ASSESSMENT OF EFFECTIVENESS OF ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN GEORGIA

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PREFACE

This publication was prepared by the Caucasus Environmental NGO Network (CENN), a non-governmental, non-profit organization founded in 1998. Since its establishment, CENN has acted as a voluntary effort to foster regional cooperation by means of improved communication among environmental organizations of the South Caucasus countries - Armenia, Azerbaijan and Georgia.

CENN with its activities tries to strengthen capacity and partnerships of environmental NGOs working in the Caucasus region, public participation and development of civil society. The organization aims to introduce and advocate new concepts and practices in the society to promote principles of sustainable development and good governance in the region.

CENN perceives that the South Caucasus states have much to share and much to work on jointly. This especially concerns the environment of our region. We are highly interdependent in achieving our common goal of promoting environmental protection and sustainable development, information exchange and harmonization of legislation with international, and specifically European, standards. This shall become one of the cornerstones of success in our endeavors. CENN is hopeful that this publication shall serve as a significant contribution to this end.

One of the main directions of the CENN's activities is improvement of EIA systems in the South Caucasus countries. In order to develop effective Environmental Impact Assessment (EIA) system and promote transboundary collaboration and sustainable development in the Caucasus, the Project: "Assessment of Effectiveness of Environmental Impact Assessment (EIA) System in the South Caucasus" was implemented by CENN with the direct participation and advice of the Netherlands Commission for EIA. The Netherlands Commission for EIA is an independent expert body that provides advisory services on EA and aims to assist countries in establishing effective systems for impact assessments as a means of contributing to sustainable development and alleviation of poverty.

The project was directed towards identification and assessment of existing needs and gaps in the EIA systems in Armenia, Azerbaijan and Georgia as well as development of the relevant recommendations for improvement of EIA systems in these countries, and was implemented during September 2003 - May 2004 by common of efforts of international - Georgia-Armenia-Azerbaijan team.

The present report is the first attempt ever to bring together EIA systems of three South Caucasus states – Armenia, Azerbaijan and Georgia. CENN believes that this publication shall be useful for governments of the South Caucasus countries, environmentalists, lawyers and the general public interested in environmental issues and committed to improve environmental governance in these countries.

CENN would like to express its gratitude to the State Secretary for Housing, Spatial Planning and the Environment of the Netherlands for expression of interest in assistance of improvement of effectiveness of Environmental Impact Assessment systems in the South Caucasus countries and provision of funding for the Project. We highly appreciate the kind assistance and valuable advice of the Netherlands Commission for EIA during the project implementation.

CENN would like also to thank the Ministries of Environment of the South Caucasus countries – Armenia, Azerbaijan and Georgia, consulting companies, international organizations as well as a number of stakeholders engaged in the EIA process for their support and assistance in provision of data and information.

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LIST OF ACRONYMS

BATs	Best Available Technologies
BP	British Petroleum
BTC	Baku-Tbilisi-Ceyhan Oil Pipeline
CEE	Central and Eastern Europe
CENN	Caucasus Environmental NGO Network
EA	Environmental Assessment
EBRD	European Bank for Reconstruction and Development
EC	European Community
EEC	European Economic Community
EIA	Environmental Impact Assessment
EPP	Environmental Protection Plan
ESIA	Environmental and Social Impact Assessment
EU	European Union
GDP	Gross Domestic Product
GEL	Georgian Lari
IDP	Internally Displaced Persons
IFIs	International Financial Institutions
MoE	Ministry of Environment and Natural Resources Protection
NGO	Non-Governmental Organization
NIS	New Independent States
QA	Quality Assurance
QC	Quality Control
SEA	Strategic Environmental Assessment
SEE	State Ecological Expertise
ToR	Terms of Reference
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
USAID	United States Agency for International Development
WB	The World Bank

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EXECUTIVE SUMMARY

After regaining the independence in the early 90s of the XX century, Georgia gradually started replacing Soviet standards and procedures of the EIA system and introducing international principles. Several international environmental agreements having EIA relevance have been signed and ratified by Georgia including the Convention on Biological Diversity, Convention on Long Range Transboundary Air Pollution, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). Also it can be assumed that Georgia will become a party to the Espoo Convention on the Environmental Impact Assessment in a Transboundary Context and Kiev Protocol on Strategic Environmental Assessment in the nearest future.

Harmonization of the legislation with the European standards became the main direction of the state policy *inter alia* in the field of Environmental Impact Assessment (EIA). Even though certain progress is evident, Georgia still has to do serious work for implementing procedures as set out in: (a) Council Directive 85/337/EEC of June 27, 1985 on the assessment of the effects of certain public and private projects on the environment; (b) Council Directive 97/11/EC of March 3, 1997 amending Directive 85/337/EEC of June 1985 on the assessment of the effects of certain public and private projects on the environment; (c) Council Directive 96/61/EC of September 24, 1996 concerning integrated pollution prevention and control.

As regards the domestic legislation in the field of EIA, one of the first steps in this regard was adoption of a new Constitution of Georgia on August 24, 1995, which set the basic rights and priorities in the field of environmental protection. This was followed by adoption of a set of laws and regulations relating to EIA.

Specific EIA issues have been introduced and regulated by various legal acts, which consist of but are not limited to the Law of Georgia on the Protection of Environment, the Law of Georgia on Environmental Permit, the Law of Georgia on State Ecological Expertise, the Regulation on Environmental Impact Assessment, Instruction for Main Pipeline Projects; Regulation on Rules to Carry out State Ecological Expertise, Administrative Violations Code and Criminal Code. In addition, some sub-laws should have also been adopted or certain acts carried out under the environmental legislation, however, there is still omission on the part of the competent authority – the Ministry for Protection of Environment and Natural Resources (MoE). The Law of Environmental Permit also introduces some elements of Strategic Environmental Assessment (SEA). The Law requires that all infrastructure plans and programmes shall be subject to EIA before they are implemented; however, as practice showed, application of EIA (which is primarily used at a project level) upstream to higher level of decision-making for plans and programmes seemed to be rather difficult task.

As regards the EIA related administrative bodies and relevant procedures of the decision-making process in Georgia, the first stage of EIA is the environmental impact assessment in a narrow sense. Normally, at this stage, the proper frames for undertaking the EIA are set (screening and scoping stages). After that, investor should hire relevant consulting company for undertaking the EIA and submit the EIA report to the MoE together with other documentation to get an approval. State administrative framework is more actively involved in the process at a later – second stage, after all the documentation, including EIA report, is submitted and the MoE has to undertake the State Ecological Expertise and issue an environmental permit.

Pursuant to Article 9 of the Regulation on EIA, Environmental Impact Assessment (EIA) is applicable to the Category I activities, list of which is given in the Law of Georgia on Environmental Permit. According to the latter, the Category I includes all activities that can cause serious negative and irreversible impact on the environment, natural resources and human health due to its large scale, location and content.

EIA process in Georgia consists of various stages starting from screening and scoping and ended to decision-making and monitoring. However, obvious fault of the EIA regime in Georgia is the absence of legal obligation to go through the scoping stage. The Georgian legislation does not envisage any provisions regarding scoping at the early stage of EIA preparation, however, holding informal consultations between relevant department of the MoE and project proponents to define the scope of the EIA reports is practiced. Consultations with the potentially affected communities, general public or the state authorities other than the MoE are neither considered by law nor by practice.

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The right of the public on access to the environmental information is guaranteed by the Constitution of Georgia as well as the General Administrative Code of Georgia. Public participation in the EIA process is regulated by the Law on Environmental Permit and Regulation on EIA, however, the Law and the Regulations are too generic and do not provide proper consultation with the affected communities and/or the general public neither at the stage of EIA report preparation nor the decision-making process. Often, neither the project proponents nor the MoE execute these general provisions properly.

The public involvement in the EIA processes is limited to the information provision and consultation. Usually, the public has no opportunity to influence the decision-making process, even though the Law on Environmental Permit requires from both the project proponent and the MoE to take account of views expressed in the process of EIA study preparation as well as in the decision-making. Poor knowledge about the planned projects brought up for discussion, the lack of knowledge on decision-making procedures or inadequately provided information further lessen effective public participation in the EIA process.

EIA as such is quite a new tool for Georgian EIA practitioners as well as for those involved in review of EIA reports (experts involved in the State Ecological Expertise, NGOs, scientists, other interested parties). Often, people involved at different stages of EIA lack the adequate knowledge and experience in EIA. This, in turn, affects the quality of EIA reports and the quality of their review process. The qualification of local experts participating in preparation of EIA reports, as well as those participating in the State Ecological Expertise is not adequate. As reported, in many cases, they are not experienced enough in their field, the type of activity, the geographical region and in EIA system in general. Often, experts hired by the consulting companies or those participating in review of EIA reports are not aware of the purpose of EIA and its procedures.

There is a certain ambiguity in the Georgian legislation regarding correlation of EIA permit and other clearance documents (licenses, permits, limits, consents, etc.) that the project proponents are obliged to obtain before commencing the activities. It is not clear whether the project proponent needs to obtain licenses and/or permits before or after the environmental permit is granted. The Law on Environmental Permit does not provide any explanation when and how other clearance documents should be issued, while other sectoral laws either mention briefly or just skip the issue. It could be said that project proponents are lost in a labyrinth of clearance procedures, since there is no particular agency (or units at the state authorities) where they can acquire complete information on all required clearance documents that need to be obtained prior to proceeding with the activity.

Inability of administrative authorities to ensure effective post-decision monitoring and control is one of the major deficiencies of the EIA system in Georgia. The Law on Environmental Permit as well as other acts related to EIA defines neither any specific procedures for post-decision monitoring and control nor requirements for self-monitoring or independent audit. It is understood that the MoE should monitor the compliance, but in the absence of clear mechanisms for monitoring and control, there is complete uncertainty and hence highest probability that conditions set out in the environmental permits can be by-passed by the project proponents. In addition, the Georgian legislation envisages only administrative and criminal liability (penalties, imprisonment) and does not contain any provisions on possibilities of stopping or closing the activities if the project proponents do not meet conditions of the environmental permit. The territorial units of the MoE, which are primarily responsible for post-decision monitoring and control as well as the Department for Environmental Management and Oversight of the MoE (which coordinates post-decision monitoring and control activities and also plays a role of internal control within the MoE) lack technical, financial resources and adequately trained and qualified staff to properly fulfill their tasks.

The effectiveness of the EIA system in Georgia is also significantly influenced by socioeconomic and political conditions currently existing in the country (tensions between central and regional governments, high level of inequity and poverty, widespread corruption, lack of experience in policy organization and governance) and the general attitude toward the environmental protection. It could be said that environmental protection enjoys only formal support from the State and is regarded as the least priority. Environmental considerations are often set back in the decision-making process, especially when the interests of individuals in leadership positions are involved.

This report aims to provide interested parties with an in-depth understanding of factors that hinder effectiveness of EIA system in Georgia and to draw recommendations on feasible actions that could contribute to the improvement of the EIA system in Georgia.

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1. Introduction

1.1 The aim of the research

Although Environmental Impact Assessment (EIA), as a key instrument of environmental policy, takes its roots from the late 60s, it is a relatively new tool in the South Caucasus countries. In Armenia, Azerbaijan and Georgia the EIA system was introduced in the 90s, when the relevant laws were adopted. Since that, EIA has been carried out for a number of projects in all three countries. However, the quality of EIA reports as well as the effectiveness of the whole EIA system in the South Caucasus states is suspicious. Shortcomings of the system resulted in occurrence of the serious obstacles at the various stages of projects' implementation. Streamlining of the projects could be ensured only by improvement of the EIA system. This approach gave the raise to the idea of the present research.

More specifically, the major aim of the research is (i) to assess existing needs and gaps affecting effectiveness of the EIA systems in Armenia, Azerbaijan and Georgia and to elaborate tangible recommendations to improve existing systems in the countries; (ii) to analyze compatibility of the EIA related legislation of South Caucasus states with the EU standards and guidelines, identify discrepancies, develop and transfer relevant recommendations for harmonization of existing EIA related legislation and practices with the EU standards to competent State authorities and Parliaments of the South Caucasus states, International Financial Institutions (IFIs) and donor organizations. (iii) Lastly, the research also aims to establish the professional links not only amongst the EIA stakeholders in the countries, but also among the countries themselves in the field of environment.

1.2 Methodology, scope and limitations

The study was implemented by the Caucasus Environmental NGO Network (CENN) with the assistance of legal and EIA experts' teams from Armenia, Azerbaijan and Georgia. Approach was based upon understanding that Armenia, Azerbaijan and Georgia compose one eco-region with common environment and natural resources and similar problems. Improvement of the EIA system in only one country will not definitely guarantee minimization of environmental impacts even in this country since the negative impacts can be resulted from activities implemented in the neighboring countries. Reduction of the negative impact not only on the natural but also the social environment can be ensured only by comprehensive regional approach. This logical chain was followed while the project preparation and implementing processes.

Team members collected and analyzed available basic national legal sources. More specifically, all EIA related laws, Presidential Decrees or Ministerial Orders in Armenia, Azerbaijan and Georgia were consolidated and reviewed. In addition, the EU EIA related directives, international conventions and various EIA guidelines and manuals were reviewed and the possible links with the national legislation were identified.

In order to become aware of the existing situation on EIA in the New Independent States (NIS), a number of case studies were collected and considered. The methodologies and findings of these studies have been found helpful and have been applied this study.

Since detailed review and deep analysis of all EIA related papers are very time/resource consuming and even in this case, the clear picture of the whole system cannot be drawn, interviewing of stakeholders involved in EIA processes according to the ***questionnaires*** was considered as a major tool for the study. The study is mainly based on EIA ***experts' judgments***. Interviewees were selected from the different groups of stakeholders. More specifically, 64 respondents from government (decision-makers), consulting companies, non-governmental organizations (NGOs) as well as investors and independent experts were interviewed in three countries. Interviewees were selected according to their experience in EIA related issues as well as their willingness to improve the EIA system in the South Caucasus countries.

With the purpose of engaging of all stakeholders in the process of the research and thus deepening their confidence to the project, instead of providing them with the already prepared recommendations, which probably would not have been taken into account readily, roundtables/workshops in Armenia, Azerbaijan and Georgia were arranged after the draft report was developed and all main findings identified.

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Totally, three roundtables/workshops (one in each country) were organized. All respondents, among them decision-makers, were invited to participate in the workshops. About 30 participants participated in the roundtables in each country. One week prior to the workshops, the study was provided to all participants to let them be aware of the report and present comments and remarks in advance.

It should be noted that the study in Georgia has concurred with the November-December of 2003 political developments within the country, which was followed by serious changes in the structure of governance in Georgia as well as legal requirements regulating EIA procedures. The study of assessment of effectiveness of the EIA system in Georgia is entirely based on the situation existed in Georgia before May 2004. Furthermore, it has to be taken into account that according to the Law of Georgia on Structure, Competence and the Rule of Activity of the Government of Georgia made on February 11, 2004, the name of the Ministry of Environment and Natural Resources Protection has been changed. Currently, this state authority is named as the Ministry of Environmental Protection and Natural Resources. To avoid confusion of the reader, the mentioned authority is referred in the study as the Ministry of Environment (MoE).

Finally, the project has been implemented with significant input of the Netherlands Commission for Environmental Impact Assessment. Project design as well as the main directions of activities envisaged by the project was developed on the basis of comments and recommendations of the Commission. Close collaboration with the Commission contributed a lot to the success of the project.

2. Country Background

Georgia is situated on the eastern coast of the Black Sea and is the westernmost country of the South Caucasus. Greater and the Lesser Caucasus Mountains form the northern and southern borders of the country respectively. Georgia shares borders with the Russian Federation in the North, the Republic of Azerbaijan in the southeast, the Republic of Armenia in the South, and the Republic of Turkey in the southwest. The area of Georgia with the total population of 4,945,000 is 69,700 km^2.

Historically, Georgia, due to its favorable geo-physical location, always has been in the center of interest of a number of countries of the world. As a result, Georgia frequently was a subject of foreign interventions. The recent segment of the long historical chain, consisting of the interchangeable periods of gaining and losing its independence, has started since 1783 (Treaty of Georgievsk between Georgia and Russia) and is related mainly to Russia. Since that, brief overview of Georgia's history looks in the following way: in 1801, Georgia was annexed by Russia and the Georgian kingdom was abolished. In 1918, Georgia proclaimed independence from Russia. However, in 1921, the Democratic Republic of Georgia, was again annexed by the Soviet Russia and, subsequently, Georgia became an integral part of the Soviet Union. Following the break-up of the Soviet Union in 1991, Georgia again gained its sovereignty.

Since that, Georgia, a sovereign nation with a freely elected Parliament and President, on one hand, started to rebuild its statehood, however, on another hand, it faced a number of political and socioeconomic problems. With the collapse of the Soviet Union, Georgian production lost its sales market. Civil war and ethnic conflicts in the Autonomous Republic of Abkhazia and South Ossetia worsened the economic infrastructure even more and grave criminal situation hindered the flow of foreign investments into the country. Therefore, 1992-1995 was the period of a deep depression for Georgian economy, when Georgia's Gross Domestic Product (GDP) declined more than that of any other former Soviet Republic (UNECE, 2003).

The era of political stabilization has started in the country since 1995 that had a positive effect on the economy of the country. Introduction of a national currency (Georgian Lari - GEL) significantly revived the consumer market and gave stimulus to economic restoration. Increase of flow of foreign capital and privatization contributed a lot to recovery of the economy of Georgia. GDP growth was especially noticeable in the period of 1996-1997, when GDP grew by 11.2% and 10.6% respectively. Micro-economic indices also improved and the rate of inflation was lowered.

In 1998, the economic and financial crisis in the Russian Federation and Asia, drought and political events cramped GDP growth and in 1999, it reached only to 3% in Georgia (UNECE, 2002). It is worth mentioning that disruption of established trade patterns during the Soviet era and absence of the new effective models as well as emerged ethnic-territorial conflicts lasting for several years, have led

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almost all sectors of the country in a deep crisis. Subsequently Georgia, which in the Soviet Union time occupied the 4th position according to living standards (after the Baltic Republics) and where some progress was noticed in 1995-1997, could not manage to escape from the difficulties and again became engaged in serious economical problems. Specifically, at present, the share of the industry remains small in the GDP, while the share of imported production is large (80-85%) in consumer market, unemployment rate is high, living standards and GDP per capita are very low, and credits and grants received from donors still form the main part of income to the country's budget. All these matters result in high level of corruption that on its turn is a permanent blockage to investments and economic development of the country. Energy shortages continue to hinder Georgia's economic development as well.

Today, still on its way of building a democratic society, Georgia is undergoing the difficult process of political self-establishment, structural and institutional reforms and transition to the market economy. Political events after the parliamentary elections of November 2003 were followed by so-called "Rose Revolution" that in its turn was followed by the resignation of the President Sehevardnadze and organization of new Presidential elections in January 2004. The consequences of the political changes have not been evaluated and analyzed yet; however, both national and international policy of newly elected President of Georgia is quite promising.

3. History of the Development of the Georgian Environmental Assessment System

3.1 Introduction to the EIA system in Georgia

The current EIA system of Georgia started formation after adoption of the new Constitution of Georgia on August 24, 1995, which set the basic rights and priorities *inter alia* in the field of environmental protection. This was followed by adoption of a set of laws and regulations related to EIA. It is worth noting that during the Soviet times and in the early 90s, before Georgia became an independent country and chose a new path of development, Soviet standards and procedures had been in force. However, starting from the second half of the 90s, Georgia gradually started modernizing the EIA system in line with the EU and other international standards.

On September 2, 1997, the Parliament of Georgia adopted Resolution on Harmonization of the Legislation of Georgia with the Legislation of the European Union. The Resolution states that for the purpose of enhancing integration of Georgia with the European structures, harmonization of legal systems and providing compliance with the principles set by the legislation of Georgia, starting from September 1, 1998 each law and normative act to be adopted by the Parliament of Georgia must be in conformity with the standards and norms established by the European Union. On June 14, 2001, the President of Georgia issued Decree No. 613 on the Strategy for Harmonizing of the Legislation of Georgia with the EU Legislation. One of the main directions of the Strategy is the environmental legislation. The environmental legislation of Georgia needs further development and improvement to bring it closer to the EU law.

3.2 National Legal Acts

Among the national legal acts relevant to the EIA system, Article 37 of the Constitution of Georgia is a key provision establishing that "*. . . 3. Everyone has the right to live in a healthy environment and use natural and cultural surroundings. Everyone is obliged to protect the natural and cultural surroundings; 4. The state guarantees the protection of nature and the rational use of it to ensure a healthy environment, corresponding to the ecological and economic interests of society, and taking into account the interests of current and future generations; 5. Individuals have the right to complete, objective and timely information on their working and living conditions.* "

Specific EIA issues have been introduced into the legislation by the Law of Georgia on the Protection of Environment (Chapter X, Articles 35-41) of December 10, 1996. This Law regulates legal relations between the governmental bodies, physical and legal persons in the sphere of environmental protection and use of natural resources all over the territory of Georgia including its territorial waters, air space, continental shelf and free economic zone (Article 1). Specifically, Chapter X (Environmental Requirements when Making Decision on Activity and Carrying out Activity) of the Law, which is

relevant to EIA process consists of Articles 35-41: Article 35 - Environmental Permit; Article 36 - State Ecological Expertise; Article 37 - Environmental Impact Assessment; Article 38 - EIA Report; Article 39 - General Environmental Requirements for Carrying out Activity; Article 40 - Environmental Requirements for Operating Industrial Object; Article 41 - Environmental Requirements for Decommissioning of Industrial Objects.

More detailed EIA related rules were introduced by the Law of Georgia on Environmental Permit of October 15, 1996. According to its preamble, this Law provides the legal basis for the issuance of an environmental permit for the activity to be performed on the territory of Georgia, State Ecological Expertise while issuing the permit and public participation and information in the process of EIA and decision–making on the issuance of the permit.

The regulatory framework of the EIA system has been further complemented by the Law of Georgia on State Ecological Expertise (October 15, 1996). According to Article 1 of the Law, the state environmental assessment is a necessary environmental measure to be carried out in the process of decision-making on the issuance of environmental permits. These activities include business, industrial and other activities, drafting and development of plans, infrastructure projects, construction and sector development plans, projects for exploitation and use of waters, forests, mineral resources, land and other natural resources on the territory of Georgia; also activities required for major reconstruction and technical and technological renovation of the existing enterprises.

After years of delay, detailed Regulation on Environmental Impact Assessment was approved by the Order No. 59 of the Minister of Environment on May 16, 2002. Article 2 of the Regulation regulates social relations among the participants of commercial or other activities, the State and the society in the field of determination of potential consequences of environmental impact of the activity, study and assessment of such consequences and in ensuring the EIA procedure with normative-methodological basis. The same order approved the Instruction for Main Pipeline Projects. According to Article 1 of the Instruction, the purpose of the Instruction is to ensure full compliance with national environmental legislation, establishment of best available methods, practices and experience in this field, adaptation and application of standards set in the EU Directive 85/337/EEC, as well as other relevant standards at the preliminary and project stages of the development of main pipeline projects.

Another legal act relevant to the EIA process is the Regulation on Rules to Carry out State Ecological Expertise approved by Order No. 85 (August 14, 2003) of the Minister of Environment of Georgia.

To have a clear idea of the EIA process the Law of Georgia on the State Complex Expertise of Construction Projects (April 16, 1999) should be noted. The Law comprises of legal norms on carrying out of a state complex expertise of construction projects. According to Article 2 of the Law, one of its objectives is to promote and advance the process of creating safe living environment for human health. Pursuant to Article 4, the Main Division of State Expertise of the Ministry of Urbanization and Construction is responsible for coordinating the complex expertise. According to the Law, State Ecological Expertise undertaken by the Ministry of Environment is one of the components of the process of the state complex expertise.

Liability rules for breaking the EIA regime is elaborated in the Administrative Violations Code and the Criminal Code. Administrative Violations Code of Georgia contains Chapter VII – “Administrative Violations in the field of environmental protection, use of nature, historical and cultural monuments (Articles 51-89(2))”. Criminal Code of Georgia contains Part Ten – Crime against the Rule of Environmental Protection and Utilizing Natural Resources (Articles 287-306). In particular, Article 287 and Article 306, which are described below in paragraph 5.6 – “Liability for violation of EIA legal framework”.

In addition, according to the present environmental legislation some sub-laws should have also been adopted or certain acts should have been carried out, however the competent authority – the MoE has not fulfill its obligations yet. In particular: (i) the MoE should have adopted the Regulation “on the rule of registration of environmental permit and application to be submitted in order to obtain environmental permit” and (ii) special EIA Council should have been formed under Article 14 (4) of the Law of Georgia on Environmental Permit.

3.3 International Agreements

In the context of EIA, several international environmental agreements that are signed by Georgia should be mentioned, which include but are not limited to the following:

(i) ***Convention on Biological Diversity of June 5, 1992 (Rio de Janeiro)*** ratified by Georgia by Resolution of the Parliament of Georgia on April 21, 1994.

Article 3 of the Convention says that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. According to this Article, each contracting party shall, as far as possible and as appropriate: (a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making; (b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity; (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements; (d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and (e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources. Article 14 of the Convention on Biological Diversity refers to EIA. In April 2002 the Conference of Parties of the Convention adopted guidelines for integration of biodiversity considerations in EIA and SEA;

(ii) ***The Convention on Long Range Transboundary Air Pollution of November 13, 1979 (Geneva)*** accessed by Georgia on November 13, 1999 (specifically, Articles 2-6); and

(iii) ***Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of June 25, 1998 (Aarhus)*** ratified by Georgia by Resolution No. 135 of the Parliament of Georgia on February 11, 2000.

Although Georgia has not yet ratified/acceded some relevant international instruments, in particular, the Protocol on Strategic Environmental Assessment to the Convention on the Environmental Impact Assessment in a Transboundary Context (May 21, 2003, Kiev, Ukraine) and Convention on the Environmental Impact Assessment in a Transboundary Context, (February 25, 1991, Espoo, Finland), steps are taken by the Government of Georgia towards the accession to these agreements and it can be assumed that Georgia will become party to the Espoo Convention and Kiev Protocol in the nearest future.

4. Administrative Framework

While speaking on EIA administrative framework in Georgia, two stages should be differentiated within environmental clearance process.

First stage is Environmental Impact Assessment itself in a narrow sense. Normally, at this stage, frames for the EIA are set (screening and scoping stages). After that, an investor should hire relevant consulting company for undertaking EIA and submit the EIA report together with other documentation to the competent state bodies for obtaining environmental permit.

Article 8 (2) of the Law of Georgia on State Ecological Expertise states that the persons performing activities, specified by the law, shall be responsible for organizing and conducting the environmental impact assessment. Thus, the project proponent (initiator of activity) is responsible for elaboration of the EIA study. This is also stated in Article 15 of the Regulation on EIA.

The project proponent is authorized to select environmental consulting company for undertaking EIA. “Consulting company” is defined as a legal (juridical) person having right to undertake consultative service in the field of environment (Article 16, Regulation on Environmental Impact Assessment). The Law of Georgia on the Fundamentals in the Field of Issuing Licenses and Permits for Commercial Activities, specifically its Article 6, stipulates that the MoE issues the licenses for the activities in the field of the EIA.

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The project proponent is obliged to finance the EIA process (Article 17, Regulation on EIA). EIA process and its stages are specified in Article 11 of the Regulation on EIA. It also affirms that EIA study is implemented by the project proponent and is financed by the project proponent through engaged consulting company.

State administration is more actively involved in the process at a later – ***second stage*** after all the documentation, including EIA report is submitted and the state bodies have to undertake State Ecological Expertise and issue environmental permit. Chapter 2 (Articles 4-7, Law of Georgia on State Ecological Expertise) specifies the bodies responsible for carrying out State Ecological Expertise. In particular, the bodies eligible to carry out the State Ecological Expertise are as follows:

- Ministry of Environment of Georgia;
- Ministries of Environment of Autonomous Republics of Abkhazia and Ajara;
- Regional (municipal) departments subordinated to the MoE (including Tbilisi Committee for Environment Protection and Regulation of Natural Resources).

The responsibilities of the MoE in carrying out the State Ecological Expertise are as follows: (a) work out and approve rules and regulations for carrying out State Ecological Expertise; (b) work out and approve technical norms and methodology instructions required for carrying out State Ecological Expertise;

The responsibility of the bodies eligible to carry out State Ecological Expertise shall be as follows: (a) set up experts' commissions to examine the objects subject to expertise by the present law; (b) provide necessary information for the process of expertise; (c) register independent experts and set up their data base; (d) cooperate with other related executive bodies in all matters related to environmental assessment.

Article 10(2) of the Regulation of Georgia on State Ecological Expertise, in compliance with the Law of Georgia on Environmental Permit, states that State Ecological Expertise is carried out: (a) for the category I and II activities – by the Department of Environmental Permit and State Ecological Expertise of the MoE; (b) for the category III and IV activities – by the Ministries of Environment of Autonomous Republics of Abkhazia and Ajara, territorial units of the MoE, Tbilisi Committee for Environment Protection and Regulation of Natural Resources.

The State Ecological Expertise on the categories I, II and III is undertaken by the experts' commission composed of independent experts. As for category IV activities, it can be undertaken by independent experts as well as employees of the state authorities authorized to carry out State Ecological Expertise.

5. The Process of Environmental Impact Assessment of Georgia: Legislation

5.1 EIA Principles

Pursuant to Article 6 of the Regulation on EIA, the process of EIA in Georgia is based on the following principles:

- Integrated consideration of technical, technological, ecological, social and economic indicators of proposed project activities;
- Multitude of options of the proposed project as well as consideration of alternative scenarios to ensure compliance with the environmental requirements;
- Integrated consideration of regional as well as local factors;
- Compliance with the principles of sustainable development;
- Transparency and public participation;
- Correctness of the methods applied in the process of environmental impact assessment, objectivity and justification of provided information and conclusions.

5.2 EIA Timeframes

Pursuant to the Paragraph 1 of Article 8 of the Regulation on Environmental Impact Assessment, the project proponent determines timeframes for undertaking EIA, except activities falling under the Category I. This clause of the Regulation is quite confusing due to two reasons. First, the Law on Environmental Permit does not set any timeframes for the project proponent for undertaking the EIA study, thus this clause of Regulation clearly contradicts to the requirements of the law. Second, EIA is required only for Category I activities and thus, stating that the project proponent is free in setting timeframes for undertaking EIA, except for activities falling under Category I, is absolutely meaningless. It is believed that in case of Paragraph 1 of Article 8 of the Regulation on Environmental Impact Assessment there is an omission on the part of a legislator.

Timeframes for reviewing EIA for the purpose of issuing environmental permit for the activities falling under Category 1 are determined by the law of Georgia on "Environmental Permit" (Article 7, Paragraph 6) and constitutes three months.

5.3 Activities subject to EIA

Pursuant to Article 9 of the Regulation on EIA, Environmental Impact Assessment (EIA) is applicable to the Category I activities, list of which is given in the Law of Georgia on Environmental Permit (Chapter II, Article 4). According to the Law, the Category I activities includes all activities that can cause serious negative and irreversible impact on the environment, natural resources and human health due to its large scale, location and content. In parallel with undertaking EIA, the Category I activities listed below are subject to the issuance of environmental permit. The following activities belong to the Category I:

(a) Extraction of mineral resources: Extraction of mineral resources (excluding the activities given in Article 4, paragraph 3 of present Law) and ore-dressing; Construction of above-ground and underground facilities related to the extraction and ore-dressing activities; Deep drilling, especially for extraction of thermal waters with extra deep circulation; Collection of excavations and works related to their disposal.

(b) Energy Industry: Oil refining and petrochemical production; gasification and liquefaction of coal; coal carbonization; briquetting of coal and lignite; building of thermal electric power stations and other thermal installation (with more than 10 megawatts capacity); construction of main infrastructure transporting gas, steam, hot water and electricity; building of hydro-electric power stations (with more than 10 megawatts capacity); construction of dams, artificial reservoirs and other hydro-engineering facilities; building of nuclear reactors of any purpose and capacity; building of nuclear power stations; production or enrichment of nuclear fuel, processing of used nuclear fuel.

(c) Agriculture: Fish breeding for the commercial purpose in natural reservoirs; land melioration; use of agricultural land for non-agricultural purpose (area with more than 50 ha); implementation of the measures against potential calamities and harmful natural processes.

(d) Food industry: Manufacture of flour from fish and animal bones; manufacture of vegetable and animal oils and fats; manufacture of industrial starch; manufacture of preserves (for objects with annual processing more than 5,000 tons of raw materials); breweries, distillation of liqueur, brandy, vodka, and production of wine (for objects with annual production more than 30 million liters).

(e) Chemical industry: Chemical production of any type and capacity, including chemical treatment of semi-finished products (intermediate products) and production of chemicals; manufacture and processing of pesticides, pharmaceutical products, paint and varnishes, peroxides and elastic substances (rubber or plastic substances); manufacture and packaging of gunpowder and other explosives, production of accumulator batteries and graphite electrodes; production of refrigerators.

(f) Metallurgy: Metallurgical industry of any type and capacity.

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(g) Machinery construction and shipbuilding: Machinery construction, among them motor-car construction, shipbuilding, railway car and aircraft construction; repair works for shipbuilding, railway and aircraft facilities; production and testing of engines, turbines and reactors;

***(h)* Manufacture of construction materials:** Any production using asbestos for its activities; manufacture of cement, asphalt, glass and glass products;

(i) Wood processing, paper, leather and textile industry: Wood-shaving and wood-fiber panels production; production of artificial mineral fiber; production of cellulose, paper and cardboard; tanning industry; construction of cloth and worsted factory (wool scouring, degreasing and bleaching activities).

(j) Waste recycling and disposal: Disposal of industrial and municipal waste, installation and operations of waste storages as well as waste treatment facilities and incinerator; disposal of toxic, dangerous and radioactive waste, deposition and operation of their storage and facilities for waste elimination.

(k) Deposition and functioning of storage facilities: Deposition and functioning of above-ground and underground storage facilities of gas, oil, coal and petrochemical products; deposition and functioning of the storages for nuclear materials;

(l) Realization of infrastructure plans, projects and programs: Urban development and city planning programs; industry development programs; energy system development programs; projects on waste and wastewater treatment facilities for settlements; forest management projects (including perspective projects for organization and management of forest and hunting farms); programs of transport infrastructure development; land use plans for administrative-territorial units (rayons); projects of motor ways, railways, airdromes, bridges and overpasses; projects for main pipelines of any purpose; projects for sea-ports and terminals; projects for the metro, underground motor and railway communications; projects for hotel complexes and resort facilities; projects for sport complexes and facilities; projects for hospitals for oncology, transmissible diseases and tuberculosis; protected areas long-term rehabilitation programs; plans and projects for protection and utilization of water, forest, land, entrails and other natural resources located on the territory of Georgia; programs and projects of national, regional and local scale facilities of all types that are designed to avoid possible negative effects from natural processes on the territory of Georgia.

5.4 EIA Stages

The project proponent (initiator of activity) is responsible for elaboration of the EIA study (Article 15, Regulation on EIA). Rights and obligations of project proponent during the EIA process are given in detail in Articles 13, 15 and 17 of the Law on Environmental Permit.

Project proponent is authorized to select environmental consulting company for undertaking EIA. “Consulting company” is defined as a legal (juridical) person having right to undertake consultative service in the field of environment (Article 16, Regulation on EIA).

Project proponent is obliged to finance the EIA process (Article 17, Regulation on EIA). EIA process and its stages are specified in Article 11 of the Regulation on EIA. It also affirms that EIA is implemented by the project proponent through the consulting company and is financed by project proponent. The Article 11 differentiates 8 stages of EIA, which are described below pursuant to EIA stages within EU.

Screening[1]

Article 4 of the Law of Georgia on Environmental Permit introduces screening criteria. It specifies four screening categories based on the scope, importance and impact on the environment of the proposed activity. The activities, which due to their scope, location and essential characteristics can bring about serious and irreversible impacts on the environment and human health, fall under Category I. These activities, plans and programs must obtain environmental permits. The environmental permitting

[1] Screening is a process by which those projects likely to have significant environmental impacts are identified and a decision is taken on the need of EIA.

process consists of the following obligatory procedures: (a) Environmental Impact Assessment (EIA), (b) State Ecological Expertise, (c) public participation in the decision-making process.

The economic activities, plans and programs that due to their scope, location and content can have a significant impact on human health and the natural environment of the region, where the activity will be carried out, fall under Category II. Before receiving environmental permit, these activities are subject to: (a) State Ecological Expertise, and (b) public participation in the decision-making process.

The activities that will not bring about serious impacts on the environment fall under Category III. They are subject to the following procedures: (a) State Ecological Expertise, and (b) public information about the proposed activity.

The activities that are not included in above mentioned three categories, and are considered to have only insignificant environment impact, fall under category IV. A list of such activities had to be developed and approved by the Ministry of Environment based on procedures established in the Law on Environmental Permit. Only after six years after adoption of the Law, on November 15, 2002, the Minister of Environment issued the Order N109 approving regulation on the list of activities falling under Category IV. This is not the only example of such a delay in implementing law via sub-laws.

The Law on Environmental Permit does not say that project proponent should make preliminary application to the Ministry of Environment with brief project description to obtain screening decision (determining that EIA for the project is necessary). Logically, only after this procedure, the project proponent should start preparation of application material (including EIA Report) for obtaining the environmental permit.

Thus, the Law does not clearly define the role of the Ministry of Environment in relations to the screening decision-making process and there is impression, that project proponent himself has to compare its proposed activity with the list of activities listed in the Article 4 and decide whether the project falls or not under Category I and accordingly, prepare application material for EIA.

Scoping[2]

The scoping stage is of utmost important for the project proponent since it is supposed to give certain guidelines to the project proponent for preparation of the EIA report taking into account specific characteristics of the proposed project. This stage can be viewed as one of the determinants of the successful EIA study and subsequent decision-making on environmental permitting to be undertaken by competent authority (MoE). Most importantly, public participation must be ensured at this stage.

The Georgian legislation including Regulation on EIA does not require the scoping procedure, even though there is certain established practice to consult the Ministry of Environment before launching the EIA study.

Assessment – Environmental Studies

Stages 1, 2, 3 and 6 of the EIA process specified in Article 11 of the Regulation on EIA can be called as a stage of “Assessment – Environmental Studies”.

The first stage considers implementation of the following actions: (i) collection of background environmental information and undertaking additional studies if necessary; (ii) collection and analysis of information on methods and means for implementation of the planned project, considering necessary industrial infrastructure and the best available technologies (BATs); (iii) identification of the volume and the character of different possible emissions and waste at all stages of various regimes of operation of the object. Development of the plan for waste transportation, disposal, utilization and removal; (iv) study and analysis of environmental components (air, water, soil, flora, fauna, geological structure, climate, protected areas, etc.) in the context of expected impact on them; (v) analysis of the socio-economic situation in the area of location of the activity and the forecast of possible environmental changes caused by the implementation of the proposed activity.

The second stage consists of identification of sources, types and objects of environmental impact of various options of project implementation on the basis of available information.

[2] Scoping is a process to determine which information should be gathered during the EIA study and how it should be presented in the EIA report. Scoping will result in Terms of Reference and EIA report.

The third stage shall determine: (i) probability of environmental impact; (ii) factors causing environmental impact; (iii) main objects exposed to environmental impact; (iv) scales of environmental impact; (v) geographical extend of environmental impact; (vi) timeframe of environmental impact; (vii) types of environmental impact (direct, indirect, cumulative, etc.); (viii) forecast of the state of the environment after environmental impact.

At the sixth stage, EIA shall identify the possible impact of the project implementation on: human health and living environment; certain environmental components and complexes; socioeconomic situation and development trends of the society, including employment and changes in social, economic and demographic structure of the territory (including aesthetic, cultural, ethnic and other aspects).

Mitigation and Impact Management

As regards mitigation measures and impact management, these are envisaged at 4, 5, 7, 8 stages.

More specifically, at the stage 4 all risks shall be identified and assessed, including (i) analysis of the probability of accidents and the scenarios of their development; (ii) opportunities for localization and elimination of consequences of accidents; (iii) development of a plan of elimination of impact consequences and mitigation of environmental impact.

Stage five shall identify*:* (i) opportunities for reduction of environmental impact; (ii) means for introduction of the best available technologies; (iii) means for minimization, management and utilization of all types of emissions and waste.

Stage seven: (i) determines methods of environmental control and monitoring; (ii) develops prevention and mitigation plan of identified or expected negative impacts on the environment; (iii) elaborates environmental strategy and management plan for each stage of the activity.

Stage eight consists of general environmental-economic assessment of project decisions taking into consideration proposed and other options of implementation, including no-development (zero) option.

Reporting

Regulation on EIA relates to the EIA Report too. Pursuant to Article 10, the EIA Report shall include the following:

- The analysis of existing state of the environment (baseline study);
- Identification of environmental impact sources, types and objects;
- The prognosis of quantitative and qualitative characteristics of the environment;
- Calculation of the probability of accidents and assessment of expected effects;
- Assessment of environmental, social and economic effects of the proposed activity;
- Identification of ways for reduction and prevention of adverse effect on the environment and human health;
- Identification of remaining (cumulative) impact as well as methods for its control and monitoring;
- Environmental and economical assessment of projects;
- Analysis of alternatives for the project implementation, selection and development of new options;
- Determination of ways and means for restoration of the initial state of the environment in case of ceasing of commercial and other activities;
- Informing the public and study of public opinion;
- Plan for the analysis of the situation after the project implementation;
- Identification of types and volume of expected emissions;
- Prognosis of “Expected State of Environment” established as a result of environmental impact factors;
- Elaboration of environmental management and monitoring plans for implementation, progress and completion stages of the activity.

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Reviewing

Legislation of Georgia does not envisage an independent examination of adequacy of environmental information given in the EIA report. The only verification mechanism is the State Ecological Expertise to be undertaken after the project proponent submits the application (including, *inter alia*, the EIA report) for obtaining the environmental permit. This procedure is specified in the Law of Georgia on State Ecological Expertise (see below under ***Decision-making and environmental clearance***).

Public participation in EIA process

Public participation in the EIA process is regulated by the Law on Environmental Permit (Articles 15, 16) and Regulation on EIA (Article 23).

According to the Law on Environmental Permit, the project proponent ***has the right*** to organize public discussion (hearing) during the EIA process. Project proponent ***has the right*** to ensure publication of the information on the date and venue of the hearing. It may be held publicly and may be attended by all interested representatives of the public. Hearing may be held in the administrative center of a district where the activity is to be undertaken (Article 15).

According to the same Law public representatives have the right to provide the project proponent with their considerations and remarks on the Category I activity. To ensure public participation and consideration of public opinion the project proponent is obliged to become familiar with the written considerations and remarks on the Category I activity, submitted by the public representatives and take into account their arguments in the process of drafting the final version of supporting documents (Article 16).

Representatives of public are empowered to carry out an independent EIA on the Category I activity on their own expenses, and to submit it to the body issuing the environment permit. The results of the independent EIA should be taken into consideration during the decision-making process on the issuance of environmental permit on the Category I activity. If a public representative believes that his/her rights are violated, he/she is empowered to appeal to the court. Article 17 of the same Law specifies that the project proponent (in the process of planning the Category I and II activities and public hearings organized during EIA) has the right not to disclose the information requested only if: (a) the information requested contains the state, commercial or industrial secret; (b) the detailed EIA study is not finished yet, and therefore, the information is not complete and does not reproduce the real picture. Representative of public has the right to appeal to the court if his/her request for information is rejected.

Decision-making and environmental clearance

The issues of decision-making and environmental clearance are specified in the Law of Georgia on Environmental Permit. ***Paragraph 7 of Article 5*** of the Law specifies that the content and the form (registration rule) of the environmental permit, as well as the form of application shall be defined by the MoE, on the basis of Regulation “on the rule of registration of environmental permit and application to be submitted in order to obtain environmental permit”. This requirement of the Law has not been fulfilled and the regulation has not been adopted for already eight years.

Pursuant to ***Article 5*** of the Law, to obtain environmental permit the project proponent shall submit an application form to the MoE or to the regional or local offices of the Ministry or to the Ministries for Protection of Environment and Natural Resources of the Autonomous Republics of Abkhazia and Ajara.

The project proponent shall submit a complete written application form. The application package shall include supporting documentation, written application of the project proponent for obtaining permit on the activity, the draft of the technical and economic justification of the activity and the EIA report (for the Category I activities). Written request should include the following information:

(a) Name of the proposed activity, name and address of the project proponent;

(b) Location of the proposed activity;

(c) Approximate dates of commencement and completion of the proposed activity, purpose of the activity;

(d) Scheme of facilities necessary for the activity;

(e) Brief description of the technological process;

(f) The list of substances to be obtained through the technological process;

(g) Detailed description of measures to be carried out to mitigate impacts on the environmental and social factors;

(h) The list and quantity of used natural resources;

(i) Type and volume of expected emissions;

(j) Methods for determination of the volume of emissions;

(k) Type and volume of waste generated through the technological process, possible places of their disposal, measures designed for reduction and treatment of waste;

(l) Safety measures proposed to prevent man-caused accidents;

The project proponent shall submit a non-technical summary along with the application, for the Category I, II and III activities. The non-technical summary should indicate:

- Name of the proposed activity, name of the project proponent;
- Location of the proposed activity;
- Schedule of the proposed activity;
- Goals of the activity;
- Category of the activity;
- The address, where public can examine the activity related documents.

Information submitted in this form shall be published in mass media and provided to the public. The project proponent further may submit supplementary documents in case he/she considers it necessary.

Article 7 specifies that after receiving the complete application for the Category I activity, the MoE, its regional or local agencies and the MoEs of the Autonomous Republics of Abkhazia and Ajara shall carry out a procedure considered by the Law.

State Ecological Expertise

State Ecological Expertise is regulated in details by the Law of Georgia on State Ecological Expertise. According to Article 3 of the Law the basic principles of State Ecological Expertise are as follows:

1. Assessment of potential ecological risk related to the activity;
2. Complex assessment of potential environmental impact of the activity, prior to the commencement of the activity;
3. Conformity with environmental requirements and norms;
4. Independence of experts and unrestricted execution of their powers;
5. Justified and lawful decision of the expertise;
6. Openness of the expertise, public participation and consideration of public opinion.

The bodies authorized to carry out State Ecological Expertise are defined under the Article 4 of the Law and listed in Chapter 4 of the report.

According to ***Article 4 (4)*** the MoE may invite foreign experts to undertake State Ecological Expertise of the activity except for the cases when the project is a State secret. There was only one case when foreign experts were invited by the Ministry to participate in the review of the EIA report (BTC pipeline project).

Paragraph 5 of the same Article states that the body responsible for conduction of State Ecological Expertise shall have the right to: (a) obtain free of charge, necessary information (including general, statistical and official) from executive and legal bodies, required for carrying out state environmental assessment within the specified period, unless otherwise determined by the legislation; (b) provide

relevant bodies with information about the projects that failed to receive positive decision of the State Ecological Expertise.

According to ***Article 6 (3),*** the procedure of State Ecological Expertise shall be specified by the Regulations on Carrying out State Ecological Expertise, worked out and approved by the MoE. Pursuant to ***Article 7*** of the Law, the results of State Ecological Expertise shall be included in the decision on State Ecological Expertise prepared by the State Commission of Ecological Expertise and approved by the body authorized to carry out State Ecological Expertise. The decision can be positive only if: (a) documentation complies with the Georgian legislation and environmental protection norms and standards prevailing in Georgia; (b) implementation of the activity in certain location and circumstances will not cause irreversible changes in quality and character of the environment and natural resources; (c) provides for the measures reducing or avoiding the environmental impact, including the measures for overcoming the aftermath of possible accidents.

Public Participation

Within 10 days from the date of receipt of an application, the MoE shall: (a) ensure publication of the application, together with a brief annotation in the mass media. The publication should be accompanied with the information on the date and venue of the review of all issues related to the proposed activity; (b) Accept and review written remarks received from public representatives within 45 days after publication of the information.

Not later than in two months after the date of receipt of the application, the MoE shall carry out a public discussion related to the fulfillment of the activity. Representatives of the project proponent, the MoE and local authorities shall take part in the discussion. The MoE shall examine submitted documentation within 3 months. The copy of the application shall be kept in the unit of the MoE, where documentation expertise is to be carried out and where the public representatives can get acquainted with the application (except the parts containing the state, industrial or commercial secrets) within the whole period of the public disclosure. Within this period, the MoE shall: carry out State Ecological Expertise of documentation of the activity; clarify whether the activity or its part is in accordance with the laws of Georgia; clarify whether the activity or its part is in accordance with the environmental protection standards operating in Georgia; determine the measures required for mitigation of the possible negative impact on the environment in case of implementation of the activity; take decision on the issuance of environmental permit on the activity, taking into consideration the results of State Ecological Expertise and public disclosure feedback.

Grounds for issuance of environmental permit

Article 12 of the Law stipulates the grounds for the issuance of environmental permit, in particular, the MoE, its regional or local bodies, as well as the Ministries for Protection of Environment and Natural Resources of the Autonomous Republics of Abkhazia and Ajara shall grant the environmental permit if: (a) implementation of the activity will not violate the laws of Georgia; (b) implementation of the activity will not violate the environmental protection standards currently active in Georgia; (c) implementation of the activity is acceptable taking into account its location, scale or contents (for infrastructure projects).

If the implementation of the activity may violate Georgian environmental standards at the site of implementation of the activity due to the increased emissions from different facilities located at the site of activity, and at the same time the use of the best technologies is proposed, the project proponent shall be given the right to implement the activity (Article 12 (2)). The MoE shall reexamine the limits of total emissions for the existing facilities and determines a deadline, after which the enterprise shall observe new limits of emissions.

Grounds for the refusal on issuing environmental permit

Environmental permit shall not be issued if: (a) implementation of the activity will violate the laws of Georgia; (b) implementation of the activity will violate the Georgian environmental standards, and environmental deterioration of the site of the activity will be caused by the used technology which does not correspond to the technological standards determined by the legislation; (c) implementation of the activity is not acceptable due to its location, scale or contents (for infrastructure projects); (d) implementation of the activity will not violate environmental standards, however the precedent of worsening of human health as a result of implementation of similar activity or its part is known;

In case the environmental permit is not granted, the Ministry, its regional or local bodies, as well as the Ministries for Protection of Environment and Natural Resources of the Autonomous Republics shall inform the project proponent about their decision, including detailed explanation of reasons for refusal within determined time terms (three months for the Category I activities, two months for the Category II and II activities, and one month for the Category IV activities). If the project proponent does not agree with the decision he/she has the right to appeal to the court.

Interrelation of issuing environmental permit with issuing sectoral licenses (on water use, mineral resources, forest, etc.)

Article 31 (3) of the Law on Water of Georgia establishes general and special forms of water use. Special water use (as enumerated in Article 48) is subject to licensing. Article 86 (2) of the same Law says that transfer of water objects for special use is permissible only after issuing environmental permit. Thus, according to water legislation of Georgia license on water use may be issued only if environmental permit is obtained. According to Article 36 of the Law of Georgia on Atmospheric Air Protection environmental permit shall contain indication of maximal permissible air pollution. The Wildlife Law and Law on the Mineral Resources and Mining are not clear enough about this issue.

During interviews many respondents stressed the necessity of precise regulation of the interrelation between issuing environmental permit and sectoral licenses. Due to uncertainty of the laws, the respondents had different understanding of the issues, they had no clear picture whether the environmental permit is needed to be obtained first and then sectoral licenses or vice versa. Some suggested that issuance of sectoral licenses shall be a part of the environmental permit issuance process. Others considered that the better option is obtaining sectoral licenses prior to applying for environmental permit.

Post-Decision Monitoring – Monitoring, Implementation and Auditing

Pursuant to Article 12 (3) of the Law of Georgia on Environmental Permits, in case of issuance of a permit for the activity, the MoE and its territorial units shall inform the project proponent about their decision and provide the list of activities required to be undertaken after implementation of the activity in writing within determined time terms (three months for the Category I activities, two months for the Category II and II activities, and one month for the Category IV activities).

Pursuant to Article 13 (2) of the Law of Georgia on Environmental Permit, after obtaining the environmental permit the project proponent is obliged to: (a) carry out the activity considered in supporting documentation in accordance with the terms specified in the conclusion of State Ecological Expertise; and (b) after commencement of the activity, take the measures to mitigate the environmental impact required by the Ministry of Environment and the other subordinated bodies.

According to Article 14 (6), the MoE and its subordinated bodies are responsible for the correctness of the expertise of compliance of the EIA results with the Georgian legislation and environmental standards. The executors of State Ecological Expertise are responsible for the objectivity of the examination in accordance with the Georgian legislation.

As it was revealed during the interviews with different stakeholders, the Law of Georgia on the Control of Commercial Activities of June 8, 2001 in many respects plays a deterrent role in the process of controlling the implementation of environmental permit conditions. Initially the rationale of the Law was designed to protect commercial entities from a multitude of controlling bodies, which frequently resulted in abuse of power by these bodies, enhanced corruption and created barriers for the development of private business. The Law established strict frames for undertaking control of private businesses; in particular, Article 3 (2) stated that a controlling body is authorized to control commercial activities (*inter alia,* enter the enterprise, demand the documentation, cease the operation of the enterprise, cease the business property, examine the enterprise, inspect) only on the basis of a judicial order. During interviews it was alleged that the Ministry of Environment as well as its territorial bodies have neither material resources nor technical support to effectively control the implementation of the environmental permit conditions and appeal to the court for getting relevant decision on inspection.

Some of the persons interviewed stated that this Law does not relate to environmental control, as according to Article 2 (b) of the Law, “control of commercial activities” does not include *inter alia* activities carried out by the MoE on implementation of international treaties and agreements of Georgia and inspection of the use of natural resources. However, this “exclusion clause” is not clear

enough and commercial entity may claim that even controlling implementation of conditions set in the environmental permit shall be decided by the court on case-by-case basis pursuant to the above Law.

5.5 Exemption from EIA

According to Article 14 (4) of the Law of Georgia on Environmental Permit, the activity can be exempted from the EIA in the following cases: (a) the project proponent repeats or continues the activity that had been started before with the fulfillment of EIA procedure, and its repetition cannot contain any additional information; (b) state interest call for the immediate launch of the activity and decision should be made immediately; (c) special EIA council, the structure and the rule of operation of which are to be determined by the MoE and approved by the Minister of Protection of Environment and Natural Resources, takes the decision on release of project proponent's activity from the assessment procedure on request of the project proponent. The Minister approves the decision of the Special EIA Council. However, the Special EIA Council has not yet been formed.

Article 18 of the Regulation on EIA further specifies that the Council shall be composed of representatives of interested state bodies whose nominees are to be submitted to the Ministry via written recommendations by the heads of the mentioned bodies. Representatives of public can also participate in the work of the Council with a status of observer.

5.6 Liability for violation of EIA legal framework

Pursuant to Article 14 (5) of the Law of Georgia on Environmental Permit, consulting company is responsible for objective EIA. Article 19 (1) of the Regulation on EIA specifies that project proponent is responsible for organizing and undertaking EIA in the process of development of project documentation for commercial and other activities. Article 19 (2) further underlies that the state body issuing environmental permit is liable for violating established standards for discussion of the EIA results.

Code on Administrative Violations of Georgia contains Chapter VIII – Administrative Violations in the Field of Environmental Protection, Use of Nature, Historical and Cultural Monuments (Articles 51-89(2)). Article 69 envisages administrative liability for violation of environmental norms. Penalty may vary from 20 to 80 GEL. In case of recurrence of the violation during a year the penalty can range from 60 to 120 GEL. Article 69(2) introduces penalty varying from 100 to 300 GEL for violating the rule of licensing environmental activities. Article 69(3) imposes the same type of penalty for violating rules of licensing the activity having an adverse effect on the environment. Article 79 establishes penalty (ranging from 40 to 80 GEL) for conducting activities without environmental permit (Category IV activities – from 100 to 500 GEL; Category III activities – from 500 to 1,000 GEL; Category II activities – from 1,000 to 3,000 GEL).

Most importantly, Article 79 (2) imposes penalties for undertaking activities without implementation of mitigation measures as indicated in the environmental permit (Category IV– from 200 to 300 GEL; Category III activities – from 300 to 500 GEL; Category II activities – from 800 to 1,000 GEL; Category I activities – from 1,500 to 2,000 GEL).

Criminal Code of Georgia contains Part Ten – Crime against the Rule of Environmental Protection and Utilizing Natural Resources (Articles 287-306). Two articles are especially relevant to the EIA process: One of them envisages criminal liability for violating environmental protection rules while projecting, locating, reconstructing, constructing, commissioning and operating industrial, agricultural, scientific and other facilities, which resulted in worsening of radiation background, damaging human health, mass destruction of flora and fauna or other severe effects. This type of violation shall be punished by five years of imprisonment, with or without depriving the right to hold certain position or to undertake certain activity up to three years (Article 287). According to the second article, undertaking activities of Category I without environmental permit shall be punished by penalty or correction works up to two years or imprisonment up to three years (Article 306).

It is evident that the above-mentioned punitive sanctions for EIA-related offences are too small in comparison with the danger that may be caused by such offences.

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5.7 EIA in trans-boundary context

Article 22 of the Regulation on EIA specifies that in case of possible trans-boundary impact of the proposed activity, the EIA shall be implemented in compliance with international legal acts and the rule established by the Georgian legislation. The Georgian legislation does not provide any relevant rule. No bilateral agreements with neighboring states have been concluded to regulate EIA in trans-boundary context.

6. Analysis of EIA Effectiveness

6.1 Internal Factors Affecting EIA Effectiveness in Georgia

6.1.1 Legislation

General comments

Generally speaking, one of the major deficiencies of the Georgian environmental legislation currently in force and specifically legislation regulating EIA procedures is that the laws set only general framework, while detailed sub-laws that should ensure enforcement either do not exist or they are not as detailed and clearly formulated as to ensure proper implementation of the laws. Lack of experience in lawmaking, as well as low institutional capacity and possibly low motivation of the authorities responsible for their elaboration could be considered as main reasons of such situation.

As mentioned in Chapter 3.2 of the report, EIA related procedures are mainly regulated by two laws - Law of Georgia on Environmental Permit and Law of Georgia on State Ecological Expertise. Both of them were adopted and came into force basically at the same time, on October 15, 1996 and January 1, 1997 respectively. However, in many cases they just duplicate each other's provisions, thus creating confusion for the reader. Both are establishing only general requirements for environmental assessment and clearance of the proposed activities. Detailed regulations defining rules for their implementation should have been adopted soon after their adoption; however, none of them was adopted in the timeframes defined by the legislation. Two major sub-laws – Regulation on Environmental Impact Assessment and Regulation on Rules to Carry out State Ecological Expertise – that define specific rules for conducting EIA and its review were adopted only after approximately seven years of the execution of the aforementioned laws. Several others not less important[3] still need to be adopted. Such situation allows assuming that there is a possibility for free interpretation of the laws (either by the MoE or project proponent) and consequent corrupt deals between civil servants responsible for directing the process and the project proponent.

Seven years of experience in executing the laws showed numerous limitations, which need to be modified and gaps that need to be filled. In this chapter we will focus on the main shortcomings of the EIA related legislation currently in force.

Screening Requirements

Article 4 of the Law of Georgia on Environmental Permit defines screening criteria, however in a very unclear way.

Paragraph 1 of the Article stipulates that activities are divided on four categories based on the ***scale***, ***importance*** and ***impact on the environment*** of the proposed activity. Paragraphs 2 of the same Article lists activities that fall under the Category I which due to their ***scale, location*** and ***character*** can bring about a ***serious adverse and irreversible impact on the environment, natural resources and human health.*** These activities require full-scale EIA. List of activities that fall under the Category II is defined under the paragraph 3 of the same Article – activities that due to their ***scale, location*** and ***character*** can have a ***significant adverse impact on human health*** and the ***environment of the region,*** where the activity will be carried out. Category III activities are listed in paragraph 4 of the same Article. Activities that due to their ***scale, location*** and ***character*** will not bring about ***significant adverse impact on the environment*** fall under this category. The Law does not list activities that fall under the Category IV, however paragraph 5 of the same Article stipulates that all the activities that

[3] See the sub-laws envisaged by legislation but not yet adopted in chapter 3.2 of the report

are not listed in the paragraphs 2, 3 and 4 and might have ***insignificant impact on environment*** fall under the Category IV. The MoE should have adopted list of such activities until January 1, 1997, i.e. before putting in force the Law on Environmental Permit.[4]

From the abovementioned it is apparent that there is an inconsistency in setting criteria for screening. In addition many similar activities falling under the different categories are listed without thresholds of size, thus leaving room for subjective use of judgment. As it was indicated during interviews, in practice, in case of emerging dispute over this issue or if the law does not clearly define the type of activity, decision to attribute proposed activity to one or another category is taken by the MoE. It has to be noted that legislation does not say anything on whether such decision should be made by the MoE or how such decision should be taken. It is not clear whether decision-maker should make screening decision alone without outside assistance or based on the advice. It is not clear either whether project proponent should provide to the MoE any study to help take screening decision.

Many respondents stated in the interviews that lists of activities are inadequate and need to be amended. It was recommended to establish clearly defined list of activities that compulsorily need EIA, however even in such case there should be a room for expert opinion in case a legislator missed an activity that could be attributed to the Category I activities.

Scoping Requirements

As mentioned in chapter 5.4, the Georgian legislation does not set any provisions regarding scoping at the early stage of the preparation of EIA. However, as it was stated in interviews, practice of informal consultation between relevant department of the MoE and the project proponent exists. In the exceptional cases representatives of regional departments are also consulted to get firsthand information on the proposed project site. Nevertheless, generally, scoping is exercised by the project proponent (through the consulting company) mainly based on the desktop studies.

Public consultation or provision with information the potentially affected people at this stage is considered neither by law nor by practice. Virtually all respondents indicated that wide-scale consultation at the scoping phase could reduce the likelihood of serious deficiencies of EIA reports and could help represent potential areas of conflict with the stakeholders. This could assist the proponent to recognize the perspective of others, to consider alternatives (which are usually poorly presented in EIA reports) and issues of concern, which are raised by those affected, and to make changes to the proposal which will both address the concerns raised and improve the proposal. It was also advised to involve at this stage other state authorities than MoE, which could contribute detailed knowledge about specific issues within their jurisdiction.

As several respondents anonymously stated, at this stage project proponents were often advised to hire consulting company that the MoE "trusted" to avoid further "difficulties" with clearance. It was also mentioned, that for the last period, the MoE provides project proponents with the list of several consulting companies and the project proponents are free in their choice.

Quality of EIA reports

As the experience showed and indicated during interviews, the quality of EIA reports differs from case to case depending on the scale and type of the activity and whether project proponent is a foreigner or local. Usually, EIA reports submitted by foreign proponents are relatively better quality than reports presented by local ones for approval. Such situation was explained by the fact that preparation of the high quality EIA reports is quite costly for local project proponents and more affordable for foreign project proponents who in turn prefer to comply with internationally recognized requirements to keep record of good environmental performance.

Though, shortcomings generally appearing in the EIA reports could be summarized as follows:

- Reports are not well structured;
- The issues discussed in the reports are poorly coordinated, presented and communicated to the reader;
- Baseline studies take more space (forgetting that the purpose of EIA is not specifically to describe the baseline conditions);

[4] The regulation defining activities that fall under the Category IV was adopted only on 15 November 2002

- Less space is devoted to the impact identification and mitigation measures, which are too generic;
- Neither negative nor positive impacts are clearly presented;
- Alternatives are studied inadequately;
- Emergency response plans are poorly presented;
- Management and monitoring plans are not presented adequately.

Special attention should be paid to the consideration of **alternatives** in the EIA reports. As mentioned above usually alternatives are poorly developed and presented in the reports. There could be various reasons that alternatives are not seriously developed. However, in case of Georgian practice two main reasons can be identified. First is the inexistence of well-established rules of scoping. Scoping could have been used to identify alternatives, although not complete, illustrating different impacts which might occur, thus assisting in arriving at a solution.

Another reason could be the fact that in many cases preparation of EIA reports starts when project design is already finished or in worse cases, when construction activities are already underway. In such situations it is hardly possible for project proponent to make design changes in order to meet MoE requirements (if such exist) and reduce environmental impacts. It is obvious that studying alternatives will be formal, just to prove that already selected (or even implemented) option of project design is the best. Rigorous studying of alternatives will just bring useless additional expenses. In cases when construction activities are already underway it is not anymore possible to think of location alternatives, however as reported, there were cases when process alternatives or mitigation alternatives were studied and presented and consequently alternatives with the less significant environmental impacts were applied.

Few words have to be said on technology alternatives. The Georgian legislation requires that the possibility of application of the Best Available Technologies (BATs) shall be taken into account at all the stages of the project lifetime. During Soviet times, catalogues of the latest technologies applied in different sectors were published. These catalogues were updated annually and widely used during project design. Since the disintegration of the Soviet Union such catalogues are not anymore available for the Georgian EIA practitioners. Thus, lack of information on modern technologies affects not only the quality of EIA reports, but also the EIA review process.

Provisions on Public Participation

As described in chapter 5.4 of the report, issues related to the public participation in the EIA process are mainly regulated by the Law on Environmental Permit and the Regulation on Environmental Impact Assessment, however, provisions dedicated to the public participation are too generic and does not provide for proper consultation with the affected communities and/or the general public neither at the stage of EIA report preparation, nor in the decision-making process.

In respect to the public participation in the EIA process, two issues should be discussed at this point.

As stated elsewhere, Article 15 of the Law on Environmental Permit ***grants the right*** to the project proponent to ensure public access to the information and organize public hearings during preparation of the EIA report. It have to be noted that Article 13 of the Regulation on Environmental Impact Assessment indirectly ***obliges*** the project proponent to ensure public participation before submitting the final EIA report to the MoE for approval. Paragraph 2 of the Article 13 stipulates that responses on public comments with the description of issues when agreement was not reached (if such issues exist) must also be submitted along with EIA report for approval.

There was only one recent example when public participation was ensured neither by project proponent nor the MoE during decision-making. The issue concerns construction of the incinerators where waste generated during the implementation of the Baku-Tbilisi-Ceyhan main oil pipeline project should be burnt.[5] The issue whether requirements of the national laws or international agreements were violated in this case or not is rather disputable and does not fall in the scope of this report.

[5] To be precise, EIA report for construction of incinerators has not been prepared and submitted to the MoE for approval, but still the MoE has issued the environmental permit, i.e. the MoE took the decision to exempt the activity from EIA. Argument for such decision was that issues related to the functioning of incinerators were discussed in BTC pipeline project ESIA, which was approved earlier.

Exemptions from EIA

There are several points that should be discussed concerning exemptions from EIA. As it was mentioned in chapter 5.5, according to Article 14 of the Law on Environmental Permit, activity could be exempted from EIA if: (a) the project proponent ***repeats*** or ***continues*** the activity that had been started before with the fulfillment of EIA procedure, and its repetition cannot contain any additional information; and (b) state interest call for the immediate launch of the activity and decision should be made immediately. In our opinion, following aspects should be taken into account when exempting activity from EIA and which are insufficiently regulated by the legislation:

- The legislation stipulates that there could be exemptions from EIA, however it does not say anything how the environmental permit could be issued in such cases, should the project proponent submit any kind of study or not. The only clause defining procedures for such cases states that a special EIA council takes the decision on exemption of activity from the assessment procedure on request of the project proponent. The Special EIA council is not established yet; neither operational manual for the council is elaborated so far.

- The issue whether activities that previously fulfilled EIA procedure and are repeated or continued should be exempted from EIA or not is quite disputable itself. By the time when environmental permit is expired, there is a high possibility that baseline conditions are changed (especially, when long-term permits are issued). Thus, there must be a need to repeat baseline studies and identify possible environmental impacts, as well as mitigation measures.

- It should also be stressed that in cases described above, public participation is narrowed down to the observation of the council's work, thus limiting any possibility to influence the decision-making process.

In connection with the issue of exempting from EIA, particular attention should be paid to the Article 22 of the Regulation on State Ecological Expertise. Paragraph 5 of the Article stipulates that positive decision of the State Ecological Expertise for any type of activity could be valid from five to ten years period (meaning that environmental permit can also be issued from 5 to 10 years period). At the time of expiration of this period, if the baseline conditions of the environment have not changed compared to those when the decision of State Ecological Expertise was issued, the body eligible to issue a decision of State Ecological Expertise (in case of Category I activities – Department of Environmental Permit and State Ecological Expertise) has a right to prolong validity of the positive decision of State Ecological Expertise on the basis of written request of the project proponent.

As could be seen from the abovementioned, there is an obvious contradiction between Article 14 of the Law on Environmental Permit and Article 22 of the Regulation on State Ecological Expertise. In fact, first one delegates the power to exempt from EIA to the specially formed council. The latter delegates the same power to the Department of Environmental Permit and State Ecological Expertise. Hence, Department of Environmental Permit and State Ecological Expertise is empowered to take independently decision on exemption from EIA, without consultation with any interested party, not speaking of even observation from the public. It is not clear as well what happens after expiration of the additional five years – is the proponent required to conduct additional studies or validity of the decision of State Ecological Expertise (and respectively environmental permit) could be prolonged forever.

Post-decision monitoring and control

The Law on Environmental Permit defines neither any specific procedures for monitoring and control of the fulfillment of environmental permit conditions, nor requirements for self-monitoring or independent audit. The Regulation on Environmental Impact Assessment vaguely but still introduces requirements for environmental self-monitoring at all stages of the project lifetime. As stated in interviews, putting self-monitoring requirements in the conditions of environmental permits has been already practiced during last year.

Neither Law on Environmental Permit nor other Georgian legal acts include any provisions, which envisage stopping or closing the activities if project proponents do not meet environmental permit conditions or obligations under the EIA reports. The Georgian legislation envisages only administrative and criminal liability (penalties, imprisonment) for violation of the EIA legislation.

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The issue of ensuring state control and monitoring over the implementation of the environmental permit conditions is discussed later in detail.

Concluding remark for this chapter

Many respondents indicated during interviews that even though current legislation is not perfect, in a way it played its role in introducing the EIA principles and procedures and acknowledging the fact that those activities that might bring about environmental impacts cannot be implemented without environmental clearance. Though, in our opinion, it is doubtful whether it played positive or negative role, since due to ambiguity and inconsistency of the legislation currently in force and extremely weak enforcement, different parties involved in EIA related processes often have distorted view on overall purpose of EIA.

6.1.2 Environmental Clearance and Decision-Making

Application for Approval

As mentioned previously, the Law on Environmental Permit defines general requirements for application to obtain environmental permit; however, requirements for the same procedures are also partially regulated by other acts, such as Law on State Ecological Expertise (Articles 5 and 6), the Regulation on Environmental Impact Assessment (Article 13) and Regulation on Rules to Carry out State Ecological Expertise (Article 10). In addition to the fact that the list of required documentation defined by the Law on Environmental Permit is unclear itself, attempts were made in these regulations either to interpret what the mentioned Law requires or to define additional requirements for application, however such attempts even worsen the situation. It is not clear either whether project proponent should submit required documents all at once or gradually.

From the first look the issues described above seems to be easily manageable, especially when in fact, the project proponent can always consult with the Department of Environmental Permit and State Ecological Expertise and get an advice. However, in practice, inexistence of clearly defined requirements could always be used as an excuse when dispute rises over the issue whether the law requirements were violated or not, as it happened in case of Baku-Tbilisi-Ceyhan Main Export Pipeline Project, when local non-governmental organization filled a lawsuit against the MoE claiming that environmental permit was issued with the violation of the national legislation. Among other allegations, plaintiff claimed that project proponent did not submit all the documents required for approval. Defendant (the MoE) however found an excuse stating that Regulation “on the rule of application to obtain environmental permit and registration of environmental permit” is still not adopted and thus the issue cannot be discussed further.

It is also important to discuss on timing of submission of required documentation. The Department of Environmental Permit and State Ecological Expertise keeps database on Category I activities that were granted environmental permit with the indication of the date of application for environmental permit and the date when it was issued. It was found that in many cases environmental permits were issued either earlier than 45 days or later than three months period. Such mismatching with terms defined by the legislation was explained by the fact that project proponents are presenting required documents separately at different time, thus it is time consuming to track when in fact applications were submitted.

One more comment has to be made in connection with the application for approval. In order to ensure public access to information and public participation Article 5 of the Law on Environmental Permit, as well as Article 13 of the Regulation on Environmental Impact Assessment require from the project proponent to submit non-technical summary of the EIA report along with other documents. As stated during interviews, usually project proponents, especially locals, do not prepare non-technical summaries of EIA reports. As staff of the Department stated, project proponents do not want to obey the rules since they think that this is just wasting time and money and the Department cannot convince them not to do so. As an alternative, to get a sense of the proposed project the representatives of the Department brief the interested audience (if such exist) at the public meeting before starting the discussion.

It is also to be noted that in order to ensure public participation in decision-making process, the Law on Environmental Permit (Article 7) obliges the MoE within 10 days from the date of the receipt of an application to publish non-technical summary in the mass-media along with the information on the

date and venue of the public hearing where the issues related to the proposed activity shall be scrutinized. As the Head of Department of Environmental Permit and State Ecological Expertise noted, the MoE did not follow this obligation for a certain period of time. Only at the end of 2001, the MoE started to publish information in the media on proposed activities.

Decision of the State Ecological Expertise and its Registration

Since the legislation does not clearly define requirements for application, it is not clear either what is the subject of the State Ecological Expertise. The Articles of the Regulation on Rules to Carry out State Ecological Expertise defining the subject of the State Ecological Expertise contradict to each other. Article 10 of the Regulation states that project documentation defined by the Law on Environmental Permit, Law on State Ecological Expertise and Regulation on Environmental Impact Assessment shall be subject to State Ecological Expertise. However, at the same time the previous Article of the same Regulation stipulates that "*the subject of the State Ecological Expertise is the project documentation or any other type of applicable documentation at different stage of their elaboration, as well as environmental impact assessment (for Category I activities)*".

Article 21 of the Regulation defines the type of information that should be indicated in the decision of the State Ecological Expertise. The Article also refers to the attachment of the Regulation where sample of a decision is presented. It has to be stressed that even in one and the same Regulation there are discrepancies in the definition of required data. In addition, neither Article 21 nor attachment of the Regulation requires indicating documents that were subject to the State Ecological Expertise. It is also notable how such inconsistency is managed in practice. Since the requirement to indicate documents that were subject to expertise does not exist, in many cases the reader can find following statement in the decision of the State Ecological Expertise: "project stage - environmental impact assessment report". Further, in the section of "information on project documentation" where usually the proposed project is described briefly, it is possible to find out what kind of documents were subject to expertise, however list of the documents/data/information does not corresponds with those defined by legislation. In many cases, date of receiving project documentation is not indicated either.

The issue of inviting experts to undertake State Ecological Expertise has to be also briefly discussed. The Regulation on Rules to Carry out State Ecological Expertise defines the requirements for inviting independent experts to review project documentation presented for approval. Among other requirements, the Regulation (Article 12) does not allow those persons who participated in elaboration of the project documentation or were hired by the project proponent for any reasons to be registered in the Independent Experts' Register of the State Ecological Expertise and consequently to participate in the review of the project documentation as an independent expert. Several interviewees indicated that they have participated (or they know others who participated) in preparation of the project documentation for different proposals and also participated in State Ecological Expertise of different projects as an independent expert. Due to time constraints, it was not possible for us to investigate whether there are cases when the same experts participated in preparation of the project documentation and at the same time participated in its review.

Decision-Making

As mentioned earlier, the decision of the State Ecological Expertise could be either positive or negative. Positive decision is a precondition to issuance of the environmental permit. Grounds for approval or refusal are described in chapter 5.4 of the report, however at this point several issues still have to be discussed.

As defined by Article 22 of the Regulation on the Rule to Carry out State Ecological Expertise, positive decision of the State Ecological Expertise is issued if project documentation: (a) complies with the Georgian legislation and environmental protection norms and standards prevailing in Georgia; (b) implementation of the activity in certain location and circumstances will not cause irreversible changes in quality and character of the environment and natural resources; (c) provides for the measures reducing or avoiding the environmental impact, including the measures for overcoming the aftermath of possible accidents.

The same Article defines the grounds for negative decision, stipulating that negative decision is made if after full Expertise of the presented documentation it is found that it cannot meet all the conditions listed above or significant part of them. In this case, it is not clear how "significance" could be measured and what are the procedures if the project documentation cannot fully meet the

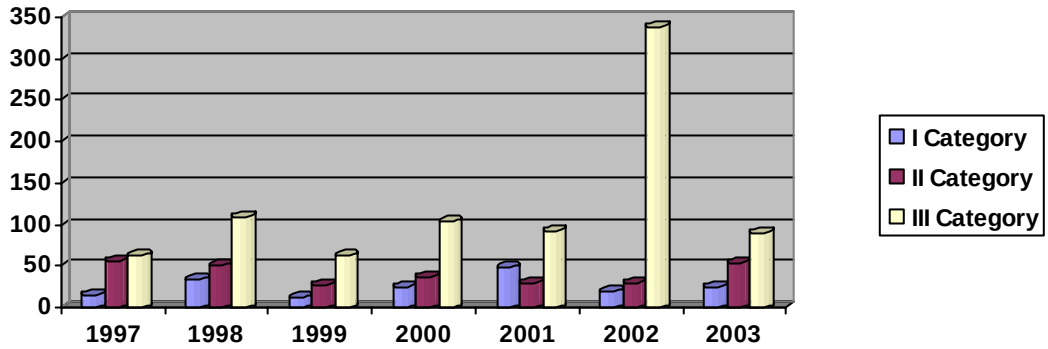
requirements, but still there is a possibility to improve it if additional studies are undertaken and/or additional information is presented.

There are two provisions that establish requirements for presenting additional information to the authority responsible for expertise before starting the State Ecological Expertise (Article 5 of the Law on Environmental Permit, Article 7 of the Regulation on Rules to Carry out State Ecological Expertise). In addition, Article 7 of the Regulation grants the project proponent the right to require temporary interruption of the State Ecological Expertise and present corrected project documentation. However, the legislation does not allow the authority responsible for expertise to require from the project proponent to conduct additional studies or correct documentation in the process of State Ecological Expertise in order to fully meet the requirements.

The current Georgian legislation does not also say much on what happens after the negative decision is made by the authority. The only Article 4 of the Law on State Ecological Expertise states that the authority responsible for State Ecological Expertise has a right to inform relevant (?) authorities on those projects that were refused. Neither Law on State Ecological Expertise, nor Regulation on Rules to Carry out State Ecological Expertise do not define whether refused proposal on proposed activity could be submitted for approval again or not and if could, under which conditions.

The MoE grants 60-70 environmental permits in average annually for Category I and Category II activities (see Figure 1 below), however, so far there is only one recent example (the project proponent was planning to construct three hydropower stations on the territory of the protected areas) when negative decision of the State Ecological Expertise was issued and consequently environmental permit was not granted. Some interviewees explained such situation by the fact that the project proponents usually consult with the staff of the Department of State Ecological Expertise and Environmental Permit at early stage of the project planning, thus avoiding further difficulties during approval. In our opinion, this reason is quite doubtful taking into account that neither scoping requirements are defined by the legislation nor the practice of holding consultations with interested parties are well established. It is more apparent that there could be other reasons for that. Supposedly, there are four main reasons why proposed projects are always approved: (1) the legislation currently in force is vague, thus allowing maneuvering and differently interpreting it; (2) project proponents hire the “right” consulting companies; (2) there are powerful persons behind the projects; and (3) there is a low level of public participation. It is more likely that all these reasons affect the final decision simultaneously. Many respondents also indicated that in some cases decisions are political rather than driven by economic, social or environmental concerns.

Figure 1. Number of Environmental Permits issued by the Ministry of Environment of Georgia for Category I, Category II and Category III activities in 1997-2003 [6]



Source: MoE, Department of State Ecological Expertise and Environmental Permit, 2004

[6]As could be seen from the figure above, in 2002 number of environmental permits issued for the III Category activities has dramatically increased. Such an upsurge in number of environmental permits issued by the MoE was explained by two reasons: (1) due to financial shortage, until 2002 the MoE was not able to issue environmental permits (i.e. paper with the special protection signs on it). Until 2002 the MoE was granting only positive decisions of the State Ecological Expertise to the project proponents. From 2002 the MoE started to issue environmental permits for new activities as well as for those that were already granted positive decisions in previous years; (2) in 2002 particularly large number of environmental permits was issued by the regional unit of the MoE in Samtskhe-Javakheti region for sawmills

In respect to the issue discussed above one more comment has to be made. Article 4 of the Law on State Ecological Expertise obliges the MoE to respond to reasonable comments submitted by the local authorities and the representatives of public on the proposed activity that was subject to expertise. As reported, this obligation established by the Law has never been fulfilled.

Registration of Environmental Permit

As mentioned previously, the positive decision of the State Ecological Expertise is followed by granting the environmental permit. Since the regulation defining rules for registration of the environmental permit is not adopted so far, the rule of signing of the environmental permit is still subject of discussions. As revealed during interviews, at the beginning for several years the front page of the environmental permits issued for Category I activities (i.e. permit itself) was signed only by the Head of Department of Environmental Permit and State Ecological Expertise; however, this rule has changed since 2001. Currently both the Head of Department and the Minister of Environment sign the permit, though it seems that this rule does not satisfy everyone.

As one of the officials stated during the interview, since the Department guides the entire process of the expertise, signature of the Head of Department should be enough to validate the clearance document. Minister of Environment does not think so. In her opinion, environmental clearance is a complex process where many different departments of the MoE, state authorities and other stakeholders are involved, thus the Department of Environmental Permit and State Ecological Expertise cannot only take all the responsibility for final approval. Minister also thinks that ministerial signature ensures better quality of work undertaken by the staff of the Department, however, in our opinion, it is more likely that the Minister is not confident that the department will adequately guide the process and take right decision independently and the validating the permit with the signature of Minister is just a double-check.

The issue of validating the decision with the signature of the official also raises the matter of who should eventually be liable if the procedures of approval were violated or conducted in a biased manner.

Licenses/Permits that must be Obtained Prior to or After the Approval

As indicated in chapter 5.4 of the report, several other licenses or permits should be obtained by the project proponent before or after the environmental permit is granted. Sequence of obtaining such licenses/permits is not always clearly defined by the legislation. The Law on Environmental Permit does not provide with any explanation when and how other licenses/permits should be issued, while other sectoral laws either briefly mention or just skip the issue.

For instance, ***the Water Law of Georgia*** states that license on water use could be granted only after the environmental permit is obtained, however the law does not foresee probability of the cases when license on water use could not be granted even if the environmental permit is issued. The license on water use is issued by the MoE (the process is guided by the Department of Water Protection) and the territorial units of the MoE, within their jurisdictions. ***The Law on Ambient Air Protection*** is clearer about the issue, stating that environmental permit must be accompanied by the limit on atmospheric air pollution. The MoE (the process is guided by the Department of Atmospheric Air Protection) and the territorial units of the MoE, within their jurisdictions, grant limits on atmospheric air pollution for five years.

As for ***the Law on Wildlife***, to some extent, it defines interrelationship between the procedures of granting the license for use of wildlife and the environmental permit, however some inconsistencies could still be observed. According to the Article 41 of the Law on Wildlife, the license for use of wildlife cannot be granted if the applicant does not present the environmental permit for the activity. According to the Law, establishment of hunting farms, which represents one of the forms of wildlife use, shall be subject to licensing. The MoE issues the license on such activity. At the same time, in accordance to the Law on Environmental Permit establishment of hunting farms falls under the Category II activities and thus, does not require EIA. However, according to the same Law, management plan of the hunting farm falls under the Category I activities and thus requires EIA.

In general, according to the paragraph 2 of the Article 9 of the Law on Wildlife, if implementation of any activity can potentially affect the wildlife or its habitat, wildlife protection considerations should be taken into account during preparation of the decision of State Ecological Expertise.

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The ***Law on Mineral Resources and Mining*** is not clear about the interrelationship between the procedures of granting the environmental permit and license for use of mineral resources and mining. However, the Law on Environmental Permit envisages conducting of EIA and granting the environmental permit for some activities, which under the Law on Mineral Resources and Mining are subject to licensing.

The waste disposal issues are not regulated by the Georgian legislation currently in force, since the draft law on waste management is still not adopted. However, the Law on Environmental Permit considers obtaining separate environmental permit for recycling and disposal of waste (activity included in Category I activities). As stated during interview, the decision on industrial waste disposal is usually made in coordination with local authorities.

In addition to the licenses or permits mentioned above there are some other clearance documents that the project proponent should obtain to proceed with the planed activity. Usually it is required from the project proponent to obtain right on the land (project site) or at least get guarantee before application to the MoE for environmental permit; however, this requirement is not clearly defined by the legislation. If the project site involves state forestland, than project proponent is required to get a clearance from the State Department of Forestry. At the same time, cutting of trees or use of state forestland itself could be subject of environmental clearance, since such activities fall under the Categories II and III activities according to the Law on Environmental Permit.

Last year the Law on Environmental Permit was amended. According to the amendment, when activity falls under the Category I, project proponent is also obliged to present to the MoE document proving that proposed activity complies with the sanitary-hygienic rules and norms. Such document must be issued by the State Agency of Sanitary Supervision. The type of the document to be issued is not clearly defined by Law. Article 1 of the amendment states that this should be “agreement”, while further the same Article allows to assume that this could be a “decision”.

There are two other clearance documents defined by the Georgian legislation that should also be kept in mind. In both cases, interrelationship of these documents with environmental clearance procedure it is not clearly defined by the legislation.

According to the Order #20 of the Head of State Inspection of Technical Supervision (adopted on July 17, 2003), certain activities shall be subject to the technical safety expertise, which is to be executed by the State Inspection of Technical Supervision. Results of the technical safety expertise should be reflected in the “expert decision”, which is the document proving compliance/incompliance of the proposed activity with the technical safety requirements. List of activities that shall be subject to the technical safety expertise is not categorized, however in a way it corresponds with the lists defined by the Law on Environmental Permit, though the wording is absolutely different.

Another legal act that in a way creates confusion when speaking about environmental clearance is the Law on State Complex Expertise and Approval of Construction Projects. The law stipulates that the purpose of the state (complex) expertise is to explore compliance/incompliance of the construction project with the Georgian legislation, approved concepts and state programmes of construction and construction rules and norms. The state complex expertise is carried out by the Ministry of Urbanization and Construction, however, according to the Law the state complex expertise itself involves two other types of expertise – technological expertise (which is carried out by the Ministry of Economy) and ecological expertise (which is performed by the MoE). The entire process is coordinated by the Ministry of Urbanization and Construction. The outcomes of the state complex expertise should be reflected in a “compound decision”. The positive decision is validated by the Ministry of Urbanization and Construction, which issues approval document. The type of the document is not clear from the Law, however the Law stipulates that this document is the superior clearance document allowing project proponent to start construction on the territory of Georgia. The list of activities defined by the legislation that undergo state complex expertise does not comply with those defined by the Law on Environmental Permit.

In fact, the Law on State Complex Expertise and Approval of Construction Projects totally ignores the environmental clearance procedures established by the Law on Environmental Permit and the Law State Ecological Expertise. In addition, the Law grants the right to the Ministry of Urbanization and Construction to approve all the guidance documents (regulations, manuals, guidelines) of the ministries involved in state complex expertise, as well as control their activity.

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The Law on Oil and Gas should also be discussed briefly, since it establishes different environmental clearance procedures for oil and gas projects.

The Law on Oil and Gas adopted on 16 April 1999 regulates issues specifically related to oil and gas operations undertaken in Georgia. New state authority – State Agency for Regulation of Oil and Gas Resources was established under the Law to execute state supervision over the oil and gas operations in Georgia. The Agency is given the right (a) to sign the agreement with the project proponent which grants the right to exploit oil and gas resources on the territory of Georgia, and (b) to issue license on use of oil and gas resources with the conditions identical to those of the signed agreement. Among other functions, Article 8 of the Law also grants the Agency the right to issue on behalf of the State any necessary authorizations, allotments, permits, certificates, etc. for oil and gas operations.[7]

The Regulation on National Rules for Oil and Gas Operations (approved by the order #2 of the Head of State Agency for Regulation of Oil and Gas Resources) elaborates further on this topic presenting detailed rules of application and clearance. According to the Regulation, the agency is authorized to issue permits on: (a) field geophysical operations, (b) well-drilling, (c) significant reconstruction of the wells and exploration of the new deposits, (d) marine construction, (e) decommissioning, (f) compression of oil and gas residuals, (g) disposal of oil and gas residuals, (h) construction of facility for recycling of oil and gas residuals, and (i) burning the gas and/or air emission.

Chapter IX of the Regulation is totally devoted to the environmental protection related issues and among them to the contents of the EIA report and the procedures of its review and approval. Specifically, in order to obtain any of the above listed permits, Regulation obliges the project proponent to present application to the Agency. According to the Article 143 of the Regulation, application should contain EIA report and Environmental Protection Plan (EPP). The Agency is authorized to review and approve EIA report in 30 days. In exceptional cases, this period of review and decision-making could be extended to 90 days, if the EIA report has to be brought in compliance with the Georgian environmental legislation. After the "decision on compliance of EIA" is made, the Agency has 30 days to approve EPP.

As for coordination with other authorities, the Regulation devotes only two short clauses to the issue. First clause (Article 272) states that not less than 60 days before announcement on the tender, the list of blocks subject to tender, as well as information on their location and description of the boundaries should be presented to the state authorities, including the MoE. Another clause (Article 273) stipulates that any of the state authorities can (!) present to the Agency information on known ecological, cultural or other characteristics of the site that might be adversely affected by oil and gas operations or those blocks that need "special permit" (?). The Agency should consider information and send its opinion to the potential participants of the tender.

Public participation is regulated by the Article 148 of the Regulation, which is the only article devoted to the issue. Even though the Article is named as "Public Participation", it only provides for dissemination of limited information, i.e. "one way" flow of information with basically no opportunity to comment. The Article states that "*any member of public can apply to the Agency and receive information and get acquainted with the environmental impact assessment report. The Agency shall establish the period for public representatives to submit written comments on EIA report. The Agency can also hold public discussion on EIA if it decides that this will certainly meet public interest*". It has to also be noted that this rule does not apply to Environmental Protection Plan, but the EIA report.

Due to the fact that the Law on Oil and Gas established different rules for oil and gas operations, the Law on Mineral Resources and Mining was amended to avoid inconsistency. Nevertheless, consistency of the Regulation on National Rules for Oil and Gas Operations with environmental legislation currently in force and especially with the Law on Environmental Permit and Law on State Ecological Expertise is rather disputable.

Surprisingly, the clearance procedures established by the Regulation on National Rules for Oil and Gas Operations often referred as "one stop" approach by the interviewees is highly appreciated by some representatives of the MoE who recommended extending such approach on other types of projects, for instance, on agricultural and transportation projects. Their perception is that the State Agency for Regulation of Oil and Gas Resources merely plays an intermediary role between project

[7] According to the same Article, upon receipt of a notice from the State Agency for Regulation of Oil and Gas Resources, the state authorities are obliged to prepare and transfer to the Agency the requested documents.

proponent and authorities responsible for issuance of different types of clearance documents, thus easing job for project proponent.[8] However, in fact, based on the Regulation on National Rules for Oil and Gas Operations all the decision-making and enforcement power is accumulated in the hands of the Agency and at the same time the functions of several state authorities (among them MoE) are overlapped and duplicated.

Others argue that institutional environment should be taken into account when adoption of "one stop" approach is discussed. Nowadays many state authorities are trying to get a stake in licensing; however, institutional capacity and availability of resources to undertake this task, as well as willingness of the authorities to use the delegated power and ensure proper enforcement of the law requirements are rarely taken into account.

This way or another, it is obvious that the Law on Oil and Gas and the Regulation on National Rules for Oil and Gas Operations attempt to grant some competences of the MoE as well as other state authorities to the State Agency for Regulation of Oil and Gas Resources. Article 273, Article 147 and Article 145 of the Regulation on National Rules for Oil and Gas Operations clearly demonstrate such an attempt when stipulating that "within 30 days of submission of an EIA … the Agency shall take a decision as to whether the EIA is complete and adequate… For any EIA the time period required for the Agency to take a decision of completeness and adequacy may be extended to 90 days to be consistent with the existing environmental legislation…" (Article 145).

It has to be noted that Head of Department of Environment and Safety Control of the State Agency for Regulation of Oil and Gas Resources does not agree with the statement that competences of the state agency defined by the oil and gas regulations overlap with competences of the MoE. In his opinion, 90 days time period set by Article 145 of the Regulation corresponds to the 3 months time period set by the Law on Environmental Permit for taking decision on EIAs for Category I activities. As he noticed, in practice, the Agency receives EIA reports from applicants, checks "completeness and adequacy" and then passes to the MoE for State Ecological Expertise. Head of Department for Environmental Permit and State Ecological Expertise confirmed existence of such practice.

In respect to the oil and gas projects, the latest amendments (December 25, 2002) to the Oil and Gas Law should also be discussed. According to the amendment, in addition to the oil and gas operations described above, the State Agency for Regulation of Oil and Gas Resources is granted the power to issue licenses for oil refining, gas processing and transportation (within the territory of Georgia) of crude oil and gas, as well as oil and gas products. The Agency is also granted the power to ensure state supervision and compliance over the oil refining, gas processing and transportation activities.

It has to be noted that interrelationship of licenses issued by the Agency with environmental clearance procedure is not clear from the Law. The only clause (Article 302) showing interrelationship with the clearance documentation issued by other state authorities stipulates that within six months period after effective date of the Law, the licensees that already hold licenses for the activities shall apply for getting license to the Agency.[9] EIA and environmental clearance related issues are not directly regulated by the Law either. However, the Regulation on Approval of Application Form for Oil refining and Gas Processing Activity (approved by the order #12 of the Head of State Agency for Regulation of Oil and Gas Resources, June 24, 2003) obliges project proponent to submit EIA report along with other required documents to the Agency for approval.

To summarize, it appears that oil refining, gas processing and transportation activities fall under the same clearance regime as oil and gas operations described above, however clearance procedures are clearly formulated neither in the Law on Oil and Gas, nor in sub-laws (regulations). Such ambiguity has already showed its results. As the Head of the Department for Environmental Permit and State Ecological Expertise stated in the interview, the project proponents do not know where to apply for licenses. Project proponents also do not feel comfortable with the requirement of the Law on Oil and

[8] It is interesting to note that the notion of "one stop" approach is defined neither by the Law on Oil and Gas nor by the Regulation on National Rules for Oil and Gas Operations. This approach in a way is explained in the regulation on State Agency for Regulation of Oil and Gas Resources approved by the Presidential Decree #107 of March 28, 2000. According to the paragraph 7 of article 2 of the Regulation, one of the main goals of the Agency is: "to ensure "one stop" approach in the oil and gas operations, that means the State Agency is the authority where investor can receive necessary information on oil and gas resources in Georgia, as well as sign contract and get license. In turn, investor is accountable to the State Agency on compliance to the conditions of the contract and license."

[9] "Existing License for the Activity – document issued by the State prior to effective date of this Law and verifying the right of conducting oil refining, gas processing and transportation activity" (Law on Oil and Gas, as amended on December 25, 2002, Article 1, paragraph 2).

Gas which in addition to the license fee, obliges them to pay so called "regulation cost" to the State Agency for Regulation of Oil and Gas Resources (later this issue is discussed in detail). In such situation project proponents prefer to stop activities.[10]

As could be seen from the mentioned above, environmental clearance is rather complex process where neither procedures are well defined nor roles are clearly allocated. In such situation, it is not surprising that often project proponents are lost in a labyrinth of clearance documents required to proceed with the projects. In this respect, it worse to go back to the definition of the environmental permit defined by the Law on Environmental Permit. Article 2 of the Law states that "*environmental permit is an integrated permit which includes permits on emissions, waste disposal, etc.*"

6.1.3 Post-Decision Monitoring and Control

EIA as such is just a prediction of what might happen once a project is implemented. Since it is not an actual development it remains necessary to monitor and control the actual development of the project to check whether planned measures are implemented and law requirements and commitments are met or not. Compliance monitoring and control is of particular importance when decision is taken to proceed with project despite the number of uncertainties, however this crucial part of the EIA system is one of the weakest in Georgia.

The Law on Environmental Protection defines general requirements for law enforcement and the authorities eligible to enforce the law. It has to be noted that the Law on Environmental Protection is a framework law and thus, more detailed enforcement provisions are defined in a wide-range of Georgian statutes. Nevertheless, enforcement provisions contained in those laws still are very general not setting detailed enforcement responsibilities, procedures, enforcement measures etc. In addition, there is an inconsistency among law enforcement provisions of media specific laws. They do not reflect the concept of integrated pollution control, introduced by the Law on Environmental Protection, implying multi-media approach to the pollution control (UNDP, 2002a).

According to the legislation currently in force, the MoE is responsible for enforcement of environmental legislation, however several other state authorities (such as Ministry of Health Protection, Ministry of Agriculture and Food, Ministry of Internal Affairs, State Department of Geology, State Inspection of Technical Supervision, State Department of Forestry, State Department for Protected Areas, State Agency for Regulation of Oil and Gas Resources, Georgian International Oil Corporation) share this responsibility with the MoE. The current legislation vaguely but still defines their roles in the law enforcement.

Inside the MoE the pyramid of enforcement responsibilities is set in a following way: regional and municipal offices of the MoE and the Black Sea Protection Inspectorate through their environmental inspectors take direct field inspections. They are accountable to the Department for Environmental Management and Oversight, which develops policies, rules and procedures for regional offices and oversights their work. Department itself is accountable to the First Deputy Minister and the Minister, Chief Environmental Inspector. The Minister stays at the top of enforcement pyramid. However, neither the regulation defining structure and terms of reference of the MoE nor environmental laws set clear responsibilities for environmental inspectors as well as the rules and procedures for inspections (UNDP, 2002a).

It has to be noted that except for the Black Sea Inspectorate, there is no separate inspection body responsible for law enforcement under the MoE. For compliance control, the MoE keeps a staff of field specialists (environmental inspectors) within its regional and municipal offices. They are responsible for site inspections of licensees. They collect data on stationary source of pollution based on annual reports submitted by industrial facilities, which conduct self-inventory of air emissions and water discharges. Data on land contamination and industrial waste are not regularly reported due to inexistence of legal requirements on monitoring, record keeping and reporting on such pollution. Finally, pollutant release data are accumulated in media-specific departments at the central office of the MoE. Those departments are responsible for maintaining state pollutant release registers (UNDP, 2002a).

[10] As the Head of the Department for Environmental Permit and State Ecological Expertise stated, there are 26 oil refineries in Georgia, however only three are operating currently

As for environmental permit, the territorial units (regional and municipal offices) of the MoE and the Department for Environmental Management and Oversight (which coordinates control activities and oversights the work of territorial units of the Ministry) play key role in the post-decision monitoring and control.

As it was indicated during interviews with the staff of the MoE, the Department of Environmental Permit and State Ecological Expertise does not have any direct role in enforcement of the environmental permit conditions. In practice, at this stage, the function of the Department of Environmental Permit and State Ecological Expertise is limited to passing the copy of the decision of the State Ecological Expertise to the Department for Environmental Management and Oversight and the latter passes it to the territorial units of the MoE in that region where the activity is implemented. Described mechanism is also strengthened by the Regulation on the Rules to Carry out State Ecological Expertise, however, at the same time Article 24 of the Regulation is still confusing the reader. The Article states that control over the implementation of the decisions of State Ecological Expertise and the conditions of the environmental permits shall be performed by the structural units specially authorized by the authority responsible for State Ecological Expertise. In other words, in case of Category I activities, the Regulation grants the right to the Department of Environmental Permit and State Ecological Expertise to delegate the power of control to the unclearly indicated structural units.

The role of the Department for Environmental Management and Oversight and the territorial units of the MoE in monitoring and control over the implementation of the environmental permit conditions is not clearly defined by the legislation either; however, in practice they are responsible for controlling project proponent's compliance with the permit conditions. As the Head of the Department for Environmental Management and Oversight stated in the interview, the Department also carries the function of internal control within the MoE. The Department is granted the right to supervise periodically accuracy of the clearance procedures, i.e. to check whether permits, licenses or other clearance documents were granted in compliance with the procedures established by the legislation. The head of the Department stated that given the limited capacity of the Department's staff and limited resources, this task is not accomplished adequately.

In order to catch a full picture of post-decision monitoring and control, the capacity of environmental inspectors should briefly be discussed at this point. Environmental inspectors under the majority of the MoE territorial units have neither field measurement devices nor enough theoretical or technical knowledge to properly check records, compliance to the environmental permit conditions or detect violations. Besides, their salaries are too low to avoid falsifications and kickbacks during inspections and keep them at their positions for longer periods. Law enforcement tasks of local units are not delineated from regulatory and management functions, contributing to the low performance by inspectors. Furthermore, most of MoE local units lack of technical staff. Because of that, frequently only one field specialist is responsible for several environmental media, not having an expertise in all these fields (UNDP, 2002a).

Some respondents indicated that the Law on Control of Commercial Activities establishes strong legal restrictions to inspect the project sites due to a very limited right of entering a facility or taking enforcement actions. They stated that the environmental inspectors are not authorized to enter a facility without court permission, which can be obtained only if they hold sufficient proof on suspected violations. Given the difficulties to prove non-compliance without entering the facility and the low environmental awareness of the courts, the likelihood to obtain permission is quite low.

Other respondents expressed different opinion on whether the abovementioned Law really creates difficulties in practice. One of the interviewees stated that the problem of entering the site emerges when enterprise operates illegally. If the project proponent holds all the licenses, permits, etc., than entering the site for inspection should not be a problem. In case of illegal operation, in order to obtain the right of entering the facility, the court requires from the environmental inspector to prove the fact that facility operates. Obtaining such evidence is still impossible for inspector without entering the facility. An inquiry from the Tax Agency could be used as another mean of proving operation of the facility. However, the likelihood to obtain such inquiry is also low since there could be cases when facilities are not registered at the Tax Agency or Tax Agency might not issue inquiry stating that such information is a commercial secret of the facility.

Other interviewees stated that the sites where operators hold licenses on mineral resources or water use could easily be inspected, since the Law on Control of Commercial Activities does not cover the issues of performing control over the "use of natural resources". However, when it comes to the environmental permit or air emission limits, they are not considered to fall under the definition of "use

of natural resources". This makes difficult to inspect whether the conditions set under these clearance documents are met or not.

It is difficult for us to judge now on restrictions that the Law on Control of Commercial Activities might impose on enforcement responsibilities of the environmental inspectors. However, it should also be mentioned that one of the respondents (project proponent) confirmed that he did not allow environmental inspectors to enter the site referring on the Law on Control of Commercial Activities, but in a few days they presented a document signed by the Deputy Minister for Protection of Environment and Natural Resources (he could not specify the type of the document) allowing them to enter and inspect the site.

Due to the fact that the Law obliges project proponents to apply directly to the central office of the MoE to get approval for Category I activities, territorial units are frequently not aware of the proposed activity. As mentioned earlier, sometimes at the stage of informal consultation between the Department of Environmental Permit and State Ecological Expertise and project proponent, territorial units are asked to express their views on proposed activity; however, this practice is not strengthened by the Law and does not carry permanent character. The Head of the Department for Environmental Management and Oversight recommended to make obligatory consultation with the territorial units of the MoE at the scoping phase.

As mentioned earlier, after the environmental permit is issued, its copy is passed to the territorial units of the MoE; however, due to poor communication between local and central offices, delivery of the copies of the permits in many cases is too delayed. However, even if the copies are delivered in time, it is extremely doubtful that inspectors would be able find the project site or project proponent without hard efforts solely relying on data indicated in the environmental permit/decision of the State Ecological Expertise or provided by the Department of Environmental Permit and State Ecological Expertise. Based on the contact details indicated in the decisions of the State Ecological Expertise, as well as information identified in the database of the Department of Environmental Permit and State Ecological Expertise, authors of this report tried to contact several project proponents already holding environmental permits for Category I activities and operating in the capital city. However, finding the project sites and the project proponents, or those responsible for preparation of EIA reports appeared to be a difficult task. In some cases addresses of the project sites were incorrectly indicated, phone numbers were not indicated virtually for any project selected to visit. In some cases, project sites were not found at all. The staff of the Department of Environmental Permit and State Ecological Expertise explained that in fact, after granting the environmental permit the Department completely looses the track of the projects. They are not even confident that all the projects that were granted environmental permit are implemented indeed.

Head of the Department for Environmental Management and Oversight also indicated another problem related to the inspection of the project sites. As he stated, the companies operating the facilities in the regions are usually registered at the capital city of Georgia and the managers who could allow inspectors to enter the site are at the capital city as well. Thus, the inspectors must travel to the capital city to get consent from the managers to enter the site. Taking into account extremely limited resources of the inspectors, one can easily guess that in many cases they fail in getting consent from the managers and therefore are not able to check the site.

Due to poor communication between territorial units and central office of the MoE, delivery of information on locally approved proposals (Category III and Category IV activities) is also delayed. This in turn affects the process of preparation of EIA reports for Category I activities, as well as process of their review, since no reliable data exist to assess cumulative effects of the proposed activities.

Representatives of territorial units of the Ministry also stated that in many cases local investors start implementation of the projects without consent of the MoE, i.e. illegally, either because they are not aware of the EIA and environmental clearance procedures or deliberately. Environmental inspectors can detect such offences either themselves visually (if they are provided with the vehicles and fuel to observe subordinated territory) or if there is a public complaint of violation.

As reported, if project proponent starts implementation of activity with fulfillment of all the clearance requirements, than monitoring and control of compliance starts at the stage of project commissioning. Typically, before starting operation, commission is formed consisting of the representatives of different state authorities to check whether the construction requirements of clearance documents were met. Usually, regional offices of the MoE are also represented in the commission. Thus, at this stage

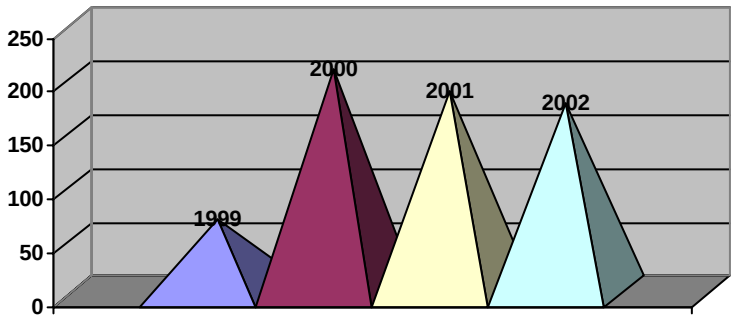
environmental inspectors are able to check compliance with those conditions of the environmental permit that should be met before commissioning of the project. As for monitoring and control of compliance at the operational stage, environmental inspectors are neither qualified enough nor provided with basic resources to undertake this duty adequately.

As mentioned earlier, the legislation does not define specific procedures for monitoring and control over the fulfillment of environmental permit conditions. Neither requirements for self-monitoring and reporting are defined. However, for last months practice of defining reporting and inspection requirements in the conditions of the environmental permits was established. Thus, under the newly established practice project proponents are required to present annual reports on the status of implementation of the environmental permit conditions to the relevant territorial units of the MoE. Frequency of inspection site visits is also defined by the conditions – once a year for activities that fall under the Category I and once in two years for activities falling under the Category II.

Finally, it has to be noted that the MoE annually prepares aggregated data on detected infringements of law that are subsequently presented in the statistical yearbooks. It is usually possible to find (not reliable but still) data on illegal logging, fishing or emissions to air, however it is hardly possible to find any data on violations of environmental permitting procedures or the conditions of environmental permits.

On our request, the Department for Environmental Management and Oversight of the MoE provided with the data on violations of the provisions defined by the Law on Environmental Permit detected in 1999-2002 (see Figure 2 below). Unfortunately, the types of violations and activity categories are not specified.

Figure 2. The number of cases when provisions of Law on Environmental Permit were violated



Source: MoE, the Department for Environmental Management and Oversight, 2004

6.1.4 Coordination between Stakeholders

As could be seen from the previous chapters, there are many different parties involved in the EIA related processes, however, the level of coordination between them is extremely low. This could be explained by three main reasons:

(1) The legislation currently in force does neither clearly define the roles of different parties involved in EIA system, nor procedures for their interactions. This is especially true in case of the state authorities and particularly, the MoE, which is the leading agency in the whole process;

(2) Capacities of the stakeholders to be fully involved in the EIA related processes are also very limited. They lack of human, technical and financial resources to fully participate, influence and contribute to the process;

(3) The stakeholders have low motivation to coordinate actions with each other. Interrelationship between them is more aggressive rather than cooperative. The primary argument in favor of strong cooperation, that coordination of interests helps to avoid conflicts, is usually ignored.

6.1.5 Public Participation

As far as public participation in the EIA process is concerned, the involvement of the general public is limited to the provision of information to them and consultation. Usually public has no opportunity to influence the decision making process, even though the Law on Environmental Permit (Paragraph 8 of Article 7 and Paragraph 2 of Article 16) requires from both, the project proponent and the MoE to take account of views expressed in the process of EIA study preparation, as well as in the decision-making. Such situation could be explained by two reasons. First, the vague EIA related legislation and second, inconsistency in the fulfillment of the legislation requirements by the MoE. Poor knowledge of public about the planned projects brought up for discussion, the lack of knowledge regarding the decision-making procedures or inadequately provided information further reduce effective public participation in the EIA process.

As for NGOs, approximately 4,000 NGOs exist currently in Georgia and among them around 2,000 are environmental. Despite such an impressive number of environmental NGOs, not all of them are active in social life. In fact, only several NGOs are expressing their views and participating in decision-making process. In some cases, if broad involvement of public and support from international organization exist, efforts of the Georgian NGOs are reaching their aim. On the other hand, due to severe social and economic situation, it is getting more and more difficult for NGOs to attract public and oppose to the implementation of the projects with negative environmental implications. It should also be noted that today many NGOs perceive themselves as scientific organizations or consulting companies, meaning that initial role of NGOs as defendants of public interests is actually lost.

There were many different views expressed by respondents (mainly by civil servants) on pros and cons of public participation in EIA and consequent decision-making process. Some respondents stated that since the public have a low culture of participation in decision-making process, it is easy to manipulate with them and in many cases they are not honest when opposing to the implementation of different projects. Others mentioned that the public and NGOs often have their “hidden agenda” and their arguments are not usually justified. Some said that public says its word only if particular project directly affects its property and they do not care of other issues related to the project implementation. General attitude of respondents was that it is not easy to take into account public interests during decision-making process since they are differently motivated and their motivations are absolutely polarized. However, respondents did not appreciate the fact that “public” is not homogenous body with a set of agreed common interests and aims. They might carry different interests that could be conflicting, but still they have to be taken into account as much as possible during decision-making process. If these interests are ignored at the decision-making stage, this could later result in conflicts, resolution of which might be more difficult and costly.

6.1.6 Financial Aspects of EIA System

As it was mentioned in chapter 5.4 of the Report, according to the Georgian legislation currently in force, the project proponents bear all the costs related to the EIA reports’ preparation. However, these are not the only costs the project proponents must bear in the process of environmental clearance.

Paragraph 6 of Article 7 of the ***Law on License and Permit Fees*** obliges the project proponent to pay permit fee[11] in order to get an environmental permit from the MoE. For Category I activities the permit fee constitutes 500 GEL,[12] for Category II activities – 300 GEL, Category III activities – 200 GEL and Category IV activities – 100 GEL. The permit fee paid by the project proponent is directed to the state budget. Fee revenues are not earmarked for any needs of the MoE or any state environmental projects.

In addition to the above mentioned, according to the Article 11 of the Law on State Ecological Expertise, the project proponents are also obliged to bear all the costs of the State Ecological Expertise, since in accordance to the same Article, costs related to the State Ecological Expertise is considered to be the part of the costs for organizing environmental clearance process.

[11] According to the article 2 of the Law on License and Permit Fees, the license/permit fee is an one-time obligatory payment to the state budget of Georgia or the budget of relevant autonomous republic (if the license/permit is issued by the relevant state authority of Autonomous Republic of Ajara or Abkhazia) paid by the person who applied for license/permit. Amount of fee shall be determined by the Law and paid for granting the right to undertake certain activity defined by the Law.
[12] As of May 10, 2004, 1 USD = 1.96 GEL

The payment paid by the project proponent for State Ecological Expertise is directed to the account of the MoE. The payment is used by the MoE to pay for experts participating in the State Ecological Expertise, to cover expenses of experts' field trips and other logistical costs, to disseminate information for public in the process of expertise, to provide technical support to the Department, to carry out additional surveys and laboratory analysis for the State Ecological Expertise. The amount of the payment for the State Ecological Expertise depends on the scale of the proposed project, thus the respondents were not able to specify even average amount of expenses of State Ecological Expertise. The rule of calculating the payment is defined by the Order #894 of September 5, 1992 of the Cabinet of Ministers on Temporary Rule of Financing State Ecological Expertise and the Payment.

It has to be noted that in addition to the environmental permit fee and the payment for the State Ecological Expertise the project proponents must also pay for clearance documents issued by other state authorities. The list of some clearance documents and relevant fees is presented in the Appendix A of the report.

In relation to the other clearance documents, which must be obtained by the project proponents from the state authorities, the Law on Oil and Gas should be discussed once again. According to the Law, in addition to the license fee,[13] project proponents must also pay so called "regulation cost" to the State Agency for Regulation of Oil and Gas Resources.

Article 1 of the Law states that "regulation cost" is a payment, which is paid by the companies conducting oil and gas operations, oil refining, gas processing and transportation to the State Agency for Regulation of Oil and Gas Resources. The payment shall be used by the State Agency for covering expenses of overall coordination, management, monitoring, control and supervision, as well as expenses related to the execution of other functions defined by the Law and other legal acts.

The amount of "regulation cost" is defined by the order of the head of the Agency. According to the legislation currently in force, the regulation cost for investors conducting oil and gas operations constitutes: (a) USD 3.0 per year for each square meter of the area defined by the agreement and license for use of oil and gas resources; and (b) USD 0.5 per year for each tone of stock-tank oil and/or each metric tone of natural gas. For oil refining, gas processing and transportation activities regulation cost of licensees constitutes: (a) oil refining – USD 997.0 per month and (b) oil product compounding - USD 1.2 for each tone of product produced as a result of compounding.

It is noteworthy to mention that in contrary to the license/permit fee, the "regulation cost" is not a one-time payment. The "regulation cost" must be paid on a quarterly basis. The Georgian legislation envisages administrative liability for non-payment or violation of payment terms.

In addition to the all abovementioned, it is important to refer to the statement of one of the respondents. Specifically, the respondent admitted that taking into account all the fees and other costs of obtaining clearance documents required under the Georgian legislation, it is more costly for the investor to operate legally rather than illegally.

As mentioned earlier, the MoE is the authority that is mainly responsible for enforcement of environmental legislation. In general, state budget is the major source for financing environmental monitoring and control, however, budgetary funds are not enough to operate the system even with minimum performance. Regarding the extra-budgetary sources, neither environmental tax revenues are earmarked for any of environmental expenses nor does the special environmental fund exist. The only extra-budgetary source for financing environmental monitoring and control are the revenues from noncompliance fees and payments for compensation of environmental damage. However, even these funds are not fully earmarked for environmental monitoring and control. Of these extra-budgetary funds, 70 percent goes directly to the state budget and only 30 percent stays within the budgets of the local units of the MoE. Ten percent out of 30 is disbursed for sustaining and stimulating the staff and 20 percent for maintaining and upgrading technical facilities. It has to be noted however, that the size of such revenues, is very small and unstable, strongly depending on the number of detected infringements of the law (UNDP, 2002a).

[13] it is notable that in accordance to the Law on Oil and Gas, the license fees paid to the state budget are directed to the account of the Agency to undertake its tasks

6.2 External Factors Affecting EIA Effectiveness in Georgia

6.2.1 Political and Socio-Economic Context

The great majority of the respondents indicated that the effectiveness of EIA system in Georgia is significantly influenced by socio-economic and political conditions currently existing in the country and the general attitude towards the environmental protection. In order to understand the context in which the EIA system operates those critical political and socio-economic problems that the country faces nowadays are briefly discussed below.

Up to now, the ***restoration of the territorial integrity*** of the State still remains the problem of paramount importance, since the settlement of the conflicts is an essential precondition for the stable development of the country. As a result of the conflicts in Abkhazia and the Tskhinvali region (South Ossetia) the number of internally displaced persons (IDPs) in Georgia nowadays exceeds 300 thousand whereas the indicated administrative-territorial units are *de facto* beyond the jurisdiction of the Georgian authorities. Ethnic-territorial conflicts, which are frequently perceived as instruments of manipulation by external forces, hinder the process of democratic decentralization of the power (UNDP, 2002c).

Both, ***inequity and poverty*** have increased dramatically last years in Georgia. While casinos are opening in the capital city, nearly 60 per cent of the population of the country lives below the poverty line, i.e. subsistence minimum and approximately half of those people live in absolute poverty. The problem of emigration should also be considered in the context of poverty. According to the latest data, approximately 20 per cent of the population left the country. The main reason this is the severe social and economic situation in the country. Scarcity of high-income places of work and the unfavorable business environment force people to search for sources of income outside the country. If we take into account that the economic crisis has led the most educated part of the society to emigrate, and provided that the current rate of emigration continues, a significant drain of human resources from Georgia is to be anticipated. In the long run, this could lead to a further deterioration of the situation in the country (UNDP, 2002c).

Legalizing the ***shadow economy*** and the elimination of consequent corruption still remain the major problem. According to latest data, over the last years at least 25-27% of Georgia's GDP was produced in the shadow sector. The existence of post-conflict/conflict-affected zones and the correspondingly insufficient protection of economic boundaries, weak institutional arrangements, the persistence of the old Soviet mentality, tolerance to corruption and low level of law-abidance are the main factors that contribute to the persistence of the shadow economy in Georgia (UNDP, 2002c).

Very little has been done about rampant ***corruption***. Several programmes were adopted and commissions were established to eradicate corruption in the higher bureaucratic institutions, however, decisive measures are still not taken. According to the survey, sponsored by the USAID and the WB in 1999, aiming to measure the public perception of the problem, the police and customs were named as the most corrupt institutions in the country (UNDP, 2002c). However, nowadays corruption seems to be everywhere. Although the degree of culpability might be different, corruption became a part of the whole system of administration. The roots of corruption might be tracked to the widespread poverty, wars and conflicts that Georgia experienced; however, it is more likely that corruption in Georgia is a product of thinking, rather than any external factor. In Georgia, corruption is accepted as a normal part of life. The person who pays a bribe to obtain government service that should be free of charge does not consider himself to be a part of corrupt deal, neither government employee who accepts the bribe. Corruption became a disease of the society.

Georgia, as other countries in transition, lacks experience in ***policy organization and governance***, since the country enjoys only around 13 years of being independent state. Policy organization is not based on strong policy-making traditions neither in terms of basic organizational traits, nor the integration of affected interests and the selection of regulatory paradigms. Today the state policy of the country in any field of development and social life is to a great extent reactive rather than proactive. Inflexible organizational and management systems of state authorities, vaguely defined responsibilities, overlapping and inefficiently distributed competencies among state authorities, weak decentralization of state power, incomprehensive legal framework – these is the shortest list of problems. However, a critically important problem is the lack of common national interests and the absence of a common vision on the future development of the country. This point in particular, against the background of weak inter-institutional cooperation and an incomprehensive system of

development planning, inexistence of strong will and commitment to follow identified priorities, has resulted in an inconsistent development of the country (UNDP, 2002c).

As for ***environmental protection***, the formal support of the State for environmental protection is not always reflected in terms of real support. This is clearly demonstrated by the public financing of the environmental measures. If one takes a look at the state budgets over the past ten years, one notices a drastic decline of expenditures on environmental protection. It could be said that environmental protection is regarded as the least priority and environmental considerations are often set back in the decision-making process (UNDP, 2002c).

The majority of existing strategies and plans were developed with the assistance of various international financial institutions. In most cases plans include activities, which are solely designed to attract future funding from international organizations. At present, most measures undertaken and those due to be implemented in the near future, are carried out with the financial support of donor countries and international financial institutions. This comes as no surprise, considering that the country today has difficulties not only in funding various sectors of country's economy from the state budget, but also in paying salaries and pensions on a regular basis (UNDP, 2002c).

6.2.2 Planning and Priority Setting

70 years of Soviet tradition of governance left Georgia with the remnants of the centrally planned economy. In Soviet times the central government attempted to control most aspects of everyday life of subordinated republics. Local governmental structures were merely administrative outposts to implement laws, regulations and decrees issued by the central authorities. The ability to address local issues locally was limited. Thus, today government has little experience in planning and priority setting, decision-making, polling residential satisfaction, etc. Since during the soviet times nearly every activity was centrally planned, nowadays in Georgia there is a lack of tradition of planning not only environmental activities, but also the entire system of the country's socio-economic development (UNDP, 2002c).

Today state authorities responsible for planning of country's development are weakly developed. Even though the current legislation defines procedures and methodology for setting short, medium and long-term strategic priorities, they require significant improvement. It could be said that the planning of the activities carries more character of declarations, rather than planning of real, feasible actions. Specific goals, strategies, priority actions and resources for their implementation are always clearly identified neither at the national, regional and local levels nor for specific spheres. Sometimes, around 30 decrees are adopted for a particular sector of the national economy in a year; however most of them are amendments to the initial document. This speaks of spontaneous character of the taken decisions, inconsistency and lack of strategic thinking.

Usually, separate subchapters of the country's development plans are devoted to the regulation of environmental protection and use of natural resources. It is to be noted, however, that in these plans environmental planning is not an integrated, but an artificially added part. The same could be said about other sectors of the economy. In the conditions of limited budgetary resources, weak inter-institutional cooperation, imperfect legislative framework and when it is hardly possible to identify any sector of country's economy, which could not be counted as a priority, every sector, i.e. state agency concerned, seeks to develop its own "agenda" to attract as much funds as possible to survive (UNDP, 2002c).

Even in the cases when based on the vague procedures the priority actions nevertheless are identified, funds for their implementation are rarely available. In addition, there are numerous cases when after adoption of the priority actions for a given period, implementation of a particular project (not included in priority action plans) is declared to be the priority action by the Presidential decree. Often necessity of the implementation of such projects is not considered in collaboration with the relevant authorities and mostly such projects are reflecting the interest of a particular authority or lobby groups (UNDP, 2002c).

In general, it could be said that the level of integration of environmental concerns in the country's social and economic development is extremely low. Economic, social and environmental activities are planned separately and procedures for their interactions are not defined. In fact, development planning of Georgia is a simple, mechanical mix of the different activities of different sectors of the country's economy.

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Environmental planning

The framework Law on Environmental Protection introduced the basic requirements to the system of environmental planning. Article 15 of the Law considers establishment of system of environmental planning as a prerequisite of the sustainable development of the country. The same Article defines general structure of the environmental planning system stating, that the system shall include long-term strategic plan (strategy for sustainable development), five-year plan (national environmental action plan) and the environmental management plans for objects of the activity (entrepreneurial or other activities, urban and development programmes, including infrastructure, building and sectoral development plans, programmes for protection and utilization of the water, wood, land, mineral deposits and other resources, as well as considerable reconstruction or technological renovation of the old enterprises, which have or are likely to have effects on the state of the environment). The Article also stipulates that the regional, local and sectoral programmes of environmental actions shall be elaborated. The Law states that the methodology and procedures for elaboration and frequency of the all abovementioned parts of the environmental planning system "shall be defined by the Georgian legislation". So far, these procedures were not developed.

There were several attempts towards the identification of the priorities and the planning of the environmental actions at the national, regional and sectoral levels. All these strategies and action plans were usually financed by the international financial institutions and donor countries with the minor counterpart contribution from Georgian side. It has to also be noted that the Government has never assessed effectiveness of such investments.

At present, the planning of environmental measures is mainly carried out by three state authorities. These are: the MoE, the Ministry of Health, Labor and Social Affairs and the State Forestry Department. According to their field of competence as defined by the Georgian legislation, the Ministry of Agriculture and Food, the Ministry of Urbanization and Construction, the State Department of Land Management, the Ministry of Transport and Communications also participate in the planning of environmental measures. The MoE determines the priority directions for environmental planning at the national level.

It should be noted that cooperation and communication among the aforementioned agencies is extremely weak. Often their spheres of competencies overlap, the functions are duplicated and vaguely defined. Frequently, agencies pursue their priorities independently and pay little attention to the interests of other parties. Collaboration among agencies often depends on personal relationships rather than procedures specified by the legislation.

As far as public participation in the planning of environmental measures is concerned, the involvement of the general public is limited to consultation and the public has no opportunity to influence and participate in the decision-making process.

6.2.3 Influence of Powerful Persons

It is acknowledged that the planning is a process, rather than a static exercise with a defined end-point. That is why implementation of the plans must be carefully monitored and course must be corrected when necessary. However, these corrections should not be made due to the intervention of special interest groups after the plan is adopted. In case of Georgia such interventions take place quite often when after the adoption of the country's development plans, i.e. when priority actions (though based on vague procedures) are already defined, the President adopts decrees declaring particular projects as a priority for the country's socio-economic development and orders the state authorities to support them. Often necessity and feasibility of such projects is not considered in collaboration with the interested authorities and mostly such projects are reflecting the interest of a particular authority or lobby group. In such cases, usually, environmental clearance procedures, as well as other sectoral clearance procedures are ignored and in best case, EIA reports are prepared at the construction phase.

One of the examples showing inconsistency in the decision-making and the influence of different lobby groups on the decision-making process is the development of the terminals in the city of Poti at the Black Sea coast.

On September 25, 1996 the President of Georgia adopted the Decree No. 642 approving the joint proposal of the Corporation Sea-Land Service (USA) and the Ministry of Transport of Georgia on development of the network of terminals for transportation of containers and specifically, construction of the new terminal for transportation of the containers in the city of Poti. After two weeks, on October 14, 1996 another Presidential Decree No. 669 was adopted, approving proposal of the Ministry of Energy of Georgia and foreign investors on construction of the terminal in Poti for transportation of liquid gas. On March 14, 1999 the Presidential Decree No. 105 was adopted, which this time was approving the joint proposal of the Poti Port Administration and the company Channel Energy Limited on construction of the terminal for transportation of oil products. Soon after the adoption of the Decree another one was adopted (November 15, 1999, Decree No. 1388) approving the proposal of the Georgian Joint Stock Company "Kolkheti" on construction of the new port in the city of Poti.

All abovementioned decrees were approving constructions and requiring from the central, regional and local authorities to facilitate to the constructions. In addition, almost all of them were requiring verification of the construction works only with the President of Georgia.

Another example is the construction of the Kulevi Marine Oil Terminal in the western part of Georgia at the Black Sea coast. On September 8, 1999 the President adopted the Decree approving proposal of the Terminal 2000 Ltd. (joint venture of Argomar Oil Handelsges mbH (Austria) and Georgian Railway Ltd.) on construction of the marine oil terminal in Kulevi. In this case as well, the state central, regional and local authorities were only required to facilitate to the construction.

It is to be noted that the project site was located on the territory, which in 1996 was included in the list of wetlands of international importance under the Ramsar Convention and also covered marine part of the Kolkheti National Park (established by the law in 1998). Construction works begun with various infringements of national and international law, however, despite all the violations, when the issue of legality of the construction was raised, the Government and the Parliament decided to support controversial project and legalize illegal construction. In July 2001, around 100 hectare of land was removed from the Ramsar Convention site by the resolution of the Parliament.

As it could be noticed from the above-mentioned facts, the requirements of the national and even international law are easily evaded when the interests of individuals in leadership positions are involved.

6.2.4 Capacities and Motivations

State Authorities

As mentioned earlier, besides the MoE there are number of state authorities that are involved in environmental protection and regulation of natural resources. These institutions are as follows:

- The Ministry of Labor, Health and Social Affairs
- The Ministry of Urbanization and Construction
- The Ministry of Food and Agriculture
- The Ministry of Internal Affairs (the Main Department of Ecological Police)
- The Ministry of Transport and Communication
- The State Department of Geology
- The State Department of Protected Areas
- The State Department of Land Management
- The State Department of Forestry
- The State Department of Hydrometeorology
- The State Department of Standardization, Metrology and Certification
- The State Technical Inspectorate
- The State Agency for Regulation of Oil and Gas Resources

In general, it could be said that functions of these authorities are not always clearly defined. Often their jurisdictions are overlapping and the coordination between them is missing. In the conditions of absence of a common vision on country's development, inexistence of strong commitment to follow identified priorities, vaguely defined procedures for inter-institutional cooperation and limited budgetary

resources, the state authorities are lowly motivated to coordinate actions with each other and try to compete rather than cooperate in implementing their functions.

In addition, the common problem is that all of them are lacking of the adequately trained staff. The institutions are mostly overwhelmingly dominated by technical professions, which are weak in strategic thinking and planning. Salaries in the state authorities are extremely low which leads to the lack of commitment and makes it difficult to attract qualified personnel (UNDP, 2002c).

Frequently, duplication of functions and unclear functional boundaries of the state authorities allowed them to point out on each other when the issues were brought on their insufficient work or when they were accused in not fully using mandated power. Such situation was subject of discussions during many years and many times recommendations were made to clearly delineate competences and responsibilities of the state authorities, however decisive measures have not been taken until now.

After the recent developments in Georgia, the new structure of the governance was introduced and the number of state authorities was restructured. According to the newly adopted Law on Structure, Competence and the Rule of Activity of the Government of Georgia (adopted on February 11, 2004), legal status of the state departments has been changed. Under the new rule, almost all the state departments fall under the subordination of a particular ministry. In case of the MoE, according to the Law, the State Department of Forestry, the State Department of Protected Areas, the State Department of Geology and the State Department of Hydrometeorology fall under the subordination of the Ministry. In addition, the functions of the State Department of Land Management were divided between two authorities – the Ministry of Justice and the MoE. The Law does not clearly differentiate the functions that are attributed to those two authorities. The Article 35 of the Law stipulates that the State Department of Land Management shall fall under the subordination of the Ministry of Justice; However, at the same time, Article states that those functions of the Department that are related to the rational use and protection of land resources, combating with soil erosion, reinstatement and preservation of soil fertility, execution of state control over the requirements of legislation on land use and land protection, as well as land inventory shall be attributed to the MoE.

Paragraph 7 of the same Article stipulates that within three months period after putting in force the Law, amendments to the legislation currently in force shall be presented to the Parliament for adoption. Taking into account past experience, it is doubtful that the deadline set by the Law will be met and/or the inconsistencies in allocation of functions among the state authorities will adequately be addressed.

Due to the fact that until the adoption of the amendments all the state authorities continue functioning within the frame of their former competences, in this chapter, as well as in the entire Report we are referring to the legislation and practice existing before adoption of the Law on Structure, Competence and the Rule of Activity of the Government of Georgia. Furthermore, since according to the current legislation, the MoE is the key authority, which is responsible for administration of EIA related processes, the capacity of the MoE in general, as well as relevant units of the Ministry, is analyzed further in this chapter (see the current structure of the MoE in the Appendix B).

According to the current administrative structure of the MoE, the Ministry consists of a central office, 12 territorial units, several scientific institutes, the Black Sea Protection Conventional Inspectorate and monitoring laboratories with a total staff of 522, of whom 196 work in the central office in Tbilisi. The Ministry also has three units with a special status of double subordination, which report both to the Ministry's central office and to the local authorities. They include the Ministry for Protection of Environment and Natural Resources of Autonomous Republic of Ajara, the Ministry for Protection of Environment and Natural Resources of Autonomous Republic of Abkhazia and Tbilisi Committee for Protection of the Environment and Regulation of Natural Resource. The territorial units of the Ministry fulfill certain environmental permitting functions and are entirely responsible for enforcement. They are principally responsible for identifying sources of pollution and investigating cases of pollution emissions and discharges. The Ministry also operates several institutes, centers and laboratories dealing with the scientific research (UNECE, 2003).

As it was mentioned previously, the functions and responsibilities of the MoE are not always clearly defined by the current legislation and in many cases overlap with the functions of other authorities. This is also true in case of structural units of the Ministry itself. Although the current legislation defines some tasks (mainly in environmental clearance) of the structural and territorial units of the MoE, their

functions are not properly defined and detailed.[14] This in turn results in insufficient integration and low coordination between them. The situation is the similar at the lower tires of the management. Allocation of the tasks between the workers of the units are not based on the formally approved ToRs, neither formal qualification requirements for hiring of workers are defined (UNDP, 2002b).

The information flow between the structural units of the MoE is not based on the clearly defined and detailed formal procedures. The exchange of information is extremely limited not only between different structural units of the Ministry, but also within the units themselves. The personnel of the Ministry admit that one of the effective ways to the access to information is their private contacts. Usually, they possess extremely limited information on the issues, which are out of their direct competence. Asking for information from others is often perceived as an intervention in their competence. Although everybody is complaining about the lack of the access to the information, no one gives information to others willingly. The major part of the personnel has no access to the policy documents, laws or regulations. Only few computers in the Ministry are connected to the Internet. Many of the personnel do not know any foreign language and are not skilled enough in using the computer or the Internet (UNDP, 2002b).

The working conditions at the Ministry leave a lot to be desired, especially at the regional offices. The Ministry does not have its own building. The units of the central office are situated on several floors of two buildings, quite far from each other. All these hinder internal coordination and information exchange. Some of the workers do not have a desk, or sometimes even a chair. Most of the rooms need to be repaired. The Ministry and especially its regional offices lack many of the physical amenities considered to be essential in most modern offices. Due to inadequate funding personnel must sometimes purchase basic supplies from their own salaries. They are in permanent lack of writing or printing paper and stationery. Most of the phones are often disconnected because of non-payment. The personnel (including those from the regional offices, for whom telephone is the only means of communication) has to use personal mobile phones and pay for the communication themselves. The Ministry has the same problems regarding lack of heat and electricity as many other places in Georgia (UNDP, 2002b).

The average salary at the Ministry is 51 GEL, which constitutes 44 percent of the official subsistence minimum (117 GEL). Some of the workers receive 18-19 GEL per month. While working at the Ministry, many promising young people acquire some knowledge and experience. They often use the Ministry as a springboard for getting a new job with a far higher salary. Often, even in case of finding better jobs, the persons try to keep their positions at the Ministry along with the new job (UNDP, 2002b).

Even though salaries at the Ministry are much less than adequate and the working conditions are poor, the personnel are still motivated to stay at the Ministry. They have different reasons for that, but still based on their motivations they could be grouped as follows: (a) people who keep low-income but still “prestigious” positions and hope to be promoted further; (b) people who travel abroad for business (attending meetings, conferences, workshops, etc.) or training; such events are often considerable sources of income for them; (c) people who are involved (or desire to be involved) in different programmes which are financed by different international financial institutions or donor countries; they get considerably higher salaries compared to the salaries of civil servants; (d) people who found better job opportunities, but still keep formal contact with the MoE – “just in case”; and (e) people who are not qualified enough to get jobs with higher salaries; working at the Ministry for them is just having some function (UNDP, 2002b).

In general, the Ministry is clearly facing the lack of experienced personnel with relevant knowledge and skills. In this respect, it has to be also noted that many programmes financed by the IFIs and donors included capacity building and personnel training components. In addition, many of the personnel attended different training courses abroad. The problem is that the acquired knowledge is not passed to others at the Ministry. Due to low salaries, the civil servants educated abroad usually leave the Ministry. Others, who still work at the Ministry, either are not trained for training of others or they are not motivated enough to do so.

As mentioned in chapter 6.1 of the report, two departments at the central office of the MoE (the Department of Environmental Permit and State Ecological Expertise and the Department of Environmental Management and Oversight) and its territorial units are the key units that are involved

[14] the regulations defining the specific tasks of the structural units of the central office of the MoE were adopted only in December 2003, however, as reported even these regulations are not sufficiently detailed

in EIA related procedures. Situation in these departments is very much the same as described above. In both departments, there are insufficient number of persons who are directly involved in EIA and environmental clearance related procedures. For instance, seven out of 15 people working at the Department of Environmental Permit and State Ecological Expertise are technical staff and only eight people are usually directly involved in environmental clearance procedures of proposed projects. Both departments lack of office equipment and permanently experience lack of financial resources to properly undertake their tasks.

The problems that the territorial units of the MoE face nowadays are discussed in chapter 6.1.3 of the report. However, as these units are entirely responsible for post-decision monitoring and compliance control, at this point it is noteworthy to discuss on the strengths and weaknesses of the territorial units more in detail. The discussion presented below is mainly based on the findings of the needs assessment study conducted under the MoE Capacity Building Programme in 2002.

As mentioned earlier in this chapter, the MoE territorial units have both, regulatory and enforcement functions. Specifically, they permit new developments of local importance and issue licenses for the use of natural resources as well as for air and water discharges. At the same time, they are responsible for compliance assurance monitoring and control. Most of the MoE territorial units do not have separate inspection divisions. Field specialists, responsible for either individual or several environmental media, implement both, regulatory and enforcement functions.

The majority of problems existing in the territorial units are of common character. Lack of funds, human and technical resources are the major issues almost for all of them, however, the magnitude of problems varies from office to office. Besides, each of the office has its own specific problems and priorities, stemming from existing environmental situation and the level of local capacity. Not all the offices have the same institutional strength. Neither all the regions are of the same strategic importance.

One of the major MoE institutional weaknesses in the field of compliance monitoring and control is that the Ministry does not have an established system of environmental inspectorate with well-defined law enforcement responsibilities and well-trained and adequately paid staff. Currently, field specialists in territorial units carry out enforcement responsibilities, which are not delineated from regulatory ones, hence causing inefficiencies in staff performance. Another problem is that there is apparent copying and overlapping of powers between the MoE and other law enforcement authorities. In such situation, the authorities try to compete rather than cooperate with each other. The lack of qualified staff is a serious issue for many of the MoE territorial units. Frequently, only one field specialist works on all environmental issues, not having enough capacity to effectively carry out tasks.

Majority of the territorial units of the MoE exist under poor housing conditions. Most of offices are located in amortized buildings and need repair. They are at large unprotected from robbery. All the regional offices are equipped with basic pieces of furniture and at least one computer; however, limited power supply makes it impossible to operate the equipment regularly. Most of regional departments either do not have vehicles or have amortized ones. None of the MoE regional offices has analytical equipment for pollution measurements. Three analytical laboratories operated at present lack some of major sampling and analytical equipment. Most of existing equipment is out of date. Due to the poor QA/QC system, measurement accuracy is not guaranteed. None of the laboratories is certified by the relevant body.

State budget is a major source of financing of the territorial units of the MoE. Taking into account the magnitude of needs, public finances are not enough for operating and maintenance of the MoE offices even with minimum performance. As mentioned earlier, salaries are usually too low to give an incentive to local staff to stay at their position for longer periods or avoid bribery. Certainly, there can never be a legitimate excuse for bribery; however, conditions under which the local staff works are the main determinants of why they might be engaged in corrupt practices, though there may be some who do so simply because of greed. As one of the interviewees stated, the personnel at the territorial units of the MoE responsible for compliance monitoring and control are neither protected physically nor supported financially and morally to undertake their tasks.

Project Proponents (Investors)

In the conditions of vague legislative framework, the poor coordination between the state authorities and the weak system of compliance monitoring and control, project proponents are often trying to implement their projects by ignoring procedures of approval established by the legislation. Sometimes

investors start implementation of projects without prior consent of the state authorities and implementation of such projects often are approved by the Presidential decrees or supported by different lobby groups. In such cases, only commercial interests are taken into account, while possible social, economic and environmental implications of the projects are ignored. On the other hand, the state authorities often ignore interests of investors during elaboration of their strategies and plans or adoption of regulations. Attempts are rarely made to define the interests of the investors and to assess whether there are any groups that feel threatened by pursuing particular strategy, plan or adopting new law or regulation.

As for EIA and environmental clearance process specifically, one can guess time and cost implications of the environmental clearance procedures described in previous chapters. Many national investors try to comply with the requirements of the legislation and get approval at the project-planning phase (or at least at the construction phase). However, in many cases, it is easier and less costly for investor either to pay fine for infringement of law, amount of which is too low or give bribe to the inspector. It has to be noted as well that often project proponents are just not aware of the clearance procedures, since there is no particular agency (or units at the state authorities) where they can get complete information on all required clearance documents that need to be obtained prior to proceeding with the activity.

EIA Practitioners (Private Consulting Companies)

As indicated in interviews, during last years the demand on providing so-called environmental services (i.e. preparation or assisting in preparation of EIA reports, environmental auditing, etc.) has increased in Georgia. Accordingly, the number of consulting companies providing such services has increased also. It is to be noted, however, that quality of their work is not always sufficient. In general, three groups of consulting companies currently operating in Georgia could be identified:

(a) There are few well-established consulting companies that are mainly oriented at providing services to the foreign project proponents and the projects in which IFIs are involved. Since such clients are not many in Georgia, there is a competition between consulting companies to get a contract. Usually, these companies are not providing service directly to the project proponents, but act as the subcontractors of the foreign consulting companies hired by the project proponents. The quality of EIA reports of such companies is sufficient to get an approval from the MoE.

(b) Compared to those mentioned above, there are more consulting companies oriented at the national investors (mostly large enterprises). The quality of their EIA reports is often low. Good knowledge of labyrinth of environmental clearance procedures and good relationship with the MoE is their competitive advantage.

(c) The last group of consulting companies (or persons providing consulting services) could be referred as newly established ones. These companies try to find their niche at the market and are mainly oriented at small and medium size enterprises. Usually, they are not knowledgeable and experienced EIA practitioners and the quality of EIA reports prepared by them is extremely low. Low costs offered for service is the competitive advantage of such companies.

In respect to the consulting companies providing environmental services to the project proponents, an issue of their licensing (certification) should be discussed briefly. Article 23 of the framework Law on Environmental Protection of 1996 stipulates that some environmental activities that require special knowledge shall be subject to licensing. Such activities include: (a) environmental auditing; (b) hydro-meteorological activities; and (c) any other types of environmental activities defined by law. According to the Law, the regulation defining the rules of licensing should have been adopted by the MoE, which is authorized to issue licenses on environmental activities. Even though, the Law does not clearly define, but it is assumed that EIA practitioners also fall under the activities, which need to be licensed.

The regulation mentioned above is not adopted so far. Meanwhile, there are long-lasting discussions whether consulting companies providing environmental services to the project proponents should be certified or not. Proponents of certification argue that consulting companies providing such services should fulfill certain requirements to get a license from authorized body. In their opinion certification on the one hand will increase credibility of the companies and on the other, contribute to the improved quality of EIA reports prepared by them. Those that are against the certification argue that the Law allows project proponents to choose consulting companies based on the tender and the performance record should be enough to prove credibility of the company. Opponents of certification also afraid that introduction of licensing requirements might result in establishment of opportunities for corruption. Despite the differences in opinions, everybody agree that there should be an official register of

consulting companies providing environmental services. Project proponents should be free in choosing the company and the MoE should not influence their decisions.

Finally, it is noteworthy to mention that, although the Law on Environmental Protection introduces just very general provisions and neither the detailed regulation on licensing of environmental activities exist, surprisingly, the Law on Licensing and Permitting of Commercial Activities (adopted on May 14, 2002) defines two types of activities that are subject to licensing - "environmental activity" and "environmental impact assessment activity". The licenses for such activities must be issued by the MoE. The Law on License and Permit Fees already defines the amount of fee that should be paid for obtaining the license (150 GEL), however, fee is defined only for "environmental activity".

It has to be noted that pros and cons of licensing (certification) of consulting companies providing environmental services were discussed with almost all respondents, especially with the representatives of consulting companies themselves; However, none of them referred to the laws mentioned above. It could be assumed that interviewees simply were not aware of the fact that the mentioned laws in a way already regulate the issues related to the licensing of their activities.

Individual Experts (Scientists)

The system of scientific institutions in Georgia could be divided into three branches: academic (a network of institutes of National Academy of Science), applied (a network of applied research institutes of ministries and other agencies) and institutions of higher education (universities, academies, etc.). Nowadays scientific institutions face the same problems as many other organizations in Georgia, which greatly depend on transfers from the state budget. Due to low salaries, many qualified professionals left the country, some others left scientific work or teaching and moved to more profitable business sector or NGOs which are mostly dependant on grants received from different financial institutions. Very few scientists receive grants to support their scientific research. For some of those who still work at the scientific institutions participation in preparation of EIA reports and/or State Ecological Expertise of the reports became a mean for additional income.

Due to lack of financial resources, the scientists have limited capacity to undertake field trips, experiments or practical studies under the laboratory conditions. Thus, today many experts (scientists) participating either in preparation of EIA reports or their review are often criticized for sole reliance on professional judgment in the conditions when their judgments are not supported by the reliable data or practical experience. In addition, most of the national experts have limited access to the latest studies or information on modern technologies. Thus, in many cases they are not able to argue with project proponent on selected technology or suggest alternatives.

Another argument for criticism of national experts is that often experts involved in preparation of EIA reports become involved in scientific research that is of their interest rather than of direct relevance to the specific project proposal. The qualification of experts engaged in preparation of EIA reports or review is also subject of discussions. As reported, in many cases, they are not experienced enough in their field, the type of activity, the geographical region and in EIA in general. As indicated during interviews, often experts hired by the consulting companies or those participating in review of EIA reports are not aware of the purpose of EIA and its procedures.

Many respondents stated that for the majority of the experts it is difficult to understand tasks, present proper analysis and offer valuable recommendations. On the other hand, experts complain that companies, which usually hire them, do not properly explain their rights, tasks and the means (field trips, modeling, etc.) they can use for accomplishment of tasks.

In general, it could be said that on a glance, there is a scientific potential in Georgia, however, only few scientists can present adequate studies or conclusions when it comes to the preparation or review of EIA reports. It is generally observed that the higher the scientific degree of the expert, the lower is the quality of his/her work. Since there are not many experts who have adequate experience in EIA there could be cases when the same experts participate in preparation of EIA reports and their review.

In order to limit possibilities of involvement of experts with low qualification both in the preparation of EIA reports and in the State Ecological Expertise, the majority of the interviewees recommended introducing a mechanism for certification of experts and establishing a register of certified experts.

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Non-Governmental Organizations (NGOs)

As mentioned in previous chapters, there are not many environmental NGOs in Georgia, which actively participate in the decision-making process, pursue public advocacy work or lobby the public interest during decision-making. Not many are aware of the EIA procedures and possibilities of their participation in the process of environmental clearance of different projects. Neither they have capacity to participate and influence the process. In many cases, NGOs are staffed with people who joined the NGOs because they are paid better there. Many of the civil servants are simultaneously working at the state authority and the NGOs. Some NGOs are entirely engaged in providing consulting services.

Communication and coordination of actions between NGOs is minimal. However, there are some positive signs in this respect. At this point, if it is at all possible to speak about positive effects of implementation of the Baku-Tbilisi-Ceyhan pipeline project in Georgia, than strengthening of collaboration between NGOs in respect to this specific project could be considered as such.

According to the Georgian legislation, NGOs are empowered to commence a case if their rights on access to environmental information and public participation in the decision-making are violated. It has to be noted that this right has never been used by the NGOs until the recent past, when the NGO filled the lawsuit against the MoE and the project proponent claiming that provisions of Aarhus Convention, as well as the Georgian Constitution and the Law on Environmental Permit were violated when decision was made to grant environmental permit to the Baku-Tbilisi-Ceyhan Main Oil Pipeline Project.

General Public

Due to economic hardship, the majority of the public is concerned only with survival. Very few Georgians can afford to look beyond their immediate needs towards taking part in the decision-making processes, especially in cases of implementation of the large-scale projects generating new job opportunities, even though in some cases they are only short-term. It has to be noted, however, that sometimes local communities oppose to some developments in their regions. Usually, the motivation for that is the possible threat to their health and livelihood. Often, local community representatives are expressing their concerns quite late, when the environmental permits are already granted to the project proponents. This, on the one hand, talks of low awareness of the public on their rights to participate in the decision-making process and on the other, inadequate provision of public with information by the responsible entities.

As it was indicated during interviews, one of the factors determining low level of public participation in the decision-making process is the fact that the provisions on public participation determined by the current legislation are not well-shaped and detailed enough. Some respondents also recommended extending the period of public participation and decision-making set by the law, since three months period is not enough to identify weaknesses and omissions of EIA reports.

International Financial Institutions

In cases when International Financial Institutions (IFIs) are engaged in the projects, formal requirements of preparation of EIA reports and public consultation are met better, since in such cases, project proponents should comply with the requirement of the national legislations along with the requirements of the policies and the procedures of the IFIs which are in some instances stricter and more detailed than national legislation. However, as stated during interviews, involvement of IFIs in the projects does not affect to a greater extent the quality of EIA reports.

Another issue which sometimes rises disputes between NGOs and the IFIs is the categorization of the projects (attributing projects to category A or B), since categorization of a project is crucial decision that determines the level of public consultation and the amount of information that will be made available.

There were cases when NGOs felt that the categorization was not appropriate for the potential environmental and social consequences that could result from the projects. The way used to avoid the rules for full public participation or speed up the implementation of the project was splitting the project in several parts and starting with less controversial part. It was expected that once the institution approves a loan for the first part of the project, subsequent loans for the remaining project parts would be more easily processed. Incorrect categorization does not happen often, however when such happens NGOs require changing category, as that happened for instance, in case of Frontera Resources project in Azerbaijan and Georgia. The project, intended to increase oil exploration and

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transporting, was expected to be started without EIA and adequate public consultation (CEE Bankwatch, 2000).

7. Strategic Environmental Assessment

Strategic environmental assessment (SEA) is a relatively new procedure not only in Georgia but also in the whole world. At the European level, discussions on Strategic Environmental Assessment (SEA) as an instrument for taking environmental considerations into account during the planning and decision-making process, started to intensify in 1995. These discussions resulted in the adoption of the Proposal for a Council Directive on the Effects of Certain Plans and Programmes on the Environment (the so-called SEA Proposal) by the European Commission in December 1996. The SEA Proposal has the aim of setting up an environmental assessment system at a plan and program level and thus, complements the existing EIA system at a project level.

None of the laws currently being in force in Georgia contain any provision on SEA. However, requirement on carrying out EIA for plans and programs (what represents SEA in reality) stipulated by the Law on Environmental Permits can be considered as an attempt to introduce the principles of SEA. Law on Environmental Permits defines that all infrastructure plans, projects and programs (e.g. transport infrastructure development programs, long-term rehabilitation programs of the protected areas, plans and projects for protection and use of water, forest, mineral and the other natural resources throughout Georgia), require Environmental Impact Assessment before they are implemented since these activities are incorporated in the list of the Category I activities (Article 4). This provision can be regarded as the embryonic requirement for SEA. However, it is not common practice to apply EIA (SEA) for plans and programs in Georgia. The first attempt to carry out EIA for the plan was made recently, when “Kolkheti National Park Management Plan,” developed within the framework of the project on Integrated Costal Zone Management, was submitted to the Ministry of Environment for discussion. The Ministry required carrying out EIA as it is stipulated by the Law on Environmental Permits (Article 4, point 2). However, since it is not established any procedure for such activity and this case can be considered as a pioneer, the Plan proponents find the situation quite confusing and even meaningless.

It is worth mentioning that the willingness of Georgian Government to introduce the principles of SEA more sturdily into EA practice in Georgia is noticeable. The Georgian Government signed the Kiev Protocol on Strategic Environmental Assessment to Espoo Convention in May 2003. It is planned to take steps to ratify the Protocol, which envisages the binding requirement on SEA to all Parties at the very early stage of planning.

Besides, as it was mentioned in the previous chapters, the Ministry of Environment is drafting a new law on EIA. Development of the law is on its initial stage and as it was defined through the interviews with the relevant authorities, the law probably will serve as an umbrella law and envisage provisions on both EIA and SEA. However, the process is prolonged due to the lack of resources handled by the Ministry.

8. EIA System of Georgia and EU Standards

The major EU requirements in the field of EIA are specified in: (a) Council Directive 85/337/EEC of June 27, 1985 on the assessment of the effects of certain public and private projects on the environment; (b) Council Directive 97/11/EC of March 3, 1997 amending Directive 85/337/EEC of June 1985 on the assessment of the effects of certain public and private projects on the environment; (c) Council Directive 96/61/EC of September 24, 1996 concerning integrated pollution prevention and control.

Directive 97/11/EC applies to the assessment of the environmental effects of those public and private projects, which are likely to have significant effects on the environment. The activities to which it is applied is defined in accordance with Article 4 of the Directive in its I and II annexes. EIA for the activities under Annex I is mandatory, while for those under Annex II it shall be decided on a case-by-case basis. Unlike this provision, exhaustive list of these activities is given in Article 4 of the Law on Environmental Permit.

The comparison of these provisions merits consideration that the list of activities subject to EIA in Georgia should be brought in compliance with the Annex I of the Directive. In addition, open-ended provision and relevant list of the activities should be introduced in compliance with Article 4(2) and Annex II of the Directive (see matrix 1 below).

Article 8 of the Directive 85/337/EEC is another important provision. It states that the results of consultations with general public must be taken into consideration when making decision on the issuance of an environmental permit. This formulation should be introduced into the Georgian legislation on EIA, including *inter alia* the Law of Georgia on Environmental Permit.

Council Directive 96/61/EC of September 24, 1996 concerning integrated pollution prevention and control aims at achieving integrated prevention and control of pollution arising from the activities listed in Annex I. It lays down measures designed to prevent or, where that is not practicable, to reduce emissions in the air, water and land from the abovementioned activities, including measures concerning waste, in order to achieve a high level of protection of the environment taken as a whole, without prejudice to Directive 85/337/EEC and other relevant community provisions.

Article 9(2) of the Directive states that in the case of a new installation or a substantial change where Article 4 of Directive 85/337/EEC applies, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of that Directive shall be taken into consideration for the purposes of granting the permit.

Council Directive 96/61/EC is not implemented in Georgia.

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Matrix 1. Comparative Analysis of Country's EIA Legislation and Procedures with the EU Requirements

#	Issue	National Legislation (EIA System)	EU Requirements & Procedures	Comments
1.	Legal texts under review	Law on Environmental Protection (1996) Law on State Ecological Expertise (1996) Law on Environmental Permit (1996) Regulation on Environmental Impact Assessment (2002) Regulation on Carrying out State Ecological Expertise (2003)	*Council Directive of June 27, 1985 on the assessment of the effects of certain public and private projects on the environment 85/337/EEC* Council Directive 97/11/EC of March 3, 1997 amending Directive 85/337/EEC of June 1985 on the assessment of the effects of certain public and private projects on the environment Council Directive 96/61/EC of September 24, 1996 concerning integrated pollution prevention and control	
2.	Applicability of EIA	Environmental impact assessment implies study and research of the proposed activity in order to protect the particular elements of the environment and human beings, as well as the cultural heritage and scenery (Article 14(1) of the Law on Environmental Permits). It is applied on a mandatory basis to the activities listed in Article 4 of the Law on Environmental Permit.	The EU Directive 85/337/EEC as amended by Directive 97/11/EC applies to the assessment of the environmental effects of those public and private projects, which are likely to have significant effects on the environment (Article 1). The activities to which it is applied is defined according to Article 4 of the Directive in annex 1, 2 Directive	
3.	Type of activities subject to EIA/Screening	Exhaustive list of these activities is given in Article 4 of the Law on Environmental Permits.	Exhaustive mandatory list is given in Annex 1 of the Directive; however Article 4(2) also has an open-ended provision, saying that activities listed in Annex 2 may be subject to EIA.	The list of activities subject to EIA in Georgia (Article 4 of Georgia on Environmental permits) must be brought in compliance with Annex 1 of the Directive. Also open-ended provision and relevant list of activities must be introduced in compliance with Article 4(2) and Annex 2 of the Directive
4.	Scoping	Absent in Legislation		Scoping stage should be introduced into the Georgian legislation
5.	Assessment-Environmental Studies	Article 11 of EIA Regulation: Ranging from collecting background information on environment to identifying possible impact of the project implementation on human health and habitats, particular components and complex of environment, social-economic situation and development trends of society.	Article 5 + Annex 4 of the Directive	
6.	Mitigation and Impact Management	Article 11 of EIA Regulation	Article 5 + Annex 4 of the Directive	
7.	Public Participation	Article 15 and 16 of the Law of Georgia on Environmental Permits; Article 23 of the EIA Regulation	Article 6 of the Directive	Clear obligation on the part of investor to involve public in the process of writing the EIA report must be introduced;
8.	Post-Decision Monitoring	Law of Georgia on Environmental Permit	Article 8 of the Directive	The results of consultations with general public must be taken into consideration when issuing environmental permit

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9. Conclusions and Recommendations

Below the main conclusions and recommendations for possible future actions, which could enhance the effectiveness of EIA system in Georgia are presented.

1. EIA related procedures are mainly regulated by two laws - the Law of Georgia on Environmental Permit and the Law of Georgia on State Ecological Expertise. Both of them were adopted and came into force basically at the same time; however, in many cases they just duplicate each other's provisions. Both are establishing only general requirements for environmental assessment and clearance of the proposed activities, while detailed regulations that should ensure enforcement either do not exist or they are not as detailed and clearly formulated as to ensure proper implementation of the laws.

   The Law of Environmental Permit also introduces some elements of Strategic Environmental Assessment (SEA). It requires that all infrastructure plans and programmes shall be subject to EIA before they are implemented; however, as practice showed, application of EIA (which is primarily used at a project level) upstream to higher level of decision-making for plans and programmes seemed to be a difficult task.

   Recommendation

   Underscoring crucial importance of the environmental assessment as a tool for integrating environmental considerations into the development project, plans and programmes, it is recommended to substitute the Law on Environmental Permit, the Law on State Ecological Expertise and the Regulation on Environmental Impact Assessment with the Law on Environmental Assessment (EA). The Law on EA must be as much detailed as possible in terms of defining procedures, roles and responsibilities of those involved in the EA process. The Law could also serve as a framework for both EIA and SEA, introducing probably basic principles of the latter.

2. The Law on Environmental Permit divides proposed activities on four categories, where Category I activities are subject to EIA. The law defines the screening criteria, however in a very inconsistent way. In addition, one and the same activities are falling under the different categories or the types of activities are not clearly formulated, thus leaving room for subjective use of judgment.

   Recommendation

   It is recommended to establish clear screening criteria and clearly defined list of activities that compulsorily need EIA. In addition, expert panel could be established under the MoE in order to decide whether particular activity which does not fall under the Category I activities by law still could be attributed to it. It could also be useful to introduce mechanism of preliminary obligatory application by the project proponents to the MoE for screening decision.

   It is also advisable to reconsider the need of dividing proposed activities on four categories.

3. The Georgian legislation does not set any provisions regarding scoping at the early stage of EIA preparation, however, holding informal consultations between relevant department of the MoE and the project proponents to define the scope of the EIA reports is practiced. Consultations with the potentially affected communities, general public or the state authorities other than the MoE is considered neither by law nor by practice.

   Recommendation

   Scoping requirements should be introduced and well-shaped in the law. It can go in parallel with screening procedure meaning that when project proponents files preliminary application for screening decision it should also ask for scoping decision. To be more precise, there could be separate "application for screening & scoping" or "application for scoping", which must precede application for getting environmental permit.

   Wide-scale consultation at the scoping phase could reduce the likelihood of serious deficiencies of EIA reports and could help represent potential areas of conflict with the stakeholders. Thus, it is recommended to introduce the obligation on the part of project proponent (or the MoE) to hold

consultations at the scoping stage with all stakeholders involved in EIA process and especially with those potentially affected by the proposed projects.

4. The requirements of application for approval are scattered in several legal acts. The Law on Environmental Permit defines general requirements for application to obtain environmental permit; requirements for the same procedures are also partially regulated by other acts, such as Law on State Ecological Expertise, the Regulation on Environmental Impact Assessment and Regulation on Rules to Carry out State Ecological Expertise. However, the regulation clearly defining the form of application, exact list of documents (EIA report, etc.) and the timing of their submission is still not adopted. Since the legislation does not clearly define requirements for application, it is not clear either what are the documents that are subject to the State Ecological Expertise.

   Recommendation

   In order to fulfill the obligation set by the paragraph 7 of Article 5 of the Law on Environmental Permit, it is strongly recommended to adopt the regulation "on the rule of registration of environmental permit and application to be submitted in order to obtain environmental permit". It is also possible to incorporate the detailed requirements for application for approval in the new Law on Environmental Assessment.

5. Provisions of current legislation regulating the issues of exempting from EIA are extremely vague and sometimes contradictive.

   Recommendation

   It is recommended to clearly indicate preconditions of exemption from EIA and the detailed procedures of taking such decision. Requirements for ensuring public participation in such cases should also be clearly indicated. In this respect, it is also advisable to reconsider the issue of whether activities that previously fulfilled the environmental clearance procedures and are repeated or continued should absolutely be exempted from any kind of environmental assessment.

6. Many other licenses or permits should be obtained by the project proponent before or after the environmental permit is granted. Sequence of obtaining such licenses/permits/consents is not always clearly defined by the legislation. The Law on Environmental Permit does not provide with any explanation when and how other licenses/permits should be issued, while other sectoral laws either briefly mention or just skip the issue. Furthermore, there is no particular agency (or units at the state authorities) where they can get complete information on all required clearance documents that need to be obtained prior to proceeding with the activity.

   Recommendation

   It is recommended to amend media specific laws so as to clearly indicate interrelationship of environmental permit with other environmental clearance documents (for instance, license on water use, limits to air emission, etc.). Introduction of integrated permit should also be considered. Interrelationship of environmental permit with other permits/licenses/consents issued by the state authorities other than MoE should be clearly defined.

   It is also advisable to consider the need of establishment of either separate unit at the MoE or the separate units at the regional or local levels that will be responsible for guiding the project proponents throughout the clearance procedures and where project proponents will be able to get all necessary information about clearance documents and procedures that need to be fulfilled before commencing the proposed activities.

7. The legislation is too generic about public participation and does not provide for proper consultation with the affected communities and/or the general public neither at the stage of EIA report preparation, nor in the decision-making process. Often even these provisions are not strictly followed by both the project proponents and the MoE.

   The involvement of the public in the EIA processes is limited to the provision of information to them and consultation. Usually public has no opportunity to influence the decision making process, even

though the Law on Environmental Permit requires from both, the project proponent and the MoE to take account of views expressed in the process of EIA study preparation, as well as in the decision-making. Poor knowledge about the planned projects brought up for discussion, the lack of knowledge regarding the decision-making procedures or inadequately provided information further reduce effective public participation in the EIA process.

Recommendation

It is highly recommended to introduce detailed rules of public participation at the different stages of EIA system. It is also essential to strengthen (public or/and internal) control over the fulfillment of legal requirements of environmental clearance and ensuring public participation in this process. Public awareness rising campaigns on possibilities of public participation in the decision-making process could also contribute to the increased public participation in the EIA process.

8. The qualification of local experts participating in preparation of EIA report, as well as those participating in the State Ecological Expertise is not adequate. As reported, in many cases, they are not experienced enough in their field, the type of activity, the geographical region and in EIA in general. Often experts hired by the consulting companies or those participating in review of EIA reports are not aware of the purpose of EIA and its procedures. Since there are not many local experts who have adequate experience in EIA there could be cases when the same experts participate in preparation of EIA reports and their review.

   Recommendation

   In order to limit possibilities of involvement of experts with low qualification both in the preparation of EIA reports and in the State Ecological Expertise, it is recommended to introduce mechanism for certification of experts and establish a register of certified experts. It is also recommended to train the local experts to increase their knowledge of EIA.

9. The Law on Environmental Permit allows project proponents to select the consulting company based on the tender, however not many project proponents use this way and prefer to get advise from the MoE in selecting the “appropriate” company.

   Recommendation

   It is recommended to establish official register of consulting companies providing environmental services, so that to eliminate any chance of influencing project proponents’ decision in selecting consulting company.

10. The Law on Environmental Permit, as well as other acts related to EIA, environmental permit and other clearance documents clearly defines neither any specific procedures for post-decision monitoring and control nor requirements for self-monitoring or independent audit. At the same time, as it is apparent from the analysis, the Law on Control of Commercial Activities creates certain barriers for post-decision monitoring and control. It is understood that the MoE should monitor the compliance but in the absence of clear mechanisms for monitoring and control, there is complete uncertainty and hence highest possible probability that conditions set out in the environmental permit or other clearance documents can be by-passed by the project proponent.

    In addition, the Georgian legislation envisages only administrative and criminal liability (penalties, imprisonment) and does not contain any provisions on possibilities of stopping or closing the activities if the project proponents do not meet environmental permit conditions. The sanctioning system itself is not adequate enough to deter investor from violation of law and ensure proper compliance.

    The territorial units of the MoE (which are primarily responsible for post-decision monitoring and control), as well as the Department for Environmental Management and Oversight (which coordinates post-decision monitoring and control activities and also plays the role of internal control within the MoE), lack of technical, financial resources and adequately trained and qualified staff to properly undertake their tasks.

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Recommendation

It is strongly recommended to set detailed procedures for post-decision monitoring and control with clearly defined rights and responsibilities of the parties involved. For the overall effectiveness of the EIA system, it is of utmost importance to raise technical, financial and human capacity of the territorial units of the MoE to monitor and control compliance.

11. The effectiveness of the EIA system as well as the system of environmental governance in general strongly depends on whether the functions and responsibilities of the authority directing the system are clearly defined or not. In this respect, the situation in the field of functions and responsibilities attributed to the MoE is complicated. The current Georgian legislation does not clearly define the functions of the MoE and in many cases, its functions overlap with the functions of other state authorities. The situation is similar at the structural units of the MoE and the lower tiers of the management. This in turn results in insufficient integration and low coordination both, between the state authorities and the structural units of the MoE.

Recommendation

It is of utmost importance to clearly determine the functions and responsibilities of the MoE both in the EIA related processes and environmental governance and policy-making. It is recommended that decisions on attributing certain functions to one or another authority are taken on the basis of a well-considered political decision.

12. EIA as such is quite a new tool for Georgian EIA practitioners, as well as for those involved in review of EIA reports (experts involved in the State Ecological Expertise, NGOs, scientists, other interested parties). Often, people involved at different stages of EIA, lack of knowledge and experience in EIA. This in turn affects the quality of EIA reports and the quality of their review.

Recommendation

It is recommended to elaborate guidelines (instructions) for preparation of EIA reports for different types of projects. Such guidelines could be helpful for EIA practitioners during preparation of EIA reports, as well as for those reviewing it.

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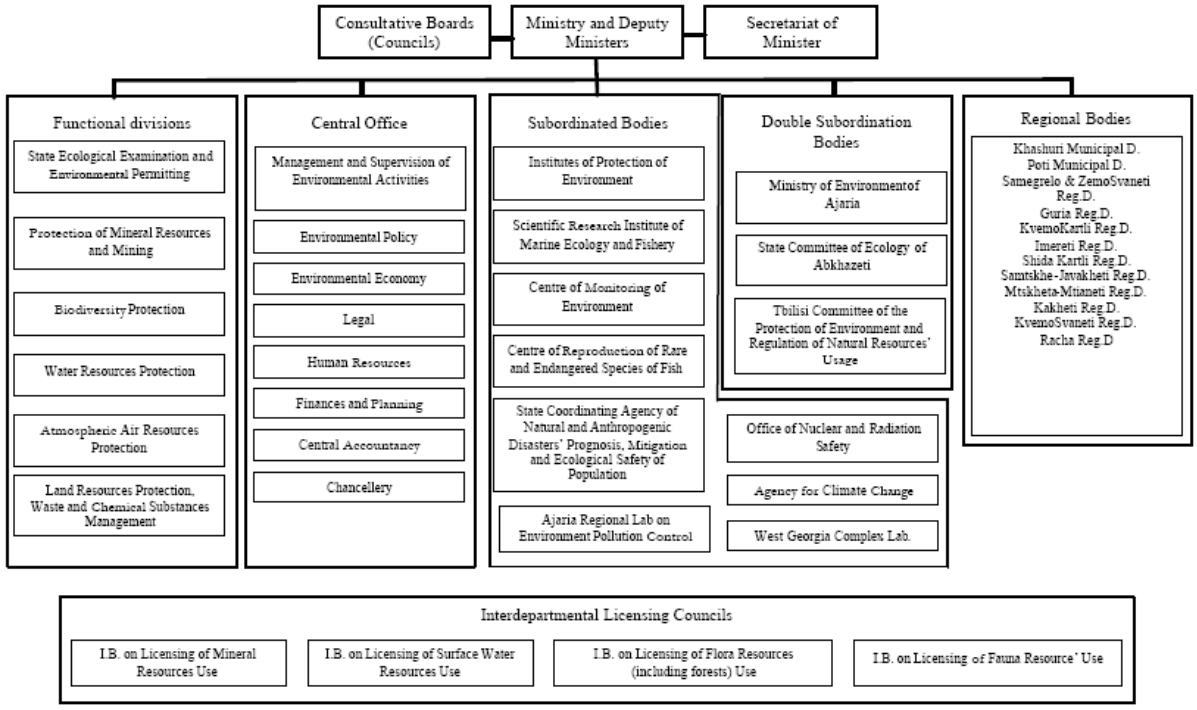
Annex I. Structure of the MoE as of May 2004



Source: UNECE, Environmental Performance Review, 2003

Annex II. Abstracts from the Law of Georgia on License and Permit Fees and Law of Georgia on Local Fees

Law of Georgia on License and Permit Fees, August 12, 2003

Article 1. General Provision

This Law, in accordance with Article 94 of the Constitution of Georgia, the Law of Georgia on the Basis of Fees' System and the Law of Georgia on the Basis for Issuing License and Permit for Entrepreneur Activity, defines the types and amount of fees, rule and terms of their payment for obtaining the right of implementation of activities subject to licensing/permitting as determined by the law and/or the right of use, as well as for certain services rendered by state organs.

Article 2. Definition of Licensing/Permitting fee

Licensing/permitting fee is one-time obligatory payment to the central budget of Georgia or to the budget of relevant autonomous republic (if the license/permit is issued by the relevant governmental agency of Abkhazia or Ajara Autonomous Republic), which is to be paid by an applicant for obtaining the right on implementation of the activity specified by the law in an amount established by the law.

Article 6. Amount of Licensing Fees

5. Designing-construction activity:
   a) Designing
      a.a) Engineering-research activities – 100 GEL;
      a.b) Urban planning – 100 GEL;
      a.c) Designing buildings for living, civil and public purposes – 100 GEL;
      a.d) Designing buildings for industrial and agricultural purposes – 100 GEL;
      a.e) Designing transport facilities – 100 GEL;
      a.f) Designing power, hydro-technical and melioration facilities – 100 GEL;
      a.g) Designing waterworks facilities, engineering systems and networks – 100 GEL;
      a.h) Expertise of construction projects – 100 GEL;
      a.i) Conservation, restoration-reconstruction and adaptation of historical and cultural monuments – 200 GEL;

   b) Construction activity
      b.a) Production of building constructions – 200 GEL;
      b.b) Construction of buildings for living, civil and public purposes – 200 GEL;
      b.c) Construction of buildings for industrial purposes – 200 GEL;
      b.d) Construction of power facilities – 200 GEL;
      b.e) Construction of engineering systems and communications – 200 GEL;
      b.f) Construction of transport facilities – 200 GEL;
      b.g) Construction of bridges and tunnels – 200 GEL;
      b.h) Construction of cable line, radio-telephone and TV-transmitting line and radio-station – 200 GEL;
      b.i) Construction of special building – 200 GEL;
      b.j) Construction of agricultural facilities – 200 GEL;
      b.k) Hydro-technical and melioration construction – 200 GEL;
      b.l) Installation of technological appliances and communications and maintenance – 200 GEL;

12. Nuclear and radiation activity:
   a) Designing, scientific-research work, control, monitoring, accounting, inspection, attestation and expertise – 90 GEL;
   b) Acquiring, transmitting, processing, transporting and other works related to nuclear materials, radioactive materials and radioactive waste – 200 GEL;
   c) Construction, possession and exploitation of nuclear and radiation facilities – 380 GEL.

16. Exploitation of oil and gas resources, oil refining, gas processing, transportation of oil, gas or/and oil products (in cases considered by Law of Georgia on Oil and Gas):
   a) Exploitation of oil and gas resources:
      a.a) Geological resources up to 20 million tons/m^2 – 65,000 GEL;

a.b) Geological resources from 20 to 60 million tons/m^2 – 130,000 GEL;
a.c) Geological resources 60 million tons/m^2 and above – 220,000 GEL;
b) Oil refining – 3,000 GEL;
c) Gas processing – 2,500 GEL;
d) Transportation of oil, gas and oil products – 2,000 GEL.

17. Use of natural resources (except oil and gas, land resources and forest)
a) Use of water resources:
a.a) Extraction of water from surface water bodies – 200 GEL;
a.b) Discharging wastewater into water bodies – 180 GEL;
a.c) Use of water bodies without extraction of water– 150 GEL;
a.d) Extraction of materials from water bodies – 300 GEL;
a.e) For resort and sport purposes – 250 GEL.
b) For the use of wildlife
b.a) For creation of hunting grounds and for hunting within the boundaries hunting grounds:
b.a.a) 0-10000 hectares – 800 GEL;
b.a.b) 10,001-20,000 hectares – 1,900 GEL;
b.a.c) 20,001-30,000 hectares – 2,800 GEL;
b.a.d) 30,001-40,000 hectares – 3,600 GEL;
b.a.e) 40,001-50,000 hectares – 4,400 GEL;
b.a.f) 50,001 hectares and more – 5,300 GEL;
b.b) Use of fish and water animals:
b.b.a) 0-2 tons - 30 GEL;
b.b.b) 2.1-10 tons – 50 GEL;
b.b.c) 10.1-20 tons – 70 GEL;
b.b.d) 20.1-40 tons – 90 GEL;
b.b.e) 40.1-60 tons – 120 GEL;
b.b.f) 60.1-100 tons – 200 GEL;
b.b.g) 1,001 tons and more – 400 GEL.

18. Environmental activity – 150 GEL.

19. Mineral resource industry and mining:
a) Study of mineral resources – 1,500 GEL;
b) Extraction of mineral resources – 3,500 GEL;
c) Processing of mineral resources – 3,500 GEL;
d) Mining of mineral resources – 3,500 GEL;
e) Mining activities – 3,500 GEL;
f) Use of Mineral resources:
f.a-f.p) – from 400 to 1,800 GEL depending on the type of activity
g) Extraction of solid mineral resources and processing their remains and waste – 500 GEL;
h) Construction and exploitation of underground facilities and natural cavities that are not related to extraction of natural resources and creation of facilities which require special protection.

20. Hydro meteorological activity:
a) Hydro meteorological expertise of the construction and territories – 1,600 GEL;
b) Marine and oceanographic monitoring – 1,350 GEL;
c) Heliographic monitoring – 1,350 GEL;
d) Environmental pollution monitoring – 1,350 GEL.

21. Geological activity:
a) Regional geological works and geological survey – 160 GEL;
b) Prospecting metal deposits – 190 GEL;
c) Prospecting non-metal deposits – 190 GEL;
d) Prospecting fuel deposits – 190 GEL;
e) Engineering-geological works – 190 GEL;
f) Geophysical works – 190 GEL;
g) Geochemical works – 190 GEL;
h) Geoecological works – 160 GEL.

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Article 7. Amount of permitting fees

"4. Permit for the construction of facilities of special importance and strategic importance:
a) Facility at the cost of 500,000 GEL – 1,000 GEL + 0.5% of the cost of the facility;
b) Facility at the cost from 500,000 to 1 million – 8,000 GEL;
c) Facility at the cost from 1 to 3 million – 14,000 GEL;
d) Facility at the cost from 3 million to 5 million – 19,000 GEL;
e) Facility at the cost from 5 million to 10 million – 24,000 GEL;
f) Facility at the cost above 10 million – 24,000 GEL + 0.01% of the cost of the facility.

6. Environmental permit:
a) Category I activity – 500 GEL;
b) Category II activity – 300 GEL;
c) Category III activity – 200 GEL;
d) Category IV activity – 100 GEL

12. Permit for Forest Use:

For the forest use for each type of activity specified in Article 51 of the Forest Code (except logging and hunting with the forest use ticket) – 8 GEL

Law of Georgia on Local Fees, May 29, 1998

Preamble

This Law, in accordance with the Constitution of Georgia and the Law on the Basis of the System of Fees, defines the type, amount and rule of introduction of local fees and rights and obligations of fee payers.

Article 1. Definition of local fees

Local fee is one-time obligatory payment to local budget, which is to be paid by physical and legal persons for obtaining the right of implementation of activities determined by the law and/or the right of use for a period (or without) specified by the body of local self governance (governance).

Article 5. Local Fees

1. Local licensing fees are:
a) Fee for the permit on commencement of the construction;
b) Fee for the permit on vendor operations;
c) Fee for the permit on dissemination of outdoor advertisements;
d) Fee for the permit on restriction of the use of public places;
e) Fee for the permit on local passenger transportation;
f) Fee for the permit on changing the structural-functional arrangement and appearance of the architectural object;
g) Fee for the permit on parking.

Article 6. Fee for the permit on commencement of the construction

1. Fee for the permit on commencement of the construction is to be paid by the physical and/or legal person - owner of the object under construction;
2. Fee may be introduced by the Sakrebulo (locally elected governing body) of the region and/or the city located outside of the region;
3. The amount of the fee introduced by the Sakrebulo must not exceed 1 GEL per square meter of the new object proposed for construction. The amount of fee for construction of the industrial facility in the resort area shall not exceed 5 GEL.
4. The Sakrebulo may decide to exempt from the fee or grant certain preferences to the construction of the object that is damaged as a result of natural disaster.

Annex III. List of Interviewees

#	NAME	ORGANIZATION	POSITION	DATE
		STATE ORGANIZATIONS		
1	Nino Chkhobadze	Ministry for Protection of Environment and Natural Resources	Minister	November 11, 2003
2	Gia Jorjoliani	Ministry for Protection of Environment and Natural Resources, Department for Environmental Permit and State Ecological Expertise	Head	April 27, 2004 May 13, 2004
3	Otar Turmanidze	Ministry for Protection of Environment and Natural Resources, Department for Environmental Permit and State Ecological Expertise	Deputy Head	October 21, 2003 October 22, 2003
4	Nona Khelaia	Ministry for Protection of Environment and Natural Resources, Department for Environmental Permit and State Ecological Expertise	Deputy Head	April 27, 2004
5	Marina Makarova	Ministry for Protection of Environment and Natural Resources, Department of Water Resources Management	Deputy Head	October 27, 2003
6	Avto Budagashvili	Ministry for Protection of Environment and Natural Resources, Department of Ambient Air Protection	Head	October 28, 2003
7	Dito Glonti	Ministry for Protection of Environment and Natural Resources, Department for Environmental Management and Oversight	Head	October 21, 2003 April 27, 2004 May 13, 2004
8	Merab Makharashvili	Ministry for Protection of Environment and Natural Resources, Shida Kartli Regional Department for Environmental Protection and Natural Resources	Deputy Head	November 18, 2003
9	Zaal Modzmanashvili	Ministry for Protection of Environment and Natural Resources, Mtskheta-Mtianeti Regional Department for Environmental Protection and Natural Resources	Senior Specialist	November 18, 2003
10	Nana Gogitidze	Parliament of Georgia, The Staff of the Committee for Environment Protection and Natural Resources	Senior Specialist, participated in preparation of EIA reports, as well as State Ecological Expertise	October 24, 2003
11	Tornike Gotsiridze	State Agency for the Regulation of Oil and Gas Resources, Department for Environment and Safety Control	Head	February 26, 2004
		CONSULTING COMPANIES		
12	Soso Tsabadze	Georgian-British Oil Service Consulting	Director. Former Head of Department for Environmental Permit and State Ecological Expertise	October 22, 2003

#	NAME	ORGANIZATION	POSITION	DATE
13	Maya Tavartkiladze	Dzelkva Ltd.	General Manager	November 18, 2003
14	David Kikodze	Dzelkva Ltd.	Executive Director	November 18, 2003
15	Vakhtang Gvakharia	Scientific Research Company Gamma	President	November 20, 2003
		INTERNATIONAL ORGANIZATIONS		
16	Nino Nadiradze	United Nations Development Programme, Georgia	Programme Analyst, previously participated in preparation of EIA reports	November 13, 2003
		NON-GOVERNMENTAL ORGANIZATIONS		
17	Malkhaz Dzneladze	World Wide Fund for Nature (WWF), Caucasus Programme Office	Consultant	October 30, 2003
18	Manana Kochladze	Association Green Alternative	Head	February 26, 2004
19	Nana Janashia	Caucasus Environmental NGO Network (CENN)	Executive Director	October 23, 2003
		INVESTORS		
20	Irina Samadashvili	British Petroleum (BP)	Environmental Coordinator	October 27, 2003
21	Marlen Tatenashvili	Oil Product Reservoir Ltd.	Director	January 16, 2004
		EXPERTS		
22	Irakli Macharashvili	NACRES	Independent Expert	November 7, 2003
23	Ucha Zviadadze	Professor, State Technical University of Georgia	Independent Expert	December 10, 2003
24	Merab Tvalchrelidze	Institute of Geology	Independent Expert	December 3, 2003

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6. Law of Georgia on Ambient Air Protection, June 22, 1999
7. Law of Georgia on Wildlife, December 26, 1996
8. Law of Georgia on Mineral Resources and Mining, May 17, 1996
9. Law of Georgia on State Complex Expertise and Approval of Construction Projects, 16 April, 1999
10. Law of Georgia on Control of Commercial Activities, June 8, 2001
11. Law of Georgia on Structure, Competence and the Rule of Activity of the Government of Georgia, February 11, 2004
12. Law of Georgia on Oil and Gas, 16 April, 1999
13. Law of Georgia on the Foundations of Issuing License and Permit for Entrepreneur Activity, May 14, 2002
14. Law of Georgia on License and Permit Fees, August 12, 2003
15. Law of Georgia on Local Fees, May 29, 1998
16. Resolution of the Parliament of Georgia on the Harmonization of the legislation of Georgia with the legislation of European Union of September 2, 1997
17. Decree N613 of the President of Georgia on the Strategy for Harmonizing the Legislation of Georgia with EU Legislation, June 14, 2001
18. Decree N642 of the President of Georgia on Approval of Construction of the New Terminal for Transportation of Containers in Poti, September 25, 1996
19. Decree N669 of the President of Georgia on Approval of Construction of the Terminal in Poti for Transportation of Liquid Gas, October 14, 1996
20. Decree N105 of the President of Georgia on Construction of the Marine Oil Terminal in Poti, March 14, 1999
21. Decree N 1388 of the President of Georgia on Approval of Construction of the New Port in Poti, November 15, 1999
22. Decree of the President of Georgia on construction of the Marine Oil Terminal in Khobi District, September 8, 1999
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24. Regulation on the Rule to Carry out State Ecological Expertise, approved by Order N85 approved of the Minister For the Protection of Environment and Natural Resources of Georgia, August 14, 2003

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35. Council Directive 97/11/EC of March 3, 1997 amending Directive 85/337/EEC on the Assessment of the Effects of Certain Public and Private Projects on the Environment

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