

27, Betlemi Street
GE-0105 Tbilisi
GEORGIA

Tel.: +995 32 75 19 03 / 04
Fax: +995 32 75 19 05
E-mail: info@cenn.org

To: Aphrodite Smagadi
Secretary to the Aarhus Convention
Compliance Committee

Tbilisi, March 14, 2011

Reference: CENN Response to the Draft Report of the Compliance Committee on Compliance of Georgia with its Obligations under the Convention

Dear Ms. Smagadi,

With reference to your letter dated March 1, 2011, we present the recommendations developed by the Caucasus Environmental NGO Network (CENN) regarding the Draft Report on *Compliance by Georgia with its obligations under the Convention*, prepared by the Aarhus Convention Compliance Committee.

On the one hand, we welcome the recommendations proposed by the Committee regarding insufficiency of publishing information in this area and the quantity of timber resources to be logged on the website of the competent state authority (Point 8 of the Draft Report). On the other hand, we would like to provide additional information regarding legislative shortcomings in the field of long-term forest use, as well as on inappropriate legal and institutional trends in the field of environmental protection in Georgia.

First of all, we would like to stress the changes recently introduced into the Forest Code of Georgia (Point 3 of Article 35), which further weakened the legislative basis for the implementation of requirements of the Aarhus Convention regarding public participation in Georgia. In particular, the new version of Point 3 of Article 35 states:

The state authority competent in management of state forest fund starts the public administrative proceedings in order to determine the area and the quantity of timber resources to be logged. All relevant information will be published on the web-site of the competent authority.

It is clear that the abovementioned public administrative proceedings are those established by the General Administrative Code of Georgia. However, it should be noted that the old version of the aforementioned Article was better suited to the requirements of the Aarhus Convention since it stated that **before making a decision** on forest use, the state authorities responsible for the management of the state forest fund would publish information regarding the management of the state forest fund in the relevant regions, including information on:

- a. forest management;
- b. categorization of the state forest fund;
- c. assignment of a protection regime to state forest fund's categories;
- d. transference of the right to use the state forest fund for 5 years and longer.

CENN - Georgia

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info@cenn.org

CENN - Armenia

16, Heratsi Str.
0025, Yerevan
t/f +37410 57 57 79
info.armenia@cenn.org

CENN - Azerbaijan

124/128, Gara Garaev Ave.
AZ1119, Baku
t +99412 4 39 41 13
f +99412 4 74 30 04
info.azerbaijan@cenn.org

Although the General Administrative Code of Georgia facilitates the publicity of certain information through public administrative proceedings, it does not provide for publicly available information before making a decision on forest use, which could include an order of the Minister of Economy and Sustainable Development on holding an auction on forest use. It should also be taken into account that if a new version of Point 3 of Article 35 implies publishing the information before making a decision on holding an auction, this should be clearly explained in the Law, since the practice of publishing of this type of information in advance does not exist in the country.

With a view to the above-stated and with the reference to Point 5 of the Draft Report, we would like to draw your attention to Resolution 132, dated August 11, 2005, on *Approval of the Statute on Rules and Provisions of Forest Use License*. Point 5 of Article 2¹ of the Resolution repeats the abovementioned requirements of the Forest Code, however, as in the case of the Forest Code, publishing the information on the web-site is not a sufficient mechanism for informing the wider public and interested parties. Therefore, to meet this objective, and the requirements of the Aarhus Convention regarding public participation, the information should be communicated to the public through public consultations. It shall be also noted that the Article 2¹ of the mentioned Resolution is in force until 2012, which creates uncertainty, since this Resolution of the Government is used in practice despite the existence of the Forest Code – a regulation ranked higher than the mentioned Resolution within the legislative hierarchy.

The above-stated demonstrates that there is actually no legislative mechanism for informing and involving the public in the early stage of the process of provision of licenses on long-term forest use in Georgia. It shall be also noted that on August 20, 2010 the Government of Georgia adopted Resolution 242 on *Approval of the Rules of Forest Use*, which also does not consider public information and participation in the process of provision of areas of the state forest fund for logging and decision-making.

In addition, we would like to draw your attention to the ongoing process of reorganization of the Ministry of Environment and Natural Resources of Georgia. As a result of the reorganization a number of competences of the Ministry, including forest management and control have been transferred to a legal entity of the public law – presently called as the Georgian Oil and Gas Corporation (GOGC) to be renamed as Natural Resources Agency, under the newly renamed Ministry of Energy and Natural Resources. It should be noted that forest management first of all means territorial management of natural resources (forests), implying protection, maintenance and restoration. As such, it is distinct from other natural resources (e.g., oil, gas and minerals), which are nonrenewable and therefore not based on the principle of territorial management. It should be mentioned that the recent changes have not addressed the duties and responsibilities of the Ministry of Environment with regards to the approval of forest use quotas and the development of forest management plans.

We would also like to inform you that the Draft Law on the above-mentioned reorganization, submitted for approval by the Georgian Government to the Parliament of Georgia, was done so ***in violation of the requirements of Article 8 of the Aarhus Convention*** - without providing the public with detailed information and holding public consultations to allow the public to express their views at an early stage of the process.

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f +99412 4 74 30 04
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With reference to Point 2 of the Draft Report, we would like to stress that the information provided to you earlier on the successful future of the Environmental Code of Georgia is outdated due to the structural and legal reorganization of the Ministry of Environment. At this stage it is absolutely unclear how the recent changes will be reflected in the new legislation. Unfortunately, a trend typifying incorporation of changes to the legislation (not the new Environmental Code) based not on environmental but primarily on economic interests becomes clear. This is a violation of not only the requirements of the Aarhus Convention, but of the international and legal principles of sustainable development in general.

We would also like to draw your attention to the general negative trend within the Government of Georgia of transforming major parts of governmental agencies, including the Forestry Department, to legal entities of the public law. These changes weaken the political and public responsibility and accountability (in terms of provision of information and consultations with stakeholders) of the public servants.

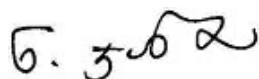
We believe that the above-stated trends contradict not only the requirements of the Aarhus Convention, but also the 5-year Action Plan for Georgia, within the European Neighborhood Policy (ENP), which determines the obligation of Georgia to *strengthen administrative structures and procedures to ensure strategic planning of environment issues and coordination between relevant actors*. Moreover, according to the Action Plan, Georgia has committed to *adopt legislation and establish procedures regarding access to environmental information and public participation, including implementation of the Aarhus Convention*. Unfortunately, these obligations are not being implemented; moreover, their importance seems to be regressing within Georgian Governmental structures.

Based on these points, we can state that during recent years, the environmental legislation of Georgia has not improved and adapted to the commitments under the Aarhus Convention at all, but has become more vague, inept and irrelevant in terms of consideration of the requirements of the Aarhus Convention. This is a step backwards and does not correspond to the spirit of Georgia - a country interested in harmonization with the modern system of international law.

Therefore, we would request and recommend the Aarhus Convention Compliance Committee to hold more active, intense and detail oriented communication with the Government of Georgia regarding the effectiveness of the implementation of obligations under the Aarhus Convention.

Sincerely,

Nana Janashia
Executive Director

A handwritten signature in black ink, appearing to be "N. Janashia", written in a cursive style.

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