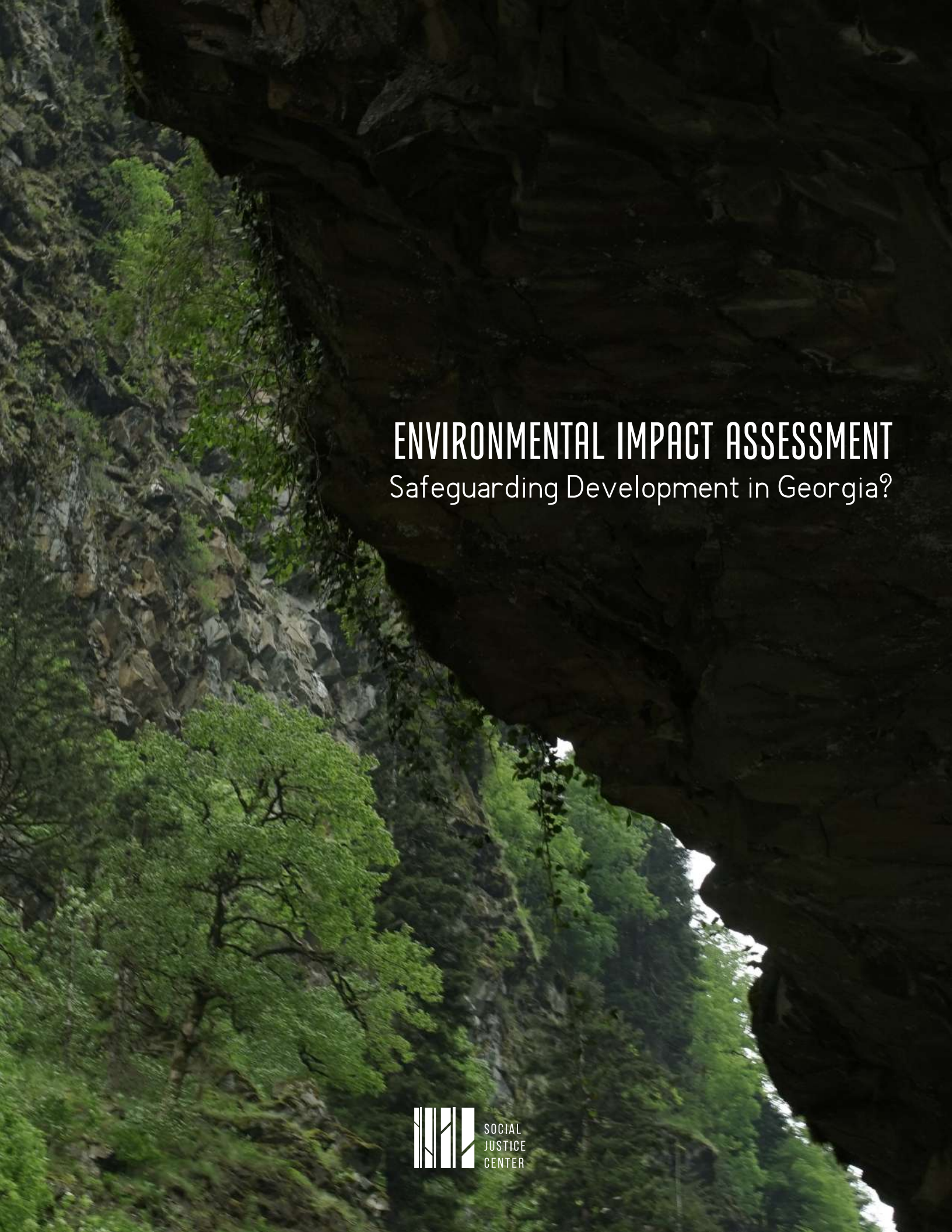

ENVIRONMENTAL IMPACT ASSESSMENT

Safeguarding Development in Georgia?

SOCIAL JUSTICE CENTER

Environmental Impact Assessment - Safeguarding Development in Georgia?

Social Justice Center
2022

This Analytical Document has been financed by Europe Foundation (EPF) through grant provided by the Swedish International Development Cooperation Agency (Sida) and the Danish International Development Agency (DANIDA). The views and opinions expressed in this document are those of the authors and should in no way be taken to represent those of EPF, Sida or DANIDA. Any mistakes or omissions are the responsibility of the author.

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Objectives and Methodology

Modern Georgian civil society has grown wary - and become aware - of environmental issues. This has manifested itself in protests and demonstrations, the most widely acknowledged case of which has been the movement against the Namakhvani HPP. Environmental law is well-acquainted with civic activism, as it was the domestically-spread environmental activism that birthed the idea of creating international environmental law in the 1960s.

Over the years, European environmental legislation, including the Environmental Impact Assessment (EIA) Directive, - which Georgia is obliged to approximate with under the Association Agreement, - has significantly improved and set high standards to ensure that the public's environmental and social interests are adequately protected in the environmental decision-making process. This, in turn, minimizes the need for the public to protect their rights through the means of street protests.

It is true that even a perfect legislation does not guarantee decisions that fully protect social and environmental interests when economic activities are being planned, however, if there are any shortcomings in the legislation that create a risk of making unscrupulous or incompetent decisions, then the risk of neglecting public interests is higher. Thus, the purpose of this study is to identify specific shortcomings in the Environmental Assessment Code and to recommend relevant legislative changes.

This study does not have an ambition of fully analyzing the compliance of Georgia's Environmental Assessment Code with the EU EIA Directive and the Aarhus Convention, nor does it claim to be fully analyzing the shortcomings in the Code.

As for the research methodology, the analysis presented in the study is, to a great extent, based on the analysis of existing documents (reports and documents of various organizations, legal instruments, academic papers, etc.) and [publicly available] information on the official website of the Ministry of Environment and Agriculture of Georgia [https://mepa.gov.ge/Ge/PublicDiscussion]. Also, online interviews have been conducted with representatives of the non-governmental sector, the Green Movement and the Green Alternative.

1. Introduction - The concept of environmental impact assessment in environmental law

The economic prosperity gained as a result of industrial development can be considered as a significant achievement for mankind. However, we must not forget that this prosperity is not accessible to all people, as more than one billion people in the world are still living in extreme poverty.[1]

In the 1960s, the international community actively engaged in discussions, suggesting that uncontrolled economic development had brought about a significant deterioration of the human environment.[2] Thus, it was necessary to introduce legal environmental regulations, both at the international and domestic levels. The introduction of an environmental impact assessment procedure proved to be one of the biggest steps in this regard. The environmental impact assessment procedure was first introduced in the United States by passing the National Environmental Policy Act in 1969. Similar legislative practices have spread to other countries, including developing countries, over the years.[3]

Environmental impact assessment, although arising from the margins of environmental law, is not a biased process against economic development.[4] The main purpose of this procedure has remained unchanged since the 1970s - to maximize the environmental and social interests even at the planning stage of economic activities and to make a balanced decision as a result. In other words, environmental impact assessment is a prerequisite for sustainable development.[5] One of the main ways to effectively achieve this goal is to ensure the participation of a properly informed public in this process.[6]

As it has already been mentioned, the environmental impact assessment procedure, along with the economic and the environmental aspects, includes a social aspect as well. The guidelines of the European Investment Bank explains the social aspect of the EIA procedure. Particularly, it encompasses the concepts of welfare, involuntary (permanent or temporary) eviction, the rights and interests of vulnerable groups, and the labor rights of employed persons. The EIA procedure should also include assessing the impact of the project on increasing the social

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[1] The United Nations Population Fund, Population Matters for Sustainable Development (UNFPA 2012) <https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA%20Population%20matters%20for%20sustainable%20development_1.pdf> 1.5.2022.

[2] UNGA Res 2398 (XXIII) (1968) UN Doc A/RES/2398(XXIII).

[3] MARK Report, 'Environmental Impact Assessment' (1987) (41), §§ 3.

[4] IUCN Environmental Law Center, 'General Principles of EIA' < https://www.iucn.org/sites/dev/files/import/downloads/eia_principles.pdf > 1.5.2022.
An online interview with Nino Chkhobadze, head of the "Movement of Greens", 28.04.2022.

[5] John E. Bonine , 'Environmental Impact Assessment - Principles Developed' (1987) 17 (1) EPL 5.

[6] MARK Report, 'Environmental Impact Assessment' (1987) (41) §§ 5.

capacities of employees and the community and their overall safety as well. The latter is intended not only to minimize the negative impact on the health of employees and the public, but also to plan specific activities in order to improve their social status.[7]

2. Brief overview of the practice of environmental impact assessment established by Georgian and European legislation

In 1985, the European Union introduced the Environmental Impact Assessment Directive. The initial Directive of 1985 and its three amendments were codified by a Directive 2011/92/EU on Assessment of the Effects of Certain Public and Private Projects (hereinafter referred to as the EIA Directive).[8] As of today, the final amendments to the EIA Directive were incorporated in 2014, which significantly improved the environmental impact assessment process and the ability to control it.[9]

'The association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part' (hereinafter referred to as the Association Agreement), singed in 2014, includes a number of environmental commitments, including implementation of the EIA Directive. In order to fulfill this obligation, Georgia has adopted the Environmental Assessment Code (hereinafter "the Code"), which was enacted on January 1, 2018.
By the adoption of the new Code, which replaced Georgia's 'Law on Environmental Impact Permits', the environmental impact assessment process has significantly improved.

In this regard, it is particularly important to expand the list of activities that require the EIA and the introduction of a detailed procedure for ensuring public participation.[10]

The code regulates next several types of procedure:

- Environmental Impact Assessment (EIA);
- Strategic Environmental Assessment (SEA);
- Transboundary Environmental Impact Assessment (TEIA);
- Current activity (Article 47).

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[7] EIB, 'Environmental and Social Standards' (2018) გვ 44-70.
[8] IMPEL, 'The implementation of the Environmental Impact Assessment on the basis of precise examples' (2012), გვ 80.
[9] Kalina Arabadjieva, 'Better Regulation' in Environmental Impact Assessment: The Amended EIA Directive' (2016) 28 GEL, გვ 168.
[10] Public Defender of Georgia, 'Alternative report of the Public Defender (Ombudsman) of Georgia on the Status of Implementation of the Aarhus Convention 2017-2020' (2021) პარა.17.

According to the Code, the purpose of the environmental impact assessment is to "to maximally prevent, reduce or mitigate adverse effects on the environment, human health and safety, cultural heritage and material assets" as a result of the planned activities.[11]

Strategic Environmental Assessment envisages "a procedure to examine and generally forecast potential impacts on the environment and human health arising from the implementation of a strategic document".[12] For the purposes of this Code, a strategic document is a normative act, which establishes a future development framework for the types of activities provided for by Annexes I and II to this Code.[13] For example, one of the activities that is a subject to the Annex II of the Code is waste disposal. Thus, if a normative act is prepared at the national or municipal level, that includes specific activities related to waste disposal, it will be subject to the SEA.

As for the Transboundary Environmental Impact Assessment, this procedure is used if there is a risk that the activities subject to the EIA will have a significant transboundary impact beyond the jurisdiction of Georgia.

However, it has to be noted that this procedure will be enforced only if the Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment are implemented in Georgia.

For the purposes of this study, we will only discuss the Environmental Impact Assessment procedure.

2.1. Stages of environmental impact assessment

The Code sets out certain stages of EIA for making decisions with regard to activities.[14]

According to the Code, activities are divided into two categories. The activities listed in Annex I of the Code are automatically subject to the EIA procedure, meaning that these activities are considered to have potentially significant environmental impact even from the beginning. As for the activities listed in Annex II, they are subject to the EIA when the Screening Procedure reveals that their implementation may have a significant impact on the environment.

When it comes to interpretation of the specific clauses in the EIA Directive, we must take in account one of the decisions of the European Court of Justice which limits the discretion of

[11] Environmental Assessment Code (2017) Article 2(2,b).
[12] Environmental Assessment Code (2017) Article 3(v).
[13] Environmental Assessment Code (2017) Article 3(x).
[14] Environmental Assessment Code (2017) Article 6 (1).

states. In particular, if the potential significant environmental impact of an activity is identified at the screening stage, that activity should automatically be subject to the EIA procedure.[15]

The first stage for the activities that are subject to the EIA is the Scoping Procedure, under which a scoping report is issued. This conclusion identifies the main environmental threats associated with the planned activity and the issues to be addressed in general when preparing an environmental impact assessment report. Also, the information in general, that will eventually be required to issue an environmental permit. The person/entity carrying out activities must obtain an environmental permit within 3 years after receiving the scoping report, otherwise the scoping report will be declared invalid.[16]

The next step is preparing an EIA report. The report is prepared by the person carrying out activities. In this process, it can use the guideline document on "Environmental Impact Assessment". A list of all the necessary information that should be included in the EIA report is provided in Article 10 of the Code. The information should include a description of the existing environmental condition of the location of the planned activity, potential significant environmental impact, proposed alternative and significant mitigation measures, a non-technical summary, and etc..[17]

After preparing the EIA report, the person carrying out activities shall apply the relevant state entity - the National Environment Agency (hereinafter referred to as the "Agency") for an environmental decision.[18] It is noteworthy that the Agency became the relevant state entity as a result of legislative changes in 2022 (for details, see chapter 5).

Public participation (which includes submitting written comments from the public as well as their participation in public hearings), according to the Code, - and in general, - is considered to be the next step in preparing an EIA report. However, it should be noted that according to the Code, the obligation to ensure public participation arises from the screening stage, but at the screening stage this only includes the possibility of submitting opinions in writing within 7 days after the screening application has been published.[19] At the scoping stage, it includes the possibility of submitting written opinions within 15 days after the registration of the application for scoping report, and the obligation of the competent body to hold a public hearing within 10-15 days.

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[15] Case C-435/97 *WWF and Others v Autonome Provinz Bozen and Others* [1999] par. 36.
[16] Environmental Assessment Code (2017) Article 9(7).
[17] Environmental Assessment Code (2017) Article 10.
[18] Environmental Assessment Code (2017) Article 11.
[19] Environmental Assessment Code (2017) Article 7(5).

As for the public participation after the preparation of the EIA report, - after the preparation of the report, the person carrying out activities shall inquire for an environmental decision from the Agency, which will ensure to inform the public within 5 days. (See Chapter 4.2. for detailed information on ways to inform the public). After being informed, the public has an opportunity to submit their opinions in writing to the Agency within 40 days, while the Agency shall conduct public hearings no earlier than 25 and no later than 30 days after informing the public. It should also be noted that the Code defines the term "day" as a "working day".[20]

Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention in 2015 (referred to hereinafter as the Maastricht Recommendations) determines a certain reasonable timeframe. In particular, a period of at least 30 days or 6 weeks is a reasonable time for the public to be properly prepared to submit an opinion to the relevant authority. However, it should be noted that these deadlines are set specifically for proper preparation of the public for the Public Discussion of the EIA report.[21] The EIA Directive also requires at least 30 days for consultations with the public for reviewing the EIA report.[22]

In order to ensure effective public participation, the Code sets out the obligation of the relevant authority to "appropriately reflect the results of public participation in the written substantiation of a respective decision".[23]

The agency evaluates the information available to it. In particular, the information reflected in the EIA report, additional information (if any) provided to the Agency by the person carrying out activities, information obtained through public participation and consultation with the relevant administrative authorities. Also, the conclusion of the expertise of the expert commission (for further details on the Expert Commission, see Chapter 3.4.)

Upon completing these stages, the Agency shall issue an Environmental Decision or make a decision to refuse to carry out the activity. The refusal is issued by the Agency in case there are the following grounds:

a) "carrying out the activity contravenes the requirements established by the legislation of Georgia, or a decision of a court/arbitrage that has entered into legal force;

[20] Environmental Assessment Code (2017) Article 3(o).
[21] UNECE, 'Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters' (2015) pg 31.
[22] Directive 2014/52/EU of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, 6(7).
[23] Environmental Assessment Code (2017) Article 35(1).

b) The Scoping Report, the EIA report and/or the Expert Opinion establish(es) the unacceptability of the nature and scale of environmental impact, the impossibility of preventing the risk of environmental impact and/or of carrying out measures to mitigate the environmental impact".[24]

It should also be noted that the environmental decision includes the possibility of further analysis of the activity. Further analysis of the activity shall include the monitoring of the conditions and mitigating measures provided for by the environmental decision and the assessment of environmental changes in the process of carrying out activities in general.[25]

2.2. Exemptions provided by the Environmental Code

The Environmental Assessment Code envisages the grounds for exemption from EIA.[26] The first of them are activities that aim to ensure state security and activities, carrying out of which is caused by an urgent necessity brought about by a force majeure. The decision of the European Court of Justice is noteworthy in this regard, according to which both types of exemptions need to be interpreted as restrictively as possible.[27]

According to the information provided by the Ministry of Environment and Agriculture of Georgia, in practice, the cases of exemption from environmental impact assessment are mainly related to the rehabilitation and construction of roads, and the purpose of applying this exemption is to "avoid expected force majeure circumstances".

Of course, this goal is entirely legitimate, which is confirmed by the 2014 amendment to the EIA Directive, which added emergency cases to the defense purposes as well. However, such exemptions, as already noted, need to be interpreted as restrictively as possible. For example, according to the European Commission, the above-mentioned exemption should be interpreted in response to the emergencies that could not have been foreseen or implemented beforehand, - and therefore need to be implemented urgently, - rather than [in cases when] projects that have simply been delayed.[28]

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[24] Environmental Assessment Code (2017) Article 14(1).
[25] Environmental Assessment Code (2017) Article 17.
[26] Environmental Assessment Code (2017) Article 16(1).
[27] Case C-435/97 *WWF and Others v Autonome Provinz Bozen and Others* [1999] par. 65. European Parliament Briefing, 'Transposition and implementation of the 2014 Directive on the assessment of the effects of certain public and private projects on the environment' (2018) pg 5.
[28] European Commission, 'Guidance document regarding application of exemptions under the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) – Articles 1(3), 2(4) and 2(5)' (2019) pg 14.

Therefore, it is important that the competent administrative body assess when the threat of "expected force majeure circumstances" actually arose and whether the person carrying out activities is simply trying to avoid the EIA procedure using this exemption.

For example, when on 2 April 2019, the "Rehabilitation of 132-135 km Section of the Mtskheta-Stepantsminda-Larsi International Road and Streambed Formation Works in its Vicinity" got exempted from the environment impact assessment, it was substantiated by the increased frequency of mudflows in the last 20 years as a result of climate change. It also listed the mudslides of 2007, 2014 and 2016 as certain examples. It is true that the existence of such a risk does provide substantial grounds for the project to be implemented urgently, but the question still arises, - if the project could have been delayed for three years (from 2016, - when the last mudslide took place, according to the official note, until 2019), why not allocate additional few months for the EIA procedure? Considering that the implementation of a project in an area so vulnerable to natural disasters especially requires the assessment of the impact on the environment.

Therefore, even just this particular example explicitly exposes the risks of overly broad interpretations of this exemption and risks the projects that are important to the public to be left out of the EIA procedure. Furthermore, according to the European Commission, exempting the project, simply because the relevant agency was late at implementing, "is unlikely to be justified". [29]

Furthermore, the Code provides for additional exceptions. According to the Code, an environmental decision is not required for activities related to oil and gas operations, as it is regulated by Georgia's relevant legislation.[30] Exclusion of specific activities from the EIA procedure was possible even before the 2014 amendments to the EIA Directive. Following the amendments, such an exception will be made only if the application of those provisions will result in adversely affecting the purpose of the project, provided the objectives of this Directive are met by other legal acts.[31] In order to approximate the regulatory framework of oil and gas operations with the procedures in Environmental Assessment Code, the amendments were made to the N2 order of the head of the state agency for regulating oil and gas resources on "Approval of National Rules Regulating the Conduct of Oil and Gas Operations" (dated 9 January 2002). The order defines the rules for issuing environmental decisions and conducting the EIA procedure.

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[29] European Commission, 'Guidance document regarding application of exemptions under the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) – Articles 1(3), 2(4) and 2(5)' (2019) pg 14.

[30] Environmental Assessment Code (2017) Article 5(6).

[31] Directive 2014/52/EU of the of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, მუხლი 2(4).

3. Environmental Impact Assessment - Formality or Effective Legal Mechanism in Georgian Legislation?

It has already been noted that the Environmental Assessment Code has substantially improved the existing legal framework related to the EIA procedure. However, in order to determine whether this Code fully guarantees that this mechanism does not become just a formal tool, it is vital to consider specific issues.

The key criteria for ensuring the environmental impact assessment process complies with European law includes, among others, public participation, transparency of the process, clarity of the process (reasonable predetermined deadlines, for example), accountability of the relevant authorities and credibility of the process.[32] Public perception of the EIA as a formal process often serves as grounds for distrusting the decisions made as a result of this process.

Representatives of the state often point to the investment environment, claiming that it is supposed to be a justification for the public to disregard their social and environmental interests, - which are often interdependent. However, it is important for government officials to understand that the formality of the environmental decision-making process, which leaves the public no choice but to protest in order to protect their rights, has a negative impact on investment climate, *inter alia*.

It should also be emphasized that public backlash is often triggered not only by environmental decisions made as a result of a formal EIA procedure, but also by licenses to extract mineral resources issued prior to the EIA procedure. The Code provides for the possibility of issuing a mineral extraction license without an environmental decision, provided that the mineral extraction takes place only after the environmental decision has been made.[33]

This provision, on the one hand, indicates that even having a valid mining license is a formality and that the actual implementation of the activity depends on an environmental decision. However, under the terms of an already issued license, the public belief that a competent authority can make an independent decision is not well-founded and may result in distrust of the entire EIA procedure.

It should be noted that the Ministry of Economy of Georgia is preparing a draft Code of Mineral Resources[34], therefore it is significant to give the non-governmental sector an opportunity to

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[32] European Commission -Training Package, 'Nature Protection and Environmental Impact Assessment' < https://ec.europa.eu/environment/legal/law/2/module_3_2.htm > 1.5.2022.

[33] Environmental Assessment Code (2017) Article 5 (2).

[34] The Agency of Mineral Resources, "The Second Phase of Mineral Resources has Begun 'წიაღის მეორე ფაზა დაიწყო' <https://nam.gov.ge/?m=texts&menu=1&id=142> 18.05.2022.

participate in the process, - as it is already required by the Aarhus Convention, - so that we see development of a system under which licensing will depend on an environmental decision. This will reduce, *inter alia*, the risk of breaches on the part of the operator, as happened in the case of Shkmeri.[35]

For the purposes of this study, this chapter only addresses the shortcomings, taking into account of which would improve the EIA procedure under the Code, set a higher standard for public safety in environmental decision-making, and increase public confidence in the process.

3.1. Disregarding the precautionary principle in the Code of Environmental Assessment

The EIA directive preamble states that EU environmental legislation stands on principles such as the principle of prevention, the "polluter-pays" principle, the principle of foresight, and more.[36] Environment impact assessment itself is a key tool for ensuring the principle of prevention. One of the manifestations of the "polluter-pays" principle is the fact that the person carrying out activities is obliged to fund the development of an EIA report on its own.[37] As for the principle of foresight - we should consider one of the provisions of Annex IV of the EIA Directive, - which is a part of the 2014 amendment, - as a manifestation of it.
Annex IV of the EIA Directive provides a detailed list of specifications, which are to be included in the environmental impact assessment report. This annex is almost fully replicated in Article 10 of the Code. However, paragraph 6 of the Annex is not fully reflected in it. Both documents set out the obligation to provide information on what methodology and sources to rely on during preparing the EIA report.

The above-mentioned paragraph of the Annex to the EIA Directive also requires provision of details of a) what difficulties (technical deficiencies or lack of knowledge) and b) vagueness characterized the process of significant environmental impact assessment.

At first glance, this vague provision is disambiguated by understanding the content of the precautionary principle. The precautionary principle has various manifestations. In this particular case, the following definition is the most relevant one:

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[35] For more information, see: https://socialjustice.org.ge/ka/search?q=%E1%83%A8%E1%83%A5%E1%83%9B%E1%83%94%E1%83%A0%E1%83%98; 18.05.2022..

[36] Directive 2014/52/EU of the 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Preamble. par. (2).

[37] Environmental Assessment Code (2017) Article 10 (1).

"if it is possible that a given policy or action might cause harm to the public or the environment and if there is still no scientific agreement on the issue, the policy or action in question should not be carried out."[38]

The precautionary principle holds the representatives of the public and private sector responsible for [not] preventing or terminating possible hazardous activity.[39] The main element of this principle is the absence of scientific clarity, which may "arise in the absence of scientific consensus on existing data or by the absence of relevant data at all.".[40]

In this regard, the approach of the European Commission, - which sets a kind of criteria for applying the precautionary principle, which is reflected in Article 191 of the Treaty on the Functioning of the European Union, - is interesting. In particular, this principle is used when a scientific assessment reveals a "reasonable basis for fear" that harm may be inflicted on the environment and humans. However, this concerns not any kind of damage, but the damage that goes beyond the scope of protection established by law.[41]

Going back to the above-mentioned provision of the EIA Directive, - its purpose is to identify what threats may not be properly assessed when preparing an EIA report. If the person carrying out activities is required to provide details about the technical difficulties and lack of scientific clarity in assessing the environmental impact of the planned activity, this may affect the outcome of the decision. In particular, this may be the main reason for the decision-making body to refuse making an environmental decision until appropriate technology is available and / or scientific clarity is established.

Thus, it is necessary to at least amend Article 10 of the EIA Code so it duly reflects the above-mentioned provision in paragraph 6 of Annex IV to the EIA Directive. At the same time, it is advisable to amend Article 14 of the Code. In particular, the possibility of refusal based on the precautionary principle should be added to the grounds for making a decision to refuse carrying out activities, because in such a case, as it was mentioned above, the decision must be

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[38] EUR-Lex, Glossary of summaries < https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:precautionary_principle > 1.5.2022.

[39] Axel Luttenbergerger , 'The Role of Precautionary Principle in Environmental Protection of Coastal Area' (2014) Sientific Paper <https://bib.irb.hr/datoteka/708383.Luttenberger.pdf> 30.4.2022. 70.

[40] European Commission, 'Communication from the Commission on the precautionary principle' (2000) EU Doc 52000DC0001, 14. European Commission, 'Communication from the Commission on the precautionary principle' (2000) EU Doc 52000DC0001, 3. Margot Horspool, European Union Law (OUP 10th edn, New York 2018) pg 5.

[41] European Commission, 'Communication from the Commission on the precautionary principle' (2000) EU Doc 52000DC0001, 3. Margot Horspool, European Union Law (OUP 10th edn, New York 2018) 20. Steven C. Hackett, Environmental and Natural Resources Economics (LGG 4th edn,) (2011). Ludwig Kramer, EU Environmental Law (CPI 7th edn, London 2012) 27.

made in the interests of the environment - "better safe than sorry".[42] And public safety is the key component of the social aspect of the EIA procedure.

The application and implementation of this principle is particularly important in relation to hydropower projects, and one such example of this necessity is the lack of technical feasibility of the Namakhvani HPP project, including the lack of scientific clarity on the causes of Rioni River water shortages and the future impact of climate change.[43]

It is also noteworthy that the so-called Conditional EIA, - when an environmental decision is issued and the person carrying out activities has an "obligation of additionally studying the particular components of the environment."[44]

This clearly indicates that the competent authority may grant the right to carry out the activity in the absence of adequate scientific data. Whereas, the main idea of the precautionary principle is that [when there is an absence of adequate scientific data] there should be proper research, no activities should be carried out and therefore no environmental decision should be issued. Thus, this provision contradicts the precautionary principle.

3.2. Non-compliance of the activities under the Annex II of the Code with the objectives of the EIA Directive

On April 26, 2022, amendments were made to the Code regarding the activities subject to Annexes I and II. In particular, as a result of these changes, Annex I will cover open-cast mining on more than 10 hectares, - instead of 25 hectares. The screening procedure will cover open-cast mining on more than 5 hectares, - instead of 10 hectares. Representatives of the non-governmental sector point to the formal nature of this change, because even lowering the threshold in such a way still leaves a significant number of careers unregulated.[45]

Representatives of the non-governmental sector also point out the non-compliance of Annex II of the Code to the EIA Directive. In particular, Annex II of the Code excludes the application of this Annex to sand and gravel extraction whereas Annex II of the EIA Directive does not allow such an exclusion.[46]

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[42] EU Commission, 'Future Brief: The precautionary principle: decision-making under uncertainty' (2017) <https://ec.europa.eu/environment/integration/research/newsalert/pdf/precautionary_principle_decision_making_under_uncertainty_FB18_en.pdf> 30.4.2022. 5.

[43] Online interview with Nino Chkhobadze, the Head of the Greens Movement 28/04/2022.

[44] Environmental Assessment Code (2017) Article 5 (11).

[45] Online interview with Nino Chkhobadze, the Head of the Greens Movement 28.04.2022;
Online interview with Keti Gujaraidze, policy analyst of Green Alternative 29.04.2022.

[46] Public Defender of Georgia, 'Alternative report of the Public Defender (Ombudsman) of Georgia on the Status of Implementation of the Aarhus Convention 2017-2020' (2021) par. 28

As far back as 2008, the EU Court of Justice responded to the vagueness of the matter. In particular, in one of the cases related to the implementation of Annex II of the Directive, it stated that:

"A Member State which established those thresholds and/or criteria at a level such that, in practice, all projects of a certain type would be exempted in advance from the requirement of an impact assessment would likewise exceed the limits of that discretion, unless all the projects excluded could, when viewed as a whole, be regarded as not likely to have significant effects on the environment"[47]

The Court of Justice of the European Union repeated the same in 2018.[48]

It is true that this interpretation of the Court is addressed to the Member States, but as already mentioned, the Association Agreement, in particular Annex XXVI, obliges Georgia to transpose the EIA Directive into national law. Although Georgia, as a non-member state, does not have a full transposition obligation, the obligation to properly implement Annex II to the EIA Directive and related relevant provisions is explicitly stated in this Annex to the Association Agreement. Thus, if the legislature fails to establish that none of the sand-gravel extraction cases are likely to be activities that are likely to have a significant impact, improper performance of the obligation under the Association Agreement will occur.

It should be noted that the EU Court of Justice, - when considering the activities under the Annex II, - not only considers setting an excessive threshold or excluding activities altogether as a case of improper transposition of the EIA Directive, but considers setting an absolute threshold for those activities as well. In particular, Annex II of the Code defines the scope of specific activities depending on, for example, how much area the planned activity covers or how many tons of material need to be processed.

According to the EIA Directive, the issue of subjecting an activity to the Screening is resolved not only by clarifying whether it falls within a predetermined scale, but also by its characteristics and location.[49] For example, according to the Code, the screening procedure is subject to "development of industrial estates in an area of more than 10 hectares".[50] If an

Online interview with Nino Chkhobadze, the Head of the Greens Movement 28.04.2022;
Online interview with Keti Gujaraidze, policy analyst of Green Alternative 29.04.2022.

[47] Case C-66/06 *Commission of the European Communities v Ireland* [2008] par.65.

[48] C-117/17 *Request for a preliminary ruling from the Tribunale amministrativo regionale per le Marche* [2018] par. 39.

[49] C-392/96 *European Commission v Irland* [1999] para. 19.

[50] Environmental Assessment Code (2017), Annex II Article 9.1.

industrial complex is located on an area of less than 10 hectares, it will automatically be left out of the screening procedure due to the established absolute threshold, regardless of where it is planned to carry out this activity. Additionally, it is possible that individual projects that are close and do not exceed the established boundaries will have a significant impact on the environment as a whole..[51]

Whereas, according to the Code, the location of the activity, the cumulative effect and other characteristics are assessed only to determine whether the activities provided for in Annex II of the Code should be subject to the EIA procedure.[52]

The Court of Justice of the European Union ruled in a 1999 judgment that the application of an absolute threshold to specific activities, without considering the characteristics and location of the activity, was an improper transposition of the Directive.[53] Therefore, it is advisable to thoroughly review the activities for which the absolute threshold is set out in Annex II of the Code and, based on the practical experience gained after the adoption of the Code, to re-define the activities for which setting absolute threshold is unacceptable. Consequently, the possibility of leaving the economic activities, - that may have a significant impact on the environment and social interests of the community, - outside the scope of the EIA procedure, is minimized.

3.3. Unreasonable time frame for screening decisions

Given the fact that the screening procedure is the most important stage, "it is essential that the screening decision-making process is not a formality."[54] For this purpose, effective community involvement even at the screening stage is crucial. The Code envisages public participation from the screening stage, - which is a higher standard than the requirements of the EIA Directive and the Aarhus Convention, as neither of them requires this, although both welcome such "good administrative practice".[55]

According to the Code, the screening application is made public 3 days after its registration and the public is given the opportunity to submit opinions within 7 days. As neither the EIA Directive nor the Aarhus Convention sets out the specific stage at which public participation is mandatory, neither of them sets specific timeframe for public participation at the screening

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[51] C-392/96 *European Commission v Irland* [1999] para. 21, 22.
[52] Environmental Assessment Code (2017), Article 7(1,6).
[53] C-392/96 *European Commission v Irland* [1999] pg 29.
[54] Public Defender of Georgia, 'Environmental Impact Assessment System - Challenges of Policy, Legislation and Enforcement' (2021) p.33.
[55] Directive 2014/52/EU of the of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, პრეამბულა. პარა (29). UNECE, 'The Aarhus Convention: An Implementation Guide' (2nd edn.) (2014) გვ. 146.

stage. However, if the state allows such an opportunity, it should enable the public to participate effectively in this process.[56]

It should be noted that the EIA Directive, for the whole screening decision, provides for 'no more than 90 days'.[57] In exceptional cases, the extension of this period is allowed.[58] According to the Code, no later than 10 days after the registration of the screening application and no later than 15 days, the competent body makes the screening decision.[59] Significantly reduced time for screening decisions, - compared to the directive, - may, on one hand, indicate efficacy of the public entity and its ability to make quick decisions. However, at the same time, it significantly limits the right of public participation, as the 7 days in this 10-15-day period is not a reasonable time for community members, including NGOs, to prepare a properly substantiated opinion on the possible significant impact of a particular activity.

Representatives of the non-governmental sector point out certain cases when not only the specifics of the activity require much more time to prepare a proper comment, but also the volumes of the screening report.[60]

The mentioning of 90 days in the EIA Directive is also a somewhat indirect indication that this time should include the longer time allocated for public consultations and not just 7 days. This is attested by the one-and-a-half-month timeframe for public participation in the screening phase mentioned in the notes of the amendment to the EIA Directive prepared in 2012.[61] It is true that this is a maximum period, but with a period of 7 days, there is still a significant difference.

In addition, if we take into account the fact that in reality the average duration for screening decisions is 2 months in EU countries, and generally it ranges from 1-3 months,[62] This indicates that the short timeframe provided for in Georgian legislation for a screening decision may also

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[56] UNECE, 'Compilation of findings of the Aarhus Convention Compliance Committee' (2021) pg 239.
[57] Directive 2014/52/EU of the 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, 3(6). European Union , 'Report of the for 2012-2015 on the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (1991 Espoo Convention)' 1.
[58] იქვე.
[59] Environmental Assessment Code (2017) Article 7(6).
[60] Online interview with Nino Chkhobadze, the Head of the Greens Movement 28.04.2022;
Online interview with Keti Gujaraidze, policy analyst of Green Alternative 29.04.2022.
[61] COMMISSION STAFF WORKING PAPER IMPACT ASSESSMENT Accompanying the document PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, par. 10.10.12.
[62] European Commission , 'Working Paper Impact Assessment Accompanying the Document Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/92/EU (2012) par 10.10.12.

have an impact on a decision made by the relevant authority itself. An example of this is when different screening decisions are made for activities of substantially similar content and nature.[63]

3.4. Ambiguity of the responsibility of the Expert Commission

According to the Code, in order to prepare an expert opinion on the EIA report, the Agency shall establish an expert commission, which shall submit the above-mentioned opinion within 40 days of its creation, the consideration of which shall not be mandatory when making the final decision, but the refusal of considering it shall be substantiated.[64]

The recommendatory nature of this conclusion can be explained especially when the conclusion is positive, but the decision-making body, in the best interests of the environment, shall still refuse to let the Operator to carry out the activity, even based on the precautionary principle. However, in the event that an expert opinion is negative, it is advisable to have a higher threshold than just a formal justification if such an opinion is not taken into account.

However, the main drawback of the expert commission is that the Code does not set out its [own] unequivocal obligation as a relevant authority to be responsible for the "completeness and quality" of the information provided in the EIA report submitted by the person carrying out activities.[65] Instead of this, as a result of legislative changes dated 17 March 2022, "the person carrying out the activity and/or the consultant is responsible for the accuracy of the documentation submitted in the EIA process and for the presentation of the relevant information required for the planned activity".[66] Hence, shifting the burden of responsibility [from the relevant state entity] entirely to the person carrying out activities and/or the consultant clearly contradicts the purpose set out in the EIA Directive for the competent authority to conduct appropriate expertise. In particular, according to the Directive, the competent authority must conduct an appropriate examination to ensure that the environmental impact assessment report submitted by the person carrying out activities is "complete and of a high level of quality".[67]

It is important that Article 42 of the Code is amended so it explicitly states the purpose of establishing an expert commission, so it is in line with the above-mentioned provision of the EIA Directive.

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[63] Online interview with Nino Chkhobadze, the head of the Greens Movement, 28.04.2022.
[64] Environmental Assessment Code (2017) Article 12(2), 42(1), 43(5).
[65] Directive 2014/52/EU of the 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, preamble, par 33.
[66] Environmental Assessment Code (2017) Article 10(1).
[67] Directive 2014/52/EU of the 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, preamble, par 33.

A number of issues related to the transparency of the activities of the expert commission are to be noted as well. First and foremost, the ambiguity of the procedure for setting up an expert commission has proven to be troublesome. According to the Code, the Agency establishes an expert commission "in each specific case by an individual administrative-legal act." This implies that the Agency has full discretion of composing the Expert Commission, except for the obligations envisaged under Article 42.2 of the Code.[68]

Furthermore, it is crucial that the information about the identity of the composition of the Expert Commission is proactively disclosed after the completion of the expertise.[69]

As it was mentioned above, the main indicators of the effectiveness of the EIA procedure, among others, are the responsibility and credibility of the competent authority. Thus, determining the direct responsibility of the Expert Commission for the accuracy and high quality of the EIA report and related documents and the transparency of the Commission's activities will increase confidence of the public in this process.

4. Compliance of public participation practices within the EIA procedure with present-day opportunities and challenges

In 1998, Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was signed within the EU. The then-secretary-general Kofi Annan labeled it “the most ambitious venture in environmental democracy”.

Reflecting the issues of public participation both in the EIA Directive and in the Code, serves to fulfill the obligations under Article 6 of the Aarhus Convention.

The Aarhus Convention is the first internationally binding instrument that establishes a direct link between a healthy environment and the well-being of an individual.[70] In order for a person to be able to maintain and protect a healthy environment, the Convention sets out procedural guarantees such as access to environmental information, public participation in environmental decision-making process and access to justice.[71]

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[68] Online interview with Nino Chkhobadze, head of the Greens Movement 28.04.2022;
[69] Online interview with Nino Chkhobadze, head of the Greens Movement 28.04.2022;
[70] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25.06.1998, went into force 30.10.2021.) 2161 UNTS 447 preamble.
[71] იქვე 1.

Georgia is a party to the Aarhus Convention, therefore it is an integral part of Georgian legislation. It should also be noted that the Aarhus Convention, as an international treaty, is a normative act which overweights the Code of Environmental Assessment, - in accordance with Georgia's Law on Normative Acts.

The European Court of Human Rights considers participation in the environmental decision-making process to be one of the means of exercising the right guaranteed by Article 8 of the Convention (the right to respect for private and family life).[72]

The issue of public participation in the decision-making process provided for in this Code is regulated by Chapter IV of the Environmental Code, - and this complies with the minimum requirements of both the EIA Directive and the Aarhus Convention.

It is important to evaluate the effectiveness of public participation in the decision-making process provided for in the Environmental Code in accordance with the Maastricht recommendations adopted in 2015 under the Aarhus Convention. It is noteworthy that since 1998, technological changes have fundamentally changed the way of life of the public, which has increased the risk of human rights violations, but has increased opportunities for the effective realization of these rights as well. One of the main purposes of the Maastricht Recommendations is to encourage the use of modern opportunities to promote effective public participation in environmental decision-making, - which is the second pillar of the Aarhus Convention.

For the purposes of this study, this chapter only discusses best international practices for the use of modern technology in informing the public so effective public participation is ensured. The Environmental Assessment Code itself declares the introduction of best international practices as one of its main objectives.[73] We will also briefly review the best approaches to dealing with challenges caused by the pandemic, - proposed by the Aarhus Convention Compliance Committee.

4.1. Practice of using modern technologies for informing the public in the framework the EIA procedure

Ten years before the Maastricht Recommendations, the highest body of the Aarhus Convention, the Meeting of the Parties, adopted recommendations regarding the use of electronic media to enforce the Aarhus Convention. These recommendations call on the parties to grant access to the mandatory information provided for in Article 6 of the Convention in electronic form.

[72] Council of Europe Publishing, 'Manual on Human Rights and the Environment' (2012) 20.
[73] Environmental Assessment Code (2017) 2(1,d).

According to the Maastricht Recommendations, informing the public and receiving feedback from them through electronic means is one of the criteria of the effectiveness of public participation.[74] The Environmental Code provides for such opportunities.[75] However, the publication of these comments in electronic form, - which is one of the recommendations, - is not implemented in practice.

Contrary to the Code, the recommendations envisage individual identification of the community concerned, including the members of the community such as vulnerable groups (children, the elderly, women in some communities), persons with disabilities, religious or ethnic minorities, and those who are economically disadvantaged, for examples, the ones that have no access to the Internet. In some cases, it is advisable to inform these individuals separately about planned public hearings, including by even using the door-to-door practice.[76]

However, it should be noted that it is difficult to reach a significant part of the public through individual means of informing. The Code provides only the following forms of mass media: official websites that are seldom checked by a significant portion of the public, or local newspapers and bulletin boards, the effectiveness of which is, at least, questionable.

Despite the disputed effectiveness of the means provided by the Code, using each of them is essential.

However, if the relevant body actually desired to ensure the effective participation of the public, it can also use modern means for informing the public, - both on an individual and communal level, such as disseminating information on social media (Facebook, Twitter, Blogs), sending individual emails or telephone messages to pre-identified members.[77]

In the process of developing a new action plan for Open Government Georgia, the introduction of the possibility of individual notifications is being discussed.[78] It should be noted, however, that some difficulties have been identified in implementing such a mechanism in terms of ensuring the obligation to protect personal data. The Maastricht recommendations, notably, provide an interesting solution. In particular, it is possible to create a database of contacts where people pre-register and indicate the type of activity and/or the location of the

[74] UNECE, 'Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters' (2015) par 53.
[75] Environmental Assessment Code (2017) Article 34(1).
[76] UNECE, 'Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters' (2015).
[77] UNECE, 'Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters' (2015) par 21, 65.
[78] Online interview with Keti Gujaraidze, policy analyst of Green Alternative 29.04.2022..

geographical unit where they wish to be notified of any publicly planned activities.[79] It should also be noted that according to the information provided by the competent authority, similar practices already exist and the LEPL Center for Environmental Information and Education sends relevant information to "all environmental NGOs and more than 6,000 subscribers". However, it should be noted that the representatives of the non-governmental sector deny the existence of such practice[80].

It should be noted that the launch of an electronic portal is required by the 2018-2019 Action Plan of Open Government Georgia, which shall facilitate access to environmental information and effective participation in the decision-making process, as provided by the Code.

This portal [http://eia.gov.ge/] has been created. However, this can not be considered as fulfilling the obligations under the said action plan, as the portal is not even running in a test mode. It is important that the full implementation of this portal is included in the new action plan.[81]

4.2. Ensuring public participation in times of crises

It is important that, even in times of crisis such as a pandemic, states do not neglect their commitments to environmental democracy.[82]

Kazakhstan's response to the challenges posed by the pandemic was the following:[81]

In 2020, following a ban on public gatherings due to the state of emergency declared in the country due to the pandemic, Kazakhstan appealed to the Aarhus Convention Compliance Committee and requested to:

"share information on how other States have dealt with the issues of public hearings, as well as to clarify whether conducting public hearings via video conference during a state of emergency would contradict the provisions of the Convention".

The basic principle of the Committee's conclusion was that it was intolerable to restrict the rights envisaged by the Convention, even in times of crises. However, in cases when using the traditional means is impossible, it is permissible to use alternative means in the form of video conferences, provided that the latter is an effective mechanism. It also determined the criteria for what constitutes an effective mechanism:

[79] Online interview with Keti Gujaraidze, policy analyst of Green Alternative 29.04.2022.
[80] Online interview with Keti Gujaraidze, policy analyst of Green Alternative 29.04.2022.

[81] UNECE, 'Compilation of findings of the Aarhus Convention Compliance Committee' (2021) ஐ 21.

A) the public should be fully informed about pandemic-related changes to the public hearings;

- The announcements [checked randomly by the author] published on the Ministry's website include information on the format of the public hearing. For example, we come across this type of definition:

  To participate in the public discussion, please ensure to install the Zoom application. This can be done automatically, by receiving an email, after following the link. The application can be used with a smartphone, as well as a personal computer and laptop.[82]

B) During a pandemic, the use of modern technologies for informing the public about public hearings becomes even more important. Thus, the competent authority should use all effective means, including social media and individual messaging;

- Representatives of the non-governmental sector, such as Green Alternative, try to compensate for the lack of such practices on the part of the state by using their own social media and other platforms to inform the public about planned public hearings.[83]

C) During the virtual public hearing, the relevant links should be provided to the public and at the same time the contact information of the person who can be contacted in case of technical difficulties;

- The announcements [checked randomly by the author] published on the Ministry's website include only the zoom link and the corresponding code. Contact information is not provided.[84]

D) Despite the difficulties caused by the pandemic, the practice of early public participation (at screening and scoping stages) should not be restricted;

- Pursuant to Article 13.5.5 of Resolution N181 of the Government of Georgia (dated 23 March 2020), it was determined that both the scoping findings and the administrative

[82] https://mepa.gov.ge/Ge/PublicInformation/29218
[83] Online interview with Keti Gujaraidze, policy analyst of Green Alternative 29.04.2022.
[84] https://mepa.gov.ge/Ge/PublicInformation/29218 + https://mepa.gov.ge/Ge/PublicInformation/29212 + https://mepa.gov.ge/Ge/PublicInformation/29211

proceedings concerning the EIA reports should be conducted without public hearings "in order to prevent the possible spread of coronavirus" . The public was only allowed to participate in writing.

- As a result of the changes made in the Code on September 18, 2020, it was determined that:

  "... In the event of an epidemic/pandemic, taking into account the epidemiological situation in the country, the public hearing envisaged by this Code shall be conducted remotely, using electronic means of communication ..."

E) Access to information required for public hearing should be provided to people who do not have access to the Internet, by, among other means, free mail delivery.

F) Since too many people might want to attend a virtual public hearing, more than one public hearing should be held.

- Some of the announcements posted on the ministry website [checked randomly by the author] proposed two days for a virtual public hearing because of the pandemic, while some did not.[85]

G) The public, even if they do not have access to the Internet, should have the opportunity to participate in a virtual public hearing. To ensure this, the following can be done:

G.a) Citizens should be able to attend the public hearing via a phone and have the opportunity to listen to the opinions expressed during the hearing and ask questions;

and

G.b) The public should also have the opportunity to submit opinions in writing after the virtual public hearing:

- The Code already provides for the possibility of submitting written opinions after a public hearing, as the public hearing is held no later than 30 days after the announcement and the public has the opportunity to submit written opinions within 40 days.[86]

[85] https://mepa.gov.ge/Ge/PublicInformation/29218; https://mepa.gov.ge/Ge/PublicInformation/29351 https://mepa.gov.ge/Ge/PublicInformation/29349.
[86] https://mepa.gov.ge/Ge/PublicInformation/29218

4. New Institutional Framework and Related Threats

Even in the presence of the best legislative framework, its conscientious and effective enforcement by the competent authority is crucial for the effective enforcement of the environmental impact assessment procedure.[87]

Prior to the legislative changes in 2022, the Ministry of Environment Protection and Agriculture of Georgia was the main competent body for conducting the EIA procedure. Following the above-mentioned changes, the core competencies of the Ministry regarding the environmental impact assessment procedure were transferred to its LEPL - National Environment Agency. There have been a number of critical assessments of these institutional changes by the non-governmental sector, which, as noted in the European Parliament report, are a result of, among other things, "increased risks of conflict of interest and corruption".[88]

Representatives of the non-governmental sector indicate that the Agency, as a legal entity under public law, has the right to provide services in exchange for a fee, and these services include information that may be procured by the Agency during the preparation of the EIA report.

Types and fees of these services are established by the Resolution N502 of the Government of Georgia (dated August 18, 2014) on "Approval of the Types and Fees of Services Provided by the National Environment Agency, a Legal Entity under Public Law of the Ministry of Environment Protection and Agriculture of Georgia." Based on this, the agency has to determine the accuracy of the information that it provides itself in return for payment.[89]

Furthermore, due to the fact that the Agency is a legal entity under public law, its head and the deputy head are not subject to the Law on Public Service, which includes the obligation under the Law of Georgia on Conflict of Interest and Corruption in Public Institutions.[90] Additionally, according to the Law on Civil Service, the obligations under the Law of Georgia on Conflict of Interest and Corruption in Public Institutions do not apply to LEPL employees during the transition period.[91] It is noteworthy that this transition period was postponed several times. As of today, the deadline for the transition period is December 31, 2022,[92] although there is no guarantee that this date will not be postponed yet again. So, during this

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[87] UNEP, 'EIA Training Resource Manual' (2nd edn.) (2002) გვ. 145.
[88] European Parliament, 'European Implementation Assessment' (2022) გვ. 65.
[89] Online interview with Nino Chkhobadze, head of the Greens Movement 28.04.2022
Online interview with Keti Gujaraidze, policy analyst of Green Alternative 29.04.2022.
[90] Law of Georgia on Public Service (2017), Article 4 (1,s).
[91] Law of Georgia on Public Service (2017), Article 126[1] (2).
[92] Law of Georgia on Public Service (2017), Article 126[1] (1).

period, the employees of the agency are not prohibited from providing services to the person carrying out activities, which explicitly exposes the risks of conflict of interest.[93]

The issue of reducing political responsibility in environmental decision-making is also noteworthy. Considering that the EIA procedure includes large-scale activities, such as large hydropower-connected activities, the decision-maker must also be a person with high political responsibility. However, this does not preclude the possibility of delegating authority even to local authorities on certain small projects (similar to the old legislation).[94] It should be noted that similar experiences exist at the European level, where many countries have a so-called dual environmental impact assessment system, where decisions on large projects and consequently responsibilities are taken by high-ranking officials, and remaining projects are addressed at regional level.[95]

5. Conclusion - primary recommendations related to legislative changes

From all the above, the advisability of specific legislative changes has emerged, in order to improve the process of environmental impact assessment. In particular: considering the precautionary principle, full consideration of the issue of public safety, setting a reasonable timeframe for effective public participation in the screening phase, determining the direct responsibility of the expert commission for the accuracy and high quality of the EIA report and related documents and thus increasing public confidence in the commission; also, minimizing the possibility of economic activity remaining, which may have a significant impact on the environmental and social interests of the community.

The purpose of these recommendations, as mentioned from the beginning, is to improve the legislation in such a way that it ensures the proper protection of the environmental and social interests of the public in the implementation of the procedures provided by the Code.

Therefore, it is recommended that:

1) Article 10 of the EIA Code is amended to adequately reflect the provisions of paragraph 6 of Annex IV to the EIA Directive. In addition, it is advisable to add the "authority to

[93] Online interview with Nino Chkhobadze, head of the Greens Movement 28.04.2022
Online interview with Keti Gujaraidze, policy analyst of Green Alternative 29.04.2022.
Law of Georgia on Public Service (2017), Article 4 (1,s).

[94] Online interview with Nino Chkhobadze, head of the Greens Movement 28.04.2022

[95] Davide Geneletti, ' Land take and the effectiveness of project screening in Environmental Impact Assessment: Findings from an empirical study' (2017) 67 EIAR 118.

refuse on the grounds on the precautionary principle" to the grounds for making a decision to refuse to carry out activities to the article 17 of the Code (see Chapter 3.1 for details.)'

2) The deadline for public participation in the screening phase and for the screening decision in general is reconsidered, so that the effectiveness of this stage and the quality of the final decision is ensured (See Chapter 3.3 for details.);

3) Article 42 of the Code is amended so it explicitly states the purpose of setting up an expert commission, and so it is in line with the purpose set out in the EIA Directive. (See Chapter 3.4 for details.)

4) It is recommended to thoroughly review the activities for which the absolute threshold is set out in Annex II of the Code and, based on the practical experience gained after the adoption of the Code, re-define the activities for which setting absolute threshold is unacceptable (See Chapter 3.2 for details.).