations and to conduct transboundary EIA for Teghut mine operation which is believed to have significant environmental impacts on the Derbed river basin). At the same time, it is important that preparatory works for ratification of agreements include

[2] The amendments made on August 19, 2009 to the regulation "On the Rules and Terms of Issuing Licenses on Forest Use" approved by decree 132 of the Government of Georgia dated August 11, 2005.

[3] The amendments made on February 19, 2010 to the regulation ""On the Rules and Terms of Issuing Licenses on Forest Use" approved by decree 132 of the Government of Georgia dated August 11, 2005

development of national legislation, as well as action plans agreed with relevant parties; such works cannot be observed in Georgia.

Reinforcing structures and procedures to carry out EIA

The Environmental Impact Assessment (EIA) system is still ineffective in Georgia, both in terms of providing public with information and opportunities for public participation, or in terms of helping decision-makers to take informed decisions on the activities that might have significant impact on environment and human health. Public (state-owned) projects remain exempt from EIA procedures, same as mining and forest use projects (mining and forest use licenses are auctioned off without any prior environmental and social assessments). Public remains uninformed about both, applications for receiving ministerial (environmental) consents for the development projects and the final decisions taken by the competent authority, the MEPNR. The EIA system is not in compliance with the requirements of the Aarhus Convention and with relevant EU directives.

Improving public information and participation

No steps have been undertaken to improve legislation and procedures for access to information, public participation in the decision-making and access to justice in environmental matters.

Public participation in the decision-making process is still sporadic and inconsistent; Moreover, despite the commitments undertaken under the ENP AP and the NGO resistance, in October 2009 the Georgian parliament adopted legislative initiative submitted by the parliamentary majority that significantly restricted formal procedures of public participation. The new Law on Normative Acts and the amendments made in the General Administrative Code of Georgia does not allow anymore the public to be involved and consulted in the process of adoption of normative administrative-legal acts (any normative act except for the constitution, international agreement and law) by the state agencies. This is clearly a violation of the requirements of articles 8 (public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments) and paragraphs 5 and 6 of Article 3 of the Aarhus Convention (please, see also above „*Promoting the adoption of environmental legislation*").

Ensuring integration of environmental aspects in other policy sectors

Certain steps have been made for integration of environmental issues in other sectors. For instance, Strategy for Regional Development of Georgia for 2010-2017 (approved on 25 June 2010) includes priorities for improvement of municipal waste management system, as well as actions directed at protection and sustainable management of water and land resources, forests, etc. While diagnostic report prepared as a baseline for elaboration of the Strategy was subject to broad public consultations, the action plan which is currently being developed under the auspices of the Ministry of Regional Development of Georgia was not made public and has not undergone any public consultations. It is not clear either at the moment if the action plan builds upon the strategy recommendations proposed by the Task Force for Regional Development and if it repeats established faulty practice of the Georgian state agencies – putting those projects in the action plans to which international donor assistance have already been pledged.

No steps have been taken towards the development of the national sustainable development strategy.

Progress in cooperation with International Financial Institutions

The international donor community pledge after the military conflict of August 2008 between Russia and Georgia went up to USD 4.5 billion. While up to USD 500 million has been spent to address the urgent needs of the conflict affected population, including internally displaced people, the majority of the aid has been assigned for activities that was intended to bring long-term economic sustainability for Georgia. This includes loans and grants to finance major infrastructure projects, including roads and power transmission lines, as well as to support the economic crisis-hit national banking system.

The number of the questionable major infrastructure projects that are gobbling up post-conflict IFI money, such as the ADB-backed Ajara highway, Tbilisi bypass railway project and some others, are also bringing questionable economic returns for Georgia. It is a general trend that the construction works are carried out by foreign companies that primarily offer only low quality, short-term contracts to local workers. With unemployment still at 16 percent, the number of people on benefit support from the government has also been trending up in the last year. On top of this, Georgia's external debt has already hit USD 3.5 billion.

A portion of the aid has been deployed too to prevent liquidity crashes at Georgia's leading private banks - yet there is mounting evidence showing that those banks receiving significant support from the EBRD and the International Finance Corporation are not injecting funds into the real economy. The state of the local business environment, though, is causing increasing concern, in spite of Georgia's surprising elevation to number 11 in the World Bank's 'Doing Business' rankings for 2010. On a recent visit to Georgia, EBRD president Thomas Mirow's remarks, that there is a "lack of healthy companies" in the country to lend them money, were reported in the national media. Government interference in the activities of Georgian SMEs is widely regarded as the major barrier currently frustrating expansion of the sector.

Still prevailing is a general environment that features weak rule of law and transparency norms, a lack of property rights protection, the non-existence of anti-monopoly legislation and competition policy, and the absence of free media. With these handicaps still rooted on the Georgian map there is little hope for now of stimulating the development of the real economy, of creating robust new businesses and, ultimately, jobs.

Implementation of provisions under the Kyoto Protocol and the UN Framework Convention on Climate Change

Government of Georgia made substantial progress in this area in 2009-2010. Taking into account the acute nature of climate change consequences, Georgia has identified climate change and adaptation to its consequences as a national priority. The National Adaptation Programmes of Activities (NAPA) which is currently under development will assist the country in undertaking the necessary measures and in finding the necessary funds. Two from three adaptation programs developed under the Second National Communication Report is under implementation with support of International donors. It includes the replacement of windbreaks, recultivation of destroyed forests areas in Dedolplistskaro region through GTZ support and rehabilitation of Black Sea coastal zone between Adlia and Batumi.

Georgia associated itself with "Copenhagen Accord" in 2009 and is ready to conduct appropriate measures to reduce GHG emissions notwithstanding its low share in the overall global emissions. Government officials started negotiations with UNDP and number of other international donors to support the NAMA (Nationally Appropriate Mitigation Action) strategy elaboration. The funds for elaboration of Third National Communication are allocated and it is expected that work on project proposals will start in spring 2011.

Unfortunately, till now Georgia has not benefited from CDM and "Kaztransgaz" project will be the first that would bring some benefits. The issues regarding the registration and validation is still problematic, e.g. after few years of preparations, the Enguri Project was not registered in UNFCCC, as project encountred some problems.

In May 2010 Tbilisi Mayor signed Climate Covenant of Mayors and took commitments to reduce $C0_2$ emissions through enhanced energy and cleaner energy production and use. By March 2011, Tbilisi City Hall aims at elaborating a baseline study on current energy consumption and CO_2 emissions in the relevant sectors of the city and in parallel elaborate strategies for energy efficiency in areas of municipal infrastructure, transportation and housing. The working groups are open for participation of all interested parties.

In autumn 2010, the second time in a row, the Climate Week supported by local EC delegation and facilitated by FoE-Georgia took place in Georgia. It aimed at raising awareness on climate change and included lectures, seminars, street actions, etc.

The EaP prioritizes the climate change adaptation and mitigation as one of the major priorities. Georgia has no integrated climate policy and almost no legislation in this field. It is important that further institutional strengthening of the competent authorities is continued by recruitment and training of staff in order to ensure development and implementation of legislation covered by the EU directives in the climate change sector. The establishment of National Forum on Climate Change will help to open door to all interested stakeholders to ensure the flow of information and increase public participation in climate change related decision-making processes and follow up activities.

Cooperation in transport sector

Georgia extensively continued implementation of the projects under roads rehabilitation programme with the funds provided by the international community after the August 2008 event, among them ADB backed Ajara Bypass Road Development project and East-West Highway Improvement project supported by the WB. In almost all IFI-funded infrastructure projects, the public consultations provided quite an important input that has resulted either in redesigning the projects, as for instance, in case of the WB financed Vasiani-Gombori road project, or in further defining the route (that would avoid biodiversity hotpsots), as in case of the ADB supported Ajara Bypass Road Development project. It should be mentioned, however that generally, public participation especially in urban transportation development schemes is still missing. Therefore, it results in construction of in city roads without any environmental and social impact assessments, or introduction of public transport schemes that promotes private car use.

Despite some improvements in intermodal services and rehabilitation of the railway system in Georgia, there are still number of the controversial issues. They are related to Euro 300 million Tbilisi Railway Bypass project that has been supported by Euro 100 million loan by the EBRD and Euro 100 million loan by the EIB in March 2010. The Tbilisi Railway Bypass project aims to improve the efficiency and safety of rail operations within the city of Tbilisi, however, foreseen construction of a new railway line through one of the densely populated districts of Tbilisi, splitting passenger railway systems in two parts and proposed safeguard measures to protect city's drinking water supply among other things are widely regarded as being far from sufficient as presently conceived. The project development has been characterized with poor public consultation process, despite the involvement of the EBRD and the EIB. It should also be noted that in September 2010 the Georgian government declined to take approved subisdized loan from the EIB and instead, decided to sell the bonds on international market. This gave raise to concerns that environmental and social standrads applied by the government will be lower than standards would have been applied in case of the EIB invlovement.

According to UNECE Second Environmental Performance Review (2010), "Tbilisi has severe air quality problems. Furthermore, its specific geography does not allow the operation of a large number of vehicles. Other parties, as referred to above, are working on fuel and vehicle quality (i.e. technological issues), but little attention has been given to one very important component of a sustainable transport system: demand management". While Tbilisi City Hall's direction towards re-introduction of electric transport could be considered as the move in right direction, overall, city lacks a comprehensive transport management plan/programme and this has resulted in increased emissions due to improperly planned public transport system.

The absence of concept for sustainable transport development for the country that prioritizes transit function and eagerly plans development of all possibilities to increase the passenger turn over, including development airports, railway, ports is issue of high concern. The integration of environmental issues, including health issues, in transport policy is still far away.

Cooperation in energy sector

In 2009 Georgian Government considered application for the full membership ("Contracting Party") in the European Energy Community (in 2007 Georgia has been granted an observer status). The commitments of

EEC Treaty includes implementations of specified EU legislation to environmental protection and management, as well as Kyoto Protocol and IPPC Directive.

According to the discussion paper prepared by GEPLAC which assesses the compliance of Georgian environmental and climate legislation to relevant EU legislation, including the Wild Bird directive, EIA directive, IPPC directive and number of relevant Energy directives, among them directive on renewable energy, the number of the legal, institutional and administrative steps should be undertaken in order to harmonize with the environmental legislation subject to EEC Treaty by Georgia[4].

According to the Ministry of Energy of Georgia the development of law on energy efficiency and renewables, has been postponed by 2012, due to the low capacity in that particular sector.

Ensuring transparency of privatisation process

As claimed by the reformist government, the privatization process had to be "unbiased and transparent", however, reality turned to be completely opposite. A non-transparent privatization agenda aims to attract short term cash inflows for the state budget, rather than prompting investors to develop new, credible – even, whisper it, sustainable – business. The experience shows that the whole cycle of decision-making, starting from decision to privatize ending with imposing obligations to the buyer – is completely blocked for public.

There were many significant amendments made to the legislation regulating privatization processes, although, none of these changes ensured transparency of privatization process; their majority were directed to increase of number of privatization objects, which is not surprising if the desire of Georgian government to boost the budget, is taken into account. Of course, interests of some powerful actors to get large facilities for a cheaper price cannot be excluded. In any case, it is important to admit that legislative change is not a product of unified and public consensus-based state privatization policy, which is proved by multiplicity of amendments in a short period of time.

Public access to privatization-related information is still an issue and no efforts have been made to address this problem. Again, the experience proves that state agencies do not promote availability of information for public; on the contrary, they are creating all possible barriers to block public information for interested parties. It should also be mentioned that efforts to obtain copy of privatization documents was not always unsuccessful. There were cases when state authorities disclosed privatization-related documentation. Such "selective openness" gives ground to assume that confidential privatization contracts include illegal obligations and/or obligations which are against public interests.

There is also one important aspect that, in the future, will cause serious problems not only for population of Georgia (especially communities affected by operations of privatized industrial enterprises having significant social and environment impacts), but also the State. Quite often it is almost impossible (or extremely time-consuming) to identify the owner of a privatized enterprise. This problem might not be acute today, but it will become apparent if operations of such enterprise cause damage. The problem is also of utmost importance in view of protection of workers rights in the privatized companies. Amendment made to the Law on Public Registry can be regarded as one of the attempts to resolve the above-mentioned problem. The law came in force in January, 2010 and made it obligatory to indicate the data of founders of the company registered in the public registry. Unfortunately, the public registry data are far from being ideal, quite often, it is impossible to find information about different businesses or contact details are out of date.

Unfortunately, confidentiality of public information is also a concern in relation to fulfillment of obligations considered by privatization contracts and Georgian legislation. Experience demonstrates that information about the performance of privatized companies is not accessible (or hardly accessible) for public. In this

[4] http://geplac.ge/newfiles/Environmental%20Implications%20vs%20ECC_JSarnacki%20May%202010.pdf

respect, quite interesting trends have been revealed: if the contract is a commercial secret from the beginning, state agencies also try to conceal information about fulfillment of contract obligations (if they have such information). However, there are cases when the contract is open for public, but information on performance is inaccessible (or hardly accessible). Situation is also weird, for instance, in case of privatization of Tbilisi, Mtskheta and Rustavi Water Supply systems: decree of the Georgian President about imposing obligations (deed on purchase) for buyer is disclosed for public, but the contract (which includes conditions set by President of Georgia) itself is inaccessible. Information on fulfillment of these obligations is also concealed.