

Green Alternative's Policy Briefs are short analyses on some of the challenges to country's sustainable development. They are part of the broader Green Alternative's analytical works; some complement or summarize reports, while others combine analysis from the research with consultation around a pressing issue. The purpose is to convey urgent public policy problems and promote debate on courses of action to resolve them.

This policy brief is intended for public policy makers and practitioners; it will also be useful for those groups and individuals seeking to influence the policymaking processes.

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Opportunities for Public Participation in the Decision-Making on Issuing Environmental Impact Permits in Georgia

Introduction

The experience and awareness about a direct link between the effective development, on the one hand, and improved information availability, participation in decision-making and accountability, on the other, are constantly increasing throughout the world. This is especially obvious in environmental governance, i.e. in the field, where authority is exercised over natural resources and environment. Indeed, well-informed and educated public is better able to participate in the decision-making that affects the environment; informed and meaningful public participation, in its turn, is an effective instrument for integrating social and environmental concerns in the process of making decisions on economic policy and natural resource management; ensuring public access to justice creates an opportunity for holding decision makers accountable for their decisions. Thus, ensuring public access to information, public participation in decision-making and access to justice is a crucial step towards sustainable development.

Principle 10 of the Rio Declaration adopted in Rio de Janeiro in 1992 establishes the key institutional components of good environmental governance for any kind of governance model. In particular, according to Principle 10 of the Rio Declaration (see box 1), governments and other decision makers should ensure access to environmental information for their citizens; promote public participation in decision making and provide effective access to judicial and administrative proceedings, including redress and remedy. Just these three access principles represent fundamental norms of transparent, equitable and accountable decision making that are the basis for good environmental governance.

Principle 10 of the Rio Declaration

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

Increasing opportunities for public participation is an indicator of democratization of any government. Granting the right to the public, each social group or citizen to participate in decision-making is a certain compensation for the unequal distribution of environmental and social benefits and costs. The right to participation enables poor and socially vulnerable groups to better defend their interests in a decision-making processes.

Certainly, it is not only public participation that ensures sustainable development, but experience shows that the more open political processes and public authorities are towards public participation, the more it provides opportunities for integration of environmental and development issues.

Decision-making on environment covers a wide range of issues, from development of state policy, programs, action plans or legal acts to making decisions on issuing a permit for particular activity/project. This policy brief discusses the opportunities for public to participate in decision-making process on certain activities, as well as existing problems and possible solutions.

1. Review of legislation

Legislation regulating public participation in decisions on this or that activity has been acting in Georgia since 1997 and it envisages public participation in the process of issuing permits on activities that have adverse effects on the environment and human health. Following the adoption of laws in this sphere, some bylaws were approved, though with a certain delay, that established more detailed rules for decisions on issuing permits; however, this specification did not apply to public participation procedures.

1.1 Law on Environmental Permit

The Law on Environmental Permit was in force in Georgia in 1997-2005; it sets the procedures for making decisions on issuing environmental permits. The law envisaged a term of three months for examining the quality of Environmental Impact Assessment (EIA) (i.e. for carrying out the state ecological expertise) and making a decision on issuing an environmental permit. An environmental permit was issued through public administrative proceedings – the procedure which enables public participation in decision-making process. In that period, public participation procedure looked as follows:

Within 10 days after receiving a project developer's application for environmental permit (which includes EIA report), a permit issuing authority (Ministry of Environmental Protection and Natural Resources) was obliged:

- (α) To publish in the media the public notice on planned activity, as well as time and place of public consultation meeting;
- (β) To ensure public access to EIA report during the entire period (three months) of reviewing the application;
- (γ) To receive and consider written comments within 45 days after publishing the public notice;
- (δ) To hold a public consultation meeting no later than two months after receiving an application.

This system also enabled a project developer, before submitting an application to the Ministry (i.e. before initialing administrative proceedings), to hold public consultation meeting in order to receive comments on draft EIA report. Noteworthy that it was the project developer's right and not an obligation.

1.2 Aarhus Convention

In 1998, the Government of Georgia signed the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters in the Danish city of Aarhus. On April 11, 2000 the Parliament of Georgia ratified the Aarhus Convention; on October 30, 2001 the Convention entered into force for Georgia; it means that starting from this date the Convention requirements have a legal force prevailing over internal normative acts (except the Constitution of Georgia).

According to the activities listed in Annex 1 of the Aarhus Convention and pursuant to national legislation, the Convention demands a public authority to ensure public participation in making decisions on the activities that would likely cause a significant adverse effect on the environment. The Convention defines the key principles of public participation, particularly:

- Not only the parties concerned, but also the entire public concerned should have an opportunity to get involved in a decision making process;
- Public participation should be ensured at the initial stage of decision-making, when options are still open for making significant changes to the planned activities;
- Reasonable timeframes should be defined for public participation;
- Information on participation opportunities should be provided effectively to the public; it means that public notice on opportunities to get involved in decision-making should reach all the persons concerned;
- Public should have access to basic information on planned activities and decision-making procedures, as well as to all the documents to be discussed by a decision-maker;
- Public should also have an opportunity to submit comments in decision-making process;
- A decision-making authority should ensure proper consideration of opinions/comments submitted by the persons concerned, as well as inform the public about the outcomes;
- Any decision on issuing a permit/license for any activity listed in the Annex 1 to the convention should immediately become available to the public.

It should be noted that the list of activities defined by the Law on Environmental Permit, which was in force in 1997-2005 and

was subject to EIA procedure, was in conformity with the activities listed in Annex 1 of the Aarhus Convention. Moreover, it even contained the activities not listed in Annex 1. Moreover, the procedure envisaged by the law to a certain degree met the principles of the Aarhus Convention on ensuring public participation in decision-making; however, procedures required improvements and strengthening law enforcement to ensure that the Convention obligations were comprehensively transposed into national legislation.

It should be noted that the Convention sets a bottom line for public participation in the decision-making processes and the parties to the convention should strive for a higher standard to be defined by the national legislations. Unfortunately, in case of Georgia it happened vice versa. In 2005 the Parliament of Georgia adopted a new Law on Licenses and Permits, which put the sphere of environmental protection and natural resource management under common rules, without any exemption, and not only it did not improve the procedure of public participation in decision-making, but completely abolished this procedure.

1.3 Law on Licenses and Permits and Law on Environmental Impact Permit

As already mentioned above, the Law on Licenses and Permits has fundamentally changed the sphere of environmental protection and natural resource management. It became symbolic that under the Law on Licenses and Permits, “environmental permit” was renamed to “environmental impact permit,” because the new system established by the law increased the opportunities of environmental degradation rather than the opportunities of its protection. For example, as a result of enactment of the Law on Licenses and Permits adopted in 2005 and the Law on Environmental Impact Permit¹ adopted to implement the former law, the activity having one of the most harmful effects on the environment and human health – extraction of mineral resources (apart of oil and gas²) was exempt from Environmental Impact Assessment (hereinafter – EIA) and competent authorities were also exempt from obligation to consult public concerned in the decision-making. In order to extract mineral resources in Georgia, an interested person has simply to pay more than competitors (if any such exist, because competition is almost unlikely at similar auctions) at the license auction. No EIA procedure is needed anymore for a number of activities, such as construction of nuclear reactor and nuclear power plants, agricultural and food production facilities, paper, leather and textile industries, certain types of infrastructural projects, etc. Furthermore, EIA and public participation in the decision-making is not compulsory, if an activity is planned to be implemented by any public authority.

In terms of public participation, the most deplorable fact is that with the introduction of the Law on Licenses and Permits, a permit issuance of which by the state was prohibited without informing public and public participation, shall be issued through **simple administrative proceedings within 20 days. These type of proceedings rules out any opportunity of public to be informed about and to participate in the decision-making planned projects.**

According to the Law on Licenses and Permits and the Law on Environmental Impact Permit, the Ministry for Protection of Environment and Natural Resources (permit issuing competent authority) is neither obliged nor authorized to ensure public participation in decision-making process. After receiving an application for obtaining a permit, the Ministry is not obliged:

- (α) To publish public notice on initiating administrative proceedings;
- (β) To ensure public access to EIA report;
- (χ) To receive and consider written comments (in case representatives of the public somehow learn about administrative proceedings);
- (δ) To hold public hearing (consultation meeting).

According to the General Administrative Code of Georgia, the Ministry is obliged to involve the person concerned in administrative proceedings, if this person has somehow learned (it may be the latter’s supposition, or information obtained through the Ministry with the help of his personal contacts, because the Ministry has no obligation and no goodwill to publish a public notice on initiating administrative proceedings) about planned administrative proceedings and has applied to the Ministry in writing with request to be involved in these proceedings.

Moreover, the Ministry is obliged to publish only the text of an adopted decision. In particular, according to the amendments made to the Law on Licenses and Permits in 2011, the Ministry of Environment and Natural Resources Protection is obliged to publish the data on issuing licenses, making amendments to them or their cancellation in Legislative Herald of Georgia within 10 days after making a decision. In addition, according to the amendments made to the law in 2012, the Ministry is obliged to

¹ Before adoption of this law, a temporary provision was in force concerning the rules and conditions of issuing an environmental impact permit (approved by Decree No.154 of the Government of Georgia dated September 1, 2005). The norms of the temporary provision of 2005 and of the law adopted in December 2007 are actually identical. The law has actually replaced the temporary provision.

² The national regulatory rules for oil and gas operations (2002) envisage an obligation on preparation of an environmental impact assessment report for oil and gas operations and its submission to the State Agency for Regulation of Oil and Gas Resources of Georgia for approval. The same act envisages the possibility of public informing and participation; however, it does not define concrete procedures and simply limits itself by general phrases.

publish information about permits granted to project developers, any amendments made in the permits or their cancellation within 10 days after making a decision.

The law imposes responsibility for informing the public and holding public hearing on draft EIA report upon the project developer. According to article 6 of the Law on Environmental Impact Permit, a project developer is obliged:

- To hold public hearing before submitting EIA report to competent authority;
- To publish public notice on planned activity in central print media, as well as in local print media (if there is such) which is published/distributed in the self-governance unit (area) where project is planned to be implemented;
- To receive and review written comments by representatives of the public within 45 days upon publication of the public notice;
- Not before 50 days after the publication of public notice and not later, than 60 days to hold public hearing on the EIA report.

The law requires that the public hearing be held in administrative center of local self-governance unit, where the activity is planned to be implemented. The law also specifies that any representative of the public is eligible to attend the hearing. The law does not specify where the EIA report should be available during the discussion period.

The above mentioned indicates clearly that the government has disclaimed the responsibility for ensuring public participation in the decision-making process. Today, the Ministry's relations with the public are limited only to disseminating information on decisions already made, within 10 days.

2. Controversial legal framework

In terms of ensuring public participation in decisions on issuing environmental impact permit, there are four basic normative acts in Georgia (including several bylaws):

1. International Agreement on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters – in force since 2001;
2. Law on Licenses and Permits adopted in 2005;
3. Law on Environmental Impact Permit adopted in 2007;
4. General Administrative Code of Georgia adopted in 1999.

It should be noted that in terms of ensuring public participation in decisions on issuing permits, since 2005 the national legislation has been in full conflict with the international commitments undertaken by the country in 2001. In particular, the Aarhus Convention requires that the public be involved in decision making process timely and effectively, whereas according to the Law on Licenses and Permits, decisions are made through simple administrative proceedings and this rule, in itself, does not envisage public involvement in the process.

When adopting the Law on Environmental Impact Permit, the authors of the law tried to somehow cover a clear controversy between the acts and invented a procedure, which was named “public participation in decision-making process.” It, however, has nothing to do with its name. Article 1 of the law, which defined the scope of the law, contained the following formulation: “The law defines a full list of activities subject to mandatory ecological expertise on the territory of Georgia as well as legal grounds for issuing environmental impact permit, holding ecological expertise when issuing a permit, environmental impact assessment, public informing and participation in decisions on issuing permits”. According to Article 2 of the law, the goal of the law is “to ensure the basic right of a citizen envisaged by Georgian constitution to receive full, impartial and timely information about working and living environment, as well as to ensure public participation in making important environmental decisions by the state”. Despite the goals and tasks declared in the introductory provisions of the law, the law does not envisage public participation in decision-making process. Instead, it obliges a developer to inform the public on the planned activities and ensure consultation with the public in the process of preparation of EIA report, i.e. until initiating administrative proceedings on permit issuance.

Besides the fact that for almost 10 years there has been no procedure in Georgia ensuring public participation in decisions on issuing a permit, it is alarming that the main environmental authority of Georgia (also, the focal point of the Aarhus Convention in the country) – the Ministry for Protection of Environment and Natural Resources believes that the current above-described scheme fully complies with the requirements of the Aarhus Convention and ensures public participation in decision-making process – hence, it does not need any improvement.

3. Key findings from the monitoring of practice

Over the past year Green Alternative was carefully watching the process of issuing environmental impact permits (and/or ecological expertise conclusions) in order to reveal the gaps and shortcomings in the opportunities of public to participate in the decision-making on issuance of environmental impact permit (simple administrative proceedings) and in pseudo-procedures of “participation” set by the law (holding of public hearings by project developers), on the one hand, and to highlight the necessity of changes, on the other. In the process of monitoring, the organization also helped projects-affected local communities in obtaining information about planned activities and also supported them in using the possibilities for raising project-related concerns before the projects developers (in some cases – before the Ministry for Environmental and Natural Resources).

3.1 Pseudo-procedure of “participation”

The following findings were made as a result of one-year monitoring over implementation of the procedures set forth by the Law on Environment Impact Permit, obliging project developers to inform public about planned projects and to organize public consultation meeting:

(a) Dissemination of a notice on public consultation meeting

According to Article 6 of the Law on Environmental Impact Permit, a project developer is obliged to publish information on planned project/activity in central print media (as well as in local print media of that self-governing unit, where the activity is planned to be implemented – if any such exists).

To fulfill this requirement, before the 1st of January, 2014, project developers, as a rule, were publishing information about planned projects in newspaper “24 Saati” (24 Hours). Although this method of informing is ineffective in terms of informing the public, especially the project-affected population (to ensure that an announcement reaches an addressee, a person should be buying (!) a newspaper every day), it was the only mean for interested persons or organizations to learn about the projects planned in Georgia, which have a significant impact on the environment and human health.

The newspaper “24 Saati” has not been published since January 1, 2014 and therefore the public lacks the possibility to obtain information on planned projects, at least, through this only and limited means. Green Alternative applied³ to the Ministry for Protection of Environment and Natural Resources in this regard and demanded it to introduce such mechanisms of public informing, which will not depend on the functioning of this or that private company(!).

In response, Green Alternative received quite an inadequate explanation⁴ from the Ministry, which said that closure of one of the newspapers does not mean that a project developer should not use other central print media for publishing its announcement. It should also be noted that “24 Saati” was the only daily newspaper, which was disseminated throughout Georgia, i.e. it could have been considered as a central print media.

Presently, the website of the Ministry for Protection of Environment and Natural Resources represents the source of information about EIA reports on planned activities (a draft report published for public consultation, which can still undergo significant amendments before it is submitted to the Ministry, i.e. before initiating real administrative proceedings) and public consultation meetings planned by companies to discuss these reports. Information on the website is posted upon goodwill of the ministry staff and as a rule, with delay.

(b) Documents submitted for public reviewing

As a rule, the EIA reports (draft EIA reports) published for public hearing are available at the Ministry for Protection of Environment and Natural Resources and in the offices of project developers, and rarely in the buildings of local self-government bodies. These documents do not take into consideration the capabilities of local communities to understand technical issues and do not contain a non-technical summary of the project. As strange as it may seem, a project developer has an obligation to submit a non-technical summary at the stage of ecological expertise (the stage of reviewing EIA report by competent authority - the Ministry for Protection of Environment and Natural Resources), i.e. when the documents should be discussed by experts in relevant fields.

³ Green Alternative’s appeal to Minister for Protection of Environment and Natural Resources Khatuna Gogoladze on the failure of public informing mechanism on planned projects having significant impacts on the environment and human health and on the need to implement measures to rectify it in the shortest time possible, January 21, 2014. Available at: http://greenalt.org/wp-content/uploads/2014/01/Open_appeal_to_MPENR_21_January-2014.pdf

⁴ The response from the Ministry is available at: http://greenalt.org/wp-content/uploads/2014/01/pasuxi_saministrodan.pdf

(c) Place of holding public hearing and quality of attendance

The above mentioned practice of publishing information on public hearings and the problems related to availability and quality of relevant documents largely determine the fact that the presence of local population at public discussions is minimal, and as a rule, mostly the employees of local self-government bodies attend them (in order to increase the number of participants). However, it should also be noted that on numerous occasions, Green Alternative held discussions with locals several days or even several hours prior to public hearings and informed them on planned projects and public hearings to be held by projects developers. This proved sufficient for local communities to mobilize and participate in the public hearings. This also confirms the fact that under conditions of adequate communication, the project-affected communities are always interested to voice their opinions and to participate in decisions on those activities, which may have adverse effects on their natural and social environment.

3.2 Decision-making – simple administrative proceedings

As we have already mentioned above, decisions on issuing Environmental Impact Permits are made through simple administrative proceedings, the duration of which, according to the law, should not exceed 20 days. Simple administrative proceedings do not envisage public involvement in the process; therefore, an administrative authority is not obliged to publish even a notice about initialing the proceedings, to say nothing about the documents subject to discussion. However, at the same time, according to the General Administrative Code of Georgia, an administrative authority is obliged to involve the party concerned in the process, if a written requirement for the latter's involvement in the process has been submitted to the agency. Just referring to this formulation of the General Administrative Code of Georgia, after holding a public hearing by the project developer, Green Alternative (actually stemming from logical supposition that a permit seeker will sometime apply to a permit issuing authority) often asks in advance for the involvement in the process of decision-making on issuing permits for this or that activity. However, such way of the organization's involvement in the process should not be viewed as an opportunity for public to participate in the decisions on issuing Environmental Impact Permits.

Although, Green Alternative always asks in written and in advance, to provide with the copies of the documents under review within in the competent authority and the terms of submitting comments, as soon as administrative proceedings are initiated, as a rule, a notice on initiating proceedings is never sent on the same day and the documents under review are never enclosed. As a rule, an additional day and financial resources are spent in obtaining the copies of relevant documents. As a result, as Green Alternative's experience shows, an interested person has from 4 (sometimes even less) to 8 days to familiarize himself/herself with at least 100-page and sometimes even 600-page document and to prepare comments. It should also be noted that this term involves calendar days, including weekends.

Thus, the opportunities of timely, adequate and effective public participation in decisions on Environmental Impact Permits, under conditions of making decisions through simple administrative proceedings, simply does not exist.

Conclusions and recommendations

Legal analysis of Georgia's international commitments and national legislation, as well as the EIA system monitoring and experience of Green Alternative's attempts to participate in decisions on issuing Environmental Impact Permits demonstrate that the procedure for issuing environmental impact permits/ecological expertise conclusions requires radical and urgent changes. In particular, in our opinion, it is urgent to implement the following measures:

- Permit issuance procedure should be carried out through public administrative proceedings instead of simple administrative proceedings;
- Mining should be subject to EIA and public participation in the decision-making process should be ensured;
- The list of activities subject to EIA should be brought in line with the list defined by Annex 1 of the Aarhus Convention. Moreover, the list should be expanded with all those activities, which are not included in the Convention's list, though can have a significant impact on the environment in case of their implementation;
- The public should be given the possibility to participate in the decision-making process at an early stage, when the opportunities are still open. A scoping procedure should be introduced for this purpose;
- Effective methods of dissemination of information on the opportunities for public to participate in decision making process should be developed; it means that information should reach all the parties concerned and they should have a possibility of real participation. For example, public notice can be published through the Georgian public broadcaster; posting of announcements should become mandatory in the places of public gathering, bus-stops, shops, as well as in the buildings of police, medical institutions, self-governance bodies, etc. It is inadmissible that a citizen has to pay money to obtain such information (for example, in case of buying a newspaper);
- The communities that might be affected by the projects should have access to adequate information: both brief, non-technical summary of activities and a full version of documents (including EIA report) subject to discussion;
- Reasonable timeframes should be set for commenting on the documents subject to discussion; these timeframes should be enough for an interested person to get acquainted with a non-technical summary, as well as if needed, to obtain full documents, get acquainted with them and make comments on them; moreover, there should be enough time for a public authority to discuss the submitted comments and get ready for public hearing;
- Public hearings should be organized locally - at the regions/cities/villages potentially affected by planned projects; moreover, due to large concentration of non-governmental organizations and sectoral experts, it is essential to organize public hearings in the capital city too. It should also be noted that when holding consultation meeting on the ground, it is important that the project-affected communities do not need to use transport to get to the meeting; if there is no other solution, the organizers should ensure free transport for the participants;
- And finally, it is essential that a decision-making public agency immediately notifies the public on the decision made. The text of the decision, along with the views and opinions, on which the decision is based, should become available to the public. The text of the decision should also contain information about the possibilities of appealing against the decision.



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