



**GREEN**  
*Alternative*

*November 2006*

# **ENVIRONMENTAL GOVERNANCE IN GEORGIA**

**And How the EU Can Contribute  
to Its Strengthening**



**HEINRICH  
BÖLL  
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**FUNDED BY EU**



## RESEARCHED AND WRITTEN BY GREEN ALTERNATIVE

Published by Green Alternative within the project “Greening the European Neighborhood Policy - Georgia” under the framework project “Greening the European Neighborhood Policy” of the WWF European Policy office and the Heinrich Böll Foundation.

Green Alternative gratefully acknowledges the financial assistance of the European Commission, DG Environment and the Heinrich Böll Foundation EU Regional Office. Grateful thanks are due to the Heinrich Böll Foundation South Caucasian Office and the WWF European Policy Office for support provided during implementation of the project.

The views expressed in this publication are those of the authors and should not be taken to represent those of the European Commission or the Heinrich Böll Foundation EU Regional Office.

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# Environmental Governance in Georgia

## And How the EU Can Contribute to Its Strengthening

November 2006



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Endorsed by:



Article 42 of the  
Constitution



Caucasus Environmental NGOs Network  
(CENN)



Borjomi Association



Bolnisi Public Environmental  
Information Center



Center for Strategic  
Research and  
Development of  
Georgia



Ecoalliance



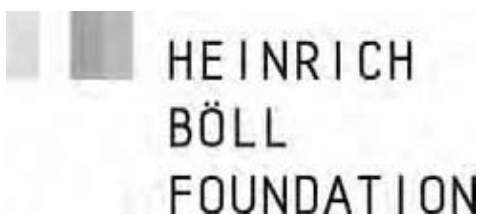
Genius Loci



Greens Movement of  
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Meskheti Voice



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## Executive summary and recommendations

The report identifies two stages in the development of the environmental governance system in Georgia: (i) the 1990's and the period before the 2003 Rose Revolution and (ii) the period after the Rose Revolution until now.

During the first period of development of environmental governance the elements of the new environmental governance system were formed after the collapse of the Soviet system. For example, institutions and legislation were created that more or less included the main principles of good environmental governance: transparency, participation and accountability. It is worth noting that Georgia became a member of the Aarhus Convention during that period; Georgia was one of the first countries to ratify the Convention. Despite the fact that ratification of the Convention was not followed by practical steps for implementation of the requirements set out in the Convention, the fact that Georgia shared the necessity of the establishment of "access principles" is to be welcomed.

The second period of development of environmental governance is characterized by frequent institutional and legislative changes that are directly related to the government's drive towards complete liberalisation and deregulation of the economy and the desire to increase state budget income with all means (including more exploitation of natural resources and changing the ownership status). The report reveals that these changes were not made in a transparent way and in consultation with the stakeholders. What is more unfortunate is that as a result of these changes the opportunities for the public to be informed and to participate in the decision making process were even more limited. Moreover, in parallel to limiting the access to information and public participation, these changes also limited access to justice.

In such circumstances, the fact that one of the priorities indicated in EU-Georgia AP is the facilitation of good environmental governance is very encouraging. However, it has to be noted that periodic evaluation of the situation in the country's environmental governance and the progress made towards achieving the goals (for example once every 2-3 years) is necessary for improving environmental governance. Moreover, as the opinions on the extent of harmonisation of the Georgian legislation with the corresponding EU legislation differ, it would be much more appropriate if such assessments were done by a third independent party, for instance, the European Environmental Protection Agency.

Furthermore, the EU and the Georgian government should be using the human resources that exist in the region more actively so that implementation of the AP brings real benefits to the country in terms of sustainable development. The introduction of the participatory principle is necessary during the implementation of the AP; this should include, but not be limited to the following:

- It is necessary to create open and transparent mechanisms of public participation in the format of structured consultation with EC and the Georgian government, this should be done during the elaboration, implementation and monitoring of the activities indicated in the Action Plan and ENPI.
- Guaranteeing public participation and organisation of public meetings on disputed issues is necessary for the implementation of the AP. Particular attention must be paid to effective expenditure, direct benefits to the population of the country and minimal damage to the environment and the public.
- Evaluation of the implementation of the AP must be based on an extensive consultation process so that subjective, or unrealistic evaluations caused by lack of information can be avoided.

Projects and programmes implemented with the assistance of the EU (both through ENPI and EIB) must unconditionally comply with the environmental policy requirements and standards of the EU, especially in the spheres of energy and transport:

- Horizontal instruments existing in the EU must become integral parts of the AP implementation.
- Any program must be preceded by strategic environmental assessment, as well as the necessity of integrated social and environmental assessment at the project level.
- The EC should have an administrative resource, which will assist the Georgian government in the planning

and implementation of specific projects in accordance with the directives of the EU.

- As infrastructural programs are usually implemented faster than environmental programs, it is necessary to avoid negative impacts both on the existing and planned protected areas, for example, on the protected areas included in the Emerald Network (which is an analogue of Natura 2000) and the areas protected under the Ramsar Convention.

Unfortunately, today the degradation of natural resources and limited access to them are both facts of life in Georgia. This is due to poor environmental governance which has been the case for decades. The problem is clearly illustrated by the natural disasters that have become particularly frequent in recent years (they are often caused by excessive logging, grazing and high density of population) and the increased number of so-called eco-migrants. Due to the close inter-relationship between poverty and environmental governance, we believe that:

- Based on public consensus, the projects must be identified within the AP that would first of all satisfy the interests of local communities based on the principles of sustainable development.
- A balance should be established between mega-projects and small-scale projects directed at specific groups, because the latter receive less attention from the Georgian government and international institutions.

In conclusion, it should also be noted that during the implementation of the AP, the EC should pay more attention to the monitoring of Georgia's compliance with international conventions, including the Aarhus Convention.

# 1. Introduction

## *1.1 The aim and the scope of the research*

The European Union's (EU) Wider Europe concept and inclusion of the South Caucasian countries in the European Neighborhood Policy opened up new prospects for Georgia in terms of future integration into the European economic and social structures. European Neighborhood Policy and consistent adherence to the EU-Georgia Action Plan must encourage growth of trade and investment; it should also facilitate economic integration.

Inclusion of Georgia in the European Neighborhood Policy creates new opportunities for the country. However, at the same time it poses new challenges for the existing system of governance and makes the formation of a more democratic and transparent political system necessary. This is particularly the case in the sphere of environmental governance, the field where decisions are made on the management of natural resources and ecosystems. As is well known, poor and low-income communities are particularly vulnerable to failed environmental governance, as they rely more heavily on natural resources for subsistence and income.

Therefore, with the new stage of the EU-Georgia relationship, it must be evaluated how prepared Georgia is to grasp all the benefits from the Neighborhood Policy and at the same time tackle all the difficulties associated with the deepening of EU-Georgia cooperation. The aim of the research is to clarify that issue.

## *1.2 Methodology*

Along with better understanding of the role of governance in sustainable development, the evaluation of the governance itself is increasingly becoming a subject of interest in the world. Correspondingly, there were attempts at using various indicators for evaluating the governance at national level, as a rule, within the context of environmental sustainability, economic growth and human development. All the researches carried out up to now show that the main characteristics of governance are transparency, participation, and accountability; therefore there have been many attempts at measuring and assessing those characteristics.

The present research used the seven elements of environmental governance defined in the joint report (World Resources 2002-2004: Decisions for the Earth: Balance, Voice and Power) drawn up by four international organisations in 2003: United Nations Development Program, United Nations Environment Program, World Bank and World Resources Institute. Those elements are: (1) legislation and institutional setting, (2) participation right, (3) distribution of competences, (4) transparency and accountability, (5) property rights, (6) market and finances and (7) science and risk. A short review of the issues covered by each component is given below:

**(1) Legislation and institutional setting** – Who makes decisions on consumption of natural resources and controls the implementation of those decisions? How legislation guarantees basic rights and freedoms concerning accessibility? How detailed the legislation is in terms of access to information, participation and access to justice in the decision-making process on environmental issues? Are there any restrictions introduced in order to limit access to information, participation and justice for any particular group? Are there any restrictions on access to environmental information? In case of violation of access rights, are there any administrative and legal means of protection?

**(2) Participation right** – Are individuals and groups involved in decision making processes that could affect natural resources and the environment? Is public participation in the decision-making process guaranteed at each level?

**(3) Distribution of competences** – Who is authorised to manage natural resources? Is the subsidiarity principle applied?

**(4) Accountability and transparency** – How open to scrutiny is the decision-making process? How are public and private sector decision-makers held accountable for their decisions?



**(5) Property rights** – Who owns natural resources or who has the right to control them?

**(6) Market and finances** – How do financial practices, economic policies or market behavior influence authority over natural resources?

**(7) Science and risk** – How are ecological and social sciences incorporated into decisions on natural resources used to reduce the risk to people and ecosystems?

The above-mentioned components of environmental governance currently existing in Georgia are assessed in this report. In addition, based on these elements, environmental governance in Georgian water management, forestry, waste management and the power industry has also been assessed.

The report is based on the analysis of Georgian legislation and various political documents; it is also based on recent research, the experience of non-governmental organisations (NGOs) and interviews conducted during the research.

### ***1.3 The structure of the report***

The present report initially reviews the role of good governance in achieving the goals of sustainable development; the main principles of good environmental governance are also briefly reviewed. The third chapter is dedicated to the assessment of the existing environmental governance system; the above-mentioned elements of environmental governance are reviewed in the sub-chapters. Chapters 4-7 are devoted to the assessment of environmental governance in four areas: management of water resources, forestry, waste management and the power industry. The structure of these chapters is similar to that of the main part of the report – the assessment is based on the seven elements of governance. Chapter 8 is dedicated to European Neighborhood Policy, the process of elaboration of the EU-Georgia Action Plan and some priority areas of the Plan; in addition, in this chapter issues are discussed which should receive particular attention during the implementation of the priority actions set out in the Action Plan.

## **2. Governance and sustainable development**

Despite the absence of a universal definition of governance, during the last two decades the realisation that the basis of development and precondition of poverty reduction is good governance is increasing all over the world. Therefore, international political documents more frequently include obligations concerning the establishment of good governance. For example, the UN Millennium Declaration (2000) and the Monterrey Consensus on Financing for Development (2002) point out that good governance at every level is essential for poverty reduction and sustainable development.

As has been already noted, governance has various definitions. The World Bank, for instance, defines governance as the manner in which power is exercised in the management of a country's economic and social resources for development. According to the UNDP, governance is the framework of rules, institutions and practices that set limits and provide incentives for the behavior of individuals and organisations<sup>1</sup>. The European Commission also has its own concept of governance, according to which, governance is a set of rules, processes and behaviors that affect the ways in which powers are exercised<sup>2</sup>. Despite certain differences, it is agreed that the main principles of good governance are transparency, participation and accountability and that achievement of sustainable development goals are possible only with transparent, participatory and accountable governance.

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<sup>1</sup> Closing the Gap: Information, Participation and Justice in Decision-making for the Environment, World Resources Institute, Washington D.C. 2002

<sup>2</sup> Visit [http://ec.europa.eu/governance/index\\_en.htm](http://ec.europa.eu/governance/index_en.htm)



Experience and understanding of the fact that there is a direct connection between effective development and improved access to information, participation in the decision-making process and accountability is constantly growing. This is particularly the case in environmental governance, in other words, in the sphere where authority is exercised over natural resources and the environment<sup>3</sup>. Indeed, an informed and educated public is better able to take part meaningfully in decision making that affects the environment; Informed and meaningful public participation is an effective instrument for integrating social and environmental concerns in decisions on economic policies and management of natural resources; Public access to justice is a way to hold decision makers accountable for the decisions they make. Therefore, ensuring public access to information, public participation in the decision-making process and access to justice are crucial steps towards sustainable development<sup>4</sup>.

Principle 10 of The Rio Declaration adopted in Rio-de-Janeiro in 1992 established the main institutional components of good environmental governance for any kind of governance model. In particular, according to Principle 10 of the Declaration (see box 1), governments and other decision-making bodies must guarantee access to environmental information for their citizens, encourage public participation in the decision making process and create the opportunities for redress and remedy. These three access principles represent the fundamental norms for a transparent, fair and accountable decision-making process and they create the foundation for good environmental governance.

**Box 1. Principle 10 of the Rio Declaration**

*Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*

Increasing the opportunities for public participation is an indicator of the level of a government's democratization. Giving the public, each social group or individual the right to participate in the decision-making process is a kind of compensation for the unequal distribution of environmental and social benefits and costs. Participation right is an opportunity for poor and socially vulnerable groups to better defend their interests during the decision-making process.

Certainly, public participation in the decision making process does not in itself guarantee sustainable development, however, experience shows that the more open state agencies are towards public participation, the greater the opportunities of integration of environmental and development issues.

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<sup>3</sup> We used the definition of environmental governance indicated in the following publication: World Resources 2002-2004: Decisions for the Earth: Balance, Voice and Power; United Nations Development Programme, United Nations Environment Programme, World Bank, World Resources Institute; Washington D.C. 2003

<sup>4</sup> Closing the Gap: Information, Participation and Justice in Decision-making for the Environment, World Resources Institute, Washington D.C. 2002

### 3. Environmental governance in Georgia

#### 3.1 Legislation

Basic human rights and freedoms, including the right to live in an environment that is not harmful to health, the right of access to the natural and cultural environment and the right to receive full, objective and up to date information on the working and living environment are guaranteed by the Constitution in Georgia (the Constitution of Georgia, Part 2). Later, several legislative acts guaranteeing basic rights and freedoms that had been previously recognized by the 1995 Georgian Constitution were also adopted. Access to environmental information, public participation in the decision making process and access to justice rights are reflected in more detail in Georgian environmental legislation. In addition, several legislative acts that regulate the right to access to public information in public offices, the right to participate in the decision making process and the right to legal protection in case of violation of basic human rights and freedoms have also been approved. These “access rights” are also guaranteed by the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention), which is an integral part of Georgian legislation and which is superior to other statutory acts (except the Constitution)<sup>5</sup>.

The Georgian environmental legislation currently in force was mainly adopted at the end of the 1990’s. Despite the fact that this legislation was changed from time to time the main principles and approaches remained the same. A number of studies have been carried out in recent years which reveal deficiencies in the legislation regulating environmental protection and the management of natural resources. These studies show that the main deficiency of the legislation is that the laws introduce only general legal norms and as a rule, there are no mechanisms for their implementation – detailed legal acts that would clearly define the functions, competences, obligations, procedures and practical actions.

Since the 2003 Rose Revolution, the Georgian government’s drive for economic liberalization has influenced the legislation regulating the issues of environmental protection and management of natural resources. The above-mentioned deficiencies in the legislation remained unchanged, however the character (content) of the regulatory instruments has significantly changed. This in turn, influenced the right of access to public information in public authorities, the right to participate in the decision-making process and the right to legal protection in case of violation of basic human rights and freedoms. The following chapters describe the way the legal norms guaranteeing the “access rights” have been changed.

##### 3.1.1 Access to environmental information

The Georgian statutory acts do not provide a definition of “environmental information” similar to that of the Aarhus Convention; however, certain definitions and the types of information related to the environment which cannot be made secret are defined. For example, the Law on Environmental Protection defines “environment” in the following manner: “the unity of natural environment and environment transformed by human activities (cultural environment) that includes living and lifeless, preserved and transformed natural elements, natural and anthropological landscapes, being in interdependency”. According to the legislation, the following types of information must be open and available to public: information on the state of environment (Law on Environmental Protection), information on public health (Law on State Secrets), information on conditions of humans’ working and living environment (the Constitution of Georgia), data on the hazards that endanger human life and health (General Administrative Code) and information on catastrophes and other emergencies that have already taken place or may take place and that endanger citizens’ safety (Law on State Secrets)<sup>6</sup>.

The current legislation more or less regulates the issues related to the preparation of reports on the state of the environment, rules of conduct during an emergency, access to statutory or strategic documents concerning the environment, dissemination of information concerning products and activities that might have significant

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<sup>5</sup> The Convention was ratified by the Parliament of Georgia on February 11, 2000. It came into force on October 20, 2001.

<sup>6</sup> Lia Todua, “How to Use Aarhus Convention in Georgia: Guide for the Representatives of Civil Society”, The European Commission, September 2004.

impact on the environment; however, these rules have to be further detailed.

The necessity of preparation and publication of a **National Report on the State of Environment** has been recognized and defined in article 14 of the Law on Environmental Protection adopted on December 10, 1996. According to the law, in order to keep the public informed the Ministry of Environmental Protection and Natural Resources (MEPNR) has to prepare an annual report on the state of environment and present it to the president of the country. Informing the public through publication of the Report is mandatory under law. While the Ministry is obliged to prepare the above-mentioned National Report, based on the aforementioned law, the sub-law approved in 1999 titled “Rules on Preparation of National Report on the State of Environment” allowed the autonomous republics and the local authorities to draw up, approve, publish and disseminate local and regional reports on the state of the local environment. The same act defines the structure and the necessary information that must be included in the Report. In particular the National Report must include information on the quality of the environment, national industry’s impact on the environment, state management of the environment, and prognosis and recommendations on the measures that must be taken in that field.

Up to now, in order to observe the requirements of the law the MEPNR has prepared and presented to the president of Georgia the National Report on the State of Environment in 2001, 2002, 2003 and 2004<sup>7</sup>. None of these Reports have been published or made available to the public (neither in print nor online) despite the fact that the primary goal of preparing that Report was to inform the public. Moreover, according to the law, statutory acts, as well as the various documents approved by the statutory acts must be published in official print. As far as the national reports are concerned, the official print published only the decrees issued by the Georgian president in connection with the approval of the national reports, but not the reports themselves.

Furthermore, the reliability of the information presented in the national reports on the state of the environment is an issue in itself. Due to serious weaknesses of control mechanisms over implementation of environmental requirements defined by law and the weakness of the monitoring system over the quality of the environment, the information presented in the Reports is not fully reliable, especially the parts that touch upon the quality of the environment and national industry’s impact on the environment. We must also note that the Scientific Institute of Environmental Protection, an agency subordinated to MEPNR, which used to coordinate the process and prepare national reports on the state of environment, was abolished by the President’s Decree issued on December 17, 2005. Currently the Report has to be prepared by the Ministry’s newly-formed structural unit – the Department of Sustainable Development.

Georgian legislation also requires the **provision of information concerning expected or previous natural and man-made accidents and other ecological catastrophes**. Surprising as it may seem, the legislation obliges the citizens to provide the corresponding state agencies with the afore-mentioned information, but says nothing about the state agencies informing the public.

The legislation also implies the possibility of the declaration of a state of emergency by the president of Georgia in the event of ecological catastrophes, epidemics and epizootics. In practice the dissemination of information under such circumstances is done according to the situation. There are very general requirements according to which there should be a plan for emergencies, in other words, that means that in the event of emergency there should be some preliminary action plans at state and industrial levels. This kind of general requirement that has no enforcement mechanisms is naturally not met<sup>8</sup>.

The only positive provision set out in the Georgian legislation in this sphere is that if the information is

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<sup>7</sup> It must be noted that the Ministry of Environmental Protection and Natural Resources published the National Report on the State of the Environment in 1996 with the help of the UNEP and GRID-Arendal. Later, again with the help of UNEP, the nongovernmental organisation GRID-Tbilisi published a thematic report on biodiversity in 1999 and two reports in 2000: “Health and Environment in Georgia” and “Environmental Conditions in Tbilisi”. Formally speaking none of these reports mean that the requirements of the law have been met, more so if we take into consideration the fact that none of them have been published according to requirements of Georgian legislation.

<sup>8</sup> Lia Todua, “How to Use Aarhus Convention in Georgia: Guide for the Representatives of Civil Society”, The European Commission, September 2004.

important in terms of protection of public safety, it can be revealed even if it constitutes a state secret<sup>9</sup>.

Georgian legislation regulating elaboration, approval and publication of statutory acts generally includes the issues concerning the accessibility of **statutory or strategic documents related to the environment**. According to the Law on Statutory Acts, the statutory acts indicated by law (laws, international agreements, acts issued by the Georgian president, government, executive authorities, local self-government bodies, etc.) must be published in official print. The legislation also sets out certain obligations in connection with accessibility of drafts of statutory acts, including statutory acts related to the environment (regulations of the Parliament of Georgia, General Administrative Code); however, as a rule, they are not followed. As for such strategic documents as, for example, policies, programmes, plans etc. they are usually approved by various statutory acts; which means they are covered by the rule according to which they have to be published. Despite this fact, just as in the case of the above-mentioned National Report on the State of Environment, such documents are often left unpublished and only the statutory acts with which this or that document was approved are published.

Generally speaking, Georgian legislation defines neither the rules of elaboration, approval and publication of strategic documents, nor their legal status and this must be considered as a serious shortcoming of the planning system existing in the country. The picture is relatively clearer in environmental planning. The framework Law on Environmental Protection sets out the provisions for the system of environmental planning (that the strategy for sustainable development, national environmental action plans and environmental management plans must be elaborated), however, these are only general provisions and Georgian legislation does not define more detailed norms and rules for planning. Therefore, the level of public involvement in the preparation of strategic documents, as well as the accessibility of the final product for the public mainly depends on the good will of the public authority that owns the document, more often it depends on the requirements of the international donors that usually provide financial support for the preparation of such documents.

It should be noted that before the changes made in September 2005, legislation regulating Environmental Impact Assessment (EIA) used to include provisions according to which EIA procedure (and therefore the mandatory consultation with the public) covered various programmes and plans (for example, industrial, transport infrastructure and energy system development plans). Despite the above-mentioned requirement, there has been no precedent of application of EIA to programmes and plans. As has been already mentioned, that requirement has already been abolished.

Recently, important steps have been taken towards the legal regulation of dissemination of information concerning **food products and food safety and quality assurance**. The following laws have been adopted: the Law on Protection of Consumers' Rights and the Law on Food Safety and Quality. Based on the risk assessment, these laws must ensure protection of consumers' health and life and provision of up to date, unbiased and objective information about the products to the consumers, so that they have the possibility to make an informed choice. At the same time despite this important improvement in the direction of ensuring food quality, the legislation that regulates the impact of the food production industry on the environment and human health has been changed for the worse. In particular, certain types of activities associated with the food industry that have a significant impact on human health and the environment, used to be subject to environmental assessment under the legislation and to public participation in the decision making process (certain activities used to be subject to full-scale environmental assessments and some were subject to limited assessment with the corresponding level of public participation). As a result of the changes made in September 2005, the food industry is no longer subject to environmental assessment procedures.

With regard to one more issue regulated under the Aarhus Convention – the pollutants release and transfer registers, that issue is not regulated at all by the Georgian legislation. In May 2003 Georgia signed the protocol of the Aarhus Convention on Pollutants Release and Transfer Registers; however, the Georgian authorities have refrained from ratifying that protocol<sup>10</sup>. Currently there is a certain system of informing the MEPNR on releases of pollutants by the entrepreneurs (through the Department of Statistics). That system is still

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<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

operational in many post-Soviet countries. Based on the information received, the Ministry registers the releases of pollutants; however, this information is not made public. The national reports on the state of environment usually include aggregated data on pollutants, however, as we have already noted, these reports themselves are also not available to the public.

### **3.1.2 Public participation in the decision-making process**

As noted above, Georgian legislation includes provisions that should ensure public participation in the elaboration of statutory acts and strategic documents; however, neither the Georgian Parliament nor the executive authorities and local self-government follow the requirements of the law.

These agencies constantly cite lack of finances as justification for incompliance. It has to be noted here, that in recent years the budget revenues and correspondingly the financing of public authorities have significantly increased; however, the obligations connected with informing the public and public participation are still not followed. Today the reasons given for not meeting the obligations is as follows: “the public is not interested” and “the authorities know better what the public needs”. The fact that the agency, which should be the first to comply with the obligation on provision of information and the involvement of the public in the decision making process, completely disregards that obligation, is extremely alarming. In the box below the appeal of NGOs on June 30, 2005 to the Minister of Environmental Protection and Natural Resources is presented where the NGOs demand more transparency and consultation with the public from the Ministry. This demand went unheeded.

#### ***Box 2. Appeal of non-governmental organisations to the Minister of Environmental Protection and Natural Resources, 30 June 2005***

To the Minister of Environmental Protection and Natural Resources Mr. Giorgi Papuashvili

In the recent period crucial changes have been made in the field of protection of the environment and natural resources, which radically changed the management system and which, in our opinion, in the long term (and in some cases in immediate future) will have an adverse impact on the environment and health of Georgian citizens. At the same time we believe that these changes will not eradicate corruption but on the contrary, will beget new forms of corrupt practices.

It is unfortunate that during the introduction of the above-mentioned changes the public was not informed and there was not even an attempt to consult the public. It is especially unpleasant for us to realize that lack of transparency and such undemocratic attitudes are applied in the sphere that the international community considers to be one of the indicators of the level of democratization and social justice in any country.

We demand that the Ministry hold a meeting in the nearest future with non-governmental organisations, relevant experts and other stakeholders and inform the public on the activities already implemented and planned by the Ministry.

- Association Green Alternative  
- Caucasus Environmental NGO Network (CENN)  
- Union for Protection of Environment and Animal Rights “Lobo”

- Center for Strategic Research and Development of Georgia  
- Center for the Recovery of Endangered Species “NACRES”

Legislation regulating public participation in the decision-making process at the activity level was adopted in 1997; it implies public participation in the permitting of activities that have an adverse impact on the environment and human health. After adoption of the laws setting the general framework, with a certain delay the sub-laws defining more detailed rules of granting permission were approved; however, this process did not include the definition of more detailed rules for public participation in the decision making process. It can be said that from 1997 till the autumn of 2005 the legislation was not changed much as far as public participation was concerned. As noted above, in September 2005 the procedures of permitting the activities having a significant impact on the environment and human health were considerably changed. This influenced the possibility of the public to be involved in the decision making process. The aforementioned changes and their results are discussed in more detail in the chapter on participation immediately below.



### 3.1.3 Access to justice

Georgian legislation provides for legal protection procedures in case of the violation of human rights guaranteed by the Constitution including the violation of “access rights”. Georgian legislation allows individuals to both lodge an administrative complaint and apply to court.

The rules of filing and hearing of **administrative complaints** are defined by the General Administrative Code, according to which, administrative complaint is an internal recourse mechanism in an administrative body, which is an alternative mechanism and does not make applying to court necessary. The practice adopted in administrative bodies nowadays does not resemble the quasi-court hearing at all. Moreover, it does not provide any information with regard to further court hearings nor benefit the complainant in any way<sup>11</sup>.

Apart from rare exceptions, the administrative proceedings do not precede legal proceedings, which indicates the fact that administrative bodies are not trusted. In fact, administrative proceedings are not really conducted. It resembles reminding an administrative body about the already sent statement rather than appealing for satisfying a concrete demand<sup>12</sup>.

There are no known precedents of filing administrative complaints related to environmental issues to an administrative body, despite the fact that according to the law, unlike the courts, this procedure is much faster and also free. So far only one case is known to us, which resembled administrative proceedings and which concerned the dissemination of incorrect public information<sup>13</sup>. The case was about drawing up of a false protocol of a meeting by a public official; the protocol was submitted to the court as proof that public consultations were conducted in the decision making process on granting an environmental permit to a certain activity<sup>14</sup>. The situation was further aggravated by the fact that the person who drew up the false protocol held the position of Public Relations Manager at the MEPNR and at the same time was a focal point of the Aarhus Convention in Georgia. The complainant “Green Alternative” demanded that the case be investigated and relevant administrative measures taken. The complaint was presented to the Ministry in June 2004 and it did not receive an official response; however, after a short time the aforementioned public official resigned.

According to the Georgian legislation, in case of any disputes related to the freedom of information, any person has the right to **file a lawsuit**. Any person has the right to apply to court and demand cancellation or changing of a decision made by a public authority, the plaintiff can also demand property or non-property compensation. Generally speaking, according to remedial legislation, a lawsuit is acceptable if the actions of a public official caused direct damage of the plaintiff’s lawful rights and interests. As a result of the ratification of the Aarhus Convention, the Georgian population received a unique opportunity – today it is not necessary to prove that an individual has experienced direct damage when it comes to the violation of Georgian environmental legislation.

Despite the fact that the Aarhus Convention was ratified five years ago, there have been very few instances when the above-mentioned rights under the Convention were used. There have been three cases so far, one of them was about the disregarding of the obligation by the public authority to provide the public with information and two other cases touched upon the disregarding of the obligation to involve the public in the decision making process on granting an environmental permit to certain activities. The first case was won by the plaintiff<sup>15</sup>. None of the courts of Georgia satisfied the plaintiff’s demands in the second case<sup>16</sup>. As for the third case, it is

<sup>11</sup> Tamar Gurchiani, “Analysis of Court Practice: Freedom of Information”, Part II, Georgian Young Lawyers Association, 2005

<sup>12</sup> *ibid.*

<sup>13</sup> The content of the complaint corresponded to the legal requirements set for administrative complaints, however, the rules of lodging the complaint and the hearing by the administrative body were precisely followed neither by the complainant nor by the administrative body.

<sup>14</sup> The court itself did not discuss the issue of recognizing the evidence as false at all ( Association Green Alternative vs. Ministry of Environmental Protection and Natural Resources and Georgian Affiliate of Baku-Tbilisi-Ceyhan Pipeline Company)

<sup>15</sup> In the case Green Alternative vs. Ministry of Foreign Affairs of Georgia and the Parliament of Georgia, the plaintiff demanded that the international agreement (and its attachments) made between the governments of Azerbaijan, Georgia and Turkey and the participants of the BTC Pipeline Project be officially published.

<sup>16</sup> In the case Green Alternative vs. Ministry of Environmental Protection and Natural Resources and Georgian Affiliate of BTC Pipeline Company, the plaintiff demanded that the environmental permit for construction of BTC pipeline in



still under legal proceedings<sup>17</sup>.

There are several reasons for the small number of “environmental lawsuits” and the abstention from application to the court; these are: lack of trust of the courts, length of legal proceedings, high court fees and reimbursement of attorneys.

Despite numerous reforms carried out in the judiciary system, the Georgian public still retains **mistrust towards the judiciary**, due to its lack of independence. According to a survey conducted by the Georgian Young Lawyers’ Association, the public has a unanimous opinion: the court has never been so politicized and obedient as it is now. Based on the survey the organisation also singled out the barriers that hinder the independent and unbiased functioning of the courts<sup>18</sup>:

- Insufficient constitutional and legislative guarantees for the independence of judges;
- Selection criteria for the judges that make it possible to select the candidates based on subjective attitudes and political reliability;
- Supreme Justice Council of Georgia, a body that makes decisions in connection with judges, is influenced by the executive branch of power, because of this Council is viewed as an agency for punishing the judges;
- Disciplinary norms make it possible to prosecute judges for the rulings they make;
- Weak social guarantees for the judges;
- Hasty judicial reforms and attempts made by the authorities to create mechanisms for controlling the courts.

According to the analysis of court practices done in 2000-2005, generally, the courts completely disregard **procedural terms**. Unfortunately, the situation has not changed since the Rose Revolution. Compliance with procedural terms is especially important during disputes connected with freedom of information, because information is a “perishable good”, which becomes useless after a certain period of time<sup>19</sup>. As an example, let us take the cases mentioned above: In the first case, the trial was over in 10 months after the lawsuit was filed; in the second case the trial was over in a year and a half and in the third case, the lawsuit was filed in June 2004 and despite the fact that the court accepted the case, the proceeding is not over yet.

When filing a lawsuit a plaintiff must pay a **court fee**, the amount and payment terms of which depends on the value of the subject of the dispute. However, the court also has the right to define the court fee based on the volume of the case, the status of the parties, their incomes, etc. Unfortunately, sometimes the courts set high fees for administrative disputes, which in itself limits the accessibility of the courts for the public. As an example, let us take the above-mentioned case when none of the courts satisfied the demand to cancel the environmental permit given to BTC Pipeline Company and guarantee public participation in the decision making process.

Before accepting the case Tbilisi District Court obliged the non-governmental organisation to pay a 3,100 GEL fee in 10 days (about USD 1500). According to the court ruling, while defining the amount of the fee the court took into account the volume of the suit, the status of the parties and the fact that the plaintiff (Association Green Alternative) was a legal entity<sup>20</sup>. Although the fee established by the court was unaffordable, the plaintiff with the help of international organisations still managed to pay it, otherwise the court would not have accepted the case.

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Georgia be cancelled and the public participation in the decision-making process be guaranteed.

<sup>17</sup> In the case Green Alternative vs. Ministry of Environmental Protection and Natural Resources and Spie Capag Petrofag International, the plaintiff demanded that the environmental permit for temporary storage and subsequent incineration of the waste accumulated during the construction of BTC pipeline be cancelled and public participation in the decision-making process be guaranteed.

<sup>18</sup> Tamar Gurchiani, “Analysis of Legal Basis, Legal Initiatives and Parliament Discussions Concerning Judicature”, Georgian Young Lawyers Association, 2005

<sup>19</sup> Tamar Gurchiani, “Analysis of Court Practice: Freedom of Information”, Part II, Georgian Young Lawyers Association, 2005

<sup>20</sup> However, the court did not take into account the fact that the plaintiff was a noncommercial legal entity of Private Law, whose activities were not directed at gaining profit and therefore it could not pay such a high court fee.

The plaintiff's demands were not satisfied by the District Court and therefore the organisation appealed the District Court's decision in the Supreme Court of Georgia. Taking into consideration the previous experience this time the organisation also asked the Supreme Court to exempt it from paying the court fee as the Aarhus Convention implied such a possibility. However, the decision made by Administrative Chamber of the Supreme Court exceeded the worst of expectations: instead of exempting the organisation from paying the court fee, it ordered Green Alternative to pay the highest possible sum – 4960 GEL (according to the legislation valid at that time, a court fee could not exceed 5000 GEL). Failure to pay the sum would mean that the case would have to be closed, therefore the plaintiff resorted to the last possible resort: it applied to the Head of the Supreme Court and asked him to ask the Supreme Court's Administrative Chamber to review its decision. That request partially worked, the Administrative Chamber discussed the amount of the court fee and decided that the plaintiff had to pay 1000 GEL, which was five times less than the sum originally demanded.

As the above-mentioned example shows, the court fee may turn into an impassable barrier for a person or organisation who wishes to apply to the court. That barrier becomes even more prohibitive after the recent changes were made to the legislation defining the amount of court fees. These changes made in July 2006 significantly altered the court fees; Table 1 below shows the amounts of court fees before and after July 2006.

	Amount of court fees before July 2006	Amount of court fees after July 2006
<b>lawsuit</b>	2,5% of the value of the subject of the dispute	3% of the value of the subject of the dispute, but not less than 100 GEL
<b>Appeal</b>	3% of the value of the subject of the dispute	4% of the value of the subject of the dispute, but not less than 150 GEL
<b>Cassation appeal</b>	3% of the value of the subject of the dispute	5% of the value of the subject of the dispute, but not less than 300 GEL
<b>Maximum amount of court fee</b>	5 thousand GEL	50 thousand GEL

**Table 1. The court fees before and after July 2006**

In the case of the above-mentioned case, following the same logic, it can be assumed that after the changes in the legislation that took place in July 2006, the plaintiff, non-governmental organisation would have to pay the court 49,600 GEL instead of 4960 GEL.

As for the reimbursement of attorneys, today this problem is more evident in Georgian regions. As for the capital and other major cities of Georgia, several human rights NGOs are operating there, who defend the citizens' rights in courts free of charge.

When discussing attorneys, we should also note the changes made in the same period to the legislation regulating the attorneys' activities and which will have a significant impact on access to justice, as experts claim. Specifically, the changes were made in July 2006 to the provisions regulating representation in the courts. According to them, person who was not able to pass the attorneys' tests and is not a member of Lawyers' Association can represent his/her client only in lower courts; for such a person it is forbidden to represent his/her client at the Courts of Appeal and Cassation. Such changes significantly limit the access to higher courts for every citizen of Georgia, not to mention the socially vulnerable groups of society, who will not have the right to select the attorneys of their choice. In fact, the state constricts the ability of citizens to hire lawyers, who have passed certain tests and are members of Attorneys' Association or just refuse to appeal against the decisions made by the lower courts.

It is noteworthy to mention that the above-mentioned restriction does not concern the representatives of the state authorities, local government agencies and organisations. This naturally places the parties under uneven conditions and that directly contradicts the main and leading principle of civil law – equality of the parties. The above-mentioned changes are viewed by lawyers as not only the restriction of access to justice, but also as an attempt to control the lawyers through the Attorneys' Association (it concerns not only the private

lawyers, but also NGOs that represent socially vulnerable groups in the courts with the help of international organisations).

In conclusion the recent decisions made by the Georgian authorities regarding the Constitutional Court should also be noted. Recently, the Constitutional Court has been moved from capital city to Batumi, Adjara<sup>21</sup>. Despite the fact that the court fee for filing the lawsuit in the Constitutional Court is quite low (GEL 10), the fact that the Court has been moved to Batumi will increase the expenses of not only the plaintiffs and defendants, but also the Court itself (for example transportation, accommodation, communication and other types of expenses). Some politicians and NGOs even claim the movement of the Constitutional Court from the capital to a distant region will further weaken the mechanism for constitutional control and endanger the democratic development of the country.

Another change in the Constitutional Court is especially important for environmentalists. This is the fact that Mr. Giorgi Papuashvili has been recently appointed the Head of Constitutional Court. During the time (a year and a half) Mr. Giorgi Papuashvili headed the MEPNR, legislative changes were made, which limited public access to information and public participation in the decision making process. Thus, taking into account this appointment, the probability that the Court will accept lawsuits demanding restoration of those rights is very low and in reality, is practically zero.

### ***3.2 Institutional structure***

The state system of environment protection and management of natural resources remained practically unchanged before the Rose Revolution. The main role in the system was played by the MEPNR. However, there were other agencies which together with the Ministry shared the responsibility of protecting the environment and managing natural resources. The deficiencies of that system were often highlighted in the reports of local and international organisations, the main problems named by those organisations were: overlapping of competences of various agencies, duplication of the functions, vague definition of obligations, poor cooperation and communication, lack of qualified human resources and planning and management experience, lack of financial and technical resources, etc.

The system as well as the whole governmental establishment, has undergone significant changes over the last three years. These changes will not be described in detail here; we will only note that the changes were made in three main directions:

- (a) The so-called “adjacent” state agencies joined the MEPNR (for example, State Forestry Department, State Department of Protected Areas, State Department of Geology, a part of State Department of Land Management, etc.)<sup>22</sup>;
- (b) Various units subordinated to the MEPNR and new joint agencies were either abolished or reorganized, or new units formed;
- (c) The Ministry’s territorial units were aggregated and deprived of certain decision making rights in environmental protection and management of natural resources.

Apart from the structural changes in the Ministry, the heads of the Ministry have been changed three times during last three years. The Minister appointed after the Rose Revolution held that position for exactly one year

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<sup>21</sup> It should be noted that earlier in January 2005, the authorities proposed moving the Constitutional Court to Kutaisi. Despite the fact that Kutaisi is closer to the capital than Batumi, this issue caused extensive disputes among the supporters of the government and opposition. Due to the confrontation the authorities failed to move the Court to Kutaisi; however, the authorities managed to realize their plans without “unnecessary” discussions after almost a year and a half, while the politicians and the whole public were “busy” discussing the deteriorating Georgian-Russian relations.

<sup>22</sup> With this arrangement the Ministry manages all natural resources except for oil and natural gas. These resources were also covered by the Ministry before the establishment of a state regulatory agency for oil and natural gas resources at the end of the 1990’s.

(from February 17, 2004 till February 17, 2005)<sup>23</sup>. The next Minister, who had been the head of the Ministry of Justice for one year prior to that (Mr. Giorgi Papuashvili), held that position for a year and a half (from February 17, 2005 till July 21, 2006) and then he was appointed the Chairman of the Constitutional Court. Today the Ministry has a new person in charge; however, he may not retain that position for long, since at the moment merging the MEPNR with the Ministry of Agriculture is being discussed and most probably the head of the new Ministry will be another person.

Despite the fact that none of those ministers had any specific experience and/or knowledge in the sphere they were heading, each of them had their vision of what the system should be like and what kind of personnel should be working there. Therefore, with the appointment of each new minister structural changes took place in the system (which, as a rule, were not substantiated and did not undergo consultation with the relevant stakeholders) and personnel were changed. The main principle of personnel replacement and recruiting was not the experience and knowledge of the newly-recruited, but whether they could be trusted or not; it mainly concerned the persons holding the higher positions in the Ministry. Due to the frequent changes, in order to avoid “paralysis” in the Ministry, a small number of “old” staff always stays in the Ministry as “storytellers”.

It is also worth noting the knowledge and attitude of public officials currently working at the MEPNR towards the obligation of the state to inform and involve the public in the decision making process. These attitudes were revealed during the research carried out in 2004 and also during the interaction of NGOs with public officials on different issues. In particular, according to the sociological survey done in forestry management<sup>24</sup>, most of the public officials polled during the survey believe that the public is insufficiently informed, and a only small part of them believed that the public was sufficiently informed. Their opinions on the forms of public participation in the decision making process are also very interesting. Most respondents name the participation of the public in street-cleaning and planting activities and informing the Ministry of suspicious or criminal activities via hot-line as the forms of public participation in the decision making process. At the same time almost half of the polled believe that public discussions, studying public opinion or using other means, and generally, public participation in forestry management is not necessary. The rest of the respondents said that all of these actions are necessary, but they should only be carried out partially (?).

As for the changing of the management tools, the reforms in this sphere were carried out according to the general policy pursued by the government, which implies improvement of investment climate and the increase of budget revenues. The Ministry (it would be more relevant to say, the government of Georgia) also has specific perceptions of how this course must be pursued. For example, the mechanisms of limiting the release of pollutants were changed and the taxes imposed for releasing pollutants in air and water were abolished, the tax for the use of natural resources was also abolished (however, after the government realized that it was a mistake (a significant source of budget revenues was lost) the tax was reintroduced, but this time it was called a fee for using natural resources), the licensing rules for using natural resources were radically changed, the number of activities that used to be subject to environmental assessment procedures (and correspondingly, public participation in the decision-making process) were sharply reduced and the decision making period for granting the environmental permit (now called permit for impact on the environment) were dramatically limited (from three months down to 20 days)<sup>25</sup>.

The policies currently pursued by the MEPNR can be concisely and clearly described by the words of the former head of this authority himself - in his interview to one of the newspapers Mr. Giorgi Papuashvili said: “If you monitor an investor at every step in such a country as Georgia – checking how many pollutants were released, what is the level of contamination, etc. - it will be viewed as an unnecessary level of interference in the business. At this stage it is most important to facilitate the development of business in Georgia. When our Gross Domestic Product equals that of an average EU member state then the environmental monitoring system

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<sup>23</sup> Ms. Tamar Lebanidze used to head the micro-finance organisation “Constanta”. After her dismissal she returned to her previous activities.

<sup>24</sup> Georgia Food Safety Association and Community Foundation Genius Loci, Sociological survey held within the framework of Georgia Forests Development Project under the component of public awareness raising strategy and action plan.

<sup>25</sup> It is noteworthy that in EU member states the decision-making period for similar permits varies from 140 to 450 days.

will become stricter. Georgia's environment is still one of the less affected ones in the world"<sup>26</sup>.

The commercials that are aired by various Georgian TV stations by request of the Ministry are also noteworthy, sometimes they advertise the amounts of money accumulated from fees for using natural resources, sometimes they urge foreign investors to invest in the exploitation of the natural resources of Georgia and the general slogan of such commercials is: "Georgia is rich with natural resources, come and exploit them".

The opinions expressed by Georgian politicians in regard to international environmental conventions (which Georgia is part of) are also interesting. Due to heavy debts Georgia has to various international organisations and Conventions (not only environmental ones), one of the politicians even considered the possibility of Georgia's leaving the CITES<sup>27</sup> Convention<sup>28</sup>. Apart from the membership fee problem, it was claimed that by entering such "strange" Conventions Georgia helped foreign businessmen "buy" some privileges from Shevardnadze's government (?). During the informal talks with officials it became clear that the possibility of leaving the Basel Convention<sup>29</sup> was discussed, so that the businessmen could import waste from other countries and increase their own and correspondingly the state budget revenues.

In conclusion, it can be said that over the years Georgia has managed to establish relevant environmental institutions; however, they have neither political will nor power to attach more importance to environmental issues, nor consider these issues as important as the economic ones.

### ***3.3 Participation Right***

As was mentioned in previous chapters, Georgian legislation does not regulate issues concerning public participation in elaboration of strategic documents at national or regional levels. It is also difficult to remember any good practice of a public authority voluntarily involving the public in the elaboration of strategic documents. Therefore, in this chapter we will concentrate on public right to participate in the decision making process at the activity/project level.

The possibilities of being involved in the decision-making process at the activity level are conditioned by the procedures of issuing the environmental permit (later called permit for impact on the environment) for the activity. We have noted a number of times that these procedures have been significantly altered during the last year and therefore to get a full picture it is necessary to review the situation existing before the changes of 2005 and the changes themselves.

It has to be noted that the government has constantly tried to gather all the procedures pertaining to licensing and permitting under one framework statutory act and introduce a certain set of common rules. Correspondingly, the issuing of environmental permits, as well as other licenses and permits existing in the sphere of environmental protection and management of natural resources, were subject to general, minimal rules, but at the same time the detailed rules, including rules for provision of public participation in the decision-making on issuing the licenses and permits, were defined by special environmental laws and international conventions.

The situation was radically changed after June 24, 2005 when a new Law on Licenses and Permits was adopted. The new law subordinated the environmental protection and use of natural resources to general rules, without any exemptions. In terms of public participation it is most regrettable that according to the new law, issuing of an environmental permit, which previously could not be issued without informing the public and ensuring public participation, became possible within 20 days based on simple administrative rules. Those rules exclude any possibility of informing the public and public participation in the decision making process. The new law also changed the name of the permit itself: instead of "environmental permit" now it is called "permit for the

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<sup>26</sup> Newspaper "Environment", Caucasus Environmental NGOs Network, June 2006; "Faces and Names - 2005", Publishing House "Sakhe(l)ebi", 2006.

<sup>27</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora

<sup>28</sup> Newspaper "Alia", October 12-13, 2004; interview with Head of the Committee of Foreign Relations of the Parliament of Georgia, Mr. Konstantin Gabashvili.

<sup>29</sup> Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal



impact on the environment” and the reason for such a change was that the new name is better suited to the content of the permit.

Based on the Law on Licenses and Permits and in order to enforce its provisions, a regulation was adopted in September 2005 that defined relatively more detailed requirements for issuing the permit for the impact on the environment. The MEPNR tried to extricate itself from the clearly “embarrassing situation” and partially “appease” the NGOs: the Ministry obligated the investors to ensure public participation before submitting an application to the Ministry for the permit. As a result, the current legislation makes public participation a mere formality – “ensuring” publicity “outside” the license issuing body. Table 2 below describes the situation concerning public access to information and public participation in the decision-making process that existed before the adoption of the Law on Licenses and Permits and after.

In conclusion, it can be said that as a result of the recently made changes, the public is left without the possibility not only of expressing its opinion but of being informed on the decisions that are made. In order to justify the above-mentioned changes the representatives of the MEPNR often say that the norms that used to guarantee public participation in the decision making process had always been just a formality anyway and they were never put into practice due to the public’s passivity. It is hard to disagree with that opinion, but it should be added that the only reason for that was poor internal control and poor and vague requirements concerning public participation in the decision-making process that could be easily avoided by the Ministry and investors; These requirements should have been made stricter and more detailed instead of simplified or abolished altogether.

The above-mentioned legislative changes are in direct contradiction with the range of requirements of the Aarhus Convention, which will not be discussed here in detail. However, it should be noted that the Aarhus Convention defines the “floor”, not the “ceiling” for public participation in the decision making process and the members of the Convention should be striving for adoption of legislation that would guarantee higher standards. Unfortunately, in the case of Georgia, everything is done vice versa.



	Before adoption of the Law on Licenses and Permits	After adoption of the Law on Licenses and Permits <sup>30</sup>
Activities	<b>Categorization</b>	
	<p>The activities are divided into four categories according to their scale, importance and the level of impact on the environment.</p> <p>The definitions of the activities required refinement and the thresholds - revision.</p>	<p>Single list of activities (criteria are not defined)</p> <p>The activities are presented in a consolidated form, without thresholds (with a few exceptions)</p>
	<b>Environmental assessment</b>	
	<p>I category – subject to full-scale environmental impact assessment</p> <p>II, III and IV categories – subject to limited environmental assessments depending on the category.</p> <p>The activities are subject to environmental assessment notwithstanding who is conducting it – the state or a private entrepreneur</p>	<p>All the activities included in the list are subject to full-scale environmental impact assessment.</p> <p>The activity is subject to environmental impact assessment if it's carried out by a private entrepreneur; the state is exempt from this responsibility</p> <p>The number of activities that used to be subject to environmental assessment has been significantly reduced. For example, mining, agricultural and food industries, wood, paper, leather and textile industries, certain types of infrastructural projects, etc. are not subject to environmental assessment anymore.</p>
<b>Periods allocated for EIA quality check (state ecological examination) and decision making on issuing permit</b>		
<p>For I category activities – 3 months</p> <p>For II category activities – 2 months</p> <p>For III category activities – 2 months</p> <p>For IV category activities – 1 month</p>		<p>20 days</p> <p>20 days period can be extended up to 3 or 6 months on each specific case, but the provisions for extension are very vague and irrelevant to the situation in Georgia.</p>

<sup>30</sup> The information presented in this column reflects the situation existing after the adoption of the Law on Licenses and Permits and the statutory acts adopted based on this law and for its enforcement.

Exemptions from environmental impact assessment		
	<p>The law allows exemption from EIA in case of state interest. There has been no precedent of exemption from EIA due to absence of a sub-law that would regulate that issue in more detail.</p>	<p>The issue is regulated by a sub-law, which is very vague and general; the decisions are made with zero publicity. After the statutory act was adopted the following three activities were exempt from EIA: construction of an asphalt factory and two infrastructural projects (motorways)</p>
<p><b>Informing the public and ensuring public participation:</b></p> <p><b>The rights and obligations of MEPNR</b></p>	<p>After receiving an application for permit the Ministry is obliged to:</p> <p>For I category activities – inform and consult the public (public meeting to be held in the capital)</p> <p>For II category activities - inform and consult the public (public meeting to be held in the capital)</p> <p>For III category activities – inform the public</p> <p>For IV category activities – no public participation</p>	<p>The Ministry is neither obliged nor entitled to ensure public participation after receiving an application for a permit (i.e. in the decision making over issuing a permit)</p>
<p><b>Informing the public and ensuring public participation:</b></p> <p><b>The rights and obligations of project proponent</b></p>	<p>In case of first category activities, the project proponent has the right, but is not obliged to hold a public meeting before submission of an application for permit.</p>	<p>The project proponent is obliged to hold a public meeting before submission of an application to the Ministry; the public meeting shall only take place in the centre of the district where the activity is proposed to take place.</p>

Table 2. Public participation in the decision-making process before and after the adoption of the Law on Licenses and Permits.

### ***3.4 Distribution of competences***

Natural resources<sup>31</sup> are owned by the state in Georgia. The state regulates the environmental protection and management of natural resources. Generally speaking Georgian legislation recognizes the subsidiarity principle in the distribution of functions; however, this principle has not been applied in practice either before the Rose Revolution or after it. There are certain differences between the periods before and after the Rose Revolution, therefore we will briefly review these two periods below.

The Law on Environmental Protection sets the criteria for the distribution of functions between the state authorities, autonomous republics and local self-government, these are: 1. Sources for financing the environmental measures; 2 Significance of natural resources; 3. Scale of adverse impact on the environment and 4. Jurisdiction over the protected areas. Based on these criteria, especially on the second and third criteria the statutory acts regulating specific natural resources introduced the concepts of resources of state and local significance. Logically, this should have been followed by a definition of the functions of the autonomous republics and local self-government in the management of local resources and the practical measures for implementation of those functions. Unfortunately, little was done apart from the introduction of the concept. For instance, when it comes to minerals, MEPNR used to issue licenses on mining operations of national significance, licenses for mining operations of some local mineral sources were issued by the territorial units of the Ministry again rather than by local self-government bodies. The Law on Water Resources recognizes the concept of water resources of special national and local significance; According to the law, the local self-government bodies had the right to issue licenses for using water resources of local importance; however, despite this fact, the licenses for using the local water resources in the regions were still issued by territorial units of the Ministry. As far as forests are concerned, the situation was the same, but in this case there were the so-called “collective farm forests” (defined during the Soviet period) in the Adjara Autonomous Republic and the Imereti region and the local self-government bodies had the right to issue licenses for certain types of forest use (the rest of the territories were managed by the State Forestry Department, which was not part of the MEPNR at the time).

As for the environmental permits mentioned in the previous chapter, in this case the MEPNR held the complete reins of power again. The Ministry allowed the ministries of environment of autonomous republics and its territorial units to issue licenses for II and III category activities<sup>32</sup>.

The control function was completely in the hands of the central authorities and the situation remains the same at present. The central government controlled the levels of pollution of environment and management of natural resources through its territorial units. The difficulty in this case was the fact that several state agencies had the right to control one and the same sphere, which, taking into consideration the poor coordination and cooperation between those agencies, enabled them to blame each other for the deficiencies existing in the system (including corruption). The situation has been more or less improved after the Rose Revolution after the merging of some state agencies and the establishment of a single controlling unit – the Environmental Inspectorate; however, the control system is still not working properly.

Therefore, it can be said that delegation of competences to autonomous republics and local self-government bodies in environmental protection and management of natural resources was a formality and in fact the sphere was really managed from the centre through the Ministry’s territorial units. This state of affairs was reinforced by the fact that the differentiation between the natural resources of national and local significance was also formal and actually none of the resources were delineated in practice. It should be noted here that despite the fact that the law specifically regulating the activities of local self-government grants them certain rights in environmental governance, these norms are very general and declarative as is the case with environmental legislation. As a result, local self-government bodies sometimes try to make decisions under the vague rights delegated to them by the legislation that may not correspond to the decisions made in the centre.

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<sup>31</sup> By natural resources we mean forest, water, minerals and fauna resources.

<sup>32</sup> It should be noted that the so called “dual subordination” of ministries of the environment of the autonomous republics and the Tbilisi committee of the environment used to create certain misunderstandings due to their simultaneous subordination both to MEPNR and the governments of autonomous republics and local self-government bodies; to some extent such a situation created an illusion of decentralization.

The institutional changes carried out in environmental protection and the management of natural resources, which took place after the Rose Revolution, as well as the adoption of the Law on Licenses and Permits aggravated the situation even further. As a result of those changes, the territorial units of the MEPNR were stripped of even those rights that they had under the previous legislation and the central office of MEPNR got complete power in this sphere. It can be said that the Ministry has completely monopolized power. Unfortunately, NGOs' attempts to convince corresponding state agencies that such changes would limit public access to natural resources and that this would become a new source of conflict turned out to be futile.

This "mistake" or possibly deliberate action soon yielded corresponding negative results; however, the government's, in particular the MEPNR's reaction was inadequate. Several months ago the Ministry delegated the right to issue licenses for certain types of activities related to the forest use, mining, water use and hunting to the Office (previously, Ministry) of Environmental Protection and Natural Resources of the Adjara Autonomous Republic<sup>33</sup>. It is noteworthy that the same power was not delegated to other offices/units of the MEPNR in the rest of Georgia. With the adoption of the Law on Licenses and Permits, access of local communities to firewood was significantly restricted. The MEPNR responded to the concern only a year after the adoption of the law. In August 2006 the MEPNR delegated the power of licensing on firewood to its territorial units and the local self-government bodies.

Despite the experience of other developing countries, which local experts and organisations often point out for the government to see, it can be generally said that the authorities learn only by their mistakes. The cause of mistakes is the reluctance to hear other parties' opinions and take them into account. This reluctance can only be opposed by the requirements of the law. However, the most deplorable thing is that the government is slowly but steadily eroding the public right to be informed and to express their opinion as defined by the law.

### ***3.5 Transparency and accountability***

Currently the MEPNR's actions to guarantee transparency and accountability to the public are mainly manifested in the form of news published on the website of the Ministry, which mainly concerns the auctions already carried out and planned on mining operations and the listing of violations revealed by the Environmental Inspectorate. The only document that can provide some information on the processes that took place in the Ministry and the Ministry's future plans is the Ministry's Report on the activities that authority carried out in 2005. The contents of the Report will not be discussed in detail, we will just note that about half of the Report is filled with useless photos and the Ministry's priorities for 2006 are presented in about 10 sentences on half a page without any substantiation or analysis. It is also noteworthy that the website's English version includes only the list of natural resources in various regions of Georgia that can be exploited in the event of a corresponding license being received; apparently this is done in order to attract potential foreign investors.

As we have already noted, a certain degree of transparency is guaranteed only in the projects that are carried out with the help of international donor organisations and countries, since those programmes usually include the requirements for transparency. In other words, it is transparency and accountability to the donors rather than the public.

How transparent the activities carried out by the authorities are and how accountable they are to the public can be seen in the statement made by NGOs on November 10, 2005 in which they jointly apply to the Minister of the Environment for the second time. If we compare the statement made on June 30, 2005 with the November 10, 2005 statement it is evident that the demands are practically the same. The only difference between these two statements is that with their last statement the NGOs also ask the Parliament to guarantee more transparency during the decision making process and carry out its supervisory functions. The main similarity between the first and the second statements is that none of the addressees have responded to the NGOs' statement.

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<sup>33</sup> This office is still subordinated to both the MEPNR and the government of the Adjara Autonomous Republic.

### Box 3. Statement of non-governmental organisations, 10 November 2005

#### Statement of NGOs on Ensuring Public Participation in Decision-Making on Environmental Matters and Modifications in the State Environmental Policy of Georgia

Considerable changes have been made in the system of environmental protection and management of natural resources during the last two years. They effected radical changes both in the structure of public administration and management instruments, and limited the possibilities of public participation in decision-making on environmental matters.

The institutional system has been changed: the Ministry of Environment and Natural Resources Protection of Georgia were abolished and the Ministry of Environmental Protection and Natural Resources has been established, incorporating several governmental agencies. An Inspectorate for Environmental Protection has been created. Economic instruments for administration, such as taxes for use of natural resources and pollution, have been changed; tax for pollution has been annulled, while the tax for use of natural resources has been altered to a fee; a very important instrument of decision-making on implementation of different activities, such as the procedure of issuance of environmental permits, has been annulled as well; the licensing system for the use of natural resources has been completely transformed.

Unfortunately, these modifications have been done in haste and without any consultations with the stakeholders. In our opinion, this has led to the effective legislation being full of deficiencies requiring immediate correction. We think that these changes moreover that do not contribute to the establishment of more transparent and effective administrative system, create “fruitful soil” for making unjustified decisions inadequate for the health of humans and harmful for the environment.

In the coming days, before November 15 of this year, according to the requirements of the Law of Georgia on Licenses and Permits, the Government of Georgia is to submit to the Parliament the draft legislative acts that should help enforcement of this law. Again unluckily for us, notwithstanding the closing date delivered by the Law, the Ministry of Environmental Protection and Natural Resources did not make these draft legislative acts accessible to the public and avoided consultations with stakeholders as in the case of adoption of the Law itself. For us, the proposed way of making such important legislative modifications is unacceptable. Such action directly contradicts the Constitution of Georgia and the Aarhus Convention requirements, of which the Georgia is a part.

Therefore, we, the undersigned non-governmental organisations, request the following:

1. The Ministry of Environmental Protection and Natural Resources of Georgia shall guarantee public access to the draft legislative acts with regard to the adoption of the Law of Georgia on Licenses and Permits as well providing consultations with the public. Specifically, the Ministry shall take the following actions:

- fix the period of 60-90 days for consultations with the public concerning draft legislative acts and make an announcement using all possible ways of informing the public.
- along with the announcement, make public the draft legislative acts developed with regard to the adoption of the Law of Georgia on Licenses and Permits (among them, by placing this information on the Ministry’s web-page and in the Office of Public and Media Relations, also by dissemination through electronic networks).
- arrange at least two public hearings during 60-90-days of public consultations. Dates of public hearings shall be communicated in the announcement.
- within 10 days, after completion of 60-90 days of public consultations, inform the public on consideration and/or rejection of remarks and comments to the Ministry made by the public either in written or formulated verbally at public hearings; In the event that the remark/comment is not considered, the Ministry shall justify its decision.
- disseminate the information communicated in the previous item in a way similar to that of draft legislative acts.

2. The Ministry of Environmental Protection and Natural Resources of Georgia shall make decisions on any institutional modification so that public participation is guaranteed in decision making. To ensure public information and consultations, the scheme provided in the first item could be used. In any case, the Ministry shall make the procedure of decision-making and opportunities of public participation in this process clear to the public.

3. The Parliamentary Committee for Environmental Protection and Natural Resources of Georgia shall supervise activities performed with the purpose of guaranteeing public participation in the elaboration of draft legislative acts by the Ministry.

4. The Parliamentary Committee for Environmental Protection and Natural Resources of Georgia shall organize committee hearings after the draft legislative acts have been submitted to the Parliament for discussion.

- Association Green Alternative  
- Center for Strategic Research and Development of Georgia  
- Center for the Recovery of Endangered Species, NACRES

- The Caucasus Environmental NGO Network  
- Association LOBO  
- GRID-Tbilisi



### **3.6 Property rights**

As we have mentioned in one of the previous chapters, the natural resources are the property of the state in Georgia and the resources can be transferred to physical or legal entities for different uses. We already described the way the competences are distributed in the management of natural resources, including licensing. Here we will try to briefly describe the mechanism of licensing itself, the changes made in it and the future plans of the government on adopting different approaches towards the relations between the state and the users of natural resources.

Before the Rose Revolution the issuing of licenses for using natural resources was carried out almost according to one and the same mechanism. According to the legislation, the so-called inter-agency councils should have been formed in the case of each type of resource, which would comprise experts, representatives of various agencies and other relevant persons; these councils were to decide whether or not the license for the given activities would be issued. The Ministry had to issue the licenses based on the council's decision. This kind of approach when the decision over issuing the license was made by a council that consisted of various stakeholders was showcased by the Ministry as the best example of public participation and transparency. The problem was that in reality, this seemingly transparent mechanism did not really work. The council meetings were mostly a formality and the real decisions were made by the Ministry itself. Besides, if there was significant opposition to this or that issue the Ministry could always blame everything on the council and justify itself by saying that the decision was made by a collegiate body not an individual.

The Law on Licenses and Permits adopted in 2005 changed the situation. The councils were abolished and today the licenses for the use of any type of natural resources are auctioned off. As we have already noted, the fact that licenses for using natural resources of both national and local significance are issued based on the auctions conducted only in Tbilisi has already created considerable problems in the Georgian regions.

During the last year the authorities have been actively discussing the possibility of changing the form of ownership of forestry resources – the government is discussing the possibility of privatising the forests (we do not mean discussion with the public; usually, the public learns about the government initiatives from mass media outlets). The only motive here is the idea that Georgia is not capable of looking after its forests, while a private company or individual can do it; Furthermore, by selling the forests the state will receive additional income. This initiative would have been quickly and silently settled (just like many other problematic ones) if not for the opposition of NGOs and the public. The authorities seemed to retreat and instead of privatisation now the government is offering civil-legal relations (leasing) between the authorities and license-seekers rather than the administrative relations (licensing). Despite the fact that currently the issue of forest privatisation is not ostensibly discussed, one of the ten reasons for investing in Georgia named by the Georgian Ministry of Foreign Affairs' website is forest privatisation and it is represented as a rational way of using forest resources (see box 4 below).

One more change made recently in the law regulating eminent domain is also noteworthy. From 1997 (when the law was adopted) till April 2005 it was considered that the issue of public necessity could be raised during the infrastructural projects (roads, pipeline, telephone cables) or works necessary for guaranteeing national security and in this case the population's property could be expropriated. In April 2005 it turned out that the population's property rights could be limited in case of mining operations; in other words, today the mining operations in certain cases (which due to current tendencies can occur quite often) can be considered to be public necessity and the courts can expropriate the individuals' property.

If we also remember the fact that due to the other changes made in 2005, mining operations are not subject to preliminary environmental impact assessment and public consultations procedures anymore and also, if we take into account the situation existing in the courts, the attitude of the Georgian authorities to natural resources and the population becomes clear<sup>34</sup>.

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<sup>34</sup> The informed reader may remember the similar “favourable” policies in regard to mining operations pursued by Latin American and some African governments in the 1980's and 1990's, the reader may also remember the results such policies brought.



### 3.7 Market and finances

The process of economic liberalisation and privatisation of state property, which is currently taking place in Georgia and which many countries of the world have already gone through, are the results of the world globalization process. It has been established that economic globalization brings benefits and at the same time increases environmental and social costs in the countries where the level of democracy is low and the environmental governance system is weak. We have already described the way the environmental legislation and management system have been changed in Georgia since the Rose Revolution under the pretext of improving the investment environment. Below we will concentrate on several issues that in our opinion are important for clearly demonstrating the environmental governance currently existing in the country.

#### Box 4. Ten reasons to invest in Georgia

From the website of the Ministry of Foreign Affairs of Georgia:

[http://www.mfa.gov.ge/index.php?sec\\_id=57&lang\\_id=GEO](http://www.mfa.gov.ge/index.php?sec_id=57&lang_id=GEO)

##### Ten reasons to invest in Georgia:

1. Political and Liberal Economic Reforms
2. Attractive Macroeconomic Environment
3. Competitive Trade Regulations
4. Liberal Tax Code
5. Privatization of State Property
6. Modernized Business Licensing System
7. Reformed Technical Regulation System
8. Strategic Geographic Location

Privatization is one of the most dynamic processes underway in the post-revolutionary Georgia. The process is aimed at attracting private capital to state owned assets in order to introduce efficient management, increase investment and boost economic growth and jobs creation. It is guided by the following principles:...

##### 2. Efficient use of all resources available in Georgia

At this stage Georgia's privatization policy is mainly targeted towards the sale of large enterprises. Privatization of hydro power generation plants, energy distribution companies and telecommunication enterprises is planned in 2006. Privatization of land and forest resources will gradually be implemented as well. Today 74.8%, of agricultural land and 2,5 mln hectares of forests are under state ownership. In 2005, the law on privatization of state-owned agricultural land was passed in order to promote efficient use of land plots through private ownership and increased efficiency in the agricultural sector.

In order to facilitate investment in the country's economy and simplify the administrative procedures, apart from the Law on Licenses and Permits that we have already mentioned many times, the Georgian Parliament also adopted a very important law several months ago, which was initiated by the President of Georgia. The Law on State Support to Investments covers the norms indicated in the above-mentioned law (and other laws as well), establishes different rules of licensing and permitting and therefore worthy of our attention.

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

- The Law allows the state agencies to decide whether they will allocate any period of time for the investor for obtaining a "real" license/permit;
- There is no provision in the Law that would enable the state agency to refuse to issue a preliminary license/permit;
- The law does not define a concrete timeframe for making a decision on issuing such a preliminary license/permit neither does it ensure public participation in the decision making process;
- If after the preliminary license/permit is issued Georgian legislation is changed and those changes worsen

the investor's position, those changes will not affect the investor for another 5 years without his/her consent;

- According to the law, any preliminary license/permit<sup>35</sup> can be issued except for licenses on use (including use of natural resources)<sup>36</sup> and construction permits.

This means that the Law makes it possible for the state agency to issue the above-mentioned permit for the impact on the environment and let the investor start the activity without conducting preliminary environmental impact assessment and without fulfilling the weak, but still existing requirements of public participation. Conducting an environmental impact assessment after the launch of the activity is absolutely useless.

The above-mentioned clearly shows that the state is not interested in knowing in advance what environmental or social results the investment may bring, the authorities are also not interested whether their decision will be accepted by society or not.

The fact that the above-mentioned law grants certain investments the status of "investment of particular importance" is also interesting. According to the Law, if the amount of investment exceeds GEL 8 million (about USD 4.5 million) or GEL 2 million (about USD 1.2) in the mountainous regions or if functionally and strategically the investment will have an important (in mountainous regions - positive) impact on the development of the country's (local) economy and infrastructure, then the investor will have the right to ask the government to grant its investment the above-mentioned status.

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

In conclusion it can be said that the Georgian government offers the investors indirect, but certain protection from its own legislation and requirements of its state agencies. In fact, a reasonable investor should not be interested in being so dependent upon the country's government, because even a small investment (USD 4.5 million cannot be considered a big investment for even such a country as Georgia) may soon become a big loss for such an investor. The fact is that in March 2005 the Georgian President initiated amendments to the Law on Grants according to which, the Georgian government can receive grants from foreign commercial legal entities<sup>37</sup>. The amendment was not welcomed by experts and the public; one of the reasons for the disapproval was the fact that such a mechanism could be used for collection of informal "dues" from entrepreneurs and lobbying of various illegal businesses.

The environmental issues during the privatisation process must also be discussed. The current privatisation legislation actually does not imply the necessity of discussion of environmental issues during the privatisation of state property. The Law on Protection of the Environment implies the possibility of conducting environmental audits on the sites to be privatised, however it may be done only based on the request from the MEPNR. There has been only one precedent in recent privatisation agreements when the investor was obliged to fulfill certain

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<sup>35</sup> The Law on Licenses and Permits defines 92 types of licenses and 52 types of permits that must be obtained for carrying out various types of activities.

<sup>36</sup> This exception is not surprising taking into consideration the state's clearly mercantile interests and also taking into account the fact that environmental licenses are auctioned.

<sup>37</sup> The president's initiative initially also included recognition of Georgian commercial and non-commercial legal entities as grantors, however, the Georgian Parliament rejected this proposition.

environmental requirements. This happened in the case of the privatization of the gold and non-ferrous metals mining enterprise “Madneuli”. It should also be noted that the state was not the initiator of the inclusion of the environmental conditions in the bidding terms – they were initiated by the NGOs, the local group – Bolnisi Public Environmental Information Center<sup>38</sup> and the communities directly affected by the enterprise’s activities. However, we have to note that environmental conditions outlined in the agreement between the state and the current owner are rather general, which makes their implementation doubtful.

Finally, we should say a few words about the policies pursued by international financial institutions. Generally speaking, when international financial institutions are involved in the projects, formal requirements for environmental protection and public participation are more adhered to. In such cases the project proponents are obliged to follow the requirements and procedures of not only national legislation but also international financial institutions, whose procedures are stricter and more detailed than the requirements set out in the national legislation. Such attitudes of the international financial institutions are of course to be welcomed, because even the “worst practice” of international financial institutions is much better than the projects implemented according to currently existing Georgian legislation. Though, it must be taken into account that the so-called “best practice” used by international financial institutions under certain projects remains as “best practice” for only the implemented project and it does not affect policies and practices existing in the country.

Despite the fact that we cannot consider the “East-West Transport Corridor Upgrade” project currently implemented by the WB in Georgia to be an example of “best practice”<sup>39</sup>, the project clearly shows the difference in attitudes demonstrated by this international financial institution and the Georgian government. The East-West Transport Corridor Upgrade project entails the upgrading of a certain portion of motorway and the transformation of the two-lane motorway into a four-lane one. The construction works on Natakhtari-Aghaiani section of the road are financed from the state budget of Georgia and another section of the road (Aghaiani-Sveneti) is being built with the financial assistance of the WB. The comparison of decisions made by the Georgian government and the WB concerning one and the same type of activity (different but similar parts of one and the same project) is quite interesting. The Georgian government exempted reconstruction of the Natakhtari-Aghaiani section of the new motorway from the environmental impact assessment<sup>40</sup>, while the World Bank considered the same type of activities on the neighboring Aghaiani-Sveneti section of the road to be a category “B” activity and demanded limited environment assessment on that section of the motorway.

### **3.8 Science and risk**

Today scientific knowledge is practically not used during the decision making process. The following circumstances could be the causes of this state of affairs: underdevelopment of the environmental and social sciences, poor statistic system of data gathering and its unreliability, absence of inventory and monitoring systems and underdevelopment of information technology. We can also single out such external factors as the immigration of scientists due to social and economic hardship and lack of investment in the education and training of young scientists.

While speaking about scientific potential existing in Georgia it is important to mention the reforms that were carried out in the education and science after the Rose Revolution. The reform of the education and science spheres is still underway and the public vehemently discusses not only the contents of the reforms, but also their forms. For example, currently the Georgian government is not interested in investing in the development of natural and exact sciences, because according to government officials, the labour market does not require such sciences to be developed. This approach was pursued in the reform of the educational and scientific institutions. Access to information in the process of those reforms is usually not ensured and the consultations

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<sup>38</sup> Gold and non-ferrous metals were extracted in Bolnisi region even in the Soviet times; pollution and damage to human health caused by mining and processing of ore was a matter of grave concern of the local communities even at that time and it still remains as such. In 2003 with the assistance of Georgian non-governmental organisation “Caucasus Environmental NGOs Network” the Bolnisi Public Environmental Information Center was established in Bolnisi region with the mission to advocate for environmental and social interests of the local communities.

<sup>39</sup> The project has already been criticised by NGOs due to incorrect categorization of project by the WB.

<sup>40</sup> See #327 July 4, 2006 decree of Georgian government on “Exemption of Department of Automobile Roads” contractor Zimo LLC from Environmental Impact Assessment Obligation”

are very limited, which causes dissatisfaction of scientists, students and other stakeholders.

In conclusion it can be said that science is developing independently and limited scientific knowledge received even under such circumstances is not used in decision making related to the environment neither at the policy nor other levels.

## **4. Environmental governance and water management**

Good environmental governance is an essential condition for the sustainable management of natural resources and ecosystems. The environmental problems existing in the modern world such as lack of water resources, their excessive consumption and deterioration of their quality make the traditional horizontal and sector-oriented governance systems ineffective given the increasing consumption of water, the increasing of the Earth's population and the volume of economic activities as well as the impact of floods and other ecological problems. The adoption of the multifunctional approach towards water resources, connected with their extensive consumption, created the necessity of integration between the sectors. Integrated management of water resources, which has been actively discussed at international conferences during the last two decades, implies the above-mentioned multifunctional consumption of water. Realising that the various sectors consuming water are interdependent was very important for integrated management of water resources. In this regard, equal inclusion of various consumers of water and all the stakeholders in the planning, decision making and management processes is necessary.

### ***1.1 Legislation and institutional setting***

According to Global Water Partnership's survey, Georgia is one of the countries that are taking the first steps in the process of elaboration of national strategies and plans, these countries have not fully realized the necessity of integrated management of water resources<sup>41</sup>. Elaboration of strategies and concepts of natural resources, which is a state's prerogative, is necessary for the sustainable management of resources. The water concept must be a framework within which the management of water resources and the introduction of integrated management principles will take place. At the same time the water resource concept must be integrated into the common national, economic and other related sector concepts. As we have mentioned above, Georgia has not formed its water concept yet. There is no integrated management plan/strategy. However, the elaboration of strategy is planned to be done by 2008<sup>42</sup>.

The water concept then has to be transformed into relevant legislation. Water legislation should create a basis for integrated management of water resources and sustainable consumption, protection and conservation of water resources.

### ***Legislation***

The existing water legislation in Georgia is considered to be comprehensive and detailed with more than 30 laws and statutory acts. Besides general environmental legislation, which defines the basic environmental and sustainable development principles, there are a number of legal documents which manage natural resources including water resources. The most important law among the laws regulating water resources is the Law on Water, which includes the requirements for pursuing common state policies in protection and consumption of water resources, rational consumption of water, providing population with clean water, avoiding the adverse impact of water and effective elimination of the results of such an impact, etc.<sup>43</sup>.

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<sup>41</sup> Global Water Partnership Setting the stage for change, February 2006, Second informal survey by the GWP network giving the status of the 2005 WSSD target on national integrated water resources management and water efficiency plans

<sup>42</sup> Global Water Partnership Setting the stage for change, February 2006, *Second informal survey by the GWP network giving the status of the 2005 WSSD target on national integrated water resources management and water efficiency plans*

<sup>43</sup> Law on Water, 1997, article 4

### ***Water consumption***

Based on the principles of “the polluter pays” and “the user pays”, Georgian legislation imposes taxes for pollution of the environment and use of natural resources<sup>44</sup>, however, certain changes were made in the taxation system after the Rose Revolution, which have already been mentioned in this report, we will further discuss them below.

The Law on Water regulates the rules of water consumption and licensing. According to article 6 of this law, water resources existing on the territory of Georgia are state property and they can be allocated only for temporary use. Water consumption in Georgia is a chargeable service. General water consumption for housing, esthetic, recreational, sanitary and other purposes without using such facilities and devices that do not affect water quality is free of charge and is not subject to licensing (article 32). Special water consumption, which entails using of such facilities and technical devices that affect the quality of water requires corresponding licensing (article 33). Article 48 of The Law on Water defines the types of water consumption that require licensing. However, the June 24, 2005 Law on Licenses and Permits includes the licensing requirements concerning only fishing and using of underground spaces. As for water consumption, the Law requires licenses for two types of activities: the license for intake of water from surface water resources and the license for water release into the surface water resource<sup>45</sup>. The Law on Water will have to be changed correspondingly, before that happens licensing and permits regulations are defined by the Georgian government’s August 11, 2005 #137 decree on “the Rules and Conditions for Issuing Permits for Water Uptake from Surface Water Resource and Water Release into Surface Water Resource”. As we have mentioned in the main part of our research, according to the new legislation, after the changes were made in the licensing system public participation in the decision making process connected with licensing has been significantly limited<sup>46</sup>. This can be considered a step back taking into account the principles of good environmental governance and integrated management of water resources, which require active public participation.

### ***Water Protection***

As we have already noted, the Law on Water guarantees common state policies in the field of protection and consumption of water resources. At the same time, besides the law, the Law on Minerals, the Law on Fauna, etc. regulate the protection and consumption of underground water resources, protection of fauna, consumption of fauna, plant, forest, land and other resources during water consumption.

In order to keep the ecological balance Georgian legislation provides for the establishment of environmental standards and qualitative norms of environmental conditions. Decree #279/n issued by the Georgian Minister of Labor, Public Health and Social Safety on August 16, 2001 titled “Decree on Approval of Qualitative Norms of Environmental Conditions” defines qualitative norms of water from the centralized, non-centralized and surface water supply system, the decree also defines the rules and norms for sanitary protection of surface waters and sources as well as the hygienic norms and sanitary rules for protection and consumption of seaside water etc.

The limits on the amount of pollutants in effluent waters are defined based on the qualitative norms of environmental conditions. The #105 decree of the Minister of Environmental Protection and Natural Resources (issued on August 12, 1996) defines the calculation methods of the maximum amounts of pollutants that are allowed to be discharged in water. In addition, the #130 decree of the Minister of Environmental Protection and Natural Resources (issued on September 17, 1996) defines the main rules and principles of protection of water from pollution, the decree is titled “Decree on Approval of Rules for Protection of Georgian Surface Water Resources from Pollution”.

It should be noted that the existing systems of sanitary norms and standards, which define the limits on amounts of pollutants in water resources are outdated and need to be renewed as they are based on the old, Soviet (MAC) system, which was used all over the former USSR notwithstanding geophysical, social and economic differences<sup>47</sup>.

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<sup>44</sup> Law on Protection of the Environment, 1996, article 16

<sup>45</sup> Law on Licenses and Permits, 2005, article 24

<sup>46</sup> Chapter 3.3 Participation Right

<sup>47</sup> UNDP/SIDA, 2005, Reducing Trans-Boundary Degradation of The Kura-Aras River Basin



Furthermore, the new Tax Code adopted in 2004 does not include taxes for polluting the environment. In particular, the new Tax Code does not include taxes for pollution of water from stationary sources (including sewerage and drainage collectors), whereas such taxes were payable under the 1997 Tax Code (chapter XI). Currently, the regulation of pollution of water is done only at the licensing stage. It is noteworthy that the main documentation necessary for receiving a license for releasing various pollutant substances in water includes such documents as a copy of the enterprise's regulations and land ownership certificate, the statutory (approved by the Ministry) defining the maximum amounts of pollutants that can be discharged in water by the enterprise is just an additional licensing condition in this case<sup>48</sup>.

Therefore the legislation does not guarantee strict regulation of amounts of pollutants released in water, the most important thing is that there are no incentives for the reduction of pollution. Furthermore, there are a number of deficiencies in the legislation regulating water release. For example, enterprises that release effluents in the municipal sewerage system despite many towns do not even having cleaning facilities. In addition, the legislation does not define the rules for water release in ravines. For example, there are many enterprises in east Georgia that do not have water bodies near them<sup>49</sup>.

### ***Water conservation***

The Law on Protection of the Environment and the Law on Water include the necessity of sustainable water consumption based on sustainable development principles. As we have noted earlier, water consumption is not free of charge in Georgia, which is necessary for rational consumption of this resource. However, there is no special concept or mechanism that could be directed specifically at water conservation. There are a number of laws that concern habitat conservation, in particular the protection of seaside and riversides. For example, the October 27, 2000 Law on Regulation and Engineering Protection of Georgian Seaside and Riversides includes provisions for state supervision of construction activities on the seaside and the use of those resources that form the relief, sustainable development of territorial resources, etc.

Besides, there are a number of legal documents that define special protected areas, including the water protection strips of rivers, lakes, channels etc. Article 20 of the Law on Water defines the thresholds for river protection strips, within which a special regime is introduced that protects the territory from pollution, littering, silting and drying up. Besides, the Provision on Water Protection Strip issued by MEPNR on May 7, 1998 (decree #59) sets out the rules of definition of thresholds for water protection strips and regulates the activities within this territory.

In order to protect the water that is used for drinking, housing needs, etc. sanitary protection zones are created<sup>50</sup>. The March 20, 1998 Law on Resorts and Sanitary Protection Zones of Resorts defines the sanitary protection zones for preservation of natural salutary resources and their protection from pollution, damage and drying up.

Protection of water resources of special significance is also done through the system of protected areas<sup>51</sup>. Protection of water flora and fauna is regulated by the Law on Fauna. Article 24 of the law provides for the possibility of the limitation of consumption of forest, water and other natural resources in wild animals' living, reproduction, resting, watering, migration and wintering habitats.

Despite these numerous legislative documents, there is no unified policy and system of water conservation in Georgia. Georgian legislation does not provide for concrete, meaningful activities for water conservation. Moreover, as the fines for illegal use of water are quite low, there is no incentive for an enterprise to be interested in getting water consumption permits<sup>52</sup> and therefore rational attitudes towards water resources are not established.

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<sup>48</sup> August 11, 2005 #137 decree of the Georgian government on Approval of Rules and Conditions of Licensing of Uptake of Water from Surface Waters and Water Release in Surface Waters

<sup>49</sup> USAID, 2004, recommendations for improvement of water legislation in South Caucasus countries.

<sup>50</sup> Law on Water, 1997, article 21

<sup>51</sup> Law on Water, 1997, article 24

<sup>52</sup> USAID, 2004, recommendations for improvement of water legislation in South Caucasus countries.



On the whole, Georgian water legislation more or less includes the main issues connected with water consumption and its protection. It particular, it regulates water consumption, control and monitoring of water pollution, protection of shorelines, avoiding the adverse impact of water and liquidation of the negative results of such an impact, etc. However, as we have already noted, there are certain deficiencies that require further work and improvement. Besides, a number of sub-laws have to be adopted that will supplement the principles included in the Law on Water as well as other principles. The main issue is that attitudes towards water resources remain sector-based and do not imply establishment of integrated management principles. Absence of a water concept does not ensure the creation of streamlined legislation. The fragmentation of the legislation is also caused by the fact that in many cases the elaboration of sub-laws was done for specific purposes rather than pursuing certain policies. It was often done without taking into account the already existing legislation<sup>53</sup>.

### ***Institutional setting***

The regulation of water resources falls within the competence of several state agencies, authorities of autonomous republics and local self-government bodies in Georgia.

State management and protection of water resources as well as state control and the creation of a common monitoring system is the prerogative of the MEPNR<sup>54</sup>. The Ministry defines the state policy in the sphere of protection and consumption of water resources, thresholds of pollutants in effluent waters, the Ministry also issues permits for consumption of water resources, conducts state inventories of water consumption and controls the compliance with water protection and consumption rules<sup>55</sup>.

The Ministry of Labor, Public Health and Social Safety conducts state, sanitary supervision of compliance with sanitary-hygienic norms and sanitary-epidemiological rules<sup>56</sup>. The Ministry defines and approves sanitary-hygienic rules and norms, including norms for the quality of the environment and the maximum concentration of pollutants in drinking and recreational water (water from the water supply system, surface waters and waterside waters), the Ministry also conducts state supervision of these issues<sup>57</sup>.

The authorities of the autonomous republics (within the limits of their competence) are responsible for the protection and consumption of water resources on the territories of those areas. Besides, they are responsible for the management of surface waters of national significance located on the territory of those autonomous republics. The authorities of the autonomous republics must take part in the elaboration of complex measures for the protection and consumption of water resources as well as elaboration of hydro-economic balances. They are also obliged to supervise the protection and rational consumption of water resources on their territories, conduct state inventories and registration of water consumption, etc.<sup>58</sup>.

Local self-government bodies are obliged to supervise the measures directed at protection and rational use of water resources under their jurisdiction, control protection and consumption of water resources, elaborate complex measures for protection and consumption of water resources as well as elaborate hydro-economic balances. They are also obliged to supervise the protection and rational consumption of water resources on their territories, conduct state inventories and registration of local water consumption<sup>59</sup>.

As we have noted in the main part of the report, despite the fact that environmental legislation gives the authorities of autonomous republics and local self-government bodies with certain rights in the sphere of water consumption and protection, in reality they do not carry out the activities they can under the law.

The main problem in institutional organisation is still poor coordination between the institutions involved in water management. Absence of coordination and cooperation is often manifested in the overlapping of

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<sup>53</sup> USAID, 2004, recommendations for improvement of water legislation in South Caucasus countries

<sup>54</sup> Law on Protection of the Environment, 1996, article 13

<sup>55</sup> Law on Water, 1997

<sup>56</sup> Law on Environmental protection, 1996, article 13

<sup>57</sup> Decree #279/n by the Minister of Labor, Public Health and Social Safety, August 16, 2001

<sup>58</sup> Law on Water, 1997, article 11

<sup>59</sup> Law on Water, 1997, article 12

competences of various state agencies. The absence of horizontal coordination is also noteworthy, which may create disputes among the various water consumers. There is no institutional mechanism for the establishment of water basin management, this means there is no unified coordinating body where all the stakeholders can participate and have a say and which would coordinate their activities both at local and state levels<sup>60</sup>. Besides, the lack of coordination generally between various sectors and institutes of the state makes the integration of environmental issues in other related concepts more difficult.

#### **4.2 Participation right**

Water is a multifunctional resource and therefore, during the water consumption process, besides the fact that the consumption and pollution of that resource grows, competition between various consumers also increases. In this regard equal representation of all stakeholders and agencies in the management process is essential for sustainable management. Besides, the water management concept should correspond to other environmental and at the same time economic and social concepts. Water is an important factor in development, therefore water management issues are connected with and impact much larger economic and social issues including migration, land processing, number of settlements, industrial activities, etc.<sup>61</sup>.

Public participation is one of the most important factors of environmental governance. Georgian legislation, including the Constitution and general laws as well as more specific laws and international agreements touch upon the participation issue quite extensively. For example, the Law on Protection of the Environment, licensing legislation, the General Administrative Code and the Law on Water, which also provide for access to objective information, access to justice and the right to participate in the decision making process (article 13). However, water legislation says nothing about public participation in the planning process<sup>62</sup>.

Besides the fact that (as we have already noted) the changes made in the licensing system in 2005 limited public participation, the main factor that hinders the participation is the lack of available information as well as low environmental awareness of the public and lack of preparedness to participate in the decision making process.

The June 25, 1999 decree #389 of the President of Georgia on the Rule of Preparation of the Report on the State of Environment orders the Ministry to publish a National Report on State of the Environment (article 48). The National Report must be prepared and made public by the state (articles 64 and 65). However, due to technical and financial problems, collection and processing of environmental data is difficult, therefore, the reports are not prepared and published properly.

For integration of environmental and socio-economic issues equal involvement of all stakeholders in management is necessary. Integrated basin management of water resources implies such coordinated actions and cooperation between the various water users. Besides, public participation increases the reliability, effectiveness and accountability of the decision-making process. However, it can be said that so far the level of participation does not create a precondition for good environmental governance and sustainable management of ecosystems in Georgia.

#### **4.3 Distribution of competences**

According to water legislation, water management is done at state and local levels. State institutions are responsible for pursuing state policies in water management and carrying out state control and supervision in that sphere. Local self-government bodies carry out local supervision of protection and rational consumption of water resources within their competences. However, the competences of the local self-government bodies are not clearly defined by legislation. Management of water resources is mainly done in a centralized way and in most cases the MEPNR and its territorial units rather than local self-government bodies have the final say in these matters.

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<sup>60</sup> USAID, 2004, recommendations for improvement of water legislation in South Caucasus countries

<sup>61</sup> Global Water Partnership, 2002, *ToolBox, Integrated Water Resources Management*

<sup>62</sup> USAID, 2004, recommendations for improvement of water legislation in South Caucasus countries

Locally made decisions play a significant role in the management of natural resources. However, the decision making process is often centralised and is not connected with the local context and population that are directly affected by the results of the decisions being made. In this regard taking into account local experience is a good auxiliary factor in the environmental governance process<sup>63</sup>. Decentralizations, delegation of certain obligations and rights to local self-government bodies is a positive move for effective environmental governance, because it guarantees cooperation and coordination between the local population and the government. However, very often the management of natural resources has a larger impact, which surpasses local boundaries. Therefore the management of natural resources must be done at various levels. Correct distribution of power between local and state authorities and correct definition of the local share in national environmental policies are essential for good environmental governance<sup>64</sup>.

The fact that local aspects of water management in Georgia are based on the country's administrative division rather than hydrologic boundaries of water resources is another issue. According to the EU Framework Directive on Water, the best model for managing an individual water system is based on basin management, when the water management is done based on natural geographic and hydrologic units rather than administrative or political borders.

#### ***4.4 Accountability and transparency***

Mandatory reporting about the state of the environment as well as voluntary reporting and introduction of eco-labeling are essential factors for the involvement of citizens in environmental management and improvement of environmental performance of business. However, as we have already noted, National Reports on the State of Environment are not published by the Georgian government. As for business reporting, there has been no precedent in Georgia so far. Therefore the responsibility of business is not regulated in Georgia, more so if we take into account the fact that the tax for pollution of the environment has been abolished; So far no reliable alternative for this tax has been introduced, which makes accountability of businesses problematic at least through traditional regulation. There are problems in enforcement also, which are caused by the poor organisation of compliance control and monitoring systems.

Generally speaking state and business accountability as well as public participation, which guarantee transparency and therefore are essential components of good environmental governance, are in many ways interrelated and interdependent aspects.

#### ***4.5 Property rights***

Property rights on natural resources, the rules defining property rights and the compliance to those rules are one of the most important issues for environmental governance. Currently, the natural resources of Georgia, including water, are the property of the state<sup>65</sup>. The main deficiency characteristic for state ownership, which the supporters of privatization often cite both in Georgia and in other countries, is that the state is often unable to manage the natural resources effectively and in a sustainable manner. In their opinion private ownership creates certain incentives for correct and sustainable management of natural resources. However, on the other hand, this could cause the degradation of resources. More so if the other stakeholders' interests are not taken into account, on whom the actions of a private owner can have a negative impact<sup>66</sup>. Therefore, it is necessary to adopt cautious attitudes towards this contradictory issue. It is also noteworthy that notwithstanding who is the owner of natural resources, the state or the private sector, it is necessary to have a strong environmental governance system and effective regulation that guarantees environmental protection and conservation of resources. The view according to which the participation of the private sector in the management of natural resources makes the state's task easier is often incorrect. Despite the fact that in this case operational functions are transferred to the hands of the private sector, the state is still obliged to regulate and monitor this sphere. Moreover, in this case the state's regulatory role is increased rather than reduced. It is unfortunate that the politicians and public officials who opt for replacement of state ownership of natural resources with private ownership have a one-sided view of the issue and cannot or do not want to see the necessity of the application of a multi-purpose approach.

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<sup>63</sup> World Resources 2002-2004: Decisions for the Earth: Balance, Voice and Power

<sup>64</sup> World Resources 2002-2004: Decisions for the Earth: Balance, Voice and Power

<sup>65</sup> Law on Water, 1997, article 6

<sup>66</sup> World Resources 2002-2004: Decisions for the Earth: Balance, Voice and Power

Taking into consideration the administrative and financial difficulties, the existing situation as well as the absence of regulation of business sector, radical steps taken in water management system could have negative results. Moreover, while there are no environmental reports, no registration, control or monitoring system of natural resources, taking into account the poor compliance with the rules and lack of public participation, any hasty step in that direction may cause the degradation of the environment. More so because integrated river basin management implies the involvement of the many various stakeholders and often countries as the rivers often transcend the borders of one country.

At the same time the transfer of ownership of natural resources to the private sector makes business an important component of the natural resources management system. Therefore business accountability becomes an integral part of good environmental governance. However, so far there are no preconditions for the development of business accountability. Besides, there are no effective regulatory mechanisms that would guarantee the responsibility of businesses to the traditional regulatory framework. Taking into account the level of effectiveness of the current planning and implementation processes, it is doubtful that the country will be able to create a basis for such radical changes.

Usually business is oriented to short-term profit and does not try to incorporate the compensation for damaging the environment in its expenses if that is not required by law. If we take into account the fact that water management cannot be self-repaying<sup>67</sup>, which means the inclusion of environmental costs in the market price of water is very difficult, it is hard to imagine the private sector being interested in the protection of the environment and conservation of natural resources, while sustainable management of ecosystems means ecosystem-oriented attitudes, which perceive ecosystems based on the services they provide rather than as a source of products<sup>68</sup>.

As for the transfer of the integrated river basin management system to the private sector, the possibility of which is being discussed in Georgia, there is evidence that such ownership is not profitable for the private sector as it is connected with increased expenses, which can cause increased consumption of resources and their degradation<sup>69</sup>. More so, in Georgia where water resources are unevenly distributed, the state regulation is necessary<sup>70</sup>.

Therefore, in our opinion, at this stage, while there is no effective regulating mechanism in the country that would guarantee the protection of the environment, conservation of resources and sustainable consumption, there are no properly working monitoring and control systems, no strategies of ecosystems and resources management and no basis for good environmental governance, discussion on transfer of resources to the private sector is not appropriate.

#### **4.6 Market and finances**

As we have already noted, according to one of the provisions of the Dublin Conference, water is viewed as an economic product. The introduction of that principle became necessary first of all for the realization of the fact that water is an asset and it has to be rationally used so that ecosystems are not degraded.

At the same time if we speak about using water for drinking or housing purposes, water has to be considered as a common public good rather than an economic one. We have already noted that according to Georgian legislation, water consumption is not free of charge, but general water consumption is free of charge including drinking water and water for housing needs and special permit is not required in this case.

State subsidies are especially important for the development of water infrastructure in developing countries. Very often, the functioning of water infrastructure does not guarantee full compensation of expenses, which is one of the factors that hinder its development. As in other countries with developing or transitional economies,

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<sup>67</sup> UNDP/SIDA, 2005, Reducing Trans-Boundary Degradation of The Kura-Aras River Basin

<sup>68</sup> World Resources 2002-2004: Decisions for the Earth: Balance, Voice and Power

<sup>69</sup> Rahaman, M. M., Varis, O., *Integrated Water Resources Management: evolution, prospects and future challenges*, Sustainability: Science, Practice and Policy, 2005, Volume 1 Issue 1

<sup>70</sup> Chkhobadze, 2006

financial problems should be considered as one of the main reasons for the deficiencies existing in the water management system in Georgia.

The current tariffs for the municipal water service are insufficient and they cannot cover operational and environmental costs. The existing fees for water consumption are also insufficient. The fact that there are no mechanisms for collecting the tariffs further aggravates the situation. Lack of financial resources impedes the process of monitoring and obtaining/processing of the data, reporting and dissemination of environmental information. At the same time lack of funds makes the state registration/inventory of water consumption impossible. The last state water cadastre was made in 1988<sup>71</sup>.

The calculation of necessary expenses and the definition of financial sources for further implementation of the programmes are not done during the elaboration of national plans and various state programmes. Therefore, implementation of these projects (including the projects concerning further development of the water sector) often depends on external financing<sup>72</sup>.

Due to the existing financial and economic problems, market-oriented mechanisms are becoming more and more popular in various countries of the world, these mechanisms are directed at rational consumption of resources and the introduction of incentives for the reduction of pollution. However, economic instruments should not be considered as a universal tool for the solution of all environmental problems; they have to be selected cautiously, because the introduction of inappropriate market instruments can also cause the degradation of the environment.

#### ***4.7 Science and risk***

Cooperation with scientists and integration of scientific knowledge into the process of natural resources management, which is necessary for better studying the dynamics of ecosystems, is one of the most important preconditions for good environmental governance. In this regard, the role of science is essential in the elaboration of environmental strategies and the evaluation of risks.

Unfortunately, it has to be said that in this regard scientific knowledge is not used in Georgia. The existing scientific research institutes and labs are concentrated mainly on narrow research issues, such as defining the quality of drinking, recreational and effluent waters, defining the maximum amounts of pollutants in water, etc. Therefore, so far there are no signs of integrating scientific knowledge into the development of environmental governance. Due to lack of human, financial and technical resources as well as the underdevelopment of environmental science, the mechanisms of ecosystem management, risk evaluation and other mechanisms have not been established.

#### ***Conclusion***

As a multifunctional natural resource water needs a many sided, strategic approach. Sustainable consumption and protection of water are interrelated issues and they need comprehensive solutions. Good environmental governance is very important during such comprehensive management of water resources. Based on the above-mentioned, so far the quality of environmental governance in Georgia cannot provide for sustainable management of water resources and the introduction of integrated management principles. Water legislation is fragmented and does not pursue common policies. Also, sector-based, inconsistent approaches to the resources do not create a basis for integrated management.

Elaboration of a water concept is an important step that must be taken at this stage, within which water legislation would be integrated. It is necessary to establish a legislative mechanism for full-fledged participation of all stakeholders and the public at all stages of management. Besides, water basin management mechanisms and the preparation of a complete legislative basis for water control are also necessary. At the same time putting those mechanisms into practice will be no less important.

While lack of financial, human and technical resources still makes the creation of a basis for good environmental

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<sup>71</sup> UNDP/SIDA, 2005, Reducing Trans-Boundary Degradation of The Kura-Aras River Basin

<sup>72</sup> UNDP/SIDA, 2005, Reducing Trans-Boundary Degradation of The Kura-Aras River Basin



governance in Georgia impossible, the radical steps in the sphere of ownership of water resources seem to be quite premature. Besides, success of environmental governance essentially depends on the integration of environmental issues in decisions related to development.

## **5. Environmental governance and forestry of Georgia**

Over recent decades the forest degradation process has dramatically accelerated in Georgia, as a result, the erosion processes intensified, ground resources were damaged and the water circulation regime changed. Many experts point out the direct connection between the frequent droughts, floods and landslides and the overexploitation of forest resources in recent years. These processes became especially obvious in 2004-2005 when heavy rains and landslides caused casualties and destruction; thousands of people in various parts of Georgia were left homeless.

The energy crisis that started in Georgia after the collapse of the Soviet Union forced a significant part of the Georgian population to resort to using firewood as a means of heating and cooking. As a result of the energy crisis significant amounts of timber (one of the cheapest Georgian export materials) were illegally exported to Turkey, Armenia and Azerbaijan in large volumes.

The long-standing corruption existing in forestry creates a tangible danger to the environment and the population as well as to the interests of future generations. However, fighting the corruption in today's Georgia is associated only with repressive measures (for example, the dismissal of corrupt officials and/or their prosecution) and endless structural changes that have nothing to do with "increasing the transparency and accountability of the authorities".

On November 25, 2005 Georgia signed the Saint-Petersburg Memorandum under which our government undertakes to implement the Europe and North Asia Forest Law Enforcement and Governance (ENA FLEG) in the country. However, it is doubtful whether the reforms being carried out in the forestry sector conform to the above-mentioned obligations.

### **5.1 Institutional setting**

Most of the forests in Georgia are now managed by the MEPNR: the Forestry Department manages 82% of the forests and the Department of Protected Areas manages 8%. A small proportion of the forests (2%) is owned by the Vasil Gulisashvili Forestry Institute and the remaining 8% is managed by local self-government bodies. The rights and responsibilities in forestry sector management within the Ministry are distributed as follows:

The MEPNR is a state agency representing the executive branch of the Georgian authorities, which carries out state governance in the sphere of environmental protection and the rational use of natural resources as well as guaranteeing the population's environmental safety. The Ministry has so-called territorial units, which represent the Ministry in the corresponding administrative-territorial units.

The formerly independent departments are now part of the Ministry as state offices – the Department of Protected Areas and Forestry Department. With the help of the Forestry Department the Minister exercises executive power in the forestry sector. Forestry units are subordinated to the Forestry Department and protected areas existing in Georgia are subordinated to the Department of Protected Areas.

The Environment Protection Inspectorate (EPI) is the part of the MEPNR that exercises state control in the forestry sector. This is a unified and centralised control body and its main task is to reveal/prevent illegal use of natural resources and to ensure compliance control.

The lack of qualifications of the state officials working in the forestry sector is a significant problem. Many managers of forestry units have professions that have no connection with forests and nature. For example, one can see engineers, construction workers, economists, geologists, chemistry and/or physical education teachers

etc. in these positions. The main criterion for their employment is the absence of previous contact with the forestry sector, because this is considered to be the main guarantee of their reliability. It is true that the forestry sector was plagued with corruption during the Soviet period and it is difficult to find reliable and trustworthy employees, but on the other hand, a person who has no knowledge of this complex sphere, which requires extensive theoretical knowledge and practical experience, is certain to make mistakes.

## **5.2 Legislation**

Current Georgian legislation regulating the use and protection of forest resources is full of contradictions, there is a legal vacuum and variance in statutory acts, which is one of the most significant reasons for the aggravation of the illegal logging. The main act regulating the protection and use of forest resources, the Forest Code contradicts the principles declared in the framework Law on Protection of the Environment and the international agreements signed by Georgia (CITES Convention, Convention on Biological Diversity and the Aarhus Convention).

Since the Rose Revolution a number of legislative changes have been introduced under the auspices of the creation of the so-called “business environment” and the eradication of corruption; as a result, the Law on Licenses and Permits actually cancelled the issuing of environment permits, it also cancelled many special documents that were to be issued for the use of forest resources. It is now more difficult for the population to receive licenses for logging trees for firewood and wood materials; commercial consumption of non-timber resources is not regulated. These legislative changes were made in an unprofessional way and the decision making process lacked transparency. Besides, a number of laws were not correspondingly changed and it all created grounds for more corruption and illegal logging.

Public participation in the decision making process connected with the forestry sector is also characterized by contradictions. According to the Law on Licenses and Permits, forestry licenses (general license on forest use, special license on logging and special license on game farming) are issued according to public administrative regulations set out in the General Administrative Code of Georgia. The aforementioned regulations still guarantee public participation in the decision making process (although this right is somewhat limited). However, at the same time the same Law allows the license-holder to divide, rent or give the license to a third party. Unfortunately, at this stage public representatives have no say during the decision making process. It all contributes to lack of transparency during certain stages of licensing.

Generally speaking, the changes made in environmental legislation will cause the further degradation of environment, because the main factor – the sustainability principle – especially in regard to the forestry sector is absolutely disregarded by the decision makers.

## **5.3 Distribution of competences**

The main part of our research generally covers the distribution of functions in the forestry sphere. It should be added here that the level of accountability towards the MEPNR in regard to logging is very poor. This state of affairs is also conditioned by the newly introduced auctioning system, which has not been established in all parts of the country yet. At the same time the old (non-auctioned) licenses and agreements are still valid. Most of them are either terminated or they expire. Therefore during this transitional period, monitoring of the quality of the environment and illegal logging, control and self-monitoring are especially difficult.

Georgian legislation defines several ways of revealing illegal logging and its prevention:

- a. The license holders must monitor the forestry lands that they have been given permission to use. As a rule, the license-holders do not carry out this type of monitoring and most of the time the license holders or other individuals are the ones who carry out illegal logging on the above-mentioned territories;
- b. Control through the Environment Protection Inspectorate (EPI). This mechanism also turned out to be quite weak, because the EPI does not control the whole territory of Georgia, it reacts to only separate violations or conducts planned inspections. The control is further impeded by the fact that the Law on Licenses and Permits significantly limits the rights of inspectors. According to the law, the EPI either presents its report

annually or the Minister of Environmental Protection and Natural Resources must issue a separate legal act on inspection of this or that site. Of course this kind of situation does not build the controlling network that would be able to control the illegal logging all over the country and give a genuine picture of what damage has been inflicted. Now only fragmented information gathered through separate inspections and by checking the information supplied through hot-line is available. The state has no data about the general situation in the country or in any region.

The fact that the forest categories and boundaries have not been clearly defined yet is also a problem. Besides, the corresponding agencies were not given management rights on time over the so called “collective forests” that were left after the collapse of the Soviet system. As a result, these forests have fallen in the hands of several owners at the same time. In other words, they have no owners and as a result they are almost completely destroyed. This “many owners” and at the same time “no owners” syndrome is more or less the case in all categories of forests and the results correspond to this.

#### ***5.4 Accountability and transparency***

There is no state environmental monitoring system in Georgia (including the monitoring of logging). Therefore planning is done without taking into consideration the real situation.

The public does not receive reliable information from the state on illegal logging, which in itself limits public control or other ways of public influence. The monitoring conducted by environmental NGOs is various individuals are fragmented and their results are not seriously considered by the state agencies.

#### ***5.5 Property rights***

According to the Forest Code of Georgia, forest owners can be “the State, Georgian Patriarchate as well as physical or legal entities of private law”<sup>73</sup>. However, the same Code says that in order to privatise the state-owned forests a special law must be adopted. Both the Forest Code and the possibility of the privatization of state-owned forests were among the conditions of the Georgia Forests Development Project implemented by the WB in Georgia. Also, according to the Poverty Reduction and Economic Growth document, in 2004-2015 one of the priorities of the country must be the privatisation of state-owned forests.

Currently the representatives of the Georgian government often speak about the necessity of the quick privatisation of forests, which in their opinion will enable the state to “find an owner for the forests” and decrease the state costs of forest management. According to the government, it will be able to preserve the forests for future generations without any costs. The Georgian government is sure that the market will regulate relations and encourage “sustainable development”, because the private sector will find new sources of financing and guarantee professional monitoring. This approach may seem naive, if not raise suspicion that there are private interests of specific groups behind it all, that wish to appropriate the Georgian forests, including protected areas.

The aforementioned WB-funded forestry project, which among other components implies elaboration of the Law on Privatisation of State-owned Forests, underlines the necessity of the creation of a good governance model in the sector; the project also indicates that together with the arrival of the private sector in the forestry sector state control should be strengthened.

Forests in many districts of Georgia are integral parts of the living and working environment of local communities. According to the Law on Self-government, the local self-governments have exclusive rights to manage forest resources of local importance and this category of forests are the property of local self-government. Unfortunately, the categorization (zoning) of the forests has not been carried out in Georgia up until now, identification and inventory of forests of local importance and their transfer to lawful owners i.e. local self-government bodies has not taken place.

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<sup>73</sup> Forest Code of Georgia, chapter 3, article 9

## **5.6 Participation right**

Unfortunately public participation in the decision-making process with regard to the forestry sector is significantly limited. The reform that is taking place in the forestry sector is a good example of the situation existing in that sphere. Public representatives have absolutely no access to concrete plans on reforms of the forestry sector. The very limited information that the public representatives have access to seems to be quite contradictory. For example if we look through the principles set out in “The position of the Ministry of Environmental Protection and Natural Resources in regard to reforming of management of state-owned forests and use of resources” we will see that together with other aspects the Ministry realizes that public access to the information, harmonization of national legislation with the international agreements signed by Georgia, participation of local communities in the decision making processes concerning the forestry sector and involvement of interested NGOs in the elaboration of policies and legislation concerning forestry are all necessary aspects.

At the same time during the elaboration of the same document the Ministry interpreted public participation and access to information in quite a strange manner. According to the document, “the MEPNR discussed several options of future management of forestry in Georgia. The selection of the best option was done based on the relevance to the existing conditions”. In other words, the Ministry exclusively “bore the burden” of making a very important decision on the future of Georgian forests, whereas the public was not even aware of those “several other management options” (not to mention participation in the decision making process).

As for the document containing the concept of the reform, the process of its “public discussion” was not much different from the abovementioned one: After numerous requests from NGOs the Ministry published the document’s “working version” on January 16, 2006 for public comments and suggestions. NGOs and forestry specialists had quite a lot of critical comments; the NGOs arranged public discussions of the document several times.

After the expiration of the period allocated for public discussion of the document<sup>74</sup>, despite the fact that Ministry did not take into account any of the above-mentioned comments and did not arrange any public discussions, it still continued to “work” on the document and published it in its original form on its official website on April 4, 2006. In order to justify the Ministry’s actions, an official representative of the Ministry told journalists that the Ministry did not get any comments or suggestions related to the draft document.

In May 2006 NGOs conducted a protest rally in front of the State Chancellery in order to hinder the approval of that document. As this action had wide support amongst the public, the government tried to justify itself. The Georgian Prime Minister said no such reform was being contemplated; however, the Minister of Environmental Protection and Natural Resources and the State Minister said the opposite<sup>75</sup>. After two weeks, during the specially convened parliamentary committee meeting, the Deputy Minister presented the concept that had been published in January and said that discussion of that document was pointless as a new document was being prepared, this statement caused justified resentment amongst MPs.

## **5.7 Market and finances**

Unfortunately, the financing of the forestry sector has never been a priority for the Georgian government. International institutes also show weak interest in that sector, which is managed by in most cases corrupt structures that have private interests. At the same time, as a result of relevant registration and control, even during unsustainable consumption, theoretically the state could get quite a large revenue from the use of forest resources. However, neither the old nor the new government of Georgia is able to tackle the corruption existing in the sector, it is unable to control the movement of logs on Georgia’s borders and illegal logging, therefore the budget revenues from the forestry sector of the country are quite insignificant.

The customs and tax systems existing in Georgia encouraged timber export as the customs duties and VAT were actually equal to zero. At the same time as a result of numerous requests from the International Monetary Fund and the World Bank the limits imposed by the Georgian Parliament on the export of logs (which are in

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<sup>74</sup> The deadline for comments and suggestions was February 20, 2006

<sup>75</sup> “Withdrawal Tactics”, newspaper “Akhali Versia”, 2-4 June, 2006.

high demand on the international market) have been abolished. VAT for firewood export was equal to 5% and for timber 12%. Since September 1, 2006 the import tax has been abolished, which should encourage timber imports to Georgia.

One of the reasons encouraging the timber export and therefore illegal logging was the incorrect system of taxation. If we take into account the fact that even during the Soviet times when there was no energy crisis, Georgia used to import about 2 million cubic meters of timber from Russia in order to meet the local needs, we can see what an enormous pressure is being applied to Georgian forests due to that unjustified taxation system.

## **Conclusion**

In order to conduct a successful fight against corruption the correct identification of the reasons of the problem and their subsequent eradication is necessary. As a result of our research we have identified the following causes of the corruption in the forestry sector:

- Social hardship;
- Incomplete, complex and contradictory legislation that often makes compliance impossible ;
- Incorrect planning and management of the sector;
- Dependence of the sector on the state budget and at the same time its meagre financing;
- Failure to take into account the local traditions and specificity of the forestry sector;
- Lack of transparency;
- Lack of political will to eradicate corruption in the sector;
- Improper institutional setting, which cannot guarantee avoidance of conflict of interests; and
- Poor enforcement of the law.

The reform that has been carried out during the last two years has more or less touched on the above-mentioned issues, but in many cases the changes that were made were inadequate and ineffective. Simplification of legislation in one direction was followed by its complication in another. It is true that the financing of the forestry sector has increased and the people working in that sphere are receiving higher salaries, but in many cases this was done through reducing the number of employees, the sacking of qualified workers and their replacement with incompetent staff, which may cause other difficulties in future. As we have seen, the level of transparency and public participation in the decision making process has significantly deteriorated recently, which creates the preconditions for the development of corruption. Traditional forest use methods are still not fully used and legally regulated; the legislation is full of contradictions; insufficient attention is paid to increasing the public's legal and environmental awareness; fighting illegal logging is limited to punitive measures frequently showed on TV and aimed at improving the image of the ministry in the eyes of the public.

## **6. Environmental governance and waste management**

Waste management is intertwined with the environmental, social and economic spheres and, therefore, is one of the central issues of sustainable development. Georgia is at the initial stage of development in terms of the introduction of sustainable waste management policies. The existing tendencies are still far from the principles of sustainable waste management and are mainly limited to traditional attitudes. However, in recent years there has been significant change in relation to waste management issues. In this regard important steps are planned for the near future.

### **6.1 Legislation**

As we have already noted, waste management aspects are interrelated with various spheres. For a comprehensive solution of these issues the introduction of a sustainable waste management system and a strategic approach towards waste is essential. Waste management strategy creates a foundation for regulating the sphere, which in future must be transformed into legislation. However, so far there is no waste management strategy in Georgia, therefore waste management policy and priorities have not been defined.



As the waste management priorities are not defined, the legislation is fragmented and it does not envision a common and consistent policy. Only general framework laws contain the elements of sustainable waste management, such as the Law on Protection of the Environment. For example article 5 of the law names the principles of waste minimization and recycling, as well as the sustainability principle, the risk reduction principle, the priority principle and the polluter pays principle.

In addition, the Law on Protection of the Environment implies the encouragement of the introduction of waste-free, environmentally-sound, ecologically clean technologies, the utilization of secondary materials and the implementation of effective environmental projects. The Law introduces tax exemptions and favourable state loans for the above-mentioned activities<sup>76</sup>. Moreover, the Law also introduces eco-labelling, which encourages greater awareness of customers and the production of environmentally-sound goods<sup>77</sup>. Article 34 of the Law on Protection of the Environment directly concerns waste and sets out environmental requirements in that field. According to this article, any entrepreneur or other individual is obliged to reduce the amount of industrial, municipal and other types of waste; neutralise, utilize, store and dispose the waste while fully complying with environmental, sanitary-hygienic and epidemiological norms and rules.

However, the further development of the above-mentioned principles and directions did not take place in legislation; correspondingly, there are no mechanisms for their realization and practical fulfillment. Legislation was created for meeting concrete needs rather than achieving strategic goals, very often the legislation was modelled with regard to the existing situation. The fact that the Law on Waste has not been adopted yet is another indication that. Waste management in Georgia is limited to collection/removal of waste and its transportation to landfills. These activities are more or less regulated by various legal documents. Therefore the adoption of the Law on Waste was not that critical, whereas for example the Law on Waste Transit and Import was necessary due to a concrete problem. In particular, according to the explanatory note attached to the draft law on “Bringing Law on Transit and Import of Waste on Georgian Territory (adopted on February 8, 1995) in Correspondence with the Georgian Constitution and other Laws of Georgia”, the adoption of the aforementioned law was conditioned by numerous attempts of foreign companies to import large volumes of municipal and toxic waste from Western countries to Georgia. Absence of corresponding legislation in that case was inadmissible, more so if we take into account the fact that the authorities were often pressured. The activities of local or foreign waste importers did not stop after the Law was adopted, which caused the further development of the Law, that also included the obligations assumed by Georgia under the Basel Convention (1989).

The only form of waste management in Georgia is disposal of waste in landfills. The decree #36/n of February 24, 2003 issued by the Minister of Labour, Public Health and Social Safety on “Approval of Sanitary Rules and Norms for the Organisation of Municipal Solid Waste Landfills” is the document that regulates this sphere. The document says that: “sanitary rules and norms of selection of land for and organisation of municipal waste landfills have been elaborated taking into account technical resources, economic needs, modern achievements of hygiene science and the existing level of sanitary practice” (article 2). The document gives the impression that the existing economic and technical resources as well as sanitary-hygienic practices have been given more priority than environmental principles. For example the document does not pay much attention to the issues that are important for the organisation of modern sanitary landfills; there are no clear requirements in regard to the neutralisation and safe storage of waste, the arrangement of the drainage system, requirements connected with avoidance of air or water pollution and concrete means of implementing it..

The second article of the decree reads: “The necessity of the elaboration of these sanitary rules and norms has been conditioned by the introduction of industrial methods of neutralization and recycling of waste (bio-thermal composting, incineration, pyrolysis, etc.) and at the same time the preservation of ground methods of waste neutralization, in particular the creation of high-capacity landfills that are more advantageous in comparison to ordinary landfills or improved landfills”. Despite the fact that neither this decree nor any other law defines the priorities in the waste management system, the above-mentioned excerpt still shows a certain tendency towards the preservation of traditional, unsustainable methods of waste management.

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<sup>76</sup> Georgian Law on Environmental protection, 1996 article 18

<sup>77</sup> Georgian Law on Environmental protection, 1996 article 19

Moreover, the control and monitoring mechanisms of landfills are not clearly defined. For example, the controlling bodies and their functions are not defined. The word combination “controlling bodies” is often used in the decree (article 18 and 19), however, what is meant by controlling bodies remains unknown. At the same time as a result of the recent structural changes the obligations and functions of existing institutions have been changed, which requires corresponding changes in the above-mentioned legal document.

According to the present Georgian legislation, activities concerning the storage of waste require a permit for impact on the environment indicated in the Georgian Law on Licenses and Permits. The Georgian government’s #154 decree of September 1, 2005 on “the Approval of Rules and Conditions of Issuing Permits for Impact on the Environment” defines the types of activities that require such permits including the processing of municipal solid waste (including incinerators) and/or waste disposal in landfills; the storage of toxic and hazardous waste; establishment and functioning of their burial sites and/or their neutralisation. The permits are issued by the MEPNR based on the findings of state ecological expertise. Before this law was adopted the issuing of those permits was regulated by the 1996 Law on Environmental Permits. According to that law, disposal of municipal and industrial waste, establishment and functioning of their burial sites, processing and incineration factories, storage of toxic, hazardous and radioactive waste, establishment and functioning of their burial sites and their neutralisation were all considered to be activities of the first category and they all required permits (article 4). Despite the legal requirements, none of the landfills operating in Tbilisi have environmental permits, because those landfills had been established before the above-mentioned law was adopted and therefore they were not covered by the law.

As for the sub-laws that regulate the organisational issues of municipal waste collection, collection costs, tariffs, etc., there are a number of shortcomings that hinder the effective functioning of the waste collection service. The existing waste removal tariffs are calculated on the basis of old data and they should be changed. At the same time the issues connected with the collection of waste from the trading centres and business organisations are not regulated at all<sup>78</sup>.

Currently, while the waste management system is just being formed and a conceptual strategy has not been elaborated yet, correspondingly the legislation is not perfect either. Clear waste management policy is needed for comprehensive and sustainable management of waste and the creation of a basis for the introduction/regulation of alternative waste management methods. This policy should contain concrete goals and a timeline for reducing the volume of waste. Only then will it be possible to discuss how effectively and optimally the legislation manages to achieve these goals.

## **6.2 Institutional setting**

The MEPNR is the main institution as far as the waste management system is concerned. The Ministry defines state policies in the sphere, it also controls “import, export, re-export, transit, processing, utilization, neutralisation, storage and landfilling of industrial, municipal, radioactive, toxic and other hazardous waste”<sup>79</sup>, the Ministry monitors the activities in that sphere, it issues permits on the processing/neutralisation/disposal of waste.

According to the Law on Self-Governance, the local self-government bodies are exclusively responsible for planning and carrying out the collection and utilization of municipal waste, cleaning the streets, the introduction of local taxes and fees, the calculation of those fees within the legal limits, the collection of local fees, the calculation of municipal service tariffs and the definition of rules of service<sup>80</sup>.

In addition, state sanitary supervision, hygienic regulation, elaboration of anti-epidemics measures and control are the prerogatives of the Ministry of Labour, Public Health and Social Safety<sup>81</sup>.

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<sup>78</sup> The issue is discussed in chapter “Market and Finances”

<sup>79</sup> Regulation of the Ministry of Environmental Protection and Natural Resources, article 2.19

<sup>80</sup> Law on Self-Governance, 2005, article 16

<sup>81</sup> Regulations of Ministry of Labour, Public Health and Social Safety, 2004, article 3

The fact that the functions of controlling bodies are not clearly delineated is the main problem of the institutional setting. The functions and responsibilities of national and local controlling bodies are often overlapping; as a result, control is not exercised at all. At the same time the coordination between the Ministry of Labour, Public Health and Social Safety and the MEPNR in connection with landfills was also not clear; however, as a result of structural changes the MEPNR was delegated the main controlling rights and responsibilities, but it is not reflected in the corresponding legislation yet. At the same time the poor coordination between various state institutions and national and local self-government bodies is also noteworthy, the lack of coordination between these agencies makes the whole system ineffective.

### **6.3 Participation right**

As we have noted in the main part of the report (chapter 3.3) public participation in the elaboration of strategic documents both at national and local levels is not guaranteed by Georgian legislation. However, surprisingly, in parallel to the restriction of participation right and lack of transparency in the activities of the government, this year the MEPNR has ensured public participation in the elaboration of the draft law on waste. Specifically, the law was subject to a Strategic Environmental Assessment under the MEPNR implemented and Dutch Government supported project<sup>82</sup>. Public participation is an essential element of this tool of decision making, thus the MEPNR held several consultation meetings with different stakeholders. The second essential element of the Strategic Environmental Assessment is the existence of alternatives. The ministry formally met this requirement as well. One of the NGOs, the Centre for Strategic Research and Development of Georgia had its own views on how the waste management system should be arranged. Thus, the alternative draft law submitted by this organisation was also subject to the assessment. It should be noted however that neither of the proposed alternative approaches, nor the recommendations made in the assessment were taken into account by the ministry during finalization of the draft law.

As in other spheres of environmental protection, public participation in waste management at the activity level is limited only to the permitting process. As we have noted above, a permit for impact on the environment is necessary for the processing/neutralising and disposing of waste. The permits are issued according to the provisions set out in the Law on Licenses and Permits which does not guarantee full-fledged public participation in decision making on granting the permit (see also chapter 3.3).

These changes that limit public participation in decision making are especially noteworthy as economic activities are just starting to gain momentum. Construction of a new landfill may start in the near future. At the same time construction of an incinerator is also not ruled out. These kinds of activities had been subject to mandatory public participation during the decision making process before the 2005 changes, but today this obligation is actually nonexistent.

### **6.4 Distribution of functions**

Under the existing waste management system waste management rights are distributed between national and local state structures. State structures, in particular the MEPNR prepares the legislative basis, issues permits and exercises state control. Local self-government bodies are obliged to collect and store the waste, which, in itself, is a just arrangement.

There are certain coordination problems between the state structures themselves. For example regulation of various types of waste (except for municipal and industrial waste that is managed by local self-government bodies) is the responsibility of various ministries. In particular the Ministry of Labour, Public Health and Social Safety regulates issues concerning medical waste; the Ministry of Agriculture regulates issues concerning the storage/neutralisation of agrochemical and biological waste; as for hazardous waste, this sphere is regulated by the MEPNR. Moreover, according to the recently discussed draft Law on Waste, very often three different state agencies are obliged to regulate issues concerning management of one and the same type of waste. As a result of recent institutional changes, the MEPNR has been given the main regulating functions; however, there are still quite a lot of issues that are not clearly regulated, more so if we take into consideration the fact

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<sup>82</sup> Introduction of Strategic Environmental Assessment in Georgia; the Project is implemented by the MEPNR with the assistance of the Netherlands Commission for Environmental Impact Assessment and the Dutch consulting company Ameco

that the corresponding changes have not been made in the legislation. Besides, as we have previously noted, the coordination problems between state institutions and local self-government bodies still exist and hinder the development of the waste management system.

### **6.5 Accountability and transparency**

The lack of information on the state of the environment hinders the exercising of the principle of accountability. Due to the collapse of the monitoring system, the mandatory monitoring of surface and underground waters near the landfills is not carried out. Regular National Reports on the State of the Environment are not prepared, at the same time absence of properly-working control mechanisms and poor coordination between the controlling bodies also hinders the exercising of the accountability principle. Moreover, as we have already noted, due to the changes made in the licensing/permitting system public participation in decision making process has been significantly limited.

So far there is no experience of holding the industrial sector accountable in Georgia. Mechanism such as producer's responsibility has not been established. There are no obligations for reduction of waste, introduction of secondary processing or reduction of packaging material. Mandatory or voluntary reporting is also nonexistent. There is no information on the activities of the enterprises that process secondary materials.

### **6.6 Property rights**

Definition of ownership on waste is necessary for the proper functioning of the waste management system; it is especially important when we talk about secondary use of waste, processing or incineration for energy recovery. However, while the waste has no considerable market value and at the same time the obligations of the municipality related to secondary processing of waste or other methods are not defined, the ownership on waste is not regulated either. Ownership of waste is defined by the draft Law on Waste. For example according to the article 40, "Any volume of municipal waste accumulated by physical entities must be considered the property of local executive self-government bodies as soon as the waste is placed in the specially allocated containers and bunkers". Moreover, the municipality owns industrial and any other types of waste after the waste is collected and given to the operator that transports it. It is to be noted however, that this is just a draft law and has not been approved by parliament yet.

Despite the fact that absence of property rights on waste does not create an evident problem, in the event of secondary processing or other forms becoming mandatory, the municipality will encounter considerable problems due to unclear ownership. More so, if we take into consideration the fact that there are individuals and small-scale private companies that collect waste, the local self-government bodies may have certain conflicts with them in the future.

### **6.7 Market and finances**

One of the basic problems of the waste management system is lack of finance. This problem is mainly due to the fragmentation of the budget and the outdated system of tariffs calculation. For example the operational expenses of waste management in Tbilisi are recovered through the fees collected from the population and the municipal subsidies; the amount of subsidies depends on the distance covered by garbage trucks from the point of waste collection to the landfill and the number of inhabitants in any given district of Tbilisi. Removal of 1 cubic metre of municipal waste costs GEL 0.7 per inhabitant if the garbage truck covers the average distance from the point of collection to the landfill (50 kilometers). However, the monthly tariff per inhabitant is GEL 0.4. The rest of the costs are recovered from the municipal budget. Until recently the limited liability companies (LLCs) which were hired by the municipality to collect and remove waste were obliged to collect the above-mentioned tariffs. These LLCs received from the municipality the subsidized part of the tariff, remuneration for cleaning the streets and compensation for the tariffs not paid by certain types of vulnerable groups that were exempt from municipal taxes.

The LLCs used Tbilisi electricity distribution company "Telasi's" service for collecting service fees from the population, which significantly improved the collection rate, however, the rate constantly varies and it is not even near 100% collection. Correspondingly, this shortage was reflected in the quality and amount of work carried out by the LLCs. Moreover, such fragmentation and lack of transparency of the budget made the control



of expenditures impossible. Currently this system of fee collection is still being used; however, changes have already been made in the Law on Capital Tbilisi and other corresponding laws and the local self-government structures may assume the responsibility of definition of fees for the population and the collection. The LLCs will be fully remunerated by the municipality for the services they render.

Servicing of the business sector is a separate problem, as there are no strictly defined tariffs for business organisations, the LLCs and concrete business organisations make individual contracts on the collection and removal of the waste generated by those organisations. The amount of the tariff is defined based on the volume of the waste and the distance to the landfill. However, the legislation does not oblige the business structures to make such contracts. They can transport their waste to the landfills, where they pay only for storing the waste. Many business organisations take advantage of such uncertainty and throw their garbage into the containers and bunkers allocated for the population's municipal waste. As a result the LLCs actually have to remove the business organisations' waste free of charge. According to the current changes, which have not been actually carried out yet, the municipality may assume the responsibility of collecting fees from business organisations as well. With the creation of a unified budget a very significant problem will probably be solved because the LLCs will be fully reimbursed and they will be obliged to fully carry out their responsibilities, that is waste collection and removal.

The outdated tariff system, as well as the absence of mechanisms for full collection of tariffs, is still a problem. The existing tariffs are based on the old Soviet system of tariffs calculation and old data. The average amount of waste generated by an individual is thought to be 0.8 cubic metres, but that amount is based on the 1992 data<sup>83</sup> and it needs to be recalculated.

In addition, the amount of state subsidies for removal and storage of garbage is calculated on the basis of the volume of the waste removed; which creates an interest in artificially increasing the amount of waste, especially since the amount of waste transported to landfills is calculated based on the number of trucks. That system is of course quite unreliable, the more so as the garbage trucks are not always full. Tbilisi City Cleaning Service plans to install special scales at the landfill entrances (there are two landfills in Tbilisi); however, without the introduction of appropriate supervision mechanisms the situation may not change significantly.

As a result of the recent legislative and structural changes, financial management issues are still at the initial stage of development. The tariffs must be correctly calculated and their collection system improved. Solving the latter problem is especially difficult in the waste management sphere, because using individual punitive measures (the ones used for example in the electricity field) is quite difficult in many cases. Therefore increasing public awareness through informational campaigns and public service announcements is very important. As for the business structures, the problem existing in connection with them should be solved in the near future as well.

## **6.8 Science and risk**

Sustainable waste management includes the following aspects:

- Protection of the environment and human health – using of such methods of waste management that do not represent a threat to human health and the environment.
- Alleviation of the burden for future generations – so that they do not have to take care of the waste generated by us and tackle the problems caused by it.
- Conservation of resources – maximum extraction of useful resources from waste for saving energy and raw materials and in order to reduce the amount of waste that is subject to disposal.

If these aspects are to be considered, scientific knowledge needs to be incorporated in the waste management system. In particular risk assessment methods, environmental monitoring, and various means for the minimisation of the impact on the environment should be introduced.

So far scientific knowledge is not used in the waste management system in Georgia. Risk assessment has not

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<sup>83</sup> Blumenroter, 2003, Waste Analyses



been conducted on the existing landfills. No monitoring is carried out, the amount of waste is unknown and the damage inflicted on the environment has not been evaluated.

## **Conclusion**

The situation in the waste management system is especially difficult as far as the environmental situation in Georgia is concerned. The legislation is imperfect, which is first of all caused by the lack of planning or in other words absence of waste management policy. The various legislative changes for improving the situation are carried out in a fragmented way and they cover only the operational part of the sphere. Substantial changes that are necessary for the establishment of sustainable waste management system require the elaboration of a National Action Plan and identification of state priorities. As we have already noted, the waste management sphere is closely connected with economic and social factors and requires comprehensive regulation. Moreover, active public participation and the introduction of the principle of producer's responsibility are also important factors.

The establishment of a sustainable waste management system will be quite a complex and long process. The National Strategy on Waste Management must be followed by elaboration of action plans at regional levels and then the development of mechanisms for achieving strategic goals. This requires additional research, cooperation with the public and private sectors and the strengthening of monitoring and control systems. At the same time it is impossible to select an optimal set of mechanisms right away – successful implementation is a process of constant modification and correction, when strategic goals are gradually improved and a new set of mechanisms are developed.

## **7. Environmental governance and the power sector**

The analysis of the Georgian power sector potential indicates that the country has a huge potential for the development of a sustainable power sector, which would fully comply with EU requirements. EU policy integrates three main components for Sustainable Energy development: (1) environmental protection both in generation and consumption; (2) security of supply (3) competitive energy systems to ensure low cost energy for producers and consumers to contribute to industrial competitiveness and wider social policy objectives.

Today, after ten years of reforms carried out in the power sector of Georgia, security of supply or in other words, energy security is still the only priority. While the promotion of competitiveness is at least declared at policy level, integration of environmental safeguards is completely disregarded by the individuals managing the sector. Therefore the reform of the Georgian energy sector is not directed towards the development of a sustainable energy system. This could become one of the major problems for the country's environment and population in the nearest future.

### ***7.1 Legislation and institutional setting***

Georgia, until it announced its independence, was a part of the Soviet Union power grid. It was managed directly by the state in compliance with the socialist planning principles. It was totally different from market management principles. The current expenditures of the power plants as well as the funds for their development were provided by the state budget. Thus the system was subsidised by the state and did not depend on the effective work of its constituent parts.

From the very first stage of the market relations that were established after the destruction of the former Soviet Union, it became evident that the existing working and managing principles would not ensure the reliable functioning of the power industry: widespread corruption, resulting in bad management, non-payment of consumed energy, irrational use of funds allocated for capital repair works, paralysis of the industry and so forth; the industry was at the edge of total paralyses.<sup>84</sup>

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<sup>84</sup> From 1993 the import of natural gas from Russia stopped, which caused a severe energy crisis in Georgia, and had a negative impact on the country's economy and further encouraged the growth of poverty. The population was especially affected during the winter, when the residents of Tbilisi got electricity for only 4-6 hours a day, while the population in the regions had no electricity at all.

### ***First phase of reforms***

From 1994 the international financial institutions<sup>85</sup> and bilateral agencies started to work in Georgia. With the support of the US Agency for International Development (USAID) the Georgian Energy Sector's Optimal Development Plan for 1998-2020 was elaborated, which emphasised that the most profitable option was the rehabilitation of the existing generation units, including hydro power stations. Based on the recommendations of the WB and International Monetary Fund, the Georgian government was to ensure the privatisation of the generation units and the electricity distribution companies, the liberalisation of tariffs and the depoliticisation of the sector management. The government was also obliged to pursue policies that would reduce the investors' risk through setting up independent regulation bodies and improvement of tariffs collection.

Based on the international financial institutions' recommendations and with their financial assistance, during the period 1997-1999 the Georgian Parliament passed a number of laws that created the basis for the restructuring of the energy sector, to separate the regulation and policy making functions and encourage private investments in the sector. The aforementioned legislation included the following laws:

- The Law on Power Energy adopted in 1997, which was amended and finally named the Law on Power Energy and Natural Gas;
- The amendments to the Law on State Property Privatisation adopted in 1998, which had created the legal bases for privatisation of the distribution companies.

Unfortunately the reforms carried out in the period 1997-2003 turned out to be unsuccessful<sup>86</sup>. The structural changes that resulted in the abolition and reestablishment of various agencies, led to scarcity of attracted investment, financial discipline was not strengthened, and a competitive environment was not created. In parallel increased electricity tariffs greatly reduced access to energy. By 2003 energy generation in the country totalled only 1700 megawatts, of which 300 megawatts was generated by thermal power stations and the rest from hydro power stations<sup>87</sup>.

### ***Second phase of reforms***

As a result of the first phase of reforms, two main institutions became responsible for the proper working of the Georgian power industry: the Ministry of Energy and Fuel (Ministry of Energy since 2003) and the Georgian National Energy Regulatory Commission (GNERC). After the Rose Revolution a new stage of modernization of the power industry began, further liberalization and deregulation of the energy sector became a priority.

The amendments to the Law on Electric Power and Natural Gas, the Law on Licenses and Permits and the Law on Independent National Regulatory Bodies were made step by step. Positive steps such as the abolition of the Electric Power Wholesale Market and incentives to create a strong operator in the system, amendments in law that support deregulation of small hydroes abolition of the proscription of direct selling of electricity to customers, licenses on natural gas were also abolished etc.

Currently, due to the steps undertaken by the government the import of electric power from neighboring countries significantly decreased in 2005-2006. According to the Georgian government's estimates in 2007 the import of electricity will decrease to 2.92%. This positive tendency was caused by rehabilitation works conducted by the Ministry of Energy on certain hydro power stations in 2004-2006. As a result of rehabilitation works conducted on Enguri hydro power station Georgia got an additional 600 megawatts (approximately).

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<sup>85</sup> World Bank Group, International Monetary Fund, European Bank for Reconstruction and Development.

<sup>86</sup> The only exception was the US based AES corporation. However, due to incorrect maintenance, the 10<sup>th</sup> energy block of the Gardabani thermal power station, owned by AES, exploded in December 2002. While during the summer of 2003 AES sold all shares to Russian United Energy Company. As a result, WB and EBRD stopped talking about positive changes in the Georgian energy system for quite a long time.

<sup>87</sup> In 1989 Georgia generated 4700 megawatts, 2000 megawatts was generated by thermal power stations and 2700 megawatts was generated by hydro power stations.

### ***Long-term policy of energy sector development***

In 2006 the Georgian Ministry of Energy prepared and the Georgian Parliament approved in amazingly record time the document on “The Main Directions of Georgian State Energy Policy”. Despite the fact that the document addresses the following positive goal: “full satisfaction of the country’s electricity needs through Georgia’s own hydro power resources: step by step, first to replace imported volumes and at the next stage to replace thermal power generation with hydro power generation”, however, the main governmental priority addresses the issue of the existence of energy resources rather than creation of a sustainable energy system.

In this regard the policy document clearly showed that it does not intend to establish a basis for the creation of a sustainable energy system in Georgia. For example according to the document, “the use of traditional and alternative energy sources should be regulated under the same conditions”. This statement clearly excludes incentives for the development of renewables.

Energy efficiency,<sup>88</sup> one of the major components of a sustainable energy system, was also ignored within the priorities of the policy paper. Furthermore, according to the experts, the main direction of Georgian government policy does not comply with the requirements and goals of EU energy policies, and also do not conform with the European Green Paper of Strategy for Sustainable, Competitive and Secure Energy<sup>89</sup>. “It is true that the concluding part of the document on Georgia’s energy policy provides for an energy regulation format and privatisation principles, but it says nothing about creating a competitive environment, which is indispensable for tackling reliability, efficiency and safety issues. Most of the measures set out in the document are limited to a description of the potential of various energy resources, but they do not specify the scope of their utilization and, more importantly, do not define their role in achieving energy policy goals. If Georgia shares EU energy strategy objectives, it will easily, or even automatically, attain the goals set out in its energy policy document.”<sup>90</sup>

It should be mentioned that the policy document also fails to comply with the Poverty Reduction and Economic Development Program prepared by the Georgian Government with the support of the World Bank and the International Monetary Fund in 2003. The Program underlines the fact that energy efficiency and use of alternative and renewable energy resources “are especially important” for guaranteeing the country’s energy security. However, in the policy document everything is narrowed down to rehabilitation of energy units and diversification of imported energy sources.

### ***7.2 Participation in the restructuring of the energy sector***

The reforms in the energy sector in Georgia before and after the “Rose Revolution” can be said to be almost completely a product of the government. In the initial stage of their design the government consulted with the IMF, the World Bank and other donor organisations. However, during the elaboration of any document and its implementation was in the hands of the Ministry of Energy, and the other stakeholders were left in the dark, without any public consultation or hearings.

The process of elaboration of a number of the documents<sup>91</sup> drawn up by the Georgian government in 2004-2006, including the “Main Directions of Georgian State Energy Policy”, are a good illustration of the above mentioned. Since 2004 Association Green Alternative has applied several times to the Georgian government and the Ministry of Energy and requested that the public be included in the decision making process, unfortunately

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<sup>88</sup> “Crude calculations suggest that the increase of energy efficiency in supply and consumption sides by just 10 percent, will lower the dependence of the country on imported energy resources by approximately 20 percent.” Georgia in the context of EU energy policy, Teimuraz Gochitashvili, Professor; Mindaugas Krakauskas, GEPLAC expert on energy issues, George Abulashvili, GEPLAC expert on energy issues Georgia Economic Trends, June 2006 [www.geplac.org](http://www.geplac.org)

<sup>89</sup> Green Paper, A European Strategy for Sustainable, Competitive and Secure Energy, Commission of the European communities, Brussels 8.3.2006

<sup>90</sup> Georgia in the context of EU energy policy, Teimuraz Gochitashvili, Professor; Mindaugas Krakauskas, GEPLAC expert on energy issues, George Abulashvili, GEPLAC expert on energy issues Georgia Economic Trends, June 2006 [www.geplac.org](http://www.geplac.org) Georgia within the Context of EU Energy Policy,

<sup>91</sup> Energy Sector Policies, 2004, 2005, 2006 Energy Sector Strategic Action Plan, 2005-2008 Energy Sector Strategic Action Plan

with no result <sup>92</sup>.

As a rule, NGOs, trade unions and other public representatives learn about the existence of policy documents or strategic decisions (for example privatisation) only when the work is almost or completely finished. Correspondingly, the documents elaborated by the Ministry and the enforced policies do not take into account the opinions of all stakeholders and the decisions are mainly based on subjective (even professional) and private judgments<sup>93</sup>.

The situation with public participation in tariff setting policy and licensing is slightly better, due to the Law on Electric Power and Natural Gas that directly demands that GNERC conduct its activities publicly and allow all the stakeholders to express their opinions during open meetings. Therefore, the debates during GNERC meetings are always heated especially when the Commission discusses the possibility of changing the energy tariffs. It should be emphasised that GNERC is not obliged to explain why it rejects initiatives or opinions expressed by different public groups; this should be considered as serious deficiency of the legislation. For example the tariff calculation methodology raises doubts among various experts; however, there is no agency or mechanism where it would be possible to discuss the issue of tariff methodology modification. As a result, when affected members of population applied to the Constitutional Court with regard of the electricity tariff, the Court defined the cost of 1 kilowatt/hour itself, which is quite an amusing and paradoxical fact.

### ***7.3 Distribution of competences***

Currently the Georgian Ministry of Energy is the agency that sets the main directions of state energy policy and coordinates their implementation. At the moment the Ministry of Energy actively cooperates only with the Ministry of Economic Development and GNERC, while the MEPNR has no role in the planning of energy policies.

The privatisation process currently being conducted planned that all energy generation units and electricity distribution companies should become private in the nearest future. However, before the privatisation of companies the environmental audit was not carried out and consequently the enterprises were not asked to present and observe environmental management plans according to the preliminarily agreed schedule.

It should be noted that compliance with the Framework Convention on Climate Change in Georgia is considered to be the privilege of the Georgian MEPNR and the convention's requirements or mechanisms have no impact on the functioning of the Ministry of Energy and the plans elaborated by this agency. Correspondingly, the process of policy planning, elaboration and implementation is in a way the continuation of Soviet traditions rather than an example of integrated management.

The fact that the assessment of the environmental impact of Georgian energy generation units and electricity distribution companies has never been conducted is noteworthy. Furthermore, there is no strategic assessment of the Georgian energy system's environmental impact, that would assess the Georgian energy system's potential and with regard to peculiarities of the social, environmental and economic aspects, would suggest the most sustainable scenarios for the development of Georgian energy sector<sup>94</sup>.

The Ministry of Energy directed its policy towards the liberalisation of the sector and the creation of a competitive environment, what would really be worthy would be of existence of an action plan that would clearly define the consequent steps taken by the government in order to achieve concrete goals. Otherwise, none of the "good" initiatives of the government and/or the President could not be implemented. For example in the spring of 2006 the Ministry of Energy quickly responded to the President's statement about the necessity of building small and medium-sized hydro power stations and in a few weeks announced the bidding for the construction of 10 wind power stations and 32 small and medium-sized hydro power stations, with a total

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<sup>92</sup> Visit: [www.greenalt.wanex.net](http://www.greenalt.wanex.net)

<sup>93</sup> The recent talks by Georgian decision makers and media about the possibility of construction of a Nuclear Power Station could be considered from this point of view.

<sup>94</sup> Based on demand from NGOs, in 2006 World Bank agree to carry out SEA for Georgia Power Sector within the framework of pre-investment grant for Ministry of Energy Georgia. [www.bankwatch.org](http://www.bankwatch.org)



capacity 585 megawatts; however, the bidding was not successful as was predicted by the specialists from the very first day when the bidding was announced. According to experts, “the technical capabilities of listed hydro power stations do not correspond to the real energy generation capacities of the rivers”<sup>95</sup>.

Another main regulatory body of the Georgian power industry is GNERC. GNERC’s functions include issuing licenses in the Georgian power industry and natural gas sector and regulation of tariffs. At the same time the Commission is authorised to establish and adopt the rules of the system’s technical and economic performance, including conditions of licensing and control over its implementation. This approach diminishes the transparency of system. According to experts, it would be good if Georgia used the experience of EU countries where “Such rules in the EU are specified in the legislation itself or endorsed by sub-laws that are enforced under a relevant ministry’s decree, while the powers of the regulatory commission are limited to monitoring and control of compliance of energy market participants with these rules”<sup>96</sup>. Furthermore, as the law and existing provisions concerning the Ministry of Energy and GNERC have a more declarative character, GNERC is free to interpret different issues in widely different ways. Therefore, the Georgian energy market actors are more concerned with regulators rather than customers, which clearly hinders the establishment of a secure and competitive market.

Moreover, it is very difficult to ascertain the independence of the Ministry of Energy and GNERC from the political processes that take place in the country. A good example is the tariffs policy that GNERC is supposed to be conducting independently. According to experts, “the method to establish the rates, the rate for electricity could have been fixed even at a higher extent, for the freedom of determining the market cost of funds is great, not to mention the interest rates on amortisation extra charges, repairs expenditures, etc. It is supposed that the role of “GNERC” in establishing the rates is minimal”<sup>97</sup>. The fact that the Georgian government members gave guarantees to the potential investors that the tariff for electricity would increase, also raises doubts<sup>98</sup>. Meanwhile GNERC believes that its foremost obligation is to encourage the privatisation process in the country and the attraction of investment<sup>99</sup>.

#### **7.4 Accountability and transparency**

According to the legislation, the Georgian Ministry of Energy, which defines state policy in the sector and fulfills the coordinating role, is not obliged to report to the public about the work it has conducted. The government annually presents its report on activities conducted to Parliament. This report also includes a description of the work carried out by the Ministry of Energy during the respective year.

Furthermore, according to legislation, GNERC is obliged to present its report annually and it should be accessible to the public. It should be mentioned that GNERC carries out its legislative obligations and annually publishes its report, as well as fulfilling the principle of transparency with regard to freedom of information and the decision making process.

#### **7.5 Property rights**

According to the Georgian Constitution, the unified energy system belongs to the highest state agencies and they define the regime of its work. According to the Law on Privatisation of State Property, state property, which is not subject to privatisation, is “the power industry’s transmission and production control service, except for the portion of the 35-111 kilowatt network which is mainly used for external feeding of the electricity distribution network and is not intended for system and/or inter-system transit of electricity”.

The first wave of privatisation took place in 1992, when small hydro power stations generating up to 10 megawatts were sold for very low prices. Even then most of the new owners failed to make the outdated hydro

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<sup>95</sup> “How to Become an Energy Exporting Country”, “Resonance” 103, April 19, 2006

<sup>96</sup> Georgia within the Context of EU Energy Policy; Teimuraz Gochitashvili, Mindaus Krakauskas, Giorgi Abulashvili, Georgian Economic Trends, June 2006, available at: [www.geplac.org](http://www.geplac.org)

<sup>97</sup> Social-economic effectiveness of structural changes made in Georgia’s energy sector, Tbilisi, 2003, Association Green Alternative, Oxfam, available at: [www.greenalt.org](http://www.greenalt.org)

<sup>98</sup> see [http://www.minenergy.gov.ge/files/17\\_235\\_883192\\_PresentationTurkey\(short1\).ppt](http://www.minenergy.gov.ge/files/17_235_883192_PresentationTurkey(short1).ppt)

<sup>99</sup> Annual Report of GNERC, 2005, available at: [www.gnerc.org](http://www.gnerc.org)



power stations work, therefore they were stopped and some of them were robbed.

Privatisation of larger power stations and distribution companies took place in 1999-2000. As a result, the US-based Corporation AES purchased 75% of the Tbilisi electricity distribution company “Telasi” and power stations with a total generation capacity of 823 megawatts: 9<sup>th</sup> and 10<sup>th</sup> energy blocks of Gardabani thermal power station and Khrami 1 and Khrami 2 hydro power stations. In spring 2006 the privatisation of the other six main hydro power stations (except for Enguri hydro power station) and three distribution companies was announced.

According to the experts, the recent privatisation that took place does not comply with the statement presented in the document on the Main Directions of Georgian Energy Policy: “ensure transparency of the privatisation process in the power and natural gas sectors”<sup>100</sup>. The experts believe that the privatisation will increase the tariff and that this would affect the population’s welfare, and bring disastrous results, both politically and socially<sup>101</sup>. The fact that lack of transparency during the privatisation process hinders the development of a friendly investment climate in the country is also noteworthy.

Privatisation of the so-called strategic sites, for example Enguri hydro power station (which generates 40% of all electricity generated in Georgia) is also a problematic issue. Most experts believe that in order to guarantee the country’s energy security the state should retain its control over such sites.

According to the mass media, some members of the Georgian government think that after all the generation and electricity distribution sites are privatised Georgia will not need the Ministry of Energy as a separate unit and it could subsequently join the Ministry of Economic Development. It is paradoxical but the necessity of having the Ministry of Economic Development itself is also questioned<sup>102</sup>. Experts negatively assess this development; they believe that this move would be destructive for the Georgian power industry.

## **7.6 Market and finances**

Despite the numerous changes that have been made since 1994, a friendly investment environment in the energy sector has not been created. Therefore investment in the energy sector is scarce, which creates significant barriers for the development of the country’s economy. Furthermore, the decision makers are mainly focusing their attention on large and expensive projects such as the construction of new high-capacity hydro power stations and power transmission lines.

A good example of the above mentioned is the Khudoni hydro power station construction project that is under preparation by the WB and the Georgian government. According to the WB, the project aims at development of new hydro power resources, which would be able to generate an amount of electricity which would be able to satisfy more than 10% of Georgia’s need in electricity annually and will represent 20% of existing energy resources; According to the Bank, this will strengthen Georgian energy security. In addition the project is oriented to exporting electricity to neighboring countries<sup>103</sup>.

The decision makers often try to represent these type of activities as another step towards ensuring the country’s energy security; however, they tend to forget the problem of energy accessibility, as the construction of Khudoni and other high-capacity hydro power stations have the potential to increase the electricity tariff

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<sup>100</sup> According to the government, the Czech company “Energo Pro” purchased 2 distribution companies (Unified Georgian Energy Distribution Company and Adjara Power Company) and 6 hydro power stations: “Atshesi”, “Dzevrulhesi”, “Lajanurhesi”, “Rionhesi”, “Shaorhesi” and “Gumbathesi” for 312 million USD. However, experts and some MPs believe that the privatisation process was not transparent

<sup>101</sup> “Why Is the Agreement still not Signed?! The results of the destructive processes taking place in the energy sector will be evident in the forthcoming year” newspaper “Resonance”, #233, Tuesday, August 29, 2006

<sup>102</sup> “Reorganisation in the government: two ministries to be abolished?”, By M. Alkhazashvili Tuesday, June 13, 2006, #108 (1128)

<sup>103</sup> WB believes that it can provide partial financing for Khudoni hydro power station (up to \$50 million) through IBRD if the loan will be guaranteed with an electricity export contract. The ownership issue of the hydro power station should be defined by that time.

in a way that the local industry that is still based on old energy intensive technologies may become totally uncompetitive<sup>104</sup>.

### **3.7 Science and risk**

Since the collapse of the Soviet Union science in Georgia is practically not financed. The number of technical specialists has significantly decreased, including in the power industry. Many scientific institutions, such as for example “Hydroproject”, have reduced the number of specialists and the process of replacement of old specialists with young staff is not carried out anymore. Lack of financing actually stopped both theoretical and practical scientific activities in the energy sphere; for example, elaboration of rivers’ energy schemes has stopped while development of small capacity hydro power stations without these schemes is practically impossible.

There is almost no scientific-analytical body that would support the government in developing a sustainable power sector concept, as well as in the elaboration of policy and guidelines, and support for the implementation of an action plan.

### **Conclusions and recommendations**

An energy sector free of political, technical-economic and environmental risks (generation of energy resources, transmission, distribution and consumption) is a precondition of sustainable development. The rehabilitation works carried out by the Georgian government in 2004-2006 have played a positive role in the reduction of the energy deficit. This tendency (rehabilitation of hydro power stations with state money) must be preserved in future, if the private investors are not interested. It is important as the energy deficit and problems with regard to energy accessibility pose a direct threat to the Georgian economy’s further growth. Taking into account the potential of Georgia’s power sector, the growth of energy consumption and the energy balance structure should be planned based on the use of local, mainly hydro resources, which should be based on principles of sustainable development.

The EU-Georgia action plan under the Neighborhood Policy includes elaboration of Georgia’s energy policy and its compliance with the goals of EU energy policy and gradual adoption of the EU’s internal electric and gas market principles. In this regard it is important to carry out the elaboration of Georgia’s sustainable energy policy documents and strategic action plans in compliance with relevant EU energy and sustainable development strategies and corresponding directives. The process should be transparent and participatory.

Due to the existing problems in the energy sector of Georgia, the Georgian government should give short and medium-term priority to the following aspects:

- To attract investments for rehabilitation of small hydro power stations and construction of decentralized renewable energy generation sources;
- To elaborate legislative initiatives that would encourage development and promotion of renewable energy sources in Georgia through introduction of economic incentives;
- To increase energy efficiency through significant improvement in utilization of energy resources in every unit of generation, supply and consumption based on elaboration of corresponding legislative initiatives, allocation of credits, grants and subsidies for energy efficiency programmes;
- To ensure strategic energy reserves through building storage in the country or using existing storage outside the country, as defined by the EU energy security strategy;

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<sup>104</sup> There are no credits or state programs that would assist local industry in carrying out activities directed towards energy efficiency.

## **8. Environmental governance in Georgia and the European Neighborhood Policy**

### **8.1 Georgia and the European Union**

During the last few years the Georgian government has been reiterating that integration into Euro-Atlantic organisations and the European Union (EU) is the first priority of Georgia. After expansion in 2004, the EU's Wider Europe concept and inclusion of South Caucasian countries in European Neighborhood Policy (ENP) opened new prospects for Georgia for more active participation in European integration processes, gradual harmonization of legislation and encouragement of improving the living standards in the country.

Despite the fact that the EU's Neighborhood Policy is not an expansion policy, it is directed at the establishment of Georgia as an equal partner and a departure from donor-recipient relations. This should encourage the growth of Georgia's and other countries' shares in the EU's internal market and strength stability and security. In the long-term perspective the different European Commission (EC) agencies also plan to open certain programmes for neighborhood countries.

Under its Neighborhood Policy the EU supports protection of human rights, establishment of the rule of law and good governance as well as eradication of such crimes as trafficking and terrorism.

The drawing up of the EU-Georgia Action Plan (AP) was the first step taken under the ENP. It is a political document that forms the basis of strategic goals of EU-Georgia cooperation for the next five years, it encourages fulfillment of the Agreement on Partnership and Cooperation and Georgia's future integration in Europe's economic and social structures. Implementation of the AP should significantly facilitate the process of harmonisation of Georgian legislation, norms and standards with those of the EU and this in itself, creates the foundation for economic integration, growth of trade, investments and the economy.

The European Neighborhood and Partnership Instrument (ENPI) has been elaborated for implementation of ENP. From 2007 the ENPI will replace all the assistance programmes carried out by the EU in Georgia. The EU will allocate about USD 11 billion in 2007-2013 for the countries of the ENP (Belarus, Ukraine, Moldova, Georgia, Armenia, Azerbaijan, Morocco, Algeria, Tunis, Libya, Egypt, Israel, Jordan, Lebanon, Syria and Palestine).

At the same time the European Parliament will review and approve the mandate of the European Investment Bank (EIB). In 2007-2013 based on its new mandate the EIB will invest about USD 5 billion in Russia and the South Caucasus for the development of the sectors that are of most interest to the EU, such as transport (enlargement of trans-European highways), energy (strategic energy-projects), telecommunications and development of environmental infrastructure<sup>105</sup>.

Theoretically, the above-mentioned activities should promote economic growth and social security, the overcoming of poverty and sustainable development in Georgia. It should be emphasised, that this process will bring positive results only under full transparency and the rule of law, as well as if there is real political will both, in Georgia and in the EU to become equal partners.

### **8.2 ENP process**

In March 2005 the European Commission prepared the Country Report under the ENP, which was the start of the negotiations between the Georgian government and the EC on the AP for 2007-2013 and with the help of which priorities of cooperation were defined.

Negotiations between the Georgian government and representatives of the EC started in May 2005 and due to certain objective reasons the negotiations were finished only in October 2006. Unfortunately, neither the Georgian government nor the EC formally established the procedures of public participation at the onset of the

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<sup>105</sup> Proposal for a Council Decision granting a Community guarantee to the European Investment Bank against losses under loans and guarantees for projects outside the Community (presented by the Commission), Brussels, 22.06.2006, COM(2006) 324 final, 2006/0107 (CNS)

elaboration of the plan. Representatives of the EC initially stated that they did not think taking into consideration the NGOs' opinions was necessary. However, later, during the process of negotiations the cooperation between NGOs and the Georgian government, as well as NGOs and the EC intensified.

The governmental commission to develop the Action Plan created a council of experts, which included several public representatives. In parallel, Georgian civil society representatives who paid close attention to the elaboration of the plan formed a coalition of NGOs to provide recommendations for the Action Plan. The coalition was supported by the Heinrich Boll Foundation, the Eurasia Foundation and Open Society Georgia Foundation. After working for several months about 70 NGOs presented recommendations concerning the AP, which the Georgian government later called "an alternative action plan". It should be noted here that a significant part of the recommendations presented by the NGOs were taken into consideration in the final version of the AP<sup>106</sup>.

However, deficiencies of the elaboration process from both sides are still visible in the Action Plan. It should also be noted that the EC used a formal approach while preparing the Country Report; therefore the Report included only official opinions and data, which in many cases are outdated, unrealistic and/or incorrect. As a result the problems existing in the country were not fully recognised.

For example, the Report refers to the National Environmental Action Plan that was approved in 2000 and that defined nine priority areas: water supply and water contamination, air pollution, consumption of resources, control/management of waste and chemical products, land resources, protection of the Black Sea, forests and forestry, global environmental problems and the problems existing in environmental protection and management of natural resources. The Report also states that "the National Environmental Action Plan was approved in 2003 and the selected municipal bodies are currently elaborating local action plans. In 1996 Georgia published the first national report on the state of country's environment". The question is what is the added value of such information taking into account how in practice those priorities are implemented and how the Georgian practice corresponds to that of the EU? For example, how can the regulation of air and water pollution be improved by abolishing taxes on emissions, or how can environmental governance be improved while public participation in the decision making process is limited?

Therefore, it would be better if the EC and the Georgian government structured the consultations from the very beginning and introduced rules for public participation, which on the one hand would have enabled NGOs to present their opinions more actively and on the other, the level of responsibility over implementation of the document within the country would have increased.

### ***8.3 EU-Georgia action plan***

Cooperation in transport, energy and environmental protection, as well as supporting sustainable development are the priority areas in the EU-Georgia AP.

The priorities in environmental protection are as follows: (a) Creation of conditions for good environmental governance and their implementation, which implies strengthening of administrative structures and procedures and their integration into the strategic planning of environmental issues and compliance with the requirements of the Aarhus Convention; (b) Based on the decisions made at the Johannesburg Summit, reduction of environment degradation, protection of human health and rational use of natural resources through elaboration of appropriate legislation, increasing capacities of administrative capacities for issuing licenses and permits, as well as for control and law enforcement; (c) Close cooperation on environmental issues including fulfillment of the requirements of the UN Climate Change Framework Convention and the Kyoto Protocol, ratification of the conventions of the UN Economic Commission for Europe, active partnership over introduction of trans-boundary approaches towards water management in the Black Sea basin and cooperation under the Eastern European, Caucasus and Central Asian component of the EU Water Initiative.

The AP also underlines the necessity of elaboration of a national action plan for sustainable development

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<sup>106</sup> During various forums the representatives of EC and the Georgian government underlined the importance of those recommendations and their contribution to the elaboration of the final AP.

and the taking of concrete steps for its implementation, ensuring coordination between various stakeholders, strategic planning for sustainable development and taking concrete steps for integration of the environmental vision in various policies.

The goals of the ENP as well as the priorities indicated in the AP are of course to be welcomed; however, as readers have probably noticed, the legislative changes made in Georgia in 2004-2006 and the Georgian government's efforts in the environmental field (it would be better to call it "fast economic modernization practice", which is coming straight from the office of the State Minister on Economic Issues) do not comply with the above-mentioned priorities. Today, when the state policies are directed at minimization of state intervention through complete liberalisation and deregulation, about 85% of licensing legislation has been abolished, including in the food, industry and vehicle safety spheres. Correspondingly, a number of controlling bodies have been abolished or their functions have been transferred to other organisations, as a result, quite a lot of issues were left without regulation<sup>107</sup>. The above-mentioned approach is shared by almost all the members of the government; however, there are pro-European forces as well that require gradual harmonisation. According to one of the Georgian experts, the logic behind the idea of fast economic modernization is as follows: "Since the prospect of EU accession is not looming at all, we can't wait with fast economic reforms. When the people are fed, we will take care of the environment and consumer protection issues. Compliance with the EU *acquis* is not a priority now"<sup>108</sup>.

While considering the changes made during the last few years, the conclusion made by the Georgian-European Policy and Legal Advice Centre (GEPLAC)<sup>109</sup> according to which Georgia has harmonised its legislation with EU legislation in particular with the Integrated Pollution Prevention and Control Directive (96/61/EC IPPC Directive) through the creation of the Environmental Protection Inspectorate and the introduction of the new licensing system, seems quite surprising. Even if we assume that the correspondence with that Directive is certain, the facts indicated in the present report clearly show that the current environmental legislation is far from being harmonised with the corresponding EU directives, furthermore, Georgian environmental legislation has become even more distant from EU legislation than it was before (including the following requirements: 90/313/EEC – information on environment, 85/337/EEC and 97/11/EC amendment – environmental impact assessment, 2001/42/EC environmental impact assessment<sup>110</sup>).

It should be underlined that cooperation in transport and energy spheres are priorities of the AP. The part of the Plan concerning these two spheres (especially the latter one) is quite progressive. However, this cooperation that has to be transformed into concrete projects and programmes, may have an irreversible impact on the Georgian environment. The AP clearly underlines the transit potential of Georgia in the transport and energy spheres, which implies enlargement of trans-European networks, construction of strategic power industry sites and high-voltage power lines.

While horizontal instruments of environmental and social security are not working in the country, there is not a sustainable development strategy and the protection of the environment is of the lowest priority, the development of the transit potential of the country may cause further degradation of the environment, violation of human rights and increased poverty.

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<sup>107</sup> For example nobody controls the selling of expired food products in the trading network. The Law on Food Safety and Quality (approved in December 2005) completely restructured the food control system; as a result, these functions were transferred to the Ministry of Agriculture (except for border control) and the National Service of Food, Safety, Veterinary Medicine and Plant Protection (part of Ministry of Agriculture) has been created. Experts hope that the Service will carry out effective control from 2007 when its regulations are approved and it's able to operate.

<sup>108</sup> Georgia in the Wider Europe Context: Bridging Divergent Interpretations; Archil Gegeshidze, Georgian Foundation for Strategic and International Studies, Tbilisi 2006.

<sup>109</sup> The mission of the Georgian-European Policy and Legal Advice Centre (GEPLAC) is facilitation of Georgia's political, economic and social integration in the European Union. The guiding principles are indicated in the Agreement on Partnership and Cooperation made between Georgia and the European Union, which entered into legal force in July 1999. The project is financed by the European Union. Visit [www.geplac.org](http://www.geplac.org)

<sup>110</sup> The National Program on Harmonisation of Georgian Legislation with European Union Legislation, which was approved in September 2003, specifically requires the harmonization of the Georgian legislation with first of all those concrete directives. Visit: <http://www.eu-integration.gov.ge/geo/legislharmonization.php>



## 9. Conclusion

This report shows that roughly two stages can be defined in the development of the environmental governance system in Georgia: (i) the 1990's and the period before the 2003 Rose Revolution and (ii) the period after the Rose Revolution up until now.

During the first period of development of environmental governance the elements of the new environmental governance system were formed after the collapse of the Soviet system. For example, institutions and legislation were created that more or less included the main principles of good environmental governance: transparency, participation and accountability. It is worth noting that Georgia became a member of the Aarhus Convention during that period; Georgia was one of the first countries to ratify the Convention. Despite the fact that ratification of the Convention was not followed by practical steps for implementation of the requirements set out in the Convention, the fact that Georgia shared the necessity of establishment of "access principles" is to be welcomed.

The second period of development of environmental governance is characterised by frequent institutional and legislative changes, which are directly connected with the government's drive towards complete liberalisation and deregulation of the economy and the desire to increase the state budget incomes by all possible means (including more exploitation of natural resources and changing their ownership status). The report reveals that these changes were introduced in a non-transparent way and without any consultation with stakeholders. What is more unfortunate is that as a result of these changes the opportunities for the public to be informed and to participate in the decision making process were even more limited. Moreover, in parallel to limiting the access to information and public participation, these changes also limited the access to justice.

In such circumstances, the fact that one of the priorities indicated under the EU-Georgia AP is the facilitation of good environmental governance is very encouraging. However, it would be necessary to have periodic evaluation of the situation in the country's environmental governance and the progress made towards achieving the goals (for example once every 2-3 years) for improving environmental governance. Moreover, as opinions on how harmonised the Georgian legislation is with the corresponding EU legislation differ, it would be much more appropriate if such assessments were done by a third, independent party, for example, the European Environmental Protection Agency.

Furthermore, the EU and the Georgian government should use the human resources existing in the region more actively to ensure that implementation of the AP brings real benefits to the country in terms of sustainable development. Introduction of the participatory principle is necessary during the implementation of the AP. Projects and programmes implemented with the assistance of the EU (both through the ENPI and the EIB) must unconditionally comply with the environmental policy requirements and the standards of the EU, especially in the spheres of energy and transport. During implementation of the AP, the EC should pay more attention to the monitoring of Georgia's compliance to international conventions, including the Aarhus Convention.

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## **Abbreviations and Acronyms**

AP	Action Plan
EC	European Commission
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EU	European Union
GNERC	Georgian National Energy Regulatory Commission
MEPNR	Ministry of Environmental Protection and Natural Resources
NGO	Non-Governmental Organization
TACIS	Technical Assistance to the Commonwealth of Independent States
UN	United Nations



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