



OPEN SOCIETY GEORGIA FOUNDATION
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POLICY BRIEF— ACCESS TO ENVIRONMENTAL INFORMATION IN GEORGIA

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INTRODUCTION

Access to environmental information is a critical element for effective public participation in environmental decision-making and the execution of environmental rights. The EU-Georgia Association Agreement, signed in June 2014 and in force since summer 2016, stresses the importance of environmental protection and the sustainable use of natural resources. The need for full implementation of the United Nations Economic Commission for Europe Convention on access to information, public participation and access to justice on environmental matters (Aarhus Convention) were also underlined in the EU-Georgia Association Agenda 2013-2016.

The Directive 2003/04/EC - Access to environmental information - is the tool for transposition of the first pillar of the Aarhus Convention. It entails “the widest possible systematic availability and dissemination to the public” of environmental information, with the aim to increase the transparency of administrative decisions, facilitate meaningful public participation and decrease the risks of corruption in the field of environmental protection. The Association Agreement requires that Georgian legislation comply with the directive by the end of 2016.

From 2014 to 2016, the Georgian government undertook a number of measures to ensure compliance with the Directive. It introduced the environmental information definition in legislation and, with some delay, started the establishment of an environmental information dissemination system.

However, gaps in the Georgian legislation restrict access to environmental information for the public and contradict the Directive 2003/04/EC. It largely influences the ability of state structures to provide full-scale information about the environment. As a result, the official Report on the State of the Environment, prepared by the Ministry of Environment and Natural Resources in year..., superficially reviews the information regarding the emissions, types of pollution and the harms caused by big polluters (mainly energy and mining companies).

Limited access to environmental information also restricts meaningful public participation in environmental decision-making processes on large development projects (e.g., transmission lines, roads, power plants, new mines, etc.). As a result, there are permanent, ongoing protest actions by affected communities all around the country.

FREEDOM OF INFORMATION IN GEORGIA AND ITS COMPLIANCE WITH DIRECTIVE 2003/04/EC

Article 37 of the Georgian Constitution recognizes that “everyone shall have the right to complete, objective, and timely information about environmental conditions.” In addition, Article 42 in the Freedom of Information Charter of the General Administrative Code of Georgia (GACG) highlights that information on the environment, as any other information, should be open and accessible for all citizens of Georgia, unless it contains any commercial, personal or state confidential information.

The EC Directive 2003/04/EC acknowledges the need for exceptions designed to protect the confidentiality of international relations, national defense, public security, commercial, industrial and personal privacy. However, in contrast to the GACC, it stipulates that “the grounds for refusal...shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure”. The Directive requires elaboration of the definitions and processes for the grounds of the refusal in national law, based on a presumption in favor of disclosure of information. It requires that “in every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal”.

Therefore, the Directive requires introduction of the public interest test when requested environmental information contains any commercial, personal or state confidential information. The starting point is that the public interest in disclosure is greater than the public interest in maintaining the exception. Therefore, in each particular case, the authority proposing to withhold information must clearly demonstrate how it has balanced public interest against disclosure.

The Directive also requires that the public authorities made confidential environmental information available through the separation of “any information falling within the scope of the exceptions from the rest of the information requested”.

Georgian authorities often refused to disclose environmental information, claiming that providing greater transparency would be detrimental to the commercial or industrial interests of third parties. For example, public-private partnership contracts of large infrastructural and energy programs/projects could be considered confidential. Meanwhile, contracts include environmental information as “administrative measures, environmental agreements, policies, legislation, plans and programs, affecting or likely to affect the elements of the environment, cost-benefit, other economic analyses and assumptions used in environmental decision-making”. The restriction of those types limits meaningful public participation around concrete projects and programs.

Sometimes, authorities may seek permission from commercial owners to separate and disclose the information. Without the commercial owner’s permission and/or court decision, authorities do not practice the separation of environmental information.

THE LAW ON SUBSOILS – CONTRADICTIONS WITH ACCESS RIGHTS

The law on Subsoils directly contradicts both the Directive 2003/04/EC and the Freedom of Information Charter of the GACG. Article 29 of the law stresses that information about subsoil represents the property of the license holder and it “is impermissible issuing information stored in the data warehouse to other legal or natural persons without the owner’s consent”. The clause contradicts the definition of environmental information, both under the Aarhus Convention and under the Law on Environmental Protection of Georgia.

The Ministry of Environment and Natural Resources Protection does not issue any information on geological structure, deposits and resources, mining and technical terms of subsoil treatment and other properties and parameters if this information is not developed by public agencies. In accordance with the law on licensing and permits, Georgian authorities control the license holders only through the monitoring of licensing conditions and/or proprietor’s regular annual reports. The frequency and scale of monitoring activity of the ministry of environmental protection and natural resources (in 2015, the ministry inspected only 117 license holders out of 3,124 active licenses on natural resources) is very limited.

Consequently, the regular annual reports of license holders are the major source of information on environmental pollution. They are however confidential. This sets limits for public access to information on all parameters of the concrete license holder activities, including emissions, environmental action plans for the protection of public health and biodiversity, contracts, annual payments to budget and so on.

The Georgian state authority frequently restricts the release of information about the emissions and other characteristics of the planned or extracted materials. The move contradicts the Directive 2003/04/EC, which states that “the requests for environmental information relating to emissions (including discharges and other releases) into the environment shall not be refused even in circumstances where the relevant environmental information might otherwise be protected in accordance with any provision or in relation to commercial or industrial confidentiality”. The clause limits the power of public authorities to refuse to disclose emissions in relation to commercial or industrial confidentiality.

In a number of cases, the courts requested that the government discloses the information, made unavailable under Article 29 of the law on subsoils, appealing to the constitutional rights of citizens. However, the government continues to use the restriction under Article 29 of the Law of Georgia “On Subsoil”. This creates significant barriers to the public to access information and to monitor compliance of the license holders’ activities with conditions of the license.

CONCLUSION AND POLICY RECOMMENDATIONS

Principle 10 of the Rio Declaration (1992) reinforces the principle of public access to environmental information in achieving sustainable development and good governance, as it can improve environmental decision-making and pollution control, increasing the quality of environmental protection and citizen's engagement in decision-making processes.

Therefore, it is important that the Georgian government implements its obligation under the EU-Georgia Association Agreement and ensures further transparency of mining, energy and other related sectors. Obviously, there is the risk of generating opposition by some commercial companies. However, in recent years, more and more companies, especially in the minerals and energy sectors, are operating under various voluntary standards (e.g. Transparency Extractive Initiative, Hydro Sustainability Assessment Protocol etc.) to increase transparency and accountability. These initiatives received high level support from the European Union. Furthermore, full compliance with the Aarhus Convention and respective EU Directives would support the setting of new standards and attract companies that are committed to sustainable development.

Therefore, the European Commission should reinforce its requirements vis-à-vis the Georgian authorities to comply with Directive 2003/04/EC and the Aarhus Convention. It should also engage the Georgian government on natural resources governance issues, with the objective of enhancing transparency, improving the investment climate and reducing the chances of corruption and other malpractices.

In order to comply with international commitments, including the ones stipulated in the EU-Georgia Association Agreement, the Georgian government should ensure:

- Full compliance of the law on subsoils with the Directive 2003/04/EC to provide information restricted under the law. To ensure compliance with the Directive, annual reports provided by license owners should be made available to the public;
- All of Georgia's environmental horizontal legislation has to be made compliant with the Directive 2003/04/EC. It should define the grounds for refusal of providing access to environmental information in the case of the personality, state, commercial or industrial confidentiality, based on a presumption in favor of disclosure of information. The introduction of the tools envisaged by the Directive, including public interest tests, would function as the best warranty to ensure a balance between confidentiality of information and assisting the public interests.