



SHORTCOMINGS IN LEGISLATION AND PRACTICE OF STATE OVERSIGHT ON MINING ACTIVITIES

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Social Justice Center

Tbilisi, 2022

The document is prepared in the frameworks of the project “Sustainable and Democratic Management of Water and Mineral Resources in Georgia” with financial support of the Tbilisi Office of the Heinrich Böll Foundation.

The views and opinions expressed in this document are those of the Social Justice Centre and do not necessarily reflect the views of the Foundation.

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Cover Photo: Caucasus Environmental NGO Network (CENN)

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***The rule of citation:** Social Justice Center, Anano Tsintsabadze, “Shortcomings in legislation and practice of state oversight on mining activities“, 2022*

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Introduction

The recent environmental protests in Georgia have surpassed the concerns of the local population and activists participating in the protests and have exposed the shortcomings of the current policy and legislation in the field of environmental protection.

In the recent period, the natural and social environment has been increasingly sacrificed for the interests of economic benefits of private individuals. Damaged and degraded soil, poisoned rivers, polluted air, felled plants and public spaces designated for construction have become the daily life of the capital and regions. This issue is even more acute in light of the shortcomings of the health care system in Georgia.

The state mechanisms for restoring the environment damaged by the activities of the extractive industry and protecting the rights of the local population are weak and can neither restore the degraded environment nor the rights of a large part of the communities. Moreover, in some cases, the state acts as a defender of investors' private interests and responds to citizens' concerns by offering mediation with the representatives of business.

An important function of civil society is to actualize the problems of the local population living in the regions in public and political spaces, to voice the concerns of the population, and also to protect the social and natural environment from the harmful effects caused by the current policy. For this, it is important to study the shortcomings of the system, expose them and turn them into subjects of public and political discussion.

This report aims to address the gaps in legislation and practice affecting effectiveness of state supervision over mineral resource extraction activities, and to encourage further in-depth and comprehensive research, as well as development of meaningful recommendations and fight for the rectifying the flawed policies.

Research Methodology

The report is primarily based on the legal analysis of legislation and by-laws in Georgia, in the field of mining and subsoil use, as well as environmental protection in general.

To substantiate the arguments, secondary sources are analyzed at length, namely, critical analytical documents, studies of domestic organizations, reports of the State Audit Office and the Public Defender's Office, assessment and analytical documents of non-governmental organizations.

The report is relies on and analyzes the public information received from administrative bodies, the administrative offence records issued by them, published reports, statements, evaluations, as well as public communication with the third parties.

The report also examines selected case studies of environmental and community members affected by subsoil use and uses both official materials and publicly available media content.

In the process of preparing the report, interviews were conducted with community activists, non-governmental organizations, and experts in the field of environmental protection and subsoil use (a total of eight interviews).

Interviews were planned with the representatives of the National Agency for Mineral Resources and the Department of Environmental Supervision, however, in the end, the agencies declined the interviews.

The report has certain limitations. In terms of the subject matter, the report is limited to assessment of the impact mining control has on environmental protection. The data obtained through public information requests was also limited. Most of the information was incomplete and did not answer all questions asked; Not all requested documents have been provided. In addition, the report was compiled by an external researcher, who did not have the experience of directly working with the agencies to be evaluated, accordingly, information was obtained based on the sources reviewed in the methodology section, as well as the experience of persons in direct contact with the agencies in question.

Main Findings:

The state control system and legislation concerning extraction of mineral resources do not prioritize the issue of environmental protection. In 2017, the transfer of the controlling body of the subsoil sector from the system of environmental protection to the system of economic development was a political statement about the strengthening of economic interests in the extractive sector.

- In the process of subsoil use, the central goal of the state control mechanism is not to check, detect and prevent environmental violations, but to control compliance with license conditions established by the agency. These conditions mainly regulate technologies used during mining and accounting issues related to mineral resources.
- The environmental conditions established by the license are mainly foreseen to fulfill the formal requirements of the law, and the control by the agency over their enforcement is either very weak, or is redirected to the department of environmental supervision.
- This is also evident from the reports submitted by the license holders after the issuance of a license; In order to control the activities of the license holders, the legislation requires them to submit periodic reports, however, the information included in the reporting process is only related to the license conditions and not to the environmental impact caused by the ongoing mining activities;
- In the process of checking the licensees, the agency relies on several technical regulations, however, the regulations in use minimally reveal the risks of damage to the environment by the license holder's mining, or cannot do so at all; In addition, the agency's activities are not planned on the basis of substantive assessment of environmental risks, and when drawing up plans of for inspection of relevant enterprises, the agency is guided by the formal and blanket criteria defined in the by-law.
- After referring the issues to the Department of Environmental Supervision, the National Agency for Mineral Resources is no longer concerned with the environmental impact related to the resolution of the issue and the extent of damage caused to the environment.
- In comparison to the number of valid licenses issued by the agency, the number of inspections carried out in general, including field inspections, is small.
- Annual reporting by license holders is not systematic.
- Sanctions envisaged for harming the environment, due to low amount of fines, are weak and ineffective, and as a rule, neither can they achieve the goal of punishing high-profit enterprises nor play the role of preventing future violations.
- It is a big challenge for the residents in the mining area to get the National Agency for Mineral Resources to agree to conduct a field visit for the purpose of inspection. The agency

often ignores or refuses to respond to such requests from activists and neighboring communities;

- In 2018, international development agencies recommended accounting for abandoned and closed deposits and prevention of environmental risks arising from them, however, this process has not ensued yet.

Chapter 1. Utilization of Mineral Resources in Georgia - Environmental Challenge or Economic Benefit?

The extraction of mineral resources has a great impact on the environment and population: pollution of surface waters during washing of minerals; pollution of underground waters during seepage of toxic substances into the soil; air pollution with dust particles; drilling during blasting and movement of heavy machinery; rock failure and soil degradation; disruption and extinction of ecosystems; migration as a result of the destruction of the living environment - this is an incomplete list of the damage caused by the extractive industry to the environment.

The mining industry has also caused severe damage in the regions of Georgia. The environmental audit conducted in 2015 revealed various forms of damage to the environment: "disturbance of the relief, as a result of the formation of quarries, stockpiles and formation of other production complexes; land degradation; soil pollution with heavy metals, atmospheric air pollution with dust; release of sodium cyanide aerosols, and other gaseous substances from large-tonnage equipment; reduction of forest and river biodiversity".¹

The consequences of utilizing mineral resources may have a positive effect on the economy, however, it causes great damage to the environment, which is why, in the field of subsoil use, existence of strong environmental protection mechanisms is important for the balancing of the two.² Minerals are an exhaustible resource and it is important to use them in such a way as to have a positive effect on the economy, however, at the same time, it must be ensured that the risks of negative impact on the environment are eliminated.³ Precisely this logic was reflected in the institutional arrangement of the supervision body over extractive industry from 1996 to 2008, when the body responsible for the mining sector was integrated into the Ministry of Environmental Protection and Natural Resources. On the one hand, this was a political

¹ Audit Report on Effectiveness of Managing Environmental Protection in the Mining Sector, February 13, 2018, # 18/36, p. 13. available at: <https://www.sao.ge/files/auditi/auditis-angarishebi/2018/sasargeblo-ciagiseulis-mopoveba.pdf> last accessed 6/12/2022

² UN Guiding Principles on Business and Human Rights, p. 3 available at: https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf last accessed 9/12/2022

³ Audit Report on Effectiveness of Managing Environmental Protection in the Mining Sector, February 13, 2018, # 18/36, pp. 9-11. available at: <https://www.sao.ge/files/auditi/auditis-angarishebi/2018/sasargeblo-ciagiseulis-mopoveba.pdf> last accessed 6/12/2022

message about the importance of environmental protection in the extractive industry, on the other hand, it provided robust legislative basis for full coverage of the extractive industry under existing environmental regulations.

Since 2006, the process of relaxing business regulations had started in Georgia, which also covered the field of mining, and the supervisory body over the sector was transferred from the Ministry of Environmental Protection to different agencies. In 2008, the Ministry of Economic Development became the body responsible for the regulation of subsoil use. In 2011, this function was assigned to the Ministry of Energy and Natural Resources. In 2013, the function was transferred back to the Ministry of Environmental Protection and Natural Resources; And finally, in December 2017, it was transferred to the Ministry of Economy and Sustainable Development, where a specialized legal entity of public law - the National Agency for Subsoil Use - was created, which was later reformed into the National Agency for Mineral Resources.⁴ Since 2018, several phased processes of subsoil use reform have started.⁵ The initiated reform determined its goals as follows: "establishment of a transparent, commercially attractive and economically profitable system that ensures rational and sustainable use of natural resources in Georgia."⁶ Thus, at the political level, it was clearly stated that the state supervision system no longer prioritized the issue of environmental protection,⁷ rather the establishment of a commercially attractive system, where natural resources are primarily an opportunity to receive economic benefits.

Chapter 2. Procedure and Practice of State Control in the Field of Mining

This chapter reviews the process of supervising the extraction of mineral resources, as well as the legal and practical problems identified by observing the inspection processes.

The purpose of this chapter is to assess whether the controller's activities create robust guarantees for mitigating or avoiding the risks of damaging the environment through mining.

The manner of carrying out supervisory control by the National Agency for Mineral Resources is regulated in a by-law. The following forms of control are defined: study of the site of

⁴ „Green Alternative“ Developing National Mining Policy in Georgia. August 2020. P. 6. available at: <https://greenalt.org/tsiaghis-sektoris-ganvitarebis-dagegmvis-kharvezebi-mtsvane-alternativas-angarishi/> last accessed: 6/12/2022.

⁵ 2021 Parliamentary Report of the National Agency for Mineral Resources provided in response to a public information request 22/164, December 1, 2022

⁶ Public information provided through correspondence dated December 1, 2020, National Agency for Mineral Resources on projects/plans implemented in 2020.

⁷ Environmental protection as a general principle is introduced to the legislation regulating industry, see Law of Georgia on Subsoil Use, paragraph 5, stating "The purpose of this Law is to ensure the rational use of subsoil and mineral resources taking into account laws of nature and the potential capacity of the environment, the interests of present and future generations, and the principles of sustainable development."

regulation, inspection of the site and control of the activities.⁸ All three forms entail collection and analysis of information, visual materials and other data in order to determine compliance with the license conditions.

Study of the site is the primary type of inspection and involves requesting relevant documentation from the entity under regulation;

Inspection of the site- entails an on-site study of the activities through field visits. It can aim to study incoming messages, verify documentation submitted by the regulatory entity, and eliminate violations of license terms. The agency is entitled to visually inspect the licensee's activities on site, study the mineral resources, their condition, take laboratory samples and focus on the compliance of the license holder's activities with the requirements of the Georgian legislation. Under certain conditions, the agency has the authority to conduct surprise inspections of the site under regulation without obtaining its consent.⁹

Control of the activities on the site aims to check the licensee's compliance with the legislation on subsoil use. In this process, the agency is authorized to check the conditions of the activity on the ground, accounting documentation and the reports provided by the licensees. Inspection of the site may be carried out according to a plan approved by the agency (scheduled inspection) or without a plan (irregular inspection).

Despite the broad powers defined for the implementation of various forms of control, the control mechanisms are weak. In the process of implementation, they do not create guarantees for the license holder's compliance with environmental regulations, and also fail to properly supervise prevention of damage to the environment.¹⁰

The weakness of environmental damage inspection mechanisms and the need to strengthen them is also noted in the National Strategy for Subsoil Use approved by the Government of Georgia. According to the document, the Agency is obliged to strengthen the environmental monitoring tools related to mineral exploitation in the future, as well as to ensure the introduction of appropriate measures to reduce the environmental damage caused by mining.

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⁸ Ordinance 84 of the Government of Georgia dated February 16, 2018, on the approval of the procedure for the implementation of state control through monitoring compliance with the conditions of the mining or subsoil use, articles 8, 9, 10.

⁹ Ordinance 84 of the Government of Georgia dated February 16, 2018, on the approval of the procedure for the implementation of state control through monitoring compliance with the conditions of the mining or subsoil use, articles 10.

¹⁰ Ordinance 84 of the Government of Georgia dated February 16, 2018, on the approval of the procedure for the implementation of state control through monitoring compliance with the conditions of the mining or subsoil use.

¹¹ Mineral Sector Strategy of Georgia approved with Order 2575 of the Government of Georgia approved on December 9, 2019, goal 1.3. p. 16. available at: https://nam.gov.ge/files/file_6473324.pdf last accessed 10/12/2022.

The practical and legal shortcomings of the control mechanisms identified through research are as follows:

a) According to the existing legal and technical regulations, the National Agency for Mineral Resources minimally detects the risks of damage to the environment as a result of the activities of the licensee, or cannot do so at all.

When checking the activity of license holders, the National Agency for Mineral Resources is limited by the scope of license conditions. According to the law, the agency is not authorized to check or request provision of information about such factual circumstances that are not directly related to the license holder's compliance with the license conditions.¹² Due to such a narrow legislation, the National Agency for Mineral Resources assumes only weak or formal competence in the field of environmental protection. An interview with the representatives of "Green Alternative" shows that the agency is mainly focused on the timely and quick collection of license fees, and does not assume the competence of protecting the environment from the licensees' activities in a broader sense.¹³

The by-laws applicable to the process of control over the licensees' activities regulate the area, as well as scope and tools of the control. However, the mentioned acts are mainly procedural in nature, they prescribe formal processes to be implemented in the inspection process, and do not define robust principles of environmental protection or specific directions in that regard.

The methodology for assessing specific environmental risks and the technical instrument for the insurance of environmental and social risks in the mining sector has been developed by the National Agency for Mineral Resources, however, the document has not been approved yet and, therefore, is not in use in practice.¹⁴ Thus, until the document is approved, the agency will check the activities of the license holders based on the above-mentioned by-laws, which create a significant challenge in terms of effectively identifying and preventing the risks caused to the environment through their activities.

For example, the rules on the control of mineral extraction activities¹⁵ do not prioritize enterprises with high ecological risks in the process of drawing up inspection plans, and impose blanket criteria on the head of the agency.¹⁶ The quarry safety regulations¹⁷ indicated by the

¹² Law of Georgia on Licenses and Permits, article 21, paragraph 6.

¹³ Green Alternative, Ketii Gujaraidze, Nino Gujaraidze, Interview. November 14, 2022.

¹⁴ Correspondence #22/164 of National Agency for Mineral Resources dated December 1, 2022.

¹⁵ Ordinance 84 of the Government of Georgia dated February 16, 2018, on the approval of the procedure for the implementation of state control through monitoring compliance with the conditions of the mining or subsoil use

¹⁶ Ordinance 84 of the Government of Georgia dated February 16, 2018, on the approval of the procedure for the implementation of state control through monitoring compliance with the conditions of the mining or subsoil use, article 7.

¹⁷ Ordinance 450 of the Government of Georgia on Approval of Technical Regulation on Safety of Quarries, December 31, 2013; Ordinance 308 of the Government of Georgia on Standards "Quarries. Safety Standards", June 27, 2017.

National Agency for Mineral Resources in response to our correspondence are technical documents of quarry management and do not aim to implement the fundamental principles of environmental protection in practice.

b) The practice of scheduled and irregular inspections of license holders, including on-site (field) visits is scarce

The research shows that compared to the total number of licenses issued, the number of total, scheduled and irregular inspections carried out by the National Agency for Mineral Resources is low, field visits are also rare, despite the fact that this form of control is the most effective means of identifying environmental risks (for example, to identify wrongful interference with the natural environment or take the samples).¹⁸

According to the data presented in the parliamentary report of the Agency, as of 2022, more than 4,000 licenses are registered in the mining license register. And, according to the data processed up to October 2022, Licensing Conditions Control Service checked 104 and 87 licenses on a scheduled and irregular basis, respectively.¹⁹ In 2021, the Licensing Conditions Control Service inspected 130 and 54 licenses on a scheduled and irregular basis, respectively.²⁰ According to the report of "Green Alternative" on sand-gravel mining activities, between 2018 and 2021, the National Agency for Mineral Resources checked only 31 out of 128 sand-gravel mining licenses studied throughout Georgia.²¹ Only 7 out of 27 licenses issued for sand-gravel mining on the Iori River were checked, all of them without on-site visits.²² The Agency did not check any of the 15 sand-gravel mining licenses issued on the Supsa River.²³ In Dedoplistskaro, only 3 out of 14 licenses for limestone mining were checked all without

¹⁸As noted, among control mechanisms, the practice of on-site inspection of licensee's activities is the most effective way to identify and prevent environmental violations, as it gives the agency the powers of direct visual inspection, sampling and, most importantly, random inspection of enterprises.

¹⁹ 2022 Parliamentary Report of the National Agency for Mineral Resources: https://parliament.ge/legislation/25045?fbclid=IwAR3XEnon_4Evipf_MqEAyhsQWIyVCP4dLTiZCYN8_JM5JPUjKKkvtcMP58

²⁰ 2021 Parliamentary Report of the National Agency for Mineral Resources provided in response to a public information request 22/164, December 1, 2022.

²¹ Green Alternative, Extraction of Construction Materials in Georgia: Practice Analysis, 2021, Open Society Fund, p. 17, available at: <https://greenalt.org/library/sasheni-masalebis-mopovebis-martva-saqartveloshi/> last accessed: 7/12/2022.

²² Green Alternative, Extraction of Construction Materials in Georgia: Practice Analysis, 2021, Open Society Fund, p. 41, available at: <https://greenalt.org/library/sasheni-masalebis-mopovebis-martva-saqartveloshi/> last accessed: 7/12/2022.

²³ Green Alternative, Extraction of Construction Materials in Georgia: Practice Analysis, 2021, Open Society Fund, p. 88, available at: <https://greenalt.org/library/sasheni-masalebis-mopovebis-martva-saqartveloshi/> last accessed: 7/12/2022.

visiting the sites.²⁴ In Martvili, 10 out of the 21 limestone mining licenses were checked all without on-site visits.²⁵

The legislation does not establish transparent and foreseeable criteria, on the basis of which the agency is obliged to carry out an inspection through a field visit (and not without visiting the site). The Agency makes the decision to conduct an on-site visit at its own discretion, if it considers that it is impossible to check the conditions without visiting the site.²⁶ Such broad discretionary powers enable the agency to refuse to carry out field inspections of a specific license even in case of a high public interest.

Therefore, often the residents of the area where the licensed activity is taking place find it very challenging to get the consent of the National Agency for Mineral Resources to carry out a field visit to check the alleged violations. The agency often ignores or refuses to respond to these requests of activists and neighboring communities.²⁷

The case of Dighomi floodplains: For several years, the neighboring community living in the area of Dighomi floodplains in Tbilisi has been fighting to prevent sand-gravel mining activities from the Mtkvari river near their residence. The issue is that as a result of the said activities, the unique, preserved floodplain forest in Tbilisi is seriously damaged, the living environment of the population is polluted and the area is in a state of an ecological disaster.²⁸ Therefore, the representatives of the neighboring community requested that the National Agency for Mineral Resources carry out an on-site inspection of the area.²⁹ Not only was the agency uninterested in the existing acute ecological situation, but it also never visited the site for inspection. In response, the agency informed the activists that the alleged wrongdoers identified by the neighboring community were not registered as license users in the agency's database.³⁰ This was despite the fact that the photo and video materials submitted by the neighboring community proved the environmental damage originated from the area for which the mining license was issued.³¹ To date, the agency is embroiled in bureaucratic litigation

²⁴ Green Alternative, Extraction of Construction Materials in Georgia: Practice Analysis, 2021, Open Society Fund, p. 133, available at: <https://greenalt.org/library/sasheni-masalebis-mopovebis-martva-saqartveloshi/> last accessed: 7/12/2022.

²⁵ Green Alternative, Extraction of Construction Materials in Georgia: Practice Analysis, 2021, Open Society Fund, p. 166, available at: <https://greenalt.org/library/sasheni-masalebis-mopovebis-martva-saqartveloshi/> last accessed: 7/12/2022.

²⁶ Correspondence of the National Agency for Mineral Resources sent to Anano Tsintsabadze's e-mail dated December 9, 2022.

²⁷ Interview with a community member from Dighomi floodplains, November 23, 2022.

²⁸ Research – Dighomi Floodplains Facing Ecological Catastrophe, March 2021, Open Society Fund, Tbilisi. available at: <https://osgf.ge/publication/dighmis-chalebi-ekologiuri-katastrofis-winashe-arsebuli-mdgomareoba-da-problemidan-gamosavali/> last accessed: 7/12/2022.

²⁹ Correspondence 8878 of Mariam Maghradze dated October 7, 2020.

³⁰ National Agency for Subsoil Use Correspondence 22/417 dated October 13, 2020, sent to Mariam Maghradze.

³¹ Order 972 of the the Ministry of Environment Protection and Natural Resources dated September 12, 2006.

with the neighboring community over the question whether alleged wrongdoers identified by the neighborhood community are license holders registered with them.³²

The case of Shkmeri: the interviews with the population of Shkmeri village confirmed the problems related to on-site inspections by the National Agency for Mineral Resources.³³ Residents note that despite multiple calls and letters, the agency could not be persuaded to undertake a field visit, until a written request for a field visit was submitted by an environmental organization.³⁴ The agency itself states that it decided to visit Shkmeri only after the Prime Minister instructed it to do so.³⁵

c) Reporting by Licensees to the Agency is Unsystematic; Reports do not Provide Complete Information on Environmental Issues

The activities of the National Agency for Mineral Resources include an important aspect of monitoring compliance with legislative requirements, which is a continuous process of collection and analysis of the licensees' activity reports.³⁶ According to the legislation, between April 1 and May 1, annually, the license holder submits a report on compliance with license conditions.³⁷

An important challenge is that the legislation considers that the information presented in the reporting process relates to the license conditions, while, as a rule, the requirements specified in the license conditions do not create solid guarantees for environmental protection. The conditions described in them are general and cannot guarantee prevention of environmental damage.³⁸ The information presented in the report on compliance with the license conditions related to mineral exploitation is regulated by technical regulations.³⁹ The regulation mainly requires that the licensee provides information related to the quantity, volume, reserves of mineral resources and parameters of mineral exploitation at the licensed facility in the mineral exploitation report. The lack of information on environmental protection in these reports is also criticized by the European Bank for Reconstruction and Development, which studied the

³² Tbilisi City Court, August 2021. Case #4953-21.

³³ On Protest in Shkmeri Village. Netgazeti, November 2021 available at: <https://netgazeti.ge/news/577380/>

³⁴ Interview with Shkmeri resident Goga Gagnidze, November 22, 2022.

³⁵ Statement of the National Agency for Mineral Resources: <https://nam.gov.ge/?m=texts&menu=1&id=143>

³⁶ Ordinance 84 of the Government of Georgia dated February 16, 2018, on the approval of the procedure for the implementation of state control through monitoring compliance with the conditions of the mining or subsoil use, article 2

³⁷ Law of Georgia on Licenses and Permits, article 21, paragraph 3.

³⁸ Audit Report on Effectiveness of Managing Environmental Protection in the Mining Sector, February 13, 2018, # 18/36, p. 7 available at: <https://www.sao.ge/files/auditi/auditis-angarishebi/2018/sasargeblo-ciagiseulis-mopoveba.pdf> last accessed 6/12/2022

³⁹ Ordinance 271 of the Government of Georgia on Approval of Technical Regulations – Rules on Reporting (data report) on compliance with the license conditions related to subsoil use, rules on drawing up the projects and technological schemes for the handling of the mining site, and rules on work plans for the study of minerals and statistical monitoring forms (№1-01, №1-02, №1-03 and №1-04).

mining policies of Georgia in 2018. The report notes that the reporting by mining license holders is rare and flawed, imposes minimal requirements on facilities under regulation and fails to reflect the dynamic process that is characteristic to the specific sector.

Among others, attention is drawn to the fact that life and health protection, also safety issues are not described in the reports.⁴⁰ In relation to environmental polluters and other license holders, the legislation needs to define a "full cycle of operations" monitoring system, which would assess the impact of activities by specific enterprises on the environment from the period of obtaining the license to the end of the operation period.⁴¹ Besides this criticism, neither is the practice of continuous collection, analysis and recording of reports containing this limited information smooth. Out of 128 licenses for sand-gravel extraction studied by "Green Alternative", annual reporting on the control of license conditions was not submitted in full (for all years during the validity of the license) in the case of 40 licenses.⁴²

d) measures to prevent damage to the environment during the completion of licensed activities are not envisaged

Ensuring the safe completion of mining activities, closure of mines, soil recultivation and safe storage of waste is the obligation imposed upon the subsoil user in the legislation.⁴³ However, state control of this activity is a significant challenge in practice.⁴⁴ The European Bank for Reconstruction and Development points out that the proper elimination of the impact of mine closures and extractive industry should not be random, the National Agency for Mineral Resources needs to define concrete steps for preventing environmental damage and restoring the damaged environment as a result of discontinued operations.

Open trenches, seepage of acid waters and other harmful substances from the former deposit into the soil and water, cause severe damage to both the environment and health.⁴⁵ It should be noted that according to the second national action plan of Georgia on environmental protection, the Inventorization of abandoned mining sites and the prioritization of high-risk areas should have been completed already by 2016, through planning of emergency measures.⁴⁶

⁴⁰ Georgia Mining Sector Development Programme, Phase I *Policy and Strategy* Status Report. 33. 41

⁴¹ Georgia Mining Sector Development Programme, Phase I *Policy and Strategy* Status Report. 33-34 60.

⁴² Green Alternative, *Extraction of Construction Materials in Georgia: Practice Analysis*, 2021, Open Society Fund, p. 15, available at: <https://greenalt.org/library/sasheni-masalebis-mopovebis-martva-saqartveloshi/> last accessed: 7/12/2022.

⁴³ Law of Georgia on Subsoil Use, article 8, paragraph 5.

⁴⁴ Audit Report on Effectiveness of Managing Environmental Protection in the Mining Sector, February 13, 2018, # 18/36, p. 32 available at: <https://www.sao.ge/files/auditi/auditis-angarishebi/2018/sasargeblo-ciagiseulis-mopoveba.pdf> last accessed 6/12/2022

⁴⁵ Georgia Mining Sector Development Programme, Phase I *Policy and Strategy* Status Report, p. 62.

⁴⁶ Audit Report on Effectiveness of Managing Environmental Protection in the Mining Sector, February 13, 2018, # 18/36, p. 13 available at: <https://www.sao.ge/files/auditi/auditis-angarishebi/2018/sasargeblo-ciagiseulis-mopoveba.pdf> last accessed 6/12/2022

According to the National Mining Strategy adopted in 2019, appropriate mechanisms should be introduced for the purpose of closing, restoring and rehabilitating deposits.⁴⁷ Despite this, according to the information received from the National Agency for Mineral Resources, the process of accounting for abandoned and closed deposits has not yet started, and the agency is in the process of finding relevant personnel.⁴⁸

Chapter 3. Ineffectiveness of the Mining Industry's Environmental Accountability System

Before the adoption of the Law on Environmental Liability in 2021, the issue of liability for environmental damage was left outside effective legal regulation. The regulations in force for years did not entrench legal guarantees based on the principles of "polluter pays" and "restitution"; Damage caused to the environment was considered damage to the property and it was compensated for merely by making transfers to the state budget.⁴⁹ The environmental liability system did not provide for restoration of the damaged environment. Consequently, in 2013-2018, the total amount of damage to the environment as a result of both criminal and administrative offenses, amounted to 196 million GEL.⁵⁰

The "Law on Environmental Liability" adopted in 2021 redefined the degrees of damage caused to the environment and established environmental protection programs in accordance with these degrees, which has to be welcomed. However, the National Agency for Mineral Resources does not have the competence to implement these programs or make decisions on environmental impact assessments, nor does it have the competence over the implementation of the law on environmental liability in general, instead the relevant subdivision of the Ministry of Environmental Protection and Agriculture is the subject of the law. The unavailability of direct control mechanisms to the license controller for the elimination of damage caused to the environment by licensees, cannot create effective guarantees for the elimination of the damage caused to the environment as a result of licensed activities, also for the systematic monitoring and responsiveness to damage. Due to failure to finance recultivation of damage to the environment through funds transferred to the budget, environment is continuously damaged by the licensed activities.⁵¹

⁴⁷ Mineral Sector Strategy of Georgia approved with Order 2575 of the Government of Georgia approved on December 9, 2019, goal 1.3. p. 16. available at: https://nam.gov.ge/files/file_6473324.pdf last accessed 10/12/2022.

⁴⁸ Correspondence #22/164 of National Agency for Mineral Resources dated December 1, 2022.

⁴⁹ Parliamentary Report of the Public Defender, Right to Live in a Healthy Environment, p. 174, available at: <http://ombudsman.ge/res/docs/2019042620571319466.pdf> last accessed 9/12/2022 ¶.

⁵⁰ Audit Report on Effectiveness of Managing Environmental Protection in the Mining Sector, February 13, 2018, # 18/36, p. 36. available at: <https://www.sao.ge/files/auditi/auditis-angarishebi/2018/sasargeblo-ciagiseulis-mopoveba.pdf> last accessed 6/12/2022

⁵¹ Georgia Mining Sector Development Programme, Phase I *Policy and Strategy* Status Report p. 63.

Through studying environmental accountability system, the following deficiencies were identified:

a) Violations identified by the National Agency for Mineral Resources are mostly minor and formal in nature

According to the legislation, the central mechanism for responding to violations of license conditions detected during the inspection process or while concluding the inspection is the imposition of a fine on the offender. If a violation is detected, the authorized person of the National Agency for Mineral Resources draws up a protocol on the commission of an administrative offense.⁵² The protocol is sent to the relevant court, where the issue of applying a specific measure of accountability is decided.⁵³

According to the information provided by the agency, in 2021, 130 scheduled and 54 irregular inspections were carried out;⁵⁴ As a result of inspections, violations of license conditions were detected in relation to 80 licenses and corresponding protocols on violations were drawn up. However, as the agency mostly carries out inspections in camera (without visiting the place, merely by checking the submitted documentation), the most violations were detected in the formal part of the documentation. As a result of in camera inspections conducted in 2021, the number of which was not informed to us, a total of 382 protocols on administrative violations were drawn up. In addition, in the same reporting period, 133 administrative correspondences⁵⁵ were submitted to the license holders regarding the correction of the violations identified, which entailed specific conditions set by the agency for the company and a deadline for fulfilling these conditions.

It is significant that according to the information provided by the agency, during the past two years, among the most frequently detected administrative violations through control over compliance with license conditions, are the conduct of mining activities in contradiction to the project documentation, geoinformation package and norms established for mining and/or mining without project documentation. By analyzing the above-mentioned statistics and detected violations, it becomes clear that the agency's response is mainly limited to identification of procedural violations, such as the lack of specific documentation. Such violations relate to compliance with the formal requirements of law and are more minor than what can be detected as a result of an in-depth environmental protection inspections of mining

⁵² Ordinance 84 of the Government of Georgia dated February 16, 2018, on the approval of the procedure for the implementation of state control through monitoring compliance with the conditions of the mining or subsoil use, articles 22, 57/3, 56.

⁵³ Ordinance 84 of the Government of Georgia dated February 16, 2018, on the approval of the procedure for the implementation of state control through monitoring compliance with the conditions of the mining or subsoil use, article 23, paragraph 1.

⁵⁴ 2021 Parliamentary Report of the National Agency for Mineral Resources provided in response to a public information request 22/164, December 1, 2022, p. 4.

⁵⁵ 2021 Parliamentary Report of the National Agency for Mineral Resources provided in response to a public information request 22/164, December 1, 2022, p. 4.

activities. It should also be noted that some of these violations are still under consideration, some are under administrative correspondence, waiting for a response, and naturally, they will not have any significant impact on mitigating the damage caused to the environment.

b) Existing accountability measures for violations in the field of mining are ineffective

Even if the agency proactively presented consistent statistics of inspections over licenses, effectiveness of the sanctions provided by the legislation would still pose significant challenges. The Code of Administrative Offenses of Georgia defines specific types of liability for violations in the extractive industry and is limited to ten administrative offenses. The existing fines for the mentioned violations are so small, that, as a rule, they cannot serve the purpose of punishing high-income enterprises, or preventing future violations.

For example, fines for various violations of mineral protection standards range from 800 to 1000 GEL; for violation of mining safety rules - from 400 to 700 GEL, and violation of license conditions - up to 2000 GEL. In case of a repetition of an act, the fine may be tripled,⁵⁶ however, considering how low they are, even their triple amount can not achieve the legal and social goals of the fine. An example of a disproportionate sanction imposed in relation to the committed acts is the inspection of the large polluter "Georgian Manganese" by the agency and its fine of 2000 GEL.⁵⁷

It is clear that the sanctions envisaged in the legislation are not differentiated according to the number of license conditions violated - violation of a condition is punished with the same amount of a fine as the violation of several license conditions; The sanction does not differ according to the scale of the violation either - the sanctioning measure does not take into account how serious the violation of the condition is and what extent of the license area is affected.⁵⁸

⁵⁶ Administrative Offences Code of Georgia, article 56.

⁵⁷ Correspondence 22/72 of the National Agency for Mineral Resources, May 27, 2022

⁵⁸ Audit Report on Effectiveness of Managing Environmental Protection in the Mining Sector, February 13, 2018, # 18/36, p. 36 available at: <https://www.sao.ge/files/auditi/auditis-angarishebi/2018/sasargeblo-ciagiseulis-mopoveba.pdf> last accessed 6/12/2022

Chapter 4. Issues of cooperation and delineation of authority with the Department of Environmental Supervision

a) Scope of Authority of the Department of Environmental Supervision and the National Agency for Mineral Resources

According to the legislation of Georgia, the Ministry of Environmental Protection and Agriculture is the central body responsible for the enforcement of legislation in the field of environmental protection and elimination of violations of law and damage to the environment by private individuals. The Law on Environmental Protection clearly defines that the exercise of state control in the field of mining is the competence of this body.⁵⁹ An exception is monitoring over compliance with license conditions, for which, according to the legislation, the competences of the Ministry do not apply. The Ministry's sub-departmental agency - the Department of Environmental Supervision - carries out inspections in order to ensure the implementation of state control in the field of environmental protection and use of natural resources,⁶⁰ except for the monitoring over compliance with the license conditions for the extraction of oil, gas and mineral resources or for subsoil use.

It is important that the legislation limits the activity of the department to monitoring over compliance with the license conditions for subsoil use, however, according to the department's regulations, prevention, detection and elimination of illegal utilization of mineral resources, including in the field of subsoil use, remain within the department's powers. The agency automatically transfers notifications about environmental problems unrelated to the activity under the license issued by it to the Environmental Supervision Department. In response to the complaint of the neighboring community of Dighomi Chalebi in Tbilisi, the agency forwarded the information about the serious pollution of the area due to sand-gravel mining to the Environmental Supervision Department without any field visit or inspection and noted that the issue was beyond its competence and authority.⁶¹ Following a similar practice, information about raw ore extraction in Shkmeri was sent to the Department of Environmental Supervision.⁶² The department, within its authority, examined the alleged unlawful mining and found a violation.⁶³

Accordingly, it is clear that LEPL National Agency for Mineral Resources merely monitors the license conditions during the license period and within the license area, while the Department of Environmental Supervision controls enforcement of environmental regulations in general, except for the operational areas under the license issued by the National Agency for Mineral

⁵⁹ Law of Georgia on Environmental Protection, article 13, paragraph c.

⁶⁰ Law of Georgia on Environmental Protection, article 57.

⁶¹ Correspondence 22/6501 of the National Agency for Mineral Resources, September 8, 2022.

⁶² Correspondence of LEPL National Agency of Mineral Resources 22/11/2021 to the Environmental Supervision Department

⁶³ Correspondence # DES3 22 0000 1440 of the Environmental Supervision Department 11/01/2022.

Resources. In practice, this provision creates certain challenges. As interviews⁶⁴ with the representatives of Green Alternative reveal, the Department of Environmental Supervision requests documentation from activists, local communities, and civil society organizations confirming that violations are taking place outside the license area as a prerequisite for conducting inspections, otherwise, it refrains from inspecting the site. Such a practice leaves open the question, who ensures prevention of environmental damage within the license area, and whether the National Agency for Mineral Resources limits itself to the monitoring over compliance with license conditions.

In 2021, a total of 48 cases were referred to the Department of Environmental Supervision by the National Agency for Mineral Resources,⁶⁵ while the Environmental Supervision Department itself identified a total of 431 facts of illegal subsoil use.⁶⁶

b) Agency Monitoring over Cases Referred to the Department

After referring the case or the license holders to the Department of Environmental Supervision, the Agency is no longer interested in the measures taken by the Department of Environmental Supervision, outcomes and state of fulfillment/non-fulfillment of license conditions by license holders.

As a rule, the National Agency for Mineral Resources does not have information regarding the outcomes of the cases referred by it to the Department of Environmental Supervision. Moreover, in the correspondence via e-mail, the agency informs us that "information about the violations identified during the inspection process, under the competence of the State Sub-departmental Agency Department of Environmental Supervision, is referred to the relevant agency, while the information about the subsequent outcome is not recorded in the agency."⁶⁷ The National Agency for Mineral Resources, does not proactively verify fulfillment of such license conditions determined by it, which are directly related to environmental protection. For example, the mineral extraction license issued in the village of Shkmeri determined the obligation to fulfill license conditions related to environmental protection.⁶⁸ After the license was issued, the license holder started mining activities in violation of the

⁶⁴ Green Alternative, Ketij Gujaraidze, Nino Gujaraidze, Interview. November 14, 2022

⁶⁵ Correspondence #22/164 of National Agency for Mineral Resources dated December 1, 2022.

⁶⁶ 2021 Report of the Environmental Supervision Department, available at: <https://des.gov.ge/Ge/Reports> last accessed: 11/12/2022.

⁶⁷ Correspondence of the National Agency for Mineral Resources sent to Anano Tsintsabadze's e-mail dated December 9, 2022.

⁶⁸ Order 898 of LEPL National Agency for Mineral Resources dated July 9, 2021, condition "w"

conditions, and both agencies learned about this as a result of the community protests.⁶⁹ Only in November 2021, five months after the license was issued, did they become interested.⁷⁰

Neither is the National Agency for Mineral Resources interested in the contribution of the facility under its regulation to the overall amount of damage caused to the environment. According to the information of the agency, due to non-provision of the information about the findings of the Department of Environmental Supervision, they "do not know the amount of damage caused to the environment."⁷¹

Thus, it is clear that mutual cooperation between the central monitoring agency in the field of environmental protection and the central monitoring agency in the field of subsoil use is very rare, fragmented and does not create opportunities for the prevention of environmental damage, as there is no continuous monitoring of the overlapping aspects in their activities, exchange of information and reflection of each other's work in policy-making and implementation.

Conclusion

The legislative and practical shortcomings revealed in the process of writing this report create a unified perspective, according to which the exploitation of mineral resources in Georgia and the generation of economic benefits from it are the priorities of the state policy. The state policy cannot deny the harmful effects of subsoil use on the natural and social environment, however, aiming to protect business from regulations in force and to relax environmental standards, the issues of subsoil use are subordinated to the Ministry of Economy and Sustainable Development instead of the Ministry of Environment.

This sends an important political message to those who fight for environmental protection and the rights of local communities, as it implies complete and artificial separation of subsoil use and the field of environmental protection and placing of economic interests above those of environmental protection in this field.

It is obvious that there is no systematic, continuous and effective investigation of serious and dangerous practices that have environmental impact. Inspection processes are intertwined

⁶⁹ Manganese extraction resumes again in Shkmeri. Netgazeti. October 8, 2021. available at:<https://netgazeti.ge/life/634410/> last accessed: 11/12/2022.

⁷⁰ Correspondence 22/7761 of the National Agency for Mineral Resources sent to the Ministry of Environmental Protection and Agriculture.

⁷¹ Correspondence of the National Agency for Mineral Resources sent to Anano Tsintsabadze's e-mail dated December 9, 2022.

with a system of administrative and bureaucratic procedures, but this system cannot create guarantees for elimination of damage to the environment and communities.

That is why, with this initial report, we aim to open a broad public discussion, build a critical perspective on the causes, mechanisms and practices of damaging the environment and communities following such a problematic message of the state and in this manner, take first steps to shift profit-oriented politics back to the side of the environment and communities.