



ANALYSIS OF THE PUBLIC CONSULTATION MEETINGS PROTOCOLS 2012-2015

TBILISI, 2016

Introduction

The Law of Georgia determines the list of activities subject to compulsory ecological examination. It includes: processing of mineral deposits, construction of motorways of international and local importance or/and construction of high voltage (35 kWh and more) aerial and cable power transmission lines; distribution of hydropower plants (with the capacity of 2 megawatts and more) and thermal power stations (with a heat output of 10 megawatts or more); arrangement of water reservoirs (with a capacity of 10 000 cubic meters and more) and etc.¹

In recent years, social discontent and protests arose from the construction of large hydropower plants and industrial facilities, oil pipelines and motorways, exploitation and processing of new open pit mines. The most vibrant debates have been raised by Khudoni HPP construction project in Svaneti. A large part of local population and NGOs were against the decision announced by the government of Georgia on the construction of the Khudoni HPP. If Khudoni HPP were to be constructed it would cause flooding of several local villages and it would be followed by resettlement of local residents in other villages of the region or in other regions of the country. Resettlement is related to additional costs. Civil society receives incomplete or uncertain answers on its specific questions regarding Khudoni HPP and other similar projects. As a rule, the government doesn't take into account requirements of the citizens by ignoring the dialogue and unilaterally speaks out in support of the implementation of one or another large-scale project. Society is concerned about the fact that ignoring the public opinion becomes a kind of model as it happened on December 13, 2014 when RMG Company through several explosions at Sakdrisi-Kachagiani site started mining there at the hill where an ancient gold mine was located, according to the scientists (IV BC).²

In course of drafting such type of projects, government or developers whose activity is subject to ecological examination often don't provide the society with comprehensive information on what changes will take place after the project implementation, what impact one or another HPP, industries or other large facilities will have not only on the natural environment, but on the people living near to it, on their safety, cultural heritage and etc. This tendency is mentioned in The Document on Legality of the Construction of

1 Full list of activity subject of ecological expertise is given in The Law of Georgia on Environmental Impact Permits, Article 4 <https://matsne.gov.ge/ka/document/view/20206>

2 For further information please see radio "Tavisupleba" "Sakdrisi- Explosion Timeline": <http://www.radiotavisupleba.ge/a/brdzola-sakdrisis-gadasarchenad/26752694.html>

Khudoni Hydro Power Plant issued by the Public Defender's Office.³ Apart from other urgent problems Ombudsmen notes that: "An adequate, comprehensive and timely supply of the society with relevant information at the steps taken for the protection of the environment and the involvement of public in decision-making process must be ensured"; and – "A plan of resettlement, its policy, and monitoring plan must be developed with the participation and agreement with the local residents".

According to existing legislation and practice, the developers shall prepare environmental impact assessment (the EIA) if during the implementation of an activity subject to ecological examination there are risks of encroachment and damage to the environment. They shall commission this work to a specific company which would present EIA reports. According to the law, it is compulsory to arrange discussions of the reports with public participation. For this reason, it is requested to appoint a meeting on EIA report and to inform society about the place, date and time of the meeting. Consideration of the EIA report shall be affirmed by the relevant protocol. As it is a public document, public shall have access to it.⁴

According to the Law of Georgia on Environmental Impact Permits⁵, the EIA is the definition of the nature and quality of sources of all potential impacts on the environment during the course of creating documents that substantiate a planned activity and of making an environmental decision for this activity. The EIA is also the assessment of ecological, social, and economic implications of the planned activity. The goal of the above-mentioned law directly means protection of human health, environment, cultural and material values under the process of implementing the activity subject to compulsory ecological examination. Above all, the goal of the Law is to take into account the ecological, social, and economic interests of the state and public in the course of making significant decisions in relation to the implementation of activities. And the most important is that the Law ensures a fundamental right of a citizen under the Constitution of Georgia to obtain complete, objective and timely information about the state of his/her working and living environment.

Under The Article 6 of Law of Georgia on Environmental Impact Permits, developers shall be obliged to arrange a public review of the EIA reports before they are submitted to a permit issuing administrative body. To arrange a public review of the EIA reports developers shall be obliged to publish the information about their planned activities. The information must

3 Document – "Legality of the construction of Kudoni Hydro Power Plant"; See Public Defender's Office page - <http://www.ombudsman.ge/ge/news/xudonhesis-msheneblobis-kanoniereba.page>

4 These issues are regulated by Law of Georgia "On Environmental Impact Permits"

5 See Legislative Herald of Georgia - Law of Georgia on Environmental Impact Permits - <https://matsne.gov.ge/ka/document/view/20206>

be published in a central periodic print media and in a periodic print media (if any) existing within the administrative territory of a self-governing unit where the activity is planned to be implemented. To arrange a public review of the EIA reports developers shall be obliged to publish the information about their planned activities. Developers shall, within five days after the public review of an EIA report, be obliged to prepare a protocol of the results of the EIA report public review to reflect in detail the comments and opinions expressed during the public review. The protocol of the results of the EIA report public review is a public document and shall be accessible to any interested person.

“The Greens Movement of Georgia/Friends of the Earth Georgia” requested from the Ministry of Environment and Natural Resources Protection of Georgia 2012 -2015 EIA reports and protocols of public reviews of the EIA reports. Following the analysis of the collected documents, it is possible to learn the existing practice – what type of information is covered in EIA reports and how this information is provided to the public.

Upon examination of EIA reports it becomes clear that these documents mostly cover information about the possible impact of one or another project on the natural environment, ecology, flora and fauna and landscape. Comparatively less space is given to the impact on the living environment and safety issues. This indicates to shortcomings of the document as EIA reports shall include qualified and comprehensive assessment of social and economic implications of the planned activity.

Analysis of EIA reports and identification of the existing tendencies is the subject of a separate study. This document represents the analysis of the public consultation meetings protocols. For this purpose, protocols of 2012-2015 meetings on EIA reports have been analyzed through the blind selection method. The subject of interest, on the one hand, is the issue of fulfillment the norms determined in the Law of Georgia on Environmental Impact Permits and, on the other hand, identification of the shortcomings of the Law. In particular, how under the existing legislation it is possible to involve civil society in reviews of EIA reports and ensure the transparency of the process in order to provide comprehensive answers to painful questions raised by the society during the implementation of projects subject to ecological examination.

The Problem of Lack of Public Awareness

In recent years public interest to public reviews of EIA reports has been increasing. For its part, it indicates the public demand to hold EIA reports public reviews in a more transparent way and with a higher degree of public

involvement. Accordingly, it becomes necessary to improve the legislative-base in order to make it possible for all interested groups to attend review meetings on EIA reports. Particular importance is attached to informing and attending the meetings on EIA reports by media, non-governmental organizations and population living near to the facility implementing the activity subject to ecological examination.

For today, the norm established by the law is informing the public by central and local periodic print media⁶. The information must include: a) goals, name and location of the planned activity; b) the address where members of the public shall have access to the documents related to the planned activity (including hard copy and soft copy of the technical summary and non-technical summary of the EIA report); c) the deadline for submitting opinions of the public members; d) the time and place for a public review of an EIA report.

As Law of Georgia on Environmental Impact Permits doesn't provide other ways for informing the public, developers implementing the activity subject to ecological examination merely publish the information in newspapers. A large part of protocols of the public reviews of EIA reports didn't mention whether the information had been published at all and in which specific media the information on the venue and time had been published. This information exists only in the small part of protocols from which it can be seen that developers mostly have published the information in following newspapers: "24 hours", "Resonance", "Republic of Georgia". According to some of the protocols, such information was also published in "Legislative Herald".

Legislation also determines that the information must be published in a central periodic print media and in a periodic print media (if any) existing within the administrative territory of a self-governing unit where the activity is planned to be implemented. Only in a few protocols we examined, was mentioned the regional newspaper "Mtavari Tema Samegreloshi" (The Main Theme in Samegrelo).

It is a rare exception when information about the projects implemented with the donation from international banking institutions was provided to the public through information posters distributed in settlements located near to places of activity implementation. These rare cases are driven by high standards set by these international banking institutions and in such cases particular attention is paid to informing the potential victims of activity subject to the ecological examination.

On March 18, 2014 according to the protocol of the public review of EIA report on rehabilitation 10-23 km of the Tianeti-Zaridzeebi-Zhinvali

6 See Law of Georgia on Environmental Impact Permits, Article 6, Clause 2

road in the town of Dusheti the representative of a non-governmental organization “Green Alternative” said about the problem of improperly informing the local population. He noted that local population didn’t actively read the printed media. So it is necessary to provide information about public reviews by other more active way. In that connection, in the reply field of the protocol prepared by the author of EIA report LLC “Gama Consulting” is written: “**The comment is reasonable**”. However, the answer was followed by the explanation “in the course of preparing EIA report LLC “Gama Consulting” has complied with the obligation imposed by Georgian legislation to publish details of the public review in newspapers with the aim to inform the population. Georgian legislation doesn’t imply any other way of informing public. Thus, the mentioned comment shall not be considered”.

Specific examples of improper informing the public and protest actions resulted by the shortcoming of the information indicate that it is necessary to set a higher standard of public informing. In this direction the following recommendation has been developed: *in addition to publishing the information in printed media the law shall determine other more effective forms of public information: sending invitations, door-to-door poll, placing posters, distribution of booklets and flyers and etc.*

Civil Society Participation

Under The Article 6 of Law of Georgia on Environmental Impact Permits, developer is obliged to arrange, at the earliest 50 days and at the latest 60 days after the information on the planned activity is published, a public review of an EIA report concerning its planned activity.

The same Article obliges developer to ensure that written invitations to the public review of the EIA report are sent to the representatives of appropriate local self-governing bodies, the Ministry of Environment and Natural Resources Protection, the Ministry for Economy and Sustainable Development of Georgia, and other interested administrative bodies.

Developer is not obliged to send written invitations to the society, media and non-governmental organizations. Article 5 of the Law specifies that “any member of public may attend a public review of an EIA report”.

Exactly this legislative reality causes that in public reviews of EIA reports the actual participants are developers, representatives of EIA report developing company, representatives of Municipal Gamgeoba, Ministry of Environment and Natural Resources Protection of Georgia and other ministries. At the same time representatives of these institutions don’t attend all thereviews, but only those they are interested in.

In recent years (2014-2015) Ministry of Environment and Natural Re-

sources Protection was particularly active in public reviews of the EIA reports. It sent to the developers its own assessment in advance and recipients responded to it at the public review meetings. Then these responses were published in protocols of public reviews on EIA reports. This active involvement of the Ministry of Environment and Natural Resources Protection, on the one hand, is welcomed, but on the other hand, it is important to say that it is the primary responsibility of the Ministry as according to the Law the Ministry is obliged to issue an environmental impact permit to developers. **Environmental impact permit** is the right for an indefinite term, which is issued to developers and serves as a legal basis for starting activities.⁷

Since effective sharing of information with society, media and non-governmental organizations is not adequately guaranteed by the Law, public reviews of EIA reports sometimes are attended by the ridiculously low number of people. For instance, on December 3, 2012 review of environmental supporting documentation for LLC “Sun Petroleum Georgia” oil depot was attended only by 3 persons: manager of the oil depot, deputy head of logistic department and head of one of the company’s petrol stations⁸. But such cases are quite common. One more example: on March 5, 2013 review of environmental documentation of LLC “Kartuli Cementi” was attended by 3 persons –all of them were mid-level managers from LLC “Kartuli Cementi”. In the protocol was noted that “the meeting wasn’t attended by representatives of the local government and society”.

During the study of protocols of public reviews of 2012-2015 EIA reports it became clear that the reviews are rarely attended by: 1) representatives of the local population which are notified about reviews of EIA reports by non-governmental organizations and attend meetings with them; 2) non-governmental organizations. According to protocols of 2012-2015 EIA reports among participants were the following non-governmental organizations: “Green Alternative”, “Association of Young Lawyers of Georgia”, “International Transparency – Georgia”, “The Greens Movement of Georgia / Friends of the Earth Georgia”; 3) journalists, mainly attend reviews of EIA reports against the background of high-profile projects or are invited to the meetings by non-governmental organizations. 4) representatives of the academic community and students. Academic staff and students of Kutaisi Ak. Tsereteli State University attended several reviews of EIA reports on activity subject to ecological examination in western Georgia.

Participation in public reviews of EIA reports of the population living near to project which activity is subject to ecological examination, non-gov-

7 See Law of Georgia on Environmental Impact Permits, Article 3, Clause a

8 See The protocol of the review meeting of “Sun Petroleum Georgia” oil depot environmental supporting documentation. 03.12.2012.

ernmental organizations, media, and civil society is necessary for improving transparency of the process and providing higher standards to ensure citizens involvement. Accordingly, during the survey the following recommendations have been elaborated:

- 1. Developer shall be entrusted by law to send written invitations to population living near projects which activity is subject to ecological examination, media, civil society and other interested groups.**
- 2. The law should set out direct and targeted sharing of information with non-governmental organizations, media, academic community and civil society, through emails or other modern ways of communication.**
- 3. Public review of EIA report should be first postponed due to the absence of civil society representatives and the active sharing information with society should continue in order to fully exclude public reviews of EIA reports without the participation of interested persons.**
- 4. Non-governmental organizations shall apply more effort to attract the interest of the representative of various active layers of the society (journalists, academic community, students and etc.) in public reviews of EIA reports.**

Reliability of the Meeting Protocols

Under the Law of Georgia on Environmental Impact Permits, developers shall, within five days after the public review of an EIA report, be obliged to prepare a protocol of the results of the EIA report public review to reflect in detail the comments and opinions expressed during the public review. The protocol shall be signed by the developers (or their authorized representatives) and the representatives of appropriate local self-governing bodies, the Ministry of Environment and Natural Resources Protection and the Ministry of Economy and Sustainable Development of Georgia (if they have attended the public review of the EIA report). Developers shall review the written comments and opinions of the public members and shall take account of their arguments in the course of finalizing the EIA report.⁹

2012-2015 EIA reports differ from each other. Some of them are one-page documents signed only by the developer. Many of them are signed by developer and representative of the company which has prepared the EIA report. Protocols of the meeting attended by the representative of any ministry or Gamgeoba were signed by them too. Sometimes protocols were signed

⁹ See Law of Georgia on Environmental Impact Permits, Article 7-1

by the invited society. Often to the protocols is annexed the contact list of attendees to confirm that the interested society has been participating in the review.

It seems that reviews of EIA report were held not to inform the society, but to comply with the legal requirement. Most meetings on EIA report are formal in nature, and it seems that if the public review of reports were not provided by law, these formal meetings would not be held at all.

A clear example of meeting's formality is the similar protocols of the various meetings. Text of the meeting protocol held on September 9, 2013 that reflects public review of EIA report on LLC "Iberia Cement" workshop in the village of Samtavisi in Kaspi Municipality is literally repeated in the protocol of public review from December 5, 2013 of EIA report on processing the hazardous waste at LLC GEOEKO OTTA workshop in Marneuli. One more example: text of the protocol of meeting from March 14, 2014 on public review of environmental documentation related to the activity on LLC "Mamed" at limestone field in the village of Kizil-Ajlo in Marneuli is literally repeated in the protocol from 15.04.13 which reflects public review on EIA report on asphalt plant owned by LLC "Super Betoni" in the village of Khidiskuri in Bolnisi Municipality.

According to the part of protocols, some meetings were attended by the society representatives, but questions posed by them haven't been included in protocols. Normally this means that during the public discussions no questions were asked by them. However, the question is whether this was actually true. Could the compiler have not recorded all questions and answers?

Protocol of public review of the EIA Report on the construction of Tbilisi-Ponichala and Ponichala-Rustavi sections of Tbilisi-Rustavi speedway held on March 1, 2012 said that the meeting was attended by representatives of non-governmental organizations but the protocol hasn't been signed by them. In the last paragraph of the protocol is noted that "The information about the questions and proposals during the public review is given in the annex". However, Ministry of Environment and Natural Resources didn't provide the annex to the protocol along with other public information thus suggesting that the annex doesn't exist. As can be seen from the protocol, the meeting was attended by Manon Bokuchava, blogger, and journalist from Kvemo Kartli region. Then she has prepared reportage on the meeting.¹⁰ She writes that "Municipal Development Fund (MDF) was unprepared for the meeting... MDF representative wasn't able to answer the technical question related to the road widening. 'Unfortunately I don't know whether the existing road is being widened to the right or to the left. The responsible person got sick. I do not have detailed information', MDF representatives said".

¹⁰ For Manon Bokuchava story please visit the link: - <http://gardabaniherald.blogspot.com/2012/03/blog-post.html>

During the study, we contacted Manon Bokuchava and asked her additional questions about the meeting. She recalled that local population hasn't been informed about the meeting. This EIA report covers the infrastructure project funded by The Asian Development Bank and sharing information with the public was expected to be in accordance with the high standards. The meeting was attended by a small group of the local population, who learned about the public review by chance. They asked whether they would be resettled due to the project implementation.

Under the law, if developers fail to take account of the comments and opinions of the public members, the developers shall be obliged to provide a written substantiation for disregarding the comments and opinions, and to ensure that the substantiation is sent the author (authors) of the comments. The developers must submit this written substantiation (along with relevant written comments and opinions) together with a protocol of the results of the EIA report public review and the EIA Report to the permitissuing administrative body¹¹.

In comparison with 2012-13, reports from 2014-15 are relatively comprehensive. We believe that this was the result of environmental organizations activism and their active interest in meetings. At 2014-205 meetings were discussed comments and suggestions from the Ministry of Environmental Protection and Natural Resources which along with answers to questions of other participants are included in answers-and-questions charts annexed to the protocols. Some charts provide only comments and suggestions from the Ministry of Environmental Protection and Natural Resources. It seems that answers-and-questions chart with these suggestions was filled in before the meetings and in fact the reviews were a formal in nature just to shape responses of the Ministry in the form of the protocol.

Protocols of the meetings attended by the representatives of non-governmental organizations and society informed by them are more comprehensive and include questions and answers important for the society. Upon examining such protocols we see the importance of the civil society involvement in EIA reports review and especially of participation the people living in areas affected by the activity subject to ecological examination.

Tendencies emerged during the study prove that in addition to involvement and informing of the civil society it is necessary to address more comprehensive documenting of public reviews of the EIA reports.

Recommendation: *Legislation should provide full video/audio coverage of the meetings to develop more accurate picture and archiving.*

¹¹ See Law of Georgia on Environmental Impact Permits, Article 7-3

Matters of Public Importance: Compensation, Employment, Safety ...

EIA reports largely are focused on the possible impact of one or another project on the natural environment- plants, animals, climate and air. Particular attention is paid to habitats of species included in The Red List, qualitative description of plants and compensation issues for their disturbing and replacing from the natural environment. EIA reports pay less attention to the social issues and often during the public reviews developer has no answer about the resettlement, safety, and other important matters.

For example, during public review of the EIA Report of construction of Tbilisi-Ponichala and Ponichala-Rustavi sections of Tbilisi-Rustavi speedway representative of Municipal Development Fund admitted that issue of compensation to the population in EIA report has been misrepresented¹². In particular, EIA report says that those not having their plots legalized are not eligible for compensation. A representative of NGO “Green Alternative” reminded EIA report authors that this is written in EIA report of the project funded by International Financial Institution – Asian development bank. And that in such cases in addition to national legislation, ADB standards must be also applied. According to these standards, the presence of this point in EIA report is an error, since ADB pays compensations to beneficiaries for their property irrespective of the property’s legal or ownership titles.¹³

It is notable that discussion on such important social issues was reflected in the reportage but not included in the protocol of the meeting.

Protocols of EIA reports reflect consumer attitude of state agencies, business representatives and people itself towards the natural environment. If the project is not related to living environment and social issues such flagrant interference rarely provokes resistance of the audience. In other words, people are less interested in the possible impact on flora and fauna. They are interested only in possible impact on their living environment.

In common cases developers are opposing risks of environmental damage and possible social problems emerging after the project implementation (for example - ecomigration) to arguments of the country’s economic development and other forms of social welfare (for example - employment, creation of new jobs): in fact, construction of Khudoni HPP could lead to the flooding of several villages, but the country would have more electricity; we may lose ancient ore mines in Sakdrisi, but the state would have a new gold mine and new revenues.

12 See article “Tbilisi-Rustavi speedway project still hasn’t the resettlement plan” - <http://gardabani-herald.blogspot.com/2012/03/blog-post.html>

13 See article “Tbilisi-Rustavi speedway project still hasn’t the resettlement plan” - <http://gardabani-herald.blogspot.com/2012/03/blog-post.html>

Public largely is not interested in negative effects from the environmental impact and raise questions in this regard only if the impact would cause natural disasters (landslides, erosion, high-water or flood, etc.) and thus pose the threat to the villages and living environment.

Citizens attending reviews of EIA reports most of all wonder what type of compensation they would get in case of expropriation of their lands or houses. Often they express discontent that the state doesn't provide compensation for those using the land illegally.

People have particularly negative reaction when during the implementation of the so-called strategic project there emerges an issue of resettlement from the traditional place of dwelling and they enter the difficult process of the emigration.

If there are no plans to resettle the population, the society first of all is interested in the possible impact on health and safety of the new environment. In such cases, citizens ask questions if it would be possible to employ them on the developing project or at new facilities.

Conclusion

Today EIA reports include the impact on social environment but these documents don't provide the comprehensive assessment of all possible social problems and risks that may emerge while implementing one or another activity subject to ecological examination.

The exception is made only by several EIA reports on projects supported by such major financial institutes as The European Bank for Reconstruction and Development (EBRD), The Asian Development Bank (ADB) and etc. In such cases in EIA reports more attention is paid to social issues and at the stage of reports review higher standards of information sharing are ensured.

It makes sense that very often EIA reports provide a detailed description of the impact on flora and fauna. But it is less interesting for citizens living near to the site where is implementing the activity subject to ecological examination. During reviews of EIA reports on specific projects they raise questions on social issues painful for them.

The analysis of meeting protocols of public reviews of 2012-2015 EIA reports showed that it is important to improve qualified assessment of social issues to ensure that the document fully reflects all painful issues of the society.

The best solution would be preparation of social impact assessment separately as an independent qualified expertise in the course of development of supporting documentation of planned activity and decision taking on the

issues of national concern.

It is clear that assessment reports of social environment impact should be reviewed with more active participation of the interested citizens. It will require the introduction of more effective forms of society informing than it is provided today by Law of Georgia on Environmental Impact Permits.

At this stage, prior the issue of separate preparation of social environment assessment document is resolved, it is important to improve the participation of the wider public in reviews of EIA reports, particularly involvement of the citizens who live in the area affected by the activity subject to ecological examination.

Accordingly, several recommendations that might improve the process in the future have been elaborated.

Recommendations

In addition to publishing the information in printed media the law shall determine other more effective forms of public information: sending invitations, door-to-door poll, placing posters, distribution of booklets and flyers and etc.

Developer shall be entrusted by law to send written invitations to population living near project subject to ecological examination, as well as to the representatives of media, civil society and other interested groups.

The law should set out direct and targeted sharing of information with non-governmental organizations, media, academic community and civil society, through emails or other modern ways of communication.

The first public review of EIA report due to the absence of civil society representatives should be postponed and active informing of society should continue in order to fully ensure the arrangement of next EIA report public review with the participation of interested society.

Non-governmental organizations shall apply more efforts to attract the interest of the representatives of various active layers of the society (journalists, academic community, students and etc.) to public reviews of EIA reports.

Legislation should provide full video/audio coverage of the meetings to develop more accurate picture and archiving.

In the nearest future, it is desirable to separately develop social impact assessment as an independent qualified expertise in the course of development of supporting documentation of planned activity and decision taking on the issues of national concern.

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Author:

Aleko Tskitishvili

Editorial Board:

Ketevan Papashvili

Anna Kekelidze

Lela Katcheishvili

Nino Shushtakashvili

Publication was translated and redacted by Nino Tskhadadze

Georgia. Tbilisi. N 4 Slava Metreveli Street, 0112

Tel: (+995 32)2 30 62 21

E-mail: info@greens.ge

Web-page: www.greens.ge