The Aarhus Convention in Georgia: the long road to implementation

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Introduction

The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention)1 is an important tool in developing and maintaining environmental rights in signatory countries, especially in countries in transition to democracy (CITs). The Aarhus Convention has been shown to improve environmental protection, promote democratization, enhance security and produce sustainable environmental outcomes through participatory environmental decision-making in established democracies.2 It is less clear how effective the Convention has been in CITs, although the evidence that does exist indicates that the effectiveness of the Convention in CITs roughly tracks the state of their institutional and cultural transformation from authoritarian states to democratic ones. That is, the slower the progress towards democracy in general, the more resistance to the Aarhus Convention there is at the governmental level.3 At the same time, and perhaps as intended, the Convention is itself a tool that empowers civil society and gives greater impetus to reform minded individuals and organizations – in other words, it becomes a powerful ingredient in the process of democratization itself.4

Georgia is a country that illustrates the challenges a CIT may experience in implementing the Convention. This article will describe and analyze how the Convention is implemented in Georgia, and provide some insight into how the implementation structure for the Convention can continue to be strengthened in order to make it a more effective tool in the hands of citizens and civil society in their efforts to secure their environmental rights. The research for this article was conducted in Georgia and includes extensive interviews and the outcomes of field visits with the community of environmental organizations, environmental consultancies, governmental decision-makers and politicians, members of the public and the staffs of the Ministry of Environment and the independent Aarhus Center in Tbilisi, discussed below.

The legal framework and institutional capacities for complying with the Aarhus Convention in Georgia

During the 1990s Georgia enacted a flurry of new environmental laws despite experiencing serious challenges resulting from the collapse of the Soviet Union, including industrial and general economic decline, egregious corruption, acute electricity shortages, inflation and deep unemployment. Between 1993 and 1999 14 environmental laws and 10 international environmental conventions5 were signed and ratified by the Parliament.6 Such fundamental principles of international environmental governance and policy as pollution prevention and risk reduction were

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1 The Convention was adopted in Aarhus, Denmark on 25 June 1998 and entered into force in 2001.
5 Apart from the directly environment-related laws there are other marginally related ones, eg Law on Tourism (1995) or Law on Transit and Import (1995), see the Parliament of Georgia (in Georgian) http://www.parliament.ge. Overall, during this period around 100 conventions/treaties were ratified/signed (see UN (2002) Georgia-Country Profile. UN Department of Economic and Social Affairs, Division for Sustainable Development available at http://www.un.org/esa/agenda21/rualindo/countr/georgia/).
6 One reason for this legal explosion might be that from 1992 to 2004 one of the most influential people of the Georgian Government was Zurab Zhvania, a leader of the Green Party of Georgia (founded in 1988) and the first co-chairman of European Greens Party for Eastern Europe countries and the ‘second person’ of the country. It is believed...
introduced into the state’s legal and institutional frameworks. Following the pattern of other new democracies emerging from socialism, the new Constitution, introduced in 1995, conferred the right to a healthy environment:

Article 37(3)
Everyone shall have the right to live in healthy environment and enjoy natural and cultural surroundings. Everyone shall be obliged to care for natural and cultural environment.

Article 37(4)
With the view of ensuring safe environment, in accordance with ecological and economic interests of society, with due regard to the interests of the current and future generations the state shall guarantee the protection of environment and the rational use of nature.

Article 37(5)
A person shall have the right to receive complete, objective and timely information as to the state of his/her working and living environment.7

The Constitutional guarantee of access to environmental information was thus introduced in Georgia six years before the Aarhus Convention came into force. Following the adoption of the Constitution a comprehensive Report on the State of the Environment of Georgia was prepared and a number of laws concerning environmental protection were enacted. Among these, three framework laws on Environmental Protection, Environmental Impact Permit and State Ecological Expertise were particularly relevant to the Aarhus Convention.

In 2005, the post-Rose Revolution Georgian Government8 began a second round of reform of the country’s environmental legislation, and consequently the law on Environmental Protection was amended in 2007; the laws on Environmental Permits and State Ecological Expertise were abolished in 2007 and substituted by the laws on Environmental Impact Permit9 and Ecological Expertise.10 Access to environmental information and participation in decision-making are covered by these as well as other laws, but as we will see there are inconsistencies as well as vague provisions in the laws that make implementation of these pillars of the Aarhus Convention difficult at times.

Access to information

The constitutionally guaranteed right to access environmental information is elaborated by the General Administrative Code of Georgia:

Article 10(1)
Every person has a right to familiarize him/herself with the information existing in administrative institutions as well as to obtain its copies, if they do not contain state, professional, commercial or personal secrets.11

The Code defines the rules, procedures and timelines that are to be followed when the public requests access to information. A public authority, for instance, is not obliged to take additional steps to organize or compile information; rather, it should make the existing information available to a claimant in the form in which it is held by the authority. Claimants are entitled to choose a preferred format in which to receive the information and the authorities are obliged to provide an authenticated copy. Whereas it is prohibited to charge for information itself,14 the law on Fees for Copying of Public Information15 requires the claimant to cover material costs of public institutions, such as the costs of CDs, printing paper, diskettes etc. Public...

8 Law on Environmental Protection (519–Is, 1996-12-10).
9 The Rose Revolution of 2003 brought into power the nationalist democratic party of Michail Saakashvili, the President of Georgia since January 2004.
10 Law on Environmental Impact Permit (5602-rs, 2007-12-14, amended in 2009).
11 Law on State Ecological Expertise (5603-rs, 2007-12-14).
12 As in other post-Soviet countries, Georgia has a law regulating environmental impact assessment – the Law on Environmental Impact Permit – and another law regulating the quality control of environmental assessments – the Law on Ecological Expertise. (Ecological expertise is an essential environmental protection measure, which is conducted during the decision-making process about the production of a permit for environment impacts of activities or construction. The aim of the eco expertise is to secure the ecological balance of the environment taking into consideration the environmental protection principles and principles of rational use of natural resources and sustainable development. The positive conclusion of the Eco expertise is a necessary condition for issuing a permit (translation of art 1 of the Law on Ecological Exercise)).
14 ibid art 39.
15 Law on Fees for Copying Public Information (1437-rs, 2005-05-...
institutions must provide the required information as quickly as possible and no later than 10 working days from receiving a request (unless information is confidential). The General Administrative Code has stricter rules about refusals to provide information than those envisaged by the Convention. It requires that a written explanation of reasons for refusal be given to claimants within three days from the receipt of a request.

There is no legal definition of ‘environmental information’ in Georgia. What constitutes environmental information is usually decided upon interpretations made by authorities receiving requests for information of the Constitution and the General Administrative Code of Georgia, and the Law on Environmental Protection and other environmental laws. Consequently, authorities have discretion in deciding what constitutes environmental information, but in practice environmental information usually includes any kind of ‘ecological’ information, information about the population’s health, catastrophes/emergencies that endanger human life and the quality of products. This sort of information is kept in public institutions such as self-regulating authorities and municipalities and is supposed to be open to the public unless it qualifies as secret under the law or is registered as confidential pertaining to individual persons. Citizens’ right to obtain information on the quality of products is secured through a system of eco-labeling according to the Law on Environmental Protection.

The provisions of the Constitution regarding the rights to obtain information freely and the obligation to disseminate it are transposed in the environmental domain by several laws – the law on Environmental Protection requires the Ministry of Environmental Protection and Natural Resources of Georgia (MoE) to prepare triennially a state of the environment report for the president of Georgia and to publish it for the public. It also sets out the rules for local and regional authorities on how to develop, write up and disseminate the reports. Notably, this law requires Georgian citizens to report any expected or actual natural, anthropological or technogenic catastrophes and accidents to the authorities, whereas the latter are not obliged automatically to publicize this kind of information, although the law does guarantee the right to access all such information upon request.

Article 5 of the framework Law on Environmental Protection reaffirms the public’s right to access environmental information, including information relating to the activities of the Ministry of Environment. It does not, however, set out special rules with regard to access to environmental information beyond the requirement to produce state of the environment reports, as noted above. Therefore, the General Administrative Code is the primary law which implements the constitutionally guaranteed right to access information in Georgia.

Public participation

According to the Aarhus Convention the public has a right to participate in environmental decision-making during the elaboration of projects, plans, programs and policies as well as executive regulations and regulations promulgated by ministries or other agencies. In line with this, Georgia has developed certain provisions for public participation in project-level and strategic decision-making. The Law on Environmental Impact Permit aims at ensuring the basic rights of a citizen envisioned by the Constitution of Georgia to obtain full, objective and timely information about his or her work and living environment as well as providing for public participation in the government’s decision-making process in the field of environmental protection, regardless of the planning level – that is to say, at the project level as well as at more strategic levels of decision-making.

Public involvement in project-level decision-making is meant to occur during the environmental impact assessment (EIA) process, which is regulated by the laws on Ecological Expertise and on Environmental Impact Permit. The Law on Environmental Impact Permit establishes a procedure for involving the public in project-level decision-making through public hearings and opportunities to comment on project proposals but only after the intent to conduct a project and a draft EIA have been published. At that point, a public hearing on the draft EIA must be held in the vicinity of where the project would occur, and comments from the public must be collected. Project proponents are required to take account of the comments they receive in drafting the final EIA.

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13, last amended in 2009 arts 6, 8.
16 General Administrative Code of Georgia art 40.
17 ibid art 41.
19 Law on Environmental Protection. Eco-labeling is regulated by the MoE of Georgia ‘Regulations on Eco-marking’ (1795-Is, 1999.02.05) and provides the public with access to information on the quality of products, their processing, manufacturing and use conditions. Those aspects are also detailed in the Laws on Protection of Consumers Rights (151-Is, 1996-03-20, last amended in 2009) and on Food Safety and Quality (2546-rs, 2005-12-27, last amended in 2007).
20 Before the amendments of 2007, the Law (1996) obliges the MoE to prepare annually the State of the Environment Report. The components of such reports are delineated by the Presidential Decree (No 389, 1999) ‘Rules of Preparation of National Reports on the State of the Environment’. The same Decree states that both elaborating and issuing the National Reports are to be financed by the state budget.
21 Law on Environmental Protection (519-Is, 1996-12-10, last amended in 2007) art 7.
22 Law on Environmental Impact Permits art 2.
23 ibid arts 6, 7.
although how specifically they must take account of comments is not specified in the law.  

EIAs are validated through the process known as ‘ecological expertise’ in which the public plays no direct role. Environmental experts are commissioned to review and control the quality of EIAs and submit their findings to the competent authorities. Moreover, whereas EIAs are published and disseminated to the public and interested NGOs, the conclusions of those conducting the ecological expertise are not. Members of the public interested in obtaining the information included in the results of the ecological expertise may request to be ‘familiarized’ with the relevant documents by the competent authority, although the law does not specify a mechanism for doing so.

Public involvement in the preparation of higher-order initiatives such as plans, programs and strategies are also regulated by the Laws on Ecological Expertise and on Environmental Impact Permits, which specify procedures to conduct strategic environmental assessments within the framework of either. However, as a matter of practice, strategic environmental assessment (SEA) has not yet been institutionalized.

The Law on Reglement of the Parliament of Georgia contains provisions that allow for public participation in the development of laws and other legal acts, as well as regulations at the administrative level. Draft laws and regulations are to be published and made available to the public in a timely manner, thus encouraging public debate and also soliciting public comments. Draft laws and regulations are also to be debated during public hearings as well as consultations between the competent authorities and interested NGOs.

Access to justice

The principles of the third pillar of the Aarhus Convention are protected under the Constitution, the Law on Environmental Protection and the Administrative Code of Georgia. The right to appeal to the courts is amongst the basic constitutionally guaranteed human rights in Georgia. Article 42 of the Constitution entitles any person to apply to the court for the protection of his or her basic freedoms and human rights. Alternatively, if a person’s right to access information is violated by a public authority individuals can appeal to a higher-level public authority by submitting an administrative complaint according to the General Administrative Code. The same provisions apply in case a person’s request for information has not been properly registered or has been refused without a written explanation; if a person has not been allowed to participate in a decision-making process or has received incomplete, inadequate or false information; or if the information has not been provided within the legally specified period of time.

The bodies that are supposed to detect and investigate violations of national and international environmental law in Georgia are mainly within the MoE. The Environmental Inspectorate, the Monitoring Department and some smaller offices are required to examine complaints and, if necessary, transfer them to the courts. Other institutions that have similar competences are local and self-regulating municipalities in the regions as well as the police, who are primarily responsible for environmental crimes. Claimants may also direct their grievances to the human rights ombudsman (‘Public Defender’), an independent official appointed by the Parliament of Georgia for a five year period to investigate complaints and protect constitutional human rights. The ombudsman’s Tbilisi office has been recently extended to include an environmental clerk who deals specifically with environmental complaints.

Implementation of the Aarhus Convention in Georgia

Implementation of the Aarhus Convention is not a priority in the MoE or among other governmental bodies in Georgia, where the process of democratization has gone in fits and starts, despite the much celebrated Rose Revolution. As if to demonstrate a lack of concern, the Parliament failed to meet its legal requirement to publish the text of the Aarhus Convention as well as Georgia’s implementing legislation in its official gazette until 2005, despite the fact that the Convention was ratified by Georgia in 2000. Even then publication only followed a great deal of pressure from the public and NGOs.

28 See the Law on the Ombudsman of Georgia (230-IIs, 1996-05-16, last amended in 2009).
30 In 2003, the Legal Society Association of Georgia launched a lawsuit to induce an official publication of the Aarhus Convention. The court required the Parliament officially to publish the Convention (see UNEP Division of Environmental Conventions (2006) ‘Manual on Compliance with and Enforcement of Multilateral Environmental Agreements’). At that time, the Georgian Government was in the process of formation and power redistribution following the Rose Revolution of 2003 and it was not until 2005 that the new Parliament published the text of the Aarhus Convention.
Access to information

While the rights of citizens to access environmental information are legally protected, the scope and the contents of information that can be requested has become an issue among stakeholders. In practice, the MoE, environmental NGOs and environmental consultancies have divergent views on this subject. Following its internal policies, the MoE tends to post online relatively benign information that can be requested has become an issue among stakeholders. In practice, the MoE, environmental NGOs and environmental consultancies have divergent views on this subject. Following its internal policies, the MoE tends to post online relatively benign information such as news concerning tenders, dates and recipients of recently issued environmental permits and licenses; information on approved projects; auctions; and the financial terms of legal settlements such as fines for timber poaching. Environmental NGOs are dissatisfied by the quality of information made available online, and complain that the MoE fails to understand what is meant by environmental information under the Aarhus Convention. Until 2007 the ministerial website did not contain any description of the physical environment, which is conventionally perceived as basic and high priority environmental information. The website has recently been extended to cover natural resources such as land, water and minerals; however, many pages still contain little or no specific information as to the conditions of and pressures upon the resources and media in question. The website of the Ministry of Health, which is another major holder of environmental information in Georgia, also provides very limited, mainly general information on environmental health issues.  

The NGO sector, in cooperation with the Aarhus Center, has emerged as a supplement and partner to the government in collecting and disseminating environmental information. CENN, the Center for Strategic Research and Development of Georgia (CSRDG) and Green Alternative widely disseminate electronic newsletters about public hearings, legal news and other environmental events in the Caucasus, as well as summaries and interpretations of environmental information that they gather. Similar information is provided by the Regional Environmental Center Caucasus with a special focus on water issues and trans-boundary projects in the Smaller Caucasus. The Aarhus Center in Tbilisi and its regional branches maintain a dedicated website that serves multiple purposes, from providing environmental information to conducting surveys.  

State of the Environment reports have been of mixed quality, with the reports for 2001 and 2002 containing little more than descriptions of the MoE’s work programs, with little information regarding environmental conditions, problems, emissions and environmental health issues. Reports should have been issued annually until 2007; however, as of 2007 only four reports were prepared – in 1996, 2001, 2002 and 2005 / 2006 respectively. While some parts of the first State of the Environment report are available online, the other three have not been electronically published. According to the Aarhus Georgia Focal Point Coordinator, the last report will be converted into electronic form and made available online, although this has not yet occurred. Meanwhile, the hard copy is available in the MoE building and at the Aarhus Center, where it can be photocopied.

A number of problems arise that often obstruct the flow of environmental information from MoE to interested members of the public. In many cases, the MoE responds to requests for information by providing vague and not quantified descriptions of environmental conditions. When those seeking the information subsequently complain, the MoE often resorts to one of two strategies: either it claims that the request cannot be fulfilled because the form of the

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31 L’Oeufa (n 27).
32 For the Center’s activities see its website available at http://aarhus.dsl.ge/index.php?lang_id=ENG.
33 http://www.garemo.itdc.ge/.
35 The Aarhus Center also periodically publishes activities reports to describe the progress against its work plans. However, the effectiveness of the completed activities can be questioned as the reports describe only what has been accomplished not specifying to what extent and how successful it has been. See the website at http://aarhus.dsl.ge.
36 For the English version see http://enr.info.grida.no/htmls/georgia/soegehraarhus.dsl.ge/soege.htm.
request was itself insufficiently clear or it claims that further research is needed in order to meet the request. In the case of the former, most of those seeking the information desist at this stage rather than return to the MoE with a reformulated request. In cases when the MoE claims that further research is needed in order to fulfill requests for information, a two to three month wait is not unusual, if all other hurdles can be overcome. Non-governmental organizations report that compliance on the part of the MoE with the 10 day legal limit to respond to requests for information is the exception rather than the rule.37

There are indeed instances when requests for information are difficult to meet, such as a recent case in which a citizen asked the MoE to provide all documents from the last three years containing the words ‘air pollution’ and ‘heavy metals’ and ‘waste’ from the ministerial archives. However, in other cases, requests for information are not met because the MoE lacks an internal mechanism for forwarding requests to the responsible desk within the organization. If a member of the public requesting the information fails to address his or her request to the appropriate sub-division of the MoE it may well go unanswered or else the person may be shuttled randomly between administrative bodies, each of which claim to be the inappropriate destination for the request.38

Lack of coordination and communication also occurs between administrative bodies. Offices of the MoE located in the territories outside of Tbilisi often do not forward all requests for information that they cannot answer to the central office of the MoE, thus effectively denying the request for information. Moreover, territorial offices do not send complete statistics on requests for information to Tbilisi, so the MoE cannot estimate the demand for information throughout the country nor monitor whether the demand is effectively met, although the MoE is legally required to maintain an accurate database.39

Intentionally or not, the MoE has also erected a classic Catch-22 for members of the public seeking environmental information which it may employ whenever information requests require photocopying or copying CDs. According to its internal rules, the MoE will only provide photocopies of information upon receipt of the appropriate copying fees to its bank account. However, seekers of information cannot know in advance how many pages or how many CDs need to be copied, and therefore do not know how much money to pay, and the MoE is unable to provide seekers of information with a precise amount to be paid until after the copying has been done. Moreover, from 2007 until 1 January 2009 the MoE did not have a dedicated bank account into which deposits could be made, thereby making it impossible for seekers of information to pay the legally mandated fees even if they were able to work out how much will be owed. In the absence of timely payment, administrative bodies are alleviated of the responsibility to comply with requests for information and cannot be penalized for not complying with the law on access to information. Individuals who provide their own copying materials may avoid falling into this endless loop. The Aarhus Center also attempts to address the problem by borrowing materials from the MoE and making copies for the public. The Center and some NGOs have petitioned the MoE to address this issue.

Support and assistance from the NGO sector and the Aarhus Center are essential to implementing the Aarhus Convention in Georgia, as despite being the competent authority in most cases where environmental information is sought, the MoE has limited institutional capacities. It does not, for instance, have personnel responsible for information systematization, management and coordination with other administrative bodies. To respond to specific research-related questions, it often has to address specialized environmental consultancies or research institutes that possess well-equipped laboratories. The local branches of the MoE as well as municipalities that are frequently addressed with requests for information face even more difficult situations. In 2000–2006 the majority of the regional offices of the MoE were operationally defunct, with nearly non-existent financial and personnel resources. Since that time the network of ministerial offices throughout Georgia has been streamlined, with many of the smaller offices having been closed and with a focus being put on building the capacities of offices in fewer larger towns. In the longer term this linear organizational structure is expected to improve the speed and accuracy of responding to requests for information and also allow a centralized system of collecting data on requests and responses to be developed.

Public participation

As Georgia institutionalizes democratic rules and habits the public participation pillar of the Aarhus Convention gains in importance for members of the public. Nevertheless, the legal basis for public participation is

37 These findings are based upon interviews of NGO representatives and members of the public experienced in attempting to utilize Aarhus access to information rights in Georgia.

38 For example, a request for information on new cleaning trucks for waste collection was first sent to the mayor’s cleaning service office, which however stated that since it did not have those trucks on its balance sheet it was not able to answer. Then the NGOs had to find services responsible for improving the urban landscape and address them. The latter sent them to another agency. This ‘snowball principle’ applies to many requests in Georgia.

39 General Administrative Code art 37.
weaker than that for access to information, and public participation is not seen by decision-makers as an essential ingredient in making good and legitimate decisions. Rather, it is too often viewed as a formality to be discharged with as little effort as possible. Consequently, while public hearings and stakeholder consultations are now more common within the context of environmental decision-making, the outcomes of these exercises are usually not taken into consideration when final decisions are made. While this is not always the case, the frequency with which participatory exercises are conducted and then ignored in decision-making has had a detectable negative effect upon NGOs and other stakeholders, who express cynicism with regard to the motives and sincerity of authorities and developers conducting the participation processes. Ultimately, authorities are in danger of undermining the legitimacy of their decisions by raising expectations on the part of the public that it can influence decisions, and then dashing them.

As a matter of proper administrative procedure, draft environmental legislation must be published by the Ministry of Environment with an accompanying justification of the proposed law and an analysis of its socio-economic impacts. In practice usually only the draft laws are published, and when the secondary materials do appear they are vague and uninformative.40 The ministry is required to follow the publication of the draft laws and accompanying materials with public hearings that involve members of the general public and affected communities, which are meant to have an impact on the final draft of the laws. In practice, again, public hearings are rare and formal procedures and institutional mechanisms for conducting the public participation processes are missing entirely. Units of the MoE and other relevant ministries are therefore left with a great deal of discretion with regard to whether and how to conduct public participation.

As opposed to public participation with lay persons, which as noted rarely occurs, the involvement of non-governmental environmental experts in drafting strategies and draft laws is common. Experts from the NGO community and especially from consulting firms are often invited to support governmental working groups and task forces. In the cases where this occurs, the government's primary motive for bringing in outside experts is to compensate for its own lack of expertise and capacity. In such cases, NGO and consulting experts participate in closed meetings and a hearing for the general public is organized at a late stage in the decision-making process and is meant more to inform than to receive feedback.

One recent example of this procedure is that of the 2nd National Environmental Action Plan (2007–2012) drafting process, which was produced by experts in 2007, with wide involvement of NGOs and consultants. A single public hearing was held when the drafting process was complete.41

In another case, in the summer of 2005 the MoE drafted a new waste management law that was subsequently put through a public participation process within the context of an attempt to conduct a SEA. At the outset of the drafting process the MoE was reluctant to involve the wider public and NGOs; however, discovering its own limited capacities to draft a law that was harmonized with EU waste law, as the government demanded, the ministry enlisted the help of qualified NGOs, which had been lobbying for a seat at the table in any case. During a December 2006 public hearing, a Center for Strategic Research and Development of Georgia (CSRDG), an NGO, presented an alternative version of the waste management law, which was then taken under consideration. The involvement in the drafting process grew wider and in the end engaged dozens of stakeholders. The process subsequently became bogged down in a series of redrafting exercises, which is where it stands at the present time. However, the experience gained in conducting broad and deep public participation is considered valuable by stakeholders and could serve as a distinctly useful source of learning for future decision-making processes.

These are currently the exceptions, however, and in most cases public participation in drafting laws or policies does not occur. NGOs are the closest stakeholders to the public who do regularly have access to decision-makers and decision-making processes, although even then the several active NGOs who represent environmental interests are usually excluded from the formulation or drafting stages of policy and law making, and brought into hearings or meetings only after the most important decisions have already been made.

At the project level there is a positive trend in terms of the intensity and frequency of public participation events compared with the late 1990s, when such events hardly occurred. Public consultations and hearings have gradually


41 It has taken a long time to establish this level of cooperation and participation. Namely, in case of the 1st NEAP (2000–2004) Georgian NGOs with the support of Western European NGOs organized a workshop for the wider public in August 1997. As a result of this meeting, NGOs and the Georgian Government agreed to set up an NGO-NEAP Information Center (see A Zamparotti 'Environment in the Transition to a Market Economy: Progress in Central and Eastern Europe and the New Independent States' (OECD Publishing Paris 1999).
become a routine component of development projects, especially in the private sector. Private proponents and environmental consultancies engage the public not only at the final stage of decision-making through hearings, but also at the very outset of the planning processes through social surveys and social impact assessments as part of EIAs. The information about upcoming hearings is disseminated through local newspapers, environmental NGOs and the Aarhus Center. Some municipalities also attempt to involve local communities in the local planning processes; however, there are no established mechanisms for engaging the public, considering their opinions and informing them on the decisions reached.

Access to justice

Due to a lack of precedents and training on the part of judges, Georgian courts rarely accept environmental cases. Until now, environmental cases that are taken up by courts tend to be decided on narrow economic grounds, or may even be influenced by political interests who have ties with economic actors. There is one case in which claimants suing on behalf of members of the public adversely affected by an illegal landfill did win in court, but the case is as illustrative of the weaknesses of the Georgian legal system with regard to environmental rights and matters as of potential for the system to improve its performance.

In 2001 the CSRDG, a Georgian environmental NGO, brought a suit on behalf of the population of Lilo against the local municipality, a small settlement the officials of which were tolerating an illegal landfill. The court ruled in favor of the claimants and demanded that the municipality clean up the site and restore the landscape. The costs for these actions were to be included in the municipality’s 2002 budget.42 By 2004 no action had been taken or money spent to clean and remediate the site; in fact, the landfill was still in use. Local residents sent letters of complaint to the Ministry of Environment, to the Environmental Inspectorate and to the court. In response to the public pressure and increasingly bad publicity the case had attracted, the post-Rose Revolution Government decided to insist that the municipality comply with the court decision. Subsequently, in late 2004, the Lilo landfill was covered with a layer of soil – a procedure that fell far short of the clean up and landscape restoration ordered by the court, and offering no protection to local residents who continued to be exposed to the effects of uncontrolled wastes leaching into the groundwater and running off the site.43 Local residents and the CSRDG continued to complain to the MoE and the Environmental Inspectorate throughout 2005 and 2006, asking that soil and water samples be taken and analyzed, with no response from the MoE.44

The Lilo landfill case illustrates a congeries of weaknesses in Georgia that make access to justice hard to come by: a mechanism to enforce court decisions in favor of claimants is missing, and the Ministry of Environment and the Environmental Inspectorate are either subject to improper influence or lack the professional or financial resources to track and support the implementation of court decisions; and compliance with a court’s decision may be sloppy at best, while at that point the public has even less recourse to pursue a more effective remedy. On a positive note, the case does illustrate the ability of the public to achieve some degree of compliance with a court’s decision through the media and persistently nagging the authorities. As a precedent, the Lilo case may offer some hope that an empowered public and NGO community will gradually effect positive changes in the way Georgian courts and authorities safeguard their right to access to justice in environmental matters.

Another issue is the temporal aspect of court procedures. According to Georgia’s implementation report on the Aarhus Convention the time needed by courts to take up cases involving violation of the rights to access to information or public participation averages two months or sometimes longer. Our research indicates that the actual time often exceeds two years. For example, in 2004 the NGO ‘Green Alternative’ launched a lawsuit against the MoE and a Turkish company demanding the withdrawal of an environmental permit for storage and incineration of waste from the construction of the Baku-Tbilisi-Ceihan (BTC) pipeline and to guarantee public participation in this matter.45 Two years later the courts proceedings were still underway. Stakeholders report that delays in resolving court cases are the norm.

In addition to having trouble getting courts to hear environmental cases and having authorities implement decisions, Georgian claimants often face unreasonable court fees which may dissuade them from bringing cases in the first place. In the case mentioned above against the MoE and the BTC Pipeline Company, the NGO Green Alternative was obliged to pay a US$1500 fee in order for the district court to

45 Green Alternative ‘Environmental Governance in Georgia and How Can the EU Contribute to Its Strengthening’ (Tbilis 2006)

[2009] 5 Env. Liability : The Aarhus Convention in Georgia: The long road to implementation : Gachechiladze, Antypas 197
accept the case. With the support of international organizations and other NGOs it raised the funds to pay the fee. Green Alternative lost at the district court level and appealed to a higher court, which in turn charged the NGO US$2500 to hear the case. Failure to pay the court fee results in the case being thrown out. Green Alternative successfully challenged the fee through the Administrative Chamber of the Supreme Court, which lowered it to US$500. However, in 2006 a new law significantly raised the already high fees demanded by Georgian courts to take cases, and also disqualified legal entities from receiving partial fee exemptions, reserving that possibility only for individual persons. Consequently, NGOs in Georgia today are highly reluctant to bring lawsuits.

Georgia instituted the office of ‘Public Defender’ in 1997, a human rights ombudsman who oversees the activities of public authorities at all levels of government. The ombudsman’s office has been involved in some cases involving access to information, responding to complaints by pressuring authorities to release environmental information or urging them to respond to requests in a timely manner. The ombudsman cooperates with the Aarhus Center and environmental NGOs, but the office has yet to become a significant player in investigating environmental wrongdoing or significantly influencing the behaviour of environmental institutions or the courts with regard to environmental matters.

Conclusions

The Aarhus Convention is being implemented in Georgia on the margins but as a part of its transformation from Soviet Republic to independent democratic state. The habits of democracy are learned gradually, as institutions are restructured or erected anew, and as the legal system adapts to new laws and expectations. Georgia belongs to the group of transition countries that according to Chaytor and Gray first ratify the Convention and then gradually develop the capacity to implement it by modifying existing laws and institutions. Consequently, the progress towards the effective implementation of the Convention is slow and gradual.

One of the greatest obstacles to implementing the Aarhus Convention in Georgia is that it is not yet seen as an opportunity by the authorities, but rather as a series of requirements that are at times difficult to comply with and at other times impede their usual way of conducting their business. Naturally, the NGO sector is the sector of society most enthusiastic about

and the development proponents (who are responsible for public hearings) with extremely wide latitude in interpreting their obligations. Consequently, while a few decisions are made with a great deal of stakeholder and public input, even from early stages of project or decision development, other decisions are made prior to any communication with the public. In these cases public hearings in which comments are solicited on decisions that have essentially already been made are counted as public participation. When NGOs are invited to participate in decision processes they are often used to substitute for the absence of governmental capacity in a particular area. Generally speaking there is a low level of commitment to participation on the part of the government.

- Access to justice in environmental matters is obstructed in Georgia by the absence of precedents, lack of training of Georgian judges in environmental law, high court fees and a generally weak legal system that lacks the capacity to enforce court decisions when there is little political will to do so. Georgian NGOs are not yet in a position to use the courts systematically to pursue their environmental rights or hold government accountable for its decisions and/or obligations.

Improving Georgia’s performance in implementing the Aarhus Convention is a long term project that will require the consistent attention of civil society and the international community, as well as the development of political will and institutional capacity within the Ministry of Environment and other governmental bodies. Steady progress is being made in all of these areas: non-governmental organizations see the Aarhus Convention rights as among the most important tools they already possess to influence government and ensure better environmental decisions and protection; they are in regular and effective communication with international donors as well as the staff of the Aarhus Center, which represents the commitment on the part of the international community to make implementation of the Convention a priority in Georgia. Streamlining of the organizational structure of the MoE has yielded positive results, and as newly trained young professionals are hired into positions we can expect a gradual opening on the part of the bureaucracy to the principles of transparency and participation.

The most important short term steps that can be taken to improve implementation of the Aarhus Convention in Georgia are:

- The government should propose an amendment to the Environmental Impact Permit law that imposes clearer and stricter provisions for public participation in environmental decision-making, including at the project, plan and program development stage.
- The government should develop a definition of what constitutes environmental information together with stakeholders, and formalize the definition through an administrative regulation or by amending the Environmental Impact Permit Law.
- The government should hold a forum with stakeholders to discuss issues surrounding the implementation of the Aarhus Convention.
- In the context of the forum, the stakeholders, led by the government, should develop a strategy that addresses the problems of implementation identified by stakeholders.
- The government should seek international support to continue training judges in environmental law.
- The non-governmental sector should work with developers and other project proponents to broaden public participation in decision-making and deepen its quality by raising public awareness and providing information to citizens and communities.

As we have noted above, at present there is no strong advocate for the Aarhus Convention within government or among the political parties. However, as evidenced by the establishment of the Aarhus Center and the gradual, if uneven, inclusion of some forms of public participation in decision-making, Georgia is prepared to move towards fuller, more robust and proactive implementation of the Convention. Civil society organizations will do well to communicate the message that the Aarhus Convention not only confers rights upon citizens and stakeholder organizations but also presents the country with a tool to accelerate the development of the economy through making more sustainable and intelligent decisions and an opportunity to strengthen the organizational and intellectual capacities of the society as a whole through democratic participation.