Communication to the Aarhus Convention's Compliance Committee

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To:
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CC: National Government of Georgia
C/o Minister of Environmental Protection and Natural Resources of Georgia
Mr. Giorgi Khachidze

6, Gulua street,
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Re: ACCC/C/2008/35

In response to: your letter of 13 May 2009

Tbilisi, 23 September, 2009

Dear Mr. Wates,
Distinguished Members of the AC Compliance Committee,

Thank you for your letter of 13 May 2009 – as a response to our Communication ACCC/C/2008/35 – and providing us with the opportunity to clarify the indicated issues further.

We are pleased to present for your attention detailed information on the questions provided by you in the above mentioned letter concerning compliance by Georgia with the provisions of the Convention in connection with decision-making on long-term licenses for forest resources use (Ref. ACCC/C/2008/35).

We thank you in advance for your consideration.

Sincerely,

Nana Janashia
Executive Director

Caucasus Environmental NGO Network (CENN)

Communication to the Aarhus Convention Compliance Committee Concerning compliance by Georgia with the provisions of the Convention in connection with decision-making on long-term licenses for forest resources use (Ref. ACCC/C/2008/35)

Answers on the questions of the Aarhus Convention Compliance Committee
(The answers are prepared on the basis of active and abolished regulations)

Question 1 Is a long term forest use license under Georgian law a permit which gives a person the right to start felling timber (i.e. cutting) wood or are additional permit(s) requires?

According to the current legislation, the long-term license on forest resource use gives the forest resource user the right of timber harvesting without additional permits.

The mentioned issue was regulated in a different way at the time the first auction was conducted (May 1, 2007). In particular, for timber harvesting the forest resource user was required to obtain not only the long-term license on forest resource use, but also the environmental permit (permit for impact on the environment). At that time, the **Law on Environmental Permits** was regulating the issue of environmental permittance of activities of various categories, including forest felling. According to this law, forest felling was a category II activity (on an area of more than 500 ha), category III activity (on an area from 100 ha to 500 ha) (Article 4 of this Law) and category IV (on an area up to 100 ha). These activities required environmental permits along with licenses (the list of category IV activities was specified by the provision on **"the list of the category IV activities established by the procedures of environmental permitting"** approved by the order #109 of the Minster of Environment and Natural Resources Protection made on November 15, 2002. This provision has been abolished by the order #1215 of the Minister of Environment Protection and Natural Resources made on November 10, 2006 and therefore it is not relevant for the purposes of this issue).

The **Law on Environmental Permits** has been abolished since adoption of the new **Law of Impact on the Environment** on December 14, 2007 (active since January 1, 2008).

Therefore, at the time of the first auction, an environmental permit (permit for impact on the environment) along with a license was required to obtain the right of forest felling, while since the time of the second and third auctions (September 4-5, 2008 and October 7-8, 2008), the long-term license on forest resource use gives the forest resource user the right of timber harvesting without additional permits.

Question 2 Is a long term forest use permit a general or specific permit?

According to the Law of **Georgia on Licenses and Permits,** there are two main categories of license: license on use and license on activity. The Law specifies the types of each category. The general license on forest use is one of the types of the license on use. In its turn the general license on forest use has two categories:

a. special license on timber harvesting;

b. special license on hunting farm (paragraph 4 of the Article 7 of his Law).

In this case we shall focus on the long-term license on forest use. Along with other conditions, the license shall define the area of forest use, the type of forest use (timber harvesting is one of the types of forest use, subparagraph "a" of the first part of the Article 51 of the Forest Code), the type and volume of the resources to be used (5th part of the Article 55 of the Forest Code), which all indicate the specific character of this license.

Therefore, it shall be definitely stated that the long-term license on forest use is a specific (special) license and not general.

Question 3. Is public participation provided for under Georgian law in cases where an environmental permit is issued for projects specified in article 4, paragraph 2, of the Georgian law "On the environmental permit" (the first category of activities)?

First of all it shall be noted that the **Law on Environmental Permits** has been substituted by **Law of Impact on the Environment** since January 1, 2008. The current Law rejected the principle of categorization of activities according to their impact on the environment and specified the list of activities subject to expert ecological assessment and thereby to obtaining a permit for impact on the environment. Forest use is not in this list (Article 4), i.e. neither ecological expertise nor a permit for impact on the environment is needed for obtaining a license on forest use.

According to the abolished Law, an Environmental Impact Assessment (EIA) was only obligatory for category I activities, while the current Law requires an EIA for all activities specified in the Law. As for public participation in this process: after abolition of the Law on Environmental Permits the new Law has changed the procedure of public participation in the EIA process. In particular, the environmental permits were being issued through a public administrative procedure, while according to the current legislation the permits are being issued through a simple administrative procedure which restricts public participation in the process. The investor is obliged to organize a public hearing on the EIA report prior to its submission to the administrative body responsible for permitting. For the purpose of public discussion the information shall be published in the central periodic printed media, as well as in the periodic printed media (if any) of the administrative territory of that self-governing unit where the activity is to be implemented. The information notice shall contain the title, goals and the location of the activity; deadline for submission of comments and suggestions from the pubic; the place where the activity related documentation is available; the time and place of public discussion. Any representative of the public has the right to attend the public discussion of the EIA report. If the investor does not consider the written comments and suggestions of the public, he/she shall formulate the grounds for rejection of these comments/suggestions in writing and send it to their authors. These written arguments together with the protocol of the public hearing and the EIA report shall be submitted by the investor to the administrative body responsible for permitting (Articles 6 and 7 of the Law on Permits for Impact on the Environment).

Paragraph 2 of Article 2 of the abolished Law on Environmental Permits specified the list of the category I activities, which due to their scope, location and type could lead to serious and irreversible impact on the environment and human health. The procedure of issuance of the environmental permit for these activities included: 1) environmental impact assessment, 2) state ecological expertise and 3) public participation in the decision-making process.

1) Environmental Impact Assessment

The Ministry of Environment Protection and Natural Resources with its territorial departments was responsible for ensuring compliance of the Environmental Impact Assessment (EIA) with the legislation, while the expenses for conducting the EIA would be covered by the applicant – investor. The investor had the right to organize a public discussion of EIA on his/her initiative, which could be attended by all concerned. The representatives of the public had the right to give comments and suggestions on the category I activity. The investor was obliged to review and consider these comments and suggestions. Moreover, the representatives of the public were entitled to carry out independent EIA at their own expense, the results of which should be considered during the decision-making process on issuance of an environmental permit (Articles 16 and 17 of the abolished Law on Environmental Permits). The EIA report would be accompanied by the information specified by the paragraph 2 of the Article 13 of the Regulations on Environmental Impact Assessment (and the Enclosed Instruction of Main Pipeline Projects. This order has been cancelled since January 1, 2008) approved by the order #59 of the Minister of Environment Protection and Natural Resources made on May 16, 2002. The information required included (subparagraph "b") the materials on discussion of the results of public participation in environmental impact assessment process focused on the description of discrepancies (if any)

2) State Ecological Expertise

At the time the Law on Environmental Permits was in operation the issue of carrying out state ecological expertise was regulated by the Law of Georgia on State Ecological Expertise. This Law

was abolished after the enactment of the Law of Georgia on Ecological Expertise on January 1, 2008.

The Ministry of Environment Protection and Natural Resources is responsible for carrying out state ecological expertise. According to the abolished law the relevant administrative body was obliged to provide the public with the documents regulating the process of expertise upon request. The administrative body was also obliged to inform the public on the results of reviews of their justified comments on the object of expertise (paragraph 6 of the Article 4 of the abolished Law on State Ecological Expertise).

Like the abolished Law on State Ecological Expertise, the current Law on Ecological Expertise also considers certain opportunities for public participation during the process of expert ecological assessment. In particular, the Ministry of Environment Protection and Natural Resources shall ensure provision of the documents regulating the process of expertise on the request of the public representative (subparagraph "f" of the paragraph 3 of the Article 3 of the current Law).

3) Public participation in decision-making

Public participation in the case of category I activities was also ensured through the following: within 10 working days following the receipt of the application (on obtaining the environmental permit) the Ministry of Environment Protection and Natural Resources of Georgia was obligated to ensure publication of the application and a brief annotation (about the proposed activity) in printed media in which information on the date and venue of public discussion of the issues related to implementation of the activity would be enclosed. Within 45 days of the publication of this information on the activity, the Ministry of Environment Protection and Natural Resources would receive and discuss the written comments of the public. Within 2 months after the receipt of the application the Ministry of Environment Protection and Natural Resources was obligated to hold a public discussion of the activity with the participation of the investor, the Ministry of Environment Protection and Natural Resources, local administrative bodies and public representatives. Additionally, the application (with the exception of parts containing commercial, industrial and state secrets) was available to the public during the whole decision-making period (Article 7 of the abolished Law on Environmental Permits).

Thus, according to the abolished Law (in force at the time the first auction was conducted), prior to issuance of an environmental permit the public had the opportunity to participate in all stages of the process of obtaining environmental permits and express its position in the form of comments to be considered in the final decision-making, The current Law (active since January 1, 2008) does not regulate the issues of forest management and forest use in terms of impact on the environment, i.e. for obtaining the license on forest use neither an environmental permit nor the conclusion of the ecological experts are required.

Question 4. What is the legal basis for issuance of long term forest use licenses? Please specify the relevant legal act. Is an environmental impact assessment (EIA) procedure required for the issuance of forest use licenses?

The issuance of long-term licenses on forest use is regulated by the Forest Code of Georgia of June 22, 1999. Forest management is a precondition for issuance of the licenses. Forest management is an essential part of the state forest fund registration system and is additionally regulated by the **Provisions on the State Forest Fund Registration System** approved by the Order #342 of the President of Georgia made on July 19, 2002, and by the **Rules of the State Forest Fund Registration** approved by the order #1440 of the Minister of Environment Protection and Natural Resources (the latter order had not been issued at the time the first auction was conducted).

Regarding the second part of the question we would like to note that current legislation does not require environmental impact assessment for obtaining a license on forest use. As for the situation that existed before January 1, 2008, an environmental impact assessment was required for obtaining a license on forest use insomuch as environmental impact assessment had been an obligatory procedure for forest management planning, and forest management in its turn had been a basis for issuance of a license on forest use; i.e. there was an indirect link between the environmental impact assessment and the license on forest use according to the abolished Law on Environmental Permits.

Question 5 Please specify whether, under the national legislation of Georgia, the provisions of article 6 of the Aarhus Convention are applicable to the licensing of forest use activities

The issues of public participation in the management of the State Forest Fund are regulated by the Chapter X of the Forest Code of Georgia. According to the first part of Article 35 of the Forest Code the citizens and representatives of public organizations are authorized to: a) receive full, objective and timely information about the state of the State Forest Fund; b) participate in the planning of forest management by the State Forest Fund at all stages. According to the first part of Article 36 of the same Code, **bodies authorized for managing the State Forest Fund shall consider comments and suggestions made by citizens and representatives of public organizations prior to making relevant decisions**. In this case the notion "relevant decisions" means issuance of a license on forest use and therefore public participation shall be ensured in the process of issuance of the licenses. The rule of issuance of licenses is established by the Provisions on the **Rules and Conditions for Issuance of Licenses on Forest Use** approved by the Resolution #132 of the Government of Georgia made on August 11, 2005. Since the license on forest use is one of the types of licenses on use considered in the Law of Georgia on Licenses and Permits, the **Provisions on the Rules of Conduction of Auctions for the Purpose of Issuance of a License on Use, Establishment of the Initial Price of the License on Use and Payment Mode** approved by the order #1-1/480 of the Minister of Economic Development of Georgia made on **April 4, 2008** (was not active at the time of the first auction) are also applicable to the forest use licensing. None of these regulations consider any form of public participation in the process of issuance of licenses on forest use. This is a violation of the subparagraph "b" of the first part of the Article 35 of the Forest Code of Georgia which says that: the public and the public organizations are authorized to participate **at all stages of the State Forest Fund management planning activities.** These regulations are also in conflict with the third part of the Article 35 of the Forest Code of Georgia which says that: **before a decision on forest use (i.e. prior to issuance of a license) in a particular area is made by the entities authorized for managing the State Forest Fund, the following information for this area shall be published: a) about forest management; b) categories established for the State Forest Fund (only soil protecting and water regulating forests may be subject to licensing) ; c) protection regime established for the State Forest Fund; d) allocation of areas of the State Forest Fund for forest use for a period of five years or longer.** The Forest Code having the status of a Law of Georgia has superior legal power over the mentioned regulations.

As it has been mentioned above, before the abolition of the Law on Environmental Permits, obtaining an environmental permit along with a license was necessary. According to the established procedure the issue of environmental permits preceded the issue of licenses. During environmental permitting the public had the opportunity to participate in the process of environmental impact assessment and state geological expertise. In terms of the Aarhus Convention (paragraphs 2 and 4 of the Article 6) it meant **public participation at initial/early stage of environmental decision-making**, since both abovementioned activities served as procedural grounds for obtaining environmental permits on forest management and then on timber harvesting. Public participation in the decision-making process was on a separate procedural basis. The issue of public participation in environmental permitting of the category I activities has been discussed above (see the answer on Question 3). The similar situation was in case of environmental permitting of the category II activities. In case of the category III activities the public would be informed; however, the organization of public discussions was not mandatory but the application (with exception of the parts containing commercial, industrial and state secrets) was available for the public during the whole period of decision-making (Articles 8 and 9 of the abolished Law on Environmental Permits).

It is worth mentioning that the requirement of paragraph 2 of Article 6 of the Aarhus Convention on provision of information in a **timely and effective manner** is not adequately considered in the mentioned cases. Articles 7, 8 and 9 of the Law on Environmental Permits set the requirement for the relevant administrative body to publish the information in the printed media. It is obvious that such general regulation has a formal character, which gives the relevant administrative body an opportunity to avoid taking ends. Articles 15 and 16 of the same Law related to the right of the public to participate in public discussion of environmental impact assessment do not adequately regulate the public information mechanism; to be more exact, they do not specify the ways in which to inform the public and invite public representatives to the public discussions. All of these Articles do not comply with the requirement of the Aarhus Convention on the provision of information in a **timely and effective manner.**

Thus, the recent legislative changes contributed to further deviation from the requirements of the Aarhus Convention. Before January 1, 2008 the issue of forest use had been more transparent and the public had more legal mechanisms for expression of their opinion and influencing the process of issuance of licenses on forest use.

Question 6. How big are the areas concerned by the auctions of 1 may 2007 and 7-8 October 2007:

a) in Kakheti
b) in Samegrelo-Zemo Svaneti;
c) in Samtskhe-Javakheti.

As a result of the auction carried out on May 1, 2007, long-term licenses on forest use in Samegrelo-Zemo Svaneti (Tsalenjikha, Chkhorotsku) for an area of 37,860 ha have been issued. On the same day the long-term licenses on forest use for an area of 10,052 ha were issued in Kakheti (Kvareli).

On October 7, 2008 in Samtskhe-Javakheti (Akhaltsikhe) long-term licenses on forest use were issued for 689 ha, and in Kakheti for an area of 1,561 ha.

As a result of the auction carried out on October 8, 2008 long-term licenses on forest use were issued for 5,945 ha in Kakheti (Akhmeta, Telavi) and Tianeti.

a. In Kakheti and Tianeti licenses have been issued for a total of 17,558 ha;
b. In Samegrelo-Zemo Svaneti for 37,860 ha;
c. In Samtskhe-Javakheti for 689 ha.

Question 7. Have the auctions carried out on May 1, 2007 and October 7-8, 2009 been cancelled? If yes, could you indicate to relevant decision of the Government?

According to the information provided by the Ministry of Economic Development of Georgia the mentioned auctions have not been cancelled.

Question 8. Was the cancellation of the auction of special licenses (if confirmed) influenced by the Ombudsman's considerations which followed Green Alternative's appeal dated 6 November 2007?

The opinion of the Public Defender is not known.