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This policy brief is intended for public policy makers and practitioners; it will also be useful for those groups and individuals seeking to influence the policymaking processes.

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Does the Georgian Legislation Provide the Protection and Sustainable Use of Biodiversity?

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"*When you hold a top position and you have the only function in life*
– *not to make a decision and to disclaim the responsibility,*
– *what more problems should you create to your own country?*"

President of Georgia, Mikheil Saakashvili
Government session, Kvareli, 20 July 2010

Summary

Biodiversity conservation is one of the most serious challenges, which the mankind faces today. Development projects inevitably bring certain environmental impacts, however there are certain tools, among them Environmental Impact Assessment (EIA) that help to avoid environmental degradation and to provide sustainable development. According to the Convention on Biological Diversity, as well as the Ramsar and Bonn Conventions, EIA is the major tool for biodiversity protection, sustainable use of its components and fair and equitable sharing of the benefits. The given conventions define how the biodiversity preservation issues should be reflected in the national EIA legislations.

The EIA system operating in Georgia does not meet the above mentioned requirements and is far from the best international practice; the country neglects all those procedures, which would have helped a decision maker and a project proponent and would have promoted the biodiversity conservation as well as the protection of rights and interests of the communities affected by developments (screening, scoping, public participation in the decision-making process); Current EIA legislation fails to provide the prevention or mitigation of harmful impacts of industrial projects on biodiversity; Furthermore, no legal procedures are available to implement various conservation projects (establishment of protected areas and/or changing the category to existing ones; establishment of conservation centers, gene pool reserves, nurseries and forestry plantations; removal of animals with the purpose of *ex-situ* conservation; setting of harvesting quotas of biodiversity resources); the procedures for approval of management plans of protected areas, forestry and hunting farms either do not exist at all or need to be improved. Unfortunately, due to weakness and/or absence of legal procedures, the ministries often fail to make decisions or the decisions are ungrounded and/or false.

Settlement of the above mentioned problems would be possible in case of existence of a well-functioning EIA process, which would reflect the needs of biodiversity protection and sustainable use. Such approach is acceptable from (a) environmental, as well as (b) political and (c) economic points of view: (a) Mitigation of the impacts of industrial projects will be provided; a consistent procedure for implementing the conservation projects will be established; protection and sustainable use of endangered species will be provided. (b) Such approach is in line with the Georgian government's drive to strengthen its struggle against corruption, not to increase the number of existing permits and licenses and to strengthen the country's European integration process. (c) Such approach is also favorable in terms of attraction of investments as well as saving of time and costs by a project proponent; it will become easier to avoid or mitigate potential conflicts with project affected local communities.

It was revealed during the consultations with the stakeholders, that the problems unveiled in the given document are extremely serious, while the relevant legal regulation is extremely weak or does not exist at all. At this stage there is also a certain disagreement about which laws exactly should be amended (EIA or sector-specific legislation). In order to achieve the best result, it is expedient to make the SWOT analysis for each

problematic area with the participation of all stakeholders. SWOT analysis will reveal the best way for problem resolution. In any case, while developing a new regulatory mechanism, the best practices and the requirements of international conventions should be taken into consideration. It is also essential to build the capacities of decision-makers and biodiversity practitioners in application of assessment tools (including EIA).

1. Context and importance of the problem

Biodiversity conservation is one of the most serious challenges, which the mankind faces today. The key threats to biological diversity (biodiversity) are[1]:

1. Habitat loss/degradation/fragmentation,
2. Overexploitation,
3. Invasive species,
4. Environmental pollution, and
5. Climate change.

Intensification of each of these threats is linked with human activities, especially with the impacts of infrastructural/economic development projects. In modern world it is impossible to live without development projects and respectively, a certain environmental impact is inevitable. Environmental Impact Assessment (EIA)[2] is a widespread tool to avoid this threat and provide sustainable development. According to the Convention on Biological Diversity (CBD), EIA is the major tool for biodiversity conservation, sustainable use of its components and fair and equitable sharing of the benefits. The same approach is shared by the Ramsar[3] and Bonn[4] Conventions. The given conventions define how the biodiversity conservation issues should be reflected in the national EIA legislations[5].

This issue is especially important in view of the biodiversity values of Georgia: today, out of 34 biodiversity hotspots[6] the territory of Georgia falls under two of them: Caucasus and Iran-Anatolian. Unfortunately, until recently, while assessing the biodiversity threats, special emphasis was laid on poaching (illegal hunting, fishing, and wood cutting) and less attention was paid to such factors, as water, air and soil pollution, impact of mining industry and infrastructure projects. The issue is especially urgent provided that the present Georgian authorities link the country's economic development with implementation of large infrastructure projects and exploitation of natural resources. Current EIA legislation in Georgia is extremely weak and fails to fulfill its task. Due to weakness/absence of legal procedures, the ministries either fail to make decisions or the decisions are ungrounded and false. Thus, it is important to discuss concrete problems existing in terms of biodiversity protection and sustainable use, to reveal the shortcomings existing in the legislation and plan the ways of their eradication.

2. Specific problems related to biodiversity

Specific examples, which in our opinion clearly demonstrate the problems in biodiversity conservation and sustainable use, are discussed below:

1. According to the Law of Georgia on the Red Book and Red List, harvesting/extraction of species included in the Red List is possible only in special cases. At the same time, the procedures for removal of animals and plants differ from each other to a certain extent.

Capture of endangered wild animals is permitted only with the purpose of saving, curing and restoration, as well as for scientific purposes. According to the law, a permit or license defined by the Law of Georgia on Wildlife should be issued for the extraction of endangered wildlife under the rules set by the same law. At the same time, a body issuing permits or licenses should apply to the Commission of Endangered Species at the Academy of Sciences of Georgia to ascertain the necessary circumstances for issuing a permit or license and to receive a scientific conclusion. It should be noted that described rule cannot be used in practice for the following reasons:

- According to the Law of Georgia on the Licenses and Permits (2005), the licenses defined by the Law of Georgia on Wildlife were abolished. Hence, there are no legal procedures for the extraction of animals included in the Red List (even for scientific purposes);
- The procedures existing before the adoption of the Law of Georgia on the Licenses and Permits were not perfect and created problems upon putting them into practice. Naturally, a certain research is needed to ascertain the circumstances for animal extraction; the Commission of Endangered Species has never had (and still does not have) any means to conduct such research. There also were no procedures to determine the detailed rules of defining the circumstances of

1 Millennium Ecosystem Assessment, 2005

2 Environmental Impact Assessment (EIA) is an assessment of the possible positive and negative impacts of a proposed project on the natural environment, as well as socio-economic and cultural impacts and impacts on human health.

3 The Ramsar Convention - The Convention on Wetlands of International Importance especially as Waterfowl Habitat was enforced in Georgia by the decree of the Parliament of Georgia No 201 dated April 30, 1996.

4 The Bonn Convention – The Convention on the Conservation of Migratory Species of Wild Animals was enforced in Georgia by the decree of the Parliament of Georgia No 136 dated February 11, 2000.

5 Secretariat of the Convention on Biological Diversity, Netherlands Commission for Environmental Assessment (2006). Biodiversity in Impact Assessment, Background Document to CBD Decision VIII/28: Voluntary Guidelines on Biodiversity-Inclusive Impact Assessment, Montreal, Canada, 73 p.

6 Biologically richest and most endangered terrestrial eco-regions

animal extraction and developing a relevant conclusion.

Hence, due to such legal shortcomings, it is impossible to capture a live animal from the environment (regardless of whether it may or not be endangered) with the purpose of its restoration and/or breeding in the protected area or hunting farm.

2. Extraction of wild plants included in the Red List was permitted before 2009 only in the following specific cases: a) for restoration and breeding in natural habitats; b) for planting in dendrology and botanical gardens or parks; c) for breeding in artificial environment, for commercial purposes; and d) for scientific purposes. Despite the specific cases defined by the law, from 2006 several permits for commercial extraction of the Red List specie – chestnut timber (Castanea sativa) were issued through violating the law under the pretext of fighting against Endothia disease, which is characteristic to this specie. Through violating the same legal requirements, a paragraph was added to the terms of the licenses for timber processing, which allowed extraction of species included in the Red List.

In 2009 (after it became clear that the law was obviously violated by issuing a permit on chestnut logging and simultaneously, the interest of powerful groups in receiving permits for commercial extraction of chestnut timber increased) the Parliament of Georgia approved the amendments initiated by the Ministry of Environmental Protection and Natural Resources (hereafter "the Ministry")[7]. The amendments made it possible to extract wild plants included the Red List, if a plant is damaged by pests and diseases and the plant's existence in its natural habitat poses a threat of outbreak of diseases; at the same time, extraction from a natural habitat should be the only means of combating these diseases. The Ministry was authorized to make a decision on extraction from a natural habitat. The Ministry makes a decision on the basis of a conclusion that will jointly be prepared by a joint commission of the three legal entities of public law –Vasil Gulisashvili Forestry Institute, Levan Kanchaveli Plant Protection Institute and Tbilisi Botanical Garden and Botany Institute.

These rules set by the law include numerous unclear aspects, particularly: it is unclear, why the conclusion should be developed by the three scientific institutions specified in the law; the method of preparation of the joint conclusion is also unclear; it is vague whether the preparation of the conclusion envisages conducting of special researches, field expeditions; who will finance the activities of the group working over the conclusion, etc. It should be emphasized that discussion of the conclusion with the participation of all stakeholders (local communities, other scientific institutions, non-governmental organizations, etc.) is not envisaged at all.

3. The law also allowed another exemption – possibility of extraction of plants included in the Red List in case of constructing a facility and an infrastructure of national significance[8]. According to the amendments to the law[9], while implementing such projects, removal of plant species included in the Red List will be carried out only if the Ministry makes a relevant decision at the request of other ministry.

In this case it is also unclear what particular requirements this conclusion should meet; what particular rules should be observed during its development; who will finance and who will develop the conclusion. Neither does the process of decision-making envisage public discussions.

4. Poor EIA procedures have a negative impact on the state of biodiversity in the process of implementing both economic and conservation projects (such as planning/establishment of protected areas). Below we will focus on the latter.

It is generally acknowledged that the main purpose of establishing protected areas is biodiversity conservation. It is therefore essential that the category of protected area, its space, boundaries, and protection regimes are selected adequately and meet conservation requirements. Otherwise, the establishment of a protected area will have a counter effect on the state of biodiversity.

It is crucial that the category of a protected area is selected in accordance with the biodiversity conservation needs[10]. The result may be negative in case of establishment of those categories of protected areas that are either lower or higher than optimal. Low category that means comparatively soft regime of protection may fail to provide the eradication of existing threats; while the establishment of a protected area with strict regime (nature reserve, strict protection zone of the National Park, where any interference is prohibited) in the ecosystem, where it is necessary to implement the measures on restoration of the species/landscape, may also accelerate the biodiversity degradation.

While establishing a protected area, the critical issue is to avoid the insularization effect. This phenomenon takes place, when a significant part of habitats (for example, water-bearing, breeding and other important ecological niches) appears outside the boundaries of a protected area, or when the space of protected area is not enough for conservation of species. Insularization may also become a reason of population extinction.

Neglecting of traditional land use patterns during establishment of protected areas creates enormous

7 The Law of Georgia on amendments and supplements to the Law of Georgia on the Red List and Red Book, March 24, 2009 No1089-Is

8 The amendments to the law were made after it turned out during the rehabilitation of the Samtskhe-Javakheti highway that one of its sections should have passed via the Yew stands.

9 The Law of Georgia on amendments and supplements to the Law of Georgia on the Red List and Red Book, November 3, 2009 No1917-IIs

10 The categories of protected areas defined by the Georgian legislation are in line with those of the World Conservation Union (IUCN).

problems to the protected areas at later stages. For example, the oil wells located in the Sagarejo district appeared within the Tbilisi National Park. The visitors' zone of the same park appeared to be crossed by the Tbilisi by-pass railway project route. As a result, the territory of the park was split. Inclusion of agricultural plots, pastures and firewood production areas inside the protected areas created a number of problems to the protected areas and discredited the goals (and environmental ideas) of their establishment to a certain extent.

Presently there are no formalized procedures that would determine how the issue of establishing a new protected area should be prepared (development of a law on establishment of a protected area that will determine the boundaries, area and protection regime of a protected area; preparation of a management plan for protected area; opportunities for public participation, etc.).

5. The existing legal framework does not provide any provisions for establishment of conservation centers, gene pool reserves, forestry plantations and nurseries, or fails to avoid the threat of biodiversity degradation in case of their existence. For example, a dolphinarium was built in Batumi recently. It is still unknown for the interested public whether the dolphinarium meets ecological requirements, what kind and how many species are kept there, where they were captured, etc.

6. The owners of long-term timber processing licenses are obliged to develop forest use plans, which should be reviewed by the Forestry Department and approved by the Minister of Environmental Protection and Natural Resources. It should be noted that the Forestry Department also participates in the monitoring of fulfillment of license conditions and checking compliance with the forest use plans; such distribution of competences contains certain conflict of interests. Furthermore, on the territories, which are not used by the licensees on a long-term basis, the plan is prepared by the authorized body, which is either the Agency of Protected Areas or the Forestry Department. It is obvious that one and the same department cannot be responsible for reviewing and monitoring of its own plan. According to the government-initiated legislative amendments[11], reorganization of the Forestry Department is underway and a legal entity of public law, the Forestry Agency will be established instead. The functions of the agency include: performance of certain commercial activities, development of plans for forest use, etc. As a result, under the current legislation, the above discussed discrepancies will deepen further.

7. The license conditions are the same in respect of hunting farms. It is unclear, which particular unit of the Ministry will lead the process of reviewing and approval of management plans envisaged by such licenses.

8. There are no procedures for setting the harvesting quotas for biodiversity objects (animals, non-timber plant resources, mushroom) and neither for monitoring; hence, the probability of making a mistake or a corruptive decision is extremely high. At the same time, lack of information about biodiversity resources to be auctioned off hampers the attraction of investments to this sphere.

3. Overview of the root causes of the problem

As we have already mentioned elsewhere above, EIA is the major tool for biodiversity protection and sustainable use. EIA legislation and practice differs throughout the world; however, according to the CBD Decision VIII/28, the EIA system should cover the following components:

1. Screening – to determine which projects or developments require a full or partial impact assessment study);
2. Scoping – to identify which potential impacts are relevant to assess, to identify alternative solutions that avoid, mitigate or compensate adverse impacts on biodiversity, and finally to derive terms of reference for the impact assessment;
3. Assessment and evaluation of impacts and development of alternatives – to predict and identify the likely environmental impacts of a proposed project or development, including the detailed elaboration of alternatives;
4. Reporting - the environmental impact statement (EIS) or EIA report, including an environmental management plan, and a non-technical summary for the general audience;
5. Review of the environmental impact statement, based on the terms of reference (scoping) and public (including authority) participation;
6. Decision-making on whether to approve the project or not, and under what conditions; and
7. Monitoring, compliance, enforcement and environmental auditing.

Ensuring public access to information and public participation in the decision-making processes is crucial for any EIA system; it is essential to timely inform the public and engage it in the decision-making process at an early stage, when the options are still open and it is possible to influence the decision.

The EIA system in Georgia is not in line with this scheme; moreover, it is far away from the best international practice. It can especially be said about the aspects of biodiversity conservation. For the purposes of the given analysis, the key shortcomings of the EIA system can be characterized as follows:

- The list of activities subject to EIA is provided in the Law of Georgia on the Permit for the Impact on Environment. It does not include many activities having a significant impact on the environment/biodiversity, such as: removal of protected species from the environment; extraction of minerals; construction and operation of agricultural and food production facilities, nuclear power plants, as well as the facilities producing paper, leather, timber and textile. By this, the law

11 The Law of Georgia on Legal Entity of Public Law Forestry Agency was adopted on July 6, 2010 and will come into force on August 1, 2010.

contradicts various international legal acts (for example, Aarhus Convention).

- An activity may not have or have little impact on biodiversity (for example, fruit processing factory, nut plantation, etc.), but in certain conditions the same activity may increase the risk of biodiversity loss, if, for example, it is planned close to the protected area, in the habitat of rare species or in the vulnerable ecosystem. Under the current legislation, conducting of activities without EIA would have definitely lead to biodiversity degradation.
- The national legislation has not formalized screening and scoping procedures.
- The existing procedure for public participation in the EIA process does not provide relevant consultations either during preparation of EIA reports or during decision-making. Respectively, public participation, as a tool, is not used to improve the quality of EIA report and to mitigate the negative impacts of an activity.
- Georgian legislation does not clearly regulate the issues of control and monitoring of permit conditions and commitments undertaken under the EIA report; therefore, they basically remain unfulfilled.
- The recent practice shows that the EIA reports submitted to receive a permit are reviewed by the Ministry staff (previously done by independent, external experts), although their knowledge and capacities are limited in this respect. Due to such practice, independent expertise (review) cannot basically be guaranteed. At the same time, while making decisions in the process of ecological expertise (reviewing) public officials, as a rule, are pressed by other state agencies or investors; so, they fail to make an optimal decision from environmental point of view. Biodiversity experts are rarely involved in the discussion of EIA reports.
- The Ministry's structural units, whose activities are linked with biodiversity (biodiversity protection, protected areas and forestry services), often do not receive the EIA reports submitted to the Ministry for consideration, or their opinions are not reflected in the Ministry's position that makes it impossible to avoid threat of biodiversity reduction.
- The EIA reports often discuss biodiversity issues quite formally. For example, they often discuss the impacts on such species, which are not found on the territory affected by a certain activity. Moreover, frequently species which are really affected by certain activities are not mentioned at all.
- Impacts on endangered species and ecosystems, as well as mitigation measures and the issues of monitoring the species and ecosystems are hardly reflected in EIA reports.
- Environmental norms[12] either are not developed at all, or they are quite outdated (they are not updated periodically as envisaged by the legislation). While developing the existing norms (for example, water and air pollution norms), the impact of activities on human heath was taken into consideration, whereas the parameters of impact on biodiversity, especially on endangered species, were neglected.

12 See the Law of Georgia on Environmental Protection of 1996 and the relevant bylaws.

4. Policy options

As described above, the legislation neglects all those procedures, which would have helped a decision maker and a project proponent and would have promoted both biodiversity conservation and protection of rights and interests of the project affected communities. The current legislation and procedures fail to provide prevention or mitigation of harmful impacts of industrial activities on biodiversity. Furthermore, no legal procedures are available to implement various conservation projects such as establishment of protected areas and/or changing the category to the existing ones, establishment of conservation centers, gene pool reserves, nurseries and forestry plantations, removal of animals from the environment (regardless of whether it may or not be endangered), setting of harvesting quotas wildlife and non-timber plant resources. The procedures for approval of management plans of protected areas, forestry and hunting farms either do not exist at all or need to be improved. The procedures of removal of endangered species are undemocratic and simultaneously, they fail to provide the biodiversity protection.

Settlement of the above mentioned problems would be possible in case of existence of a well-functioning EIA process that requires at least:

- Regulation of those activities, through the EIA process and the procedure of issuing a permit for the impact on environment, which currently are not covered by any legal regulation procedures;
- Legally defining screening and scoping stages in EIA system;
- Reflecting the biodiversity conservation needs in the screening and scoping requirements (following the recommendations of the Convention on Biological Diversity);
- Improving the mechanisms of public participation in the decision-making process.

Such approach is acceptable from environmental, as well as from political and economic points of view.

From environmental point of view, solution of the mentioned problematic issues through the EIA process on the one hand, will promote mitigation of impacts on biodiversity components, and on other, will make it possible to implement conservation projects (protected areas, conservation centers, plantations, etc.), including those, the issue of legal regulation of which remains open today.

From political point of view, such approach is in line with the Georgian government's drive to strengthen its struggle against corruption, to eradicate its causes, as well as not to increase the number of existing permits and licenses. Improving EIA system in the light of international standards is also important in terms of contributing to the country's motivation towards European integration.

Such approach is also favorable from economic point of view, since it will enable a project proponent to save time

and costs; it will be possible to predetermine all risks and anticipated costs beforehand and to avoid or mitigate potential conflicts with project affected local communities.

Having screening procedures formalized in the legislation is favorable both for a decision-maker and for a project proponent, since at this stage it can be determined that: (a) the activity does not require EIA at all; (b) instead of a full-scale EIA, a limited research is sufficient, as the impacts are not significant; (c) it is necessary to carry out a full-scale EIA; or (d) the activity may trigger an irreversible biodiversity degradation; therefore, its implementation is impossible and there is no need to conduct a full-scale EIA. At the scoping stage it will be possible to determine specific issues to be included in the EIA report and to include in the report only necessary information and data relevant to the activity. This will help the project proponent to save time and financial resources and also help the enforcement agency in its compliance assurance efforts. The investors will have more opportunities to attract funds from international financial institutions and donors if their projects are approved through the EIA procedures that are compliant with international standards.

The argument, which can be brought up against the changes proposed above, is whether the civil service is ready to work under such procedures. In response to this argument, the following should be explained:

Despite the absence of screening procedures, there is still an "informal" screening practice at the Ministry, due to the practical needs. The existing practice also talks about the necessity of the scoping procedure: when a draft EIA report is disclosed by the project proponent for public scrutiny, a copy of the draft report is also submitted to the Ministry. Various structural units at the Ministry carry out the so called "preliminary review" - prepare comments and submit them to the applicant. It should be noted that as a rule, the authors of comments do not receive feedback on whether their comments were taken into account or not. Because of absence of a formalized scoping procedure, it is not also clear, which structural units of the Ministry or which experts should receive the draft EIA report for review. To summarize, the Ministry still performs the same amount of work and even more than it would have performed in case of existence of formalized screening and scoping procedures. The difference is that the process is entirely based on personal decisions rather than legally determined procedures and this increases risk of making faulty decisions and even corrupt deals.

The proposed mechanism will also make it possible to eradicate legal shortcomings related to the decisions on removal of the Red List species from their habitat, regardless of whether the goal of removal is to implement development or conservation project. As we have already mentioned above, this instrument provides both conducting of a research necessary for making a well-informed decision that is critical for conservation of endangered species, and participation of all interested stakeholders in the decision-making processes.

Settlement of certain issues related to the establishment of protected areas (defining zones, boundaries, area and protection regime, preparation of management plans, conflicts related to land use), is possible only through conducting special researches. Also, for prevention of conflicts with local communities it is essential that the decision on establishment of a protected area is made on the basis of transparent, democratic public discussions. The EIA is a tool that makes it possible to resolve all these challenges. Furthermore, application of EIA procedures during establishment of protected areas will make it easier for international environmental organizations and non-governmental organizations to raise funds for establishment of new protected areas and modernizing existing ones.

The proposed mechanism will also make it possible to fill in loopholes in legislation related to the establishment of conservation centers, gene poll reserves, forestry plantations and nurseries.

This mechanism is also appropriate for setting the harvesting quotas for biodiversity species (animals, non-timber plant resources, mushrooms). It is favorable for both the state and the investor to have accurate information about the harvesting quotas, as well as to make sure that there are legal procedures for removal of protected species without causing any harm.

The mechanism will also be convenient to monitor the compliance with the license conditions (long-term timber processing license, hunting farm license), since it will provide the existence of uniform procedures within the Ministry and will rule out making any subjective decisions. The existing procedure on approval of forest use plan and its further monitoring is virtually similar to the procedure of issuing a permit for the impact on environment. In the first case, the decision-making process is lead by the Forestry Department, while in the second case – by the Service for Licenses and Permits. We consider it inexpedient, when the procedures, which are similar by contents, exist within one ministry. Hence, in our opinion, the processes would be clearer and conflict of interests would be avoided if this issue was solved through the permit for the impact on environment.

Analysis of alternatives and stakeholder consultations revealed that the existing policy trends should be taken into account while making a decision on introducing the above mentioned mechanism. Particularly, it should be noted that very often the Georgian political establishment supposes that conservation projects hamper the development/economic projects; hence, establishment of protected areas often comes across artificial barriers. For example, due to the opposing positions of the Ministries of Energy, Economic Development and Agriculture, the government did not support initiative of the Ministry on the designation the Javakheti lakes area for inclusion in the list of areas protected under the Ramsar Convention. The Ministry of Energy has blocked the draft law on establishment of protected area on the Central Caucasus, in Racha-Lechkhumi-Kvemo Svaneti, citing that the project territory covered rivers where hydro power plants might be

built in the future. Based on the above mentioned trends, it was revealed during the consultations with the stakeholders that additional barriers may emerge for establishment of protected areas in case the issue of establishment of protected areas is regulated through the permitting system. In favor of this opinion, it should also be mentioned that the government is actively discussing the issue of 'simplification' of permitting procedures.

To summarize, the alternative position is as follows – since the legislation regulating the EIA and permitting systems is quite controversial in Georgia, at this stage it may be more appropriate to define the procedures of conducting the assessments necessary for establishment of new protected areas and/or modernizing the old ones in the legislation regulating the protected areas. The issues related to public participation during assessment, as well as decision-making processes can be addressed in the same piece of legislation.

It should be said in favor of application of EIA procedures for establishing/modernizing the protected areas that it will help create a legal procedure that will make it possible to make decisions through a constructive dispute between the "proponents" and "opponents". The Ministries of Economy and Energy will have to provide more arguments to prove the advantages of their plans, while the environmental agency will have to prove the necessity for carrying out conservation activities. In this case, an unjustified position of "influential" ministries will have less influence on the resolution of the issue, while the supporters of establishment of protected areas will have more opportunities to prove the urgency of their projects. For example, it would have been obvious that it was absolutely groundless to waive the issue of the Paravani Lake and Saghamo Lake protected areas only because of the planned Paravani and Saghamo hydro power plants; the construction of the Paravani HPP is planned on the Paravani River, far away from the lake, while the construction of the Saghamo HPP is also planned far away from the lake, near the village of Arakali. Furthermore, there are a lot of historical and archeological monuments on these territories, which will apparently be covered with water in case of building hydro power plants. The EIA process would have provided a complex analysis of all these factors. In other words, a legal framework would have been provided for determining future activities on a particular territory[13].

It was also revealed during the consultations with the stakeholders that other problems unveiled in the given document are also extremely important (approval of forest use plans, approval of hunting farm management plans, removal of protected species from the environment, etc.), while the relevant legislative regulation is either extremely weak or does not exist at all. Like in case of protected areas (see above), there is certain divergence in opinions at this stage about which legislation should be amended – EIA regulating or sector-specific legislation.

In our opinion, in order to achieve the best result, it is expedient to make a SWOT analysis for each problematic issue with the participation of all stakeholders. SWOT analysis will reveal the best way for problem resolution: through amending the EIA regulating or other sector-specific legislation. In any case, the proposed legal mechanism should not look like "invention of a new bicycle." It should be reiterated that according to international conventions and best practice, the EIA is considered as the major tool for biodiversity conservation, sustainable use of its components and fair and equitable sharing of the benefits.

Unfortunately, decision makers (the representatives of all levels of public service) fail to understand the essence of EIA process completely. Therefore, while discussing the ways of settlement of the above mentioned problems, they often fail to go beyond the faulty practice of issuing a permit for the impact on environment. This faulty practice can be explained by imperfect legislation, on the one hand, and by lack of knowledge and absence of political will to make changes that will be acceptable from environmental and social points of view, on the other.

In the end, in order to prove the necessity of a well-functioning EIA process, the Black Sea Regional Energy Transmission Project[14] can be recollected. The EIA for the project was carried out in compliance with the procedures of international financial institutions – it included screening and scoping stages; the project proponent – the Ministry of Energy held more public meetings and consultations than it was envisaged by the national legislation. As a result, the route was selected for project implementation which was acceptable in terms of biodiversity conservation, as well as technically and financially, in a long-term perspective. A threat of degradation of the Borjomi-Kharagauli National Park was avoided, while the European Commission, guided by the interests of the biodiversity conservation, allocated additional funds to finance the alternative that was identified through the EIA and was acceptable for every party involved in the process.

13 Naturally, it is expedient to solve the issues of spatial development through application of Strategic Environmental Assessment and systemic spatial planning; however, we suppose in case of Georgia, the improvements in these directions should be discussed in a long-term perspective.

14 The project envisages the rehabilitation/construction of a 500-kw electricity transmission line from western Georgia to the borders with Turkey and Azerbaijan. The project is financed by international financial institutions.

5. Policy recommendations

The legislative amendments necessary for promoting the biodiversity conservation through the EIA process are given below:

- The list of EIA-related activities defined by the Law of Georgia on Permit for the Impact on Environment should be enhanced by all those activities, which are determined by the Aarhus Convention and which are not currently envisaged by the mentioned law.
- The procedure on issuing a permit for the impact on environment should include the screening and scoping stages (it is also possible to combine these stages) as well as the opportunities for public participation in the decision-making processes at these stages. It is essential that public participation opportunities are improved in the entire cycle of EIA process and decision-making.
- Biodiversity conservation needs should be taken into consideration while making decisions at the screening and scoping stages (through using the recommendations of the Convention on Biological Diversity).
- In our opinion, well-functioning EIA and permitting procedures will make it possible to regulate such activities as: establishment or changing the category of protected areas; removal of protected species from the environment; removal of species from the environment for commercial purposes; establishment of conservation centers, gene pool reserves, nurseries, forestry plantations and approval of environmental management plans (forestry and hunting farms).
- It is urgent to update/develop environmental norms set by the legislation (environmental quality norms; the limits of emission of harmful substances into the environment; the norms of use of chemical substances in the environment; ecological requirements towards the products; permissible environmental load), as well as technical regulations on the basis of biodiversity conservation needs.
- It is essential to revise the Regulation on Environmental Impact Assessment in the light of needs of biodiversity conservation.
- Inclusion of the biodiversity-related issues in the national EIA system requires the implementation of capacity building measures. Such measures should aim at deepening the knowledge of decision-makers and biodiversity practitioners in conservation biology, ecology, taxonomy, as well as in modern assessment tools, procedures and technologies.

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