Netherlands Commission for Environmental Assessment

Comments on the Draft Laws of Georgia on Environmental Impact Permit and on State Ecological Expertise

Memorandum by the NCEA

19 June 2006

Advice of the Secretariat

To	Ministry of Environment, Georgia
Attn	Minister of Environment of Georgia, Mr Papuashvili
From	Mr Arend Kolhoff (Technical Secretary - Netherlands Commission for Environmental Assessment)
Date	19 June 2006
Subject	Comments on the draft Laws of Georgia on Environmental Impact Permit and on State Ecological Expertise
	By: Secretariat of the Netherlands Commission for EIA Advice DGIS-0605

1. INTRODUCTION

1.1 Request

The Minister of Environment of Georgia Mr Papuashvili, requested the Netherlands Commission for Environmental Assessment ("the Commission") dd. 6 June 2006 to review the:

- Law of Georgia on Environmental Permit;

- Law of Georgia on State Ecological Expertise.

1.2 Review framework

The Commission has reviewed the completeness and consistency of both laws. As a review framework the following documents have been used:

- EU EIA directive (1985 and amended directive 1997); this directive consists of a number of minimum requirements that should be followed. Individual member states might apply additional requirements;

- International good practise EIA.

1.3 Disclaimer

Whilst reviewing the two laws we became aware that the following three by laws will be part of the new environmental legislative framework:

- Order of the Minister of Environment of Georgia on approval of the Charter "On environmental Impact Assessment";

- Order of the Minister of environment on" On regulation of special environmental impact assessment council";
- Charter "On Rule of carrying out state ecological expertise" approved by the Minister.

We did not receive these by laws in time. The Minister requested to review the two above mentioned draft laws on June 9 2006. As a consequence we do not have a complete overview of the new environmental legislative framework and we might have missed issues that could have changed our review findings.

The one stop shop principle is mentioned as one of the basic principles that will be introduced with these two new laws. The environmental permitting procedure is linked to the construction permitting procedure. However, due to the fact that we are not familiar with the latter procedure, we have not been able to assess the linkages between these two procedures.

2. MAIN COMMENTS

1. These laws do not fully comply with the EU EIA directive on the following issues or provisions :

- the list of activities that require an EIA differs considerably;

- according to the directive, the decision on the need for an EIA (screening decision) should be made publicly available;

- reasonable / main alternatives should be studied, such as alternatives for site selection, design and process alternatives;

- the directive requires public availability of a justified conclusion of the review of the EIA report. In Georgia review is called State Ecological Expertise (SEE);

- no provisions are included on the possibility for the public to file an appeal against the conclusion of the State Ecological Expertise as well as on the decision on approval of the environmental permit by the Minister;

- no provision is included on the public availability of the motivated approval of an environmental permit by the Minister.

2. These laws do not prescribe scoping. Scoping is not required according to the EU EIA directive but is considered as part of good practise EIA. Scoping results in more project and site specific data gathering for the EIA report and that safes the implementer a lot of time and money. Adequate scoping is considered as one of the most cost effective measures in the entire EIA procedure. Research showed that it contributes to an increase of efficiency of the EIA process and an increase of the effectiveness of EIA. There are different forms of scoping that could be applied in the EIA procedure and that will be effective in Georgia.

3. In article 2 ambitious aims of the law are stated. In our view these aims cannot optimally be achieved due to the following reasons:

- The transparency of the decision making process facilitated by these laws is limited.The following decisions / conclusions will not be made publicly available:

  - the decision on the need for an EIA;

  - the minutes of the public hearing;

  - the reaction of the proponent on the comments and observations of the public

  - the conclusion of the SEE;

  - the way public comments are taken into consideration by the SEE and by the approval of the permit;

  - the decision on approval of the environmental permit.

- Public participation is not optimal; the public has no possibility to file appeal against the conclusion of the SEE and against the approval of the environmental permit.

4. In these laws no provisions are included on Strategic Environmental Assessment for plans and programmes.

5. In these laws no provision are included that deal with activities that (might) cause trans-boundary environmental impacts.

2.1 Specific comments: Law on Environmental Impact Permit

1. Article 1.

This article does not provide clarity on the scope of this law. It seems that the law is dealing with all activities that require an environmental permit. However, it is not clear what procedure should be followed by activities requiring an environmental permit but no EIA.

It is recommended to provide clarity on the scope of this law concerning the activities that require an environmental permit but no EIA.

2. Article 3.

Definitions of terms 4. Activity implementer, it is not clear whether a governmental authority can also be considered as an activity implementer. This seems, however, logical seen the list of activities that require an EIA such as construction of national motor road and railways.

3. Article 4.

The law does not have a provision on the type of information that should be provided by the implementer in order to make a decision on the need for EIA possible.

For most of the activities that are subject to EIA the list does not provide thresholds. As a consequence, there are opportunities for differences in interpretation.

It is not clear who takes the decision on the need for an EIA and the procedure that will be followed.

It is not clear whether this decision will be made publicly available and whether the public can appeal against this decision .

It is recommended:

- *to include a provision on the information the proponent should provide to the competent authority in order to facilitate decision-making on the need for EIA;*

- *to attach thresholds to the list of activities that require EIA;*

- *to provide clarity on the decision making procedure and on who is responsible for the decision-making as well as on the opportunity for appeal by the public.*

4. Article 5.

This article is dealing with activities that require no EIA but that do require approval of technical regulations. The activities that require this type of approval are not listed and the procedure that has to be followed is not clear.

It is recommended to provide clarity on the type of activities and the procedure to be followed.

5. Article 6 and 7

According to these articles, the implementer is responsible for organising the public hearing as well as providing the comments to the competent authority and answering the comments made by the public. The competent authority is invited for the public hearing and will sign the minutes of the meeting. The minutes will not become publicly available.

As far as we know this is a rather unique situation. We do not know of any country in which the proponent is responsible for organising the public hearing and for considering of the comments made by the public as well as for informing the public what has been done with their comments. Usually these are responsibilities of the authorities.

To strengthen the position of the public in line with the aim of the law, the following suggestions could be considered:

- *make minutes of the public hearing publicly available;*

- *make the competent authority respond / motivate to the public in what way it has considered their comments. That could be done as part of the review of the EIA report by the SEE. The conclusions of the SEE / review findings should than explain what has been done with the public comments. The conclusions of the SEE should be made publicly available.*

6. Article 8.

The type of information that should be provided by the proponent to obtain a permit does not provide provisions on the contents of an EIA report. In case that would have been included article 8 – 2b, 2c and 2d could be skipped because this type of information should be part of the EIA report.

It is recommended to include a provision on the contents as well as the structure (table of contents) of an EIA report. See also our comment 8. concerning article 10.

It is recommend to make a clear distinction between the information required to decide on the need for an EIA and the information required to obtain a permit.

7. Article 9.

No provisions are included on the public availability of the act of approval of the permit by the Minister. It is good practise that these type of decisions are well motivated and publicly available.

8. Article 10 and 21.

Point 5, costs for EIA procedure are covered by activity implementer, should the costs for organisation of public hearing be mentioned as well?

9. Article 13.

A negative conclusion of the State Ecological Expertise might be another reason to refuse an environmental permit. In the law on state ecological expertise article 1 point 5 is stated that - the positive conclusion of SEE is a necessary condition to issue environmental impact or construction permit for implementation of an activity.

It is recommended to add to article 13 the above mentioned reason to refuse a permit.

10. Article 14

Not only the implementer but also the public in general should be given the right to appeal against the issuance of a permit.

11. article 18

A monitoring and reporting obligation on environmental management for the implementer could be considered. . This obligation will create environmental awareness and safe the respective authority time and money during control and inspection.

12. Explanatory note - In relation to the draft law of Georgia on environmental impact permit

Under point c) is stated that the draft law does not contradict with the EC Directives. This is not correct. This law does not fully comply with the EU EIA directive as explained in the section main comments on the first page of this report.

2.2 Specific comments on Law of Georgia on State Ecological expertise Environmental Impact Permit

1. Article 1.

Under point 1 of article 1 is stated that the state ecological expertise (SEE) is carried out for activities such as infrastructure plans, programs and projects. This means that according to international good practise Strategic Environmental Assessment will be carried out for plans and programs and the EIAs for such plans and programs (called Strategic Environmental Assessment) reports will be reviewed by the SEE. However, in this law nor in the law on environmental impact permit reference is made to SEA.

Under point 3 of article 1 is stated that a list of activities subject to mandatory SEE is determined in the law of Georgia "on environmental impact assessment permits". However, a law with this title does not exist. Most likely, the law on Environmental Impact Permit is meant. In that case the list of activities that is provided in article 4 is not in line with the activities mentioned under article 1 of the law on SEE.

Under point 4 of article 1 the objectives of the SEE are described. The objectives are not in line with the basic principles, tasks and responsibilities of the SEE as described in this law. This might, however, be the result of a translation problem.

In this article no reference is made to SEE of EIA reports. That is rather surprising because in the old situation first category the quality of the EIAs were always reviewed by the SEE.

It is recommended:

- to clarify the linkages of SEE with EIA;

- to work with one clear list of activities to determine the need for EIA and the need for SEE.;

- to have a look at the objective of SEE.

2. Article 3.

Under point 3 b) of article 3 is stated: "provide necessary information for the process of SEE". The linkage with EIA is not clear. It seems logical that the EIA provides the relevant information that is required for the process of SEE.

It is recommended to clarify this observation.

3. Article 6.

No provisions are included on the public availability of the conclusions of the SEE. International good practise is that the conclusions of an assessment of the EIA report by the SEE, internationally known as a review body, is well motivated and is made publicly available.

The SEE could also include an assessment of the way in which the implementer has considered the public comments as requested by article 7 of the Law on Environmental Impact Permit.

It is recommended to make the conclusion of the SEE publicly available.

4. Article 7.

This article on the procedure for EIA is a duplication of article 10 of the law on law on environmental impact permit for four out of the five points.

It is recommended to delete article 7 because it does not provided added value.

5. Article 8.

It might be a translation problem, but the term "subject" is not clear and therefore it is recommended to clarify this term.

6. Explanatory note - In relation to the draft law of Georgia on state ecological expertise

Under category c.a) the draft law on EC directives is stated; adoption of this draft law does not contradict with the EC directives. This is <u>not</u> correct. This law does not fully comply with the EU EIA directive as explained in the section main comments on the first page of this report.