GREEN Alternative

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To: Country Strategy team of European Bank for Reconstruction and Development

January 25, 2010

Dear Sir/Madam,

Please, find below comments of Association Green Alternative and CEE Bankwatch Network on Country Strategy Paper of EBRD.

Sincerely yours,

Manana Kochladze
Chairwoman of Green Alternative,
Regional coordinator for Caucasus
of CEE Bankwatch Network

Comments of Green Alternative to EBRD Country Strategy Paper

The draft of the newly proposed EBRD country strategy should draw more attention to the existing bottlenecks in almost all of the existing sector, in order to support Georgian government and society overcome the barriers and difficulties, that makes the Georgia's development – both democratic and economic unsustainable.

There is a general consensus among leading NGOs in Georgia (TI, GYLA, ISFED and etc.[1]) that there has been little development in areas of democratic processes, human rights protection and rule of law. In 2008 under mounting international pressure President Saakashvili promised a 'new wave of democracy', which envisaged, among other things, increased powers to parliament, more opposition oversight, a freer media and reform of the country's judiciary. A year on, the reality has been disappointing. Despite the re-introduction of limited political debate shows, all three national TV channels are clearly pro-government. Many of the most influential opposition parties continue to boycott parliament and the government has continued to pass constitutional amendments without consulting the commission charged with overseeing such changes. Negotiations over the electoral system ahead of local elections in 2009 are ongoing but have not produced any results.

Development Socially Responsible Business sector

The two of major operational objectives of EBRD, improvement of investment climate through policy dialogue with authorities and development of local enterprise sector, represents key areas that need to be addressed urgently. While the World Bank's Doing the business report 2010 ranks Georgia as the eleventh easiest country in which to do business, the reality is more complicated, that needs to be acknowledged by International Financial Community.

It has been true that Georgia has greatly reduced 'micro-corruption' and really make step forward in that direction, however, "itself selective anti-corruption policy that provides impunity for the president's retinue leaves big issues untouched"[2]. Meanwhile, Transparency International's Global Corruption Report for 2009 defined corruption in the judicial system as Georgia's number one problem. It is estimated that 37 percent of the country's judiciary is corrupt. Public service is in second place, with 21 percent of public servants assessed as being involved in corruption, while the national parliament comes in third in this roll-call of murkiness.

The Labour Code of Georgia that represents another major achievement since Rose revolution contradicts with major principles of International Labour Organisation and represents one of the major challenge in ongoing negotiations between European Union and government of Georgia, as one of the pre-condition for Georgia to further enjoy the GSP + status.

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[1] Report on the Implementation of Georgia's European Neighbourhood Policy Action Plan, http://greenalt.org/webmill/data/file/publications/Georgia_ENP%20AP_25%20November_2009.pdf

[2] Freedom House 2009

The problems relating to the business environment, includes ignorance rule of law, lack of property rights protection, interface of government in business activities, non existence of anti-monopoly legislation, competition policy and absence of free media. Adverse effects of the problems of these sectors have offset advantages created by simplified procedures to start up a new business.

There were number of cases, when local and foreign business entities were penalized and/or fined in unlawful manner, that even involves seize of assets and stop its activity. E.g. Country's largest retailing chain Elit Electronics has for the past two years been disputing a USD 4.15 million fine imposed by the government. In August 2009, while the company was still lingering in court, it was forced to close after tax officials seized company assets, relying on a recently adopted tax code amendment to provide legal cover for their actions.

The government's general reform agenda has seen the systematic reduction or abolition of requirements that relate to environmental protection, oversight and licensing of potentially environmentally damaging projects, public participation and consultancy. The concept of easy business licensing should not be mixed with ignorance of heavy environmental and social implications that undermines the sustainable development. For example, for certain A – or high risk – category projects such as in oil and gold extraction, mining or farming, there is no longer any requirement for environmental and social assessment.

According to a report by the Georgian-European Policy and Legal Advice Centre (GEPLAC) the 2005 Law on Free Trade and Competition, for example, "does not touch the traditional fields of competition law, such as agreements restricting competition, concerted practices, abusing dominant position in the market, takeovers and mergers, state enterprises and so called natural monopolies". The Agency for Free Trade and Competition (the body charged with overseeing the law) lacks independence and its power is restricted to giving recommendations and it has no enforcement mechanism. The results on the ground are monopolies and cartels and rampant downstream price fixing in various sectors including food, petrol import and sale, pharmacies, and Internet market.

Georgia does have regulation of key sectors like banking, communications, energy and water utilities. However, these do not show themselves to be very sensitive to monopoly issues. For example, the phone regulators did not stop a major consolidation of the ISP market when *Caucasus Online* bought *Sanet* and *Georgia Online* in 2006. They were also slow to get involved when, in 2008, another phone company called UGT tried to cut-off Caucasus Online customers, in a clear attempt to take over the market.

The EBRD should deepen the dialogue with Georgian Government on above mentioned issues, and support legislation harmonization of Georgia with EU legislation and support to develop the institutions that would impose strict control over the enforcement of laws.

EBRD investments to Municipal and Environmental Infrastructure projects

Lack of public participation in planning and implementation

The development of municipal and environmental infrastructure projects is important to ensure better and efficient access of public to main services. However, it is essential to ensure transparency and public participation during the project planning and implementation.

In case of Tbilisi Public Transport Project related problems were based on lack of public consultation and transparency. In spite of a number of requests to arrange public participation to discuss environmental management plans and Tbilisi city transport, the management plan has never been discussed with major stakeholders. Moreover, these plans have never been published by the Tbilisi municipality. As a result the positive environmental impact of the project is zero and efforts still need to be undertaken to create efficient urban transport system[3].
The problems were witnessed also in EBRD water projects. Because of lacking public participation and transparency, the project implementation raises concerns in Kutaisi and Poti[4]. In case of Poti, the major concern relates to safe drinking water is still not accessible because of pure project planning and implementation.[5]

PPP in MEI projects

[3] http://bankwatch.org/documents/EBRD_transport_tbilisi.pdf
[4] http://sites.google.com/a/asa.org.ge/geo/
[5] http://www.akhali-gazeti.ge/index.php?cnt=vnws&nwid=29

EBRD states that “Lack of investments and mismanagement of municipal utilities have underlined the urgent need for private-sector involvement in the sector.”

Taking into consideration examples from Central and Eastern Europe (M1/M15 motorway in Hungary, the Trakia Highway in Bulgaria and the Horgos-Pozega motorway in Serbia) where IFIs have not succeeded in ensuring value for money in some of the PPP projects they have financed is causing great concern in Society. The main problems in PPP projects are connected with incoherent planning, corruption, lack of transparency and public participation.

In order to ensure the sustainability of government spending commitments as well as transparency and value for money in MEI projects EBRD should switch from Public Private Partnership projects to Public-Public Partnership projects for sectors such as water where management improvements are needed in municipal companies. These may involve well-run municipal companies being twinned with those in need of capacity building.

Waste management practice

The draft strategy states that “a further priority for many municipalities is to ensure that solid waste management practices are strengthened and related investment undertaken in a manner that complies with European standards. Building on the successful experience of the Rustavi waste management project, the Bank will seek to optimize its cooperation with the government, municipalities and donors, including BP, which is committed to support regional development and community initiatives”.

The fact that EBRD started considering to finance waste management projects in Georgia (Adjara and Rustavi Solid Waste Management Projects) that will comply with EU standards should be welcome. However, the absence of public participation in Rustavi landfield case and later involvement of affected communities in Adjara landfill planning (after the site was already chosen), makes impossible to assess those projects as successful ones.

The EBRD’s approach towards waste management projects in Georgia is focused on landfilling and does not include environmentally sustainable waste management options, e.g. establishing a Mechanical Biological Treatment (MBT) plant at the landfill site or other recycling options. Although a basic network of sanitary landfills is needed for the foreseeable future, the provision of public funds for waste management should ensure that waste solutions are introduced according to the waste hierarchy, with due consideration given to: the prevention of waste production, the reuse of waste, separate collections of waste, recycling and composting. Support for these waste management options would maximise the EBRD's added value.

In case of the ongoing EBRD projects, number of the recommendations needs to be implemented:

- Ensure that a general waste management plan for Rustavi and Adjara is prepared, where the main focus will be not only on simple landfilling but also on other environmentally sustainable waste management options, namely: promoting waste prevention; reuse; recycling; composting and establishing Mechanical Biological Treatment (MBT) plants at the landfill sites.
- Ensure that additional research is conducted in order to find suitable alternative sites for the landfills.
- Analyse the impact of the projects on waste collection service tariffs, including mitigation measures for socially vulnerable groups.
- Conduct a detailed social analysis of the projects and prepare mitigation measures for any villagers living next to the proposed landfill sites.

EBRD support to post war reconstruction

Following the August conflict between Georgia and Russia, external support for Georgia's reconstruction has been pledged by a number of the international financial institutions (the IFIs, namely the World Bank, the Asian Development Bank, the European Investment Bank, the European Bank for Reconstruction and Development and the International Monetary Fund) as well as the EU and the USA. The funds were allocated not only for emergency budgetary support and humanitarian aid, but also largely addressed the infrastructural and energy sectors.

As Georgia is not a part of the Paris declaration and Accra Agenda, civil society was not given a voice in the donors' conference in Brussels and the joint needs assessment document prepared by the UN and the World

Bank[6]. Besides, the document (albeit incomplete and edited) became available only ten days before the conference[7].

Transparency International Georgia has commented that "the document was created and revised so that the Parliament of Georgia, political parties, research organizations, interest groups and media have not participated in the process of elaboration of Georgia's development strategies. Because of secrecy of the document, the Parliament and the civil society groups have no opportunity to effectively participate in discussion on how the donor aid should be distributed, how this process should pass and what kind of monitoring should be imposed on it… It [JNA] has not been submitted to the Parliament for approval. As a result, the possibility of observing the accountability principle in the process of receiving the aid has been reduced and the Parliament's supervisory role has been weakened."[8]

In contrast to Transparency International Georgia's sentiments stated above, EBRD President Thomas Mirow relates in a letter[9] sent to Green Alternative that the EBRD, along with other IFIs, continues participation in discussions with civil society groups, as for example in the case of the JNA preparation.

Since a significant part of international aid for Georgia comes for infrastructure and energy projects, it is essential that international financial institutions and the Georgian government hold an extensive dialogue with society and the local population to avoid related negative impacts and potential conflicts. Unfortunately, problems related to the transparency of international aid, public involvement and independent monitoring still persist in respect of particular projects.

Energy

The EBRD plans to continue investment in Georgia’s energy sector for security and efficiency improvement. The strategic directions indicated in paper are more than welcome, as it includes completion of Enguri HPP rehabilitation, investment in renewable sources, including small and mini HPPs, energy efficiency, rehabilitation of North-South gas pipeline and further technical assistance.

The EBRD, KFW and EIB involvement in rehabilitation of a 500kW transmission line could be considered as a positive example. The board decision that condition the loan to environmental safeguards and additional feasibility studies press government to chose the least harming alternative for Borjomi-Kharagauli National Park.

Georgian Government last year, widely promoted the construction of Oni HPP and associated it with EBRD and EIB. The decision was negatively assessed by local people. The communities of region have already endured grave experiences and are aware of the negative impacts of the big dams, thanks to the Shaori reservoir in Racha. They know how micro-climates change and how this affect on their health and everyday life, to say nothing about the damage caused to their cultural heritage. People are also concerned about the seismic and geological stability of the two proposed dams[10].

After the recent earthquake (MS=6.2, 8 September, 2009), the epicentre was registered in Oni district (Racha), the project sponsor, again associated with EBRD, started to develop the Upper Mtkvari HPP project. In addition, by the end of the year Government signed memorandum of understanding with Korean and Turkish companies to construct the Namakhvanj HPP.

However, taking into account that government of Georgia simultaneously promotes a number of the Greenfield HPP projects and In order to ensure the sustainability of Georgia’s energy sector, the international donors should assist Georgia in the developing of a strategic assessment and development plans for Georgia’s power sector that would be based on participative processes.

EBRD should continue to work in area of energy efficiency. However, country still has no formulated state vision or strategy in energy efficiency improvement and development of renewable energy, despite commitments

[6] www.worldbank.org
[7] The full text of the document has not been published yet. Only a limited 46-page version is available at present. The limited document does not include forecasts in relation to unemployment, assessment of the impact of the war on economy, social problem, anti-poverty measures, and data on the bank sector. According to the World Bank officials, this information was removed at the request of the Georgian government. The government also insisted that the document be confidential and available only to the conference participants
[8] www.transparency.ge
[9] EBRD president's letter to Green Alternative, sent on July 29, 2009, related to energy sector projects.
[10] Another While Georgia is located in a highly seismic zone, the Racha-Dzjava earthquake (Ms=7) that occurred on 29 April, 1991 was the biggest disaster ever recorded in the region, stronger than the Spitak earthquake (Ms=6.9) in 1998

undertaken to EBRD[11] and EU Georgia. According to researches, "without incentives and special status for these projects,renewable projects would hardly find their place in the future development of Georgian power system". In July 2008, the work on energy efficiency law, as well as law on renewable energy, supported by the USAID and conducted with the participation of the Ministry of Energy, was stopped and postponed for an uncertain period of time. At the same time, attempts to introduce provisions on energy efficiency into the Construction Code failed due to strong resistance from certain businesses and politicians.

Tbilisi Railway Bypass Project

According to the draft strategy "the Bank will prioritizes projects that can be financed on the strength of Georgian Railway balance sheet, showing a positive Economic Rate of Return. This includes the Tbilisi railway bypass, a major project to be financed jointly with the EIB."

Taken into account the fact that the total real project cost and the cost deviations that are characteristic of infrastructure projects are not determined, and even an increase of freight tonnage is not expected in the most optimistic calculations (and accordingly the profit of the Georgian Railway company is also not planned to increase), the strength of Georgian Railway Balance Sheet may appear questionable that should be taken into consideration by the EBRD when deciding to finance project.

In order to ensure solvency of the projects in transport sector economic viability of the projects should become part of the final ESIA.

[11] Enguri Rehabilitation Project, Phase II