

**ASSESSMENT OF EFFECTIVENESS OF  
ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM  
IN AZERBAIJAN**

## PROJECT PARTNERS:



I. **Caucasus Environmental NGO Network**

### HEAD OFFICE

#### GEORGIA CENN

14<sup>B</sup>, Chonkadze Str.  
0107, Tbilisi

#### ARMENIA CENN

Environmental Conservation and  
Research Center, AUA  
40, Marshal Baghramyan Str.  
375019, Yerevan

Tel.: +3741 51 26 93, 51 26 94  
Fax: +3741 51 26 95  
E-mail: [info.armenia@cenn.org](mailto:info.armenia@cenn.org)

Tel: +99532 92 39 46  
Fax +99532 92 39 47  
E-mail: [info@cenn.org](mailto:info@cenn.org)

#### AZERBAIJAN CENN

32A, Jeyhun Gajibekov Str.  
Apt. 30  
Baku

Tel: +99412 65 33 41  
Fax: +99412 65 33 41  
E-mail: [info.azerbaijan@cenn.org](mailto:info.azerbaijan@cenn.org)

### WEB SITE:

[www.cenn.org](http://www.cenn.org)

### Netherlands Commission for Impact Assessment

Arthur van Schendelstraat 800  
PO Box 2345  
3500 GH UTRECHT  
The Netherlands  
Tel.: +31 (0)30 2347 604  
Fax: +31 (0)30 2304 382  
E-mail: [akolhoff@eia.nl](mailto:akolhoff@eia.nl)

## PREFACE

This publication was prepared by the Caucasus Environmental NGO Network (CENN), a non-governmental, non-profit organization established in 1998. Since its establishment, CENN has acted as a voluntary effort to foster regional cooperation by means of improved communication among environmental organizations of Armenia, Azerbaijan and Georgia.

CENN with its activities tries to strengthen capacity and partnerships of environmental NGOs working in the Caucasus region, public participation and development of civil society. The organization aims to introduce and advocate new concepts and practices in the society to promote principles of sustainable development and good governance in the region.

CENN perceives that the states of the South Caucasus have much to share and much to work on jointly. This especially concerns the environment of our region. We are highly interdependent in achieving our common goal of promoting environmental protection and sustainable development, information exchange and harmonization of legislation with international, and specifically European, standards. This shall become one of the cornerstones of success in our endeavors. CENN is hopeful that this publication shall serve as a significant contribution to this end.

One of the main directions of the CENN's activities is improvement of EIA systems in the South Caucasus countries. In order to develop effective Environmental Impact Assessment (EIA) system and promote transboundary collaboration and sustainable development in the Caucasus, the project: *"Assessment of Effectiveness of Environmental Impact Assessment (EIA) System in the South Caucasus"* was implemented by CENN with the direct participation and advice of the Netherlands Commission for EIA. The Netherlands Commission for EIA is an independent expert body that provides advisory services on EA and aims to assist countries in establishing effective systems for impact assessments as a means of contributing to sustainable development and alleviation of poverty.

The project was directed towards identification and assessment of existing needs and gaps in the EIA systems in Armenia, Azerbaijan and Georgia as well as development of the relevant recommendations for improvement of EIA systems in these countries, and was implemented during September 2003 - May 2004 by common efforts of international - Georgia-Armenia-Azerbaijan team.

The present report is the first attempt ever to bring together EIA systems of three South Caucasus states – Armenia, Azerbaijan and Georgia. CENN believes that this publication shall be useful for governments of the South Caucasus countries, environmentalists, lawyers and the general public interested in environmental issues and committed to improve environmental governance in these countries.

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Leyli Bektashi-Brown (M.Sc in Environmental Sciences and Policy) – Azerbaijan  
Vram Tevosyan (Master in Environmental Management and Policy) – Armenia  
Kety Gujaraidze (M.Sc. in Environmental Management and Policy) - Georgia.

Nana Janashia  
Executive Director  
CENN – Caucasus Environmental NGO Network

## TABLE OF CONTENTS

<b>1</b>	<b>INTRODUCTION</b> .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
1.1	THE AIM OF THE RESEARCH.....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
1.2	STRUCTURE.....	11
1.3	METHODOLOGY.....	11
<b>2</b>	<b>COUNTRY BACKGROUND</b> .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>3</b>	<b>HISTORY OF THE DEVELOPMENT OF THE AZERBAIJANI ENVIRONMENTAL ASSESSMENT SYSTEM</b> .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
4.1	NATIONAL EA LEGISLATIVE FRAMEWORK.....	14
4.2	ENFORCEMENT OF THE NATIONAL LEGISLATION.....	15
<b>4</b>	<b>ADMINISTRATIVE FRAMEWORK</b> .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
5.1	HUMAN RESOURCES (STAFFING, PROFESSIONAL SKILLS, ETC.).....	16
5.2	CO-ORDINATION WITH OTHER PARTIES TO THE EIA PROCESS.....	17
5.3	MANDATES.....	17
<b>5</b>	<b>ASSESSMENT OF AZERBAIJAN'S EA/EIA LEGISLATION AND PRACTICE</b> .....	<b>19</b>
5.1	THE PARTIES TO THE EIA PROCESS.....	19
5.2	EIA PRINCIPLES.....	19
5.3	EIA TIMEFRAMES.....	20
5.4	EIA OBJECTS.....	20
5.5	CONTENTS OF THE EIA REPORT.....	20
5.6	EIA STAGES.....	21
5.6.1	<i>Screening</i> .....	21
5.6.2	<i>Scoping</i> .....	21
5.6.3	<i>Assessment - environmental studies</i> .....	21
5.6.4	<i>Alternatives, mitigation and impact management</i> .....	21
5.6.5	<i>Reporting</i> .....	22
5.6.6	<i>Reviewing</i> .....	22
5.6.7	<i>Decision-making and environmental clearance (permitting &amp; licensing)</i> .....	23
5.6.8	<i>Post-decision monitoring - monitoring, implementing and auditing</i> .....	23
5.7	EXEMPTION FROM EIA.....	23
5.8	LIABILITY FOR VIOLATION OF EIA LEGAL FRAMEWORK.....	24
5.9	EIA IN A TRANSBOUNDARY CONTEXT.....	24
5.10	PUBLIC PARTICIPATION IN THE EIA PROCESS.....	24
5.11	SPECIAL RULES OF EIA APPLICATION.....	25
5.12	METHODOLOGICAL ASPECTS.....	25
<b>6</b>	<b>ANALYSIS OF THE EFFECTIVENESS OF AZERBAIJAN'S EIA SYSTEM</b> .....	<b>31</b>
6.1	SCREENING.....	32
6.2	SCOPING.....	33
6.3	CONSIDERATION OF ALTERNATIVES.....	33
6.4	EIA REPORTING.....	34
6.5	QUALITY REVIEW.....	34
6.6	PREPARATION OF ENVIRONMENTAL MANAGEMENT PLANS.....	34
6.7	PUBLIC PARTICIPATION AND CONSULTATIONS.....	34
6.8	MONITORING AND POST-PROJECT ANALYSIS.....	35
6.9	INTEGRATION OF EIA FINDINGS IN THE DECISION MAKING PROCESS.....	35
6.10	CONCLUSIONS.....	36
<b>7</b>	<b>STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)</b> .....	<b>38</b>
<b>8</b>	<b>COUNTRY'S EIA SYSTEM AND EU STANDARDS (GUIDELINES, ETC.): POSSIBLE AMENDMENTS FOR HARMONISATION</b> .....	<b>40</b>
<b>9</b>	<b>CONCLUSIONS AND RECOMMENDATIONS</b> .....	<b>47</b>
	<b>REFERENCES</b> .....	<b>51</b>

**APPENDIX I: LIST OF STAKEHOLDERS .....53**

## ABBREVIATIONS

BTC	Baku-Tbilisi-Ceyhan Oil Pipeline
EA	Environmental Assessment
EIA	Environmental Impact Assessment
EIA Handbook	Handbook for the Environmental Impact Assessment Process in Azerbaijan
EMP	Environmental Management Plan
EREG	Environmental Review Expert Group
EU	European Union
fSCE	former State Committee for Ecology
fSU	former Soviet Union
GDP	Gross Domestic Product
IDP	Internally Displaced Person
Law on EP	Law on Environmental Protection of the Azerbaijan Republic of 1999
MoENRU	Ministry of Ecology and Natural Resource Utilisation
MPC	Maximum Permissible Concentration
NGO	Non-governmental Organisation
OVOS	Rus.: Assessment of Environmental Impacts (Otsenka vliyaniya na okruzhayushuyu sredu)
PER	Public Ecological Expertise
SEA	Strategic Environmental Assessment
SEE	State Ecological Expertise
SOCAR	State Oil Company of the Azerbaijan Republic
SPPRED	State Programme for Poverty Reduction and Economic Development
UNDP	United Nations Development Programme

## EXECUTIVE SUMMARY

Azerbaijan, one of the former USSR republics, has suffered perhaps the most severe economic devastation among the rest of the post-soviet states, aggravated by the military conflict with Armenia over Nagorno-Karabakh. As a result, in the beginning of the 21<sup>st</sup> century the country is still struggling to rehabilitate its economy and improve living standards of its population.

Development of Azerbaijan's environmental assessment system started during the Soviet period, with the adoption of the state ecological expertise (SEE) procedure, but the actual changes to the system took place in the 1990s after the collapse of the USSR. Since then, as SEE has proved itself incapable of preventing economic activities from further damaging the environment, the EA system has evolved from SEE into a mixture of the old Soviet and contemporary western approach (i.e. Environmental Impact Assessment, or EIA). In fact, the country has not yet officially adopted any EIA legislation that would allow the flexible and democratic procedure of EIA be systematically applied to economic developments. The main document outlining the nature of the environmental assessment process in Azerbaijan remains the Law on Environmental Protection (*Law on EP*), according to which the environmental assessment procedure in the Republic features the old Soviet SEE procedure, highly technocratic and inflexible in its nature. However, the *EIA Handbook*, developed in 1996, introduced all the main elements of EIA and thus became an important step in the evolution of the Azerbaijani EIA system proving the possibility for the country to follow western EIA standards.

Today's EIA system in Azerbaijan, like elsewhere in the world, aims not only at minimising or avoiding possible impacts of development activities in a growing economy through providing decision-makers with a powerful tool to support environmentally conscious decisions. It represents a mechanism designed to encourage democratic tendencies in the development of societies, to achieve transparency in decision-making, to introduce elements of sustainability into economic activities, and to achieve consensus on controversial issues. Like any other EIA system, Azerbaijan's EIA system, which includes not only the relevant legislation, but also EIA practice and relevant capacity of various stakeholders to the EIA process in the country, has its advantages and disadvantages, which were looked into by the Assessment of the Effectiveness of EIA Systems in the South Caucasus States Project developed by the Caucasus Environmental NGOs Network (CENN) and supported by the European Subsidy Programme for Environmental Co-operation and The Netherlands Commission for Environmental Impact Assessment.

Since 1996, in line with development of the economy, capacity and expertise of various stakeholders of the EIA process in Azerbaijan has been constantly growing reaching in some cases very high levels. An increasing number of organisations (governmental as well as non-governmental – NGOs), companies and individuals are getting involved in EIAs in the country, which signals significantly improved levels of public awareness of environmental issues and opportunities provided by the democratic principles intrinsic in the EIA process. However, the overall level of the EIA-related capacity (including institutional, technical financial and human resources) is still in a need for considerable improvement and from this point of view would benefit from support from the government as well as international partners with relevant expertise.

Although EIA practice in the country is viewed as improving, it remains highly unsystematic, whereby developers, who committed themselves to environmental protection (mostly international and foreign companies and organisations), choose to follow the non-binding EIA procedure. The unsystematic application of the EIA procedure also results in weaker co-ordination between various participants of EIAs, which may eventually affect the quality of the process. From this point of view, introduction of an EIA act would considerably improve EIA performance in the country, systematise its application and help cope with the increasing pace of economic development. Alternatively, upgrading of the *EIA Handbook* could be chosen as an easier option, which would at the same time allow for simultaneous amendments to the EIA procedure based on the experience acquired through almost a decade of carrying out EIAs in the country. Thus, certain clarification is necessary for the timeframes of the EIA process and its interaction with the SEE procedure as well as for the scoping requirements which do not currently cover all the necessary issues (such as EIA timing and scope, project alternatives to be discussed, EIA process participants and public participation issues, health, social, risk, sustainability and any other issues to be reviewed during the EIA, etc.). Among the aspects of the national EIA system, which require close attention, is the screening stage of EIAs, which is largely overlooked by the *Law on EP* and the *EIA Handbook*, but which could be easily improved based on experience gained since 1996, in order to increase the overall effectiveness of the EIA process in the country. The

country's developing economy is in a need of a flexible EIA procedure which would help address environmental impacts of various types of developmental activities depending on their scale, location and other characteristics. In this regard, a two-tiered screening procedure (which is partly already implemented in the country) widely applied in developed as well as developing countries, could significantly improve EIA performance in Azerbaijan. Also having a list of activities exempt from undergoing a full EIA procedure (e.g. those implying military, state or commercial secrecy) improves the efficiency of the EIA process and builds trust between stakeholders (as in this case all stakeholders are aware of certain types of activities on which they can receive only limited information).

Issues of public participation are currently perhaps most often discussed amongst EIA process stakeholders. This aspect of EIAs is recognised as one of the most developed and successful in the Republic, owing to a large extent to the active promoting of EIAs by national NGOs, but also by some foreign investors. The activity of the public (mainly NGOs, but in some cases also local population) has dramatically increased in the country over the period of application of EIAs, signalling the overall development of democracy in Azerbaijan. This is all the more a remarkable achievement, taking into account the lack of democratic traditions in the former Soviet Union (fSU). For example, active involvement of the public in various oil projects has led to development by oil companies of oil spills management plans and programmes for wildlife protection. Thus development and further improvement of democratic traditions in the shape of public participation in EIAs clearly shows how effective EIAs can be in protecting the environment through involvement of wide groups of population and NGOs. The success of EIA public participation campaigns in Azerbaijan also clearly shows benefits of early public involvement at the stages of preparation of various projects, when taking into account public opinion can help developers design their projects in the way best suit not only their economic goals, but also local (national) social and environmental conditions and lift tension and possible conflicts of interest.

Another positive aspect of EIA practice in Azerbaijan is consideration of alternatives, which in fact is not required by the legislation (i.e. the *Law on EP*) and is not inadequately attended by the *EIA Handbook*. Despite these deficiencies, alternatives are widely considered in practice, including the so-called "do-nothing" alternative, which looks into the existing development trends that would direct the overall development of the territories and sectors of the economy in case no new activities are carried out.

However, when speaking of the deficiencies of the Azerbaijani EIA system, it is worth remembering that the majority of shortcomings are, as a rule, judged against international EIA standards set out in various documents. Thus, more and more often such judgement is based on the requirements of the European Commission (EC) EIA Directives of 1985 and 1997 and the EC Directive on strategic environmental assessment (SEA) of 2001. Such comparative approach in the attempts to improve national EIA systems, especially in the fSU republics, is fraught with certain consequences as a chance is high to end up with a highly advanced but artificial in terms of country context, and therefore non-functional, EIA system. It should be noted that there is no immediate need to harmonise the Azerbaijani EIA system's requirements with those of the European Union (EU), as Azerbaijan is not intended to access it in the medium-term perspective. Instead, it would be more appropriate to compare the today's Azerbaijani EIA system to the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention of 1991) and the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention of 1998), which Azerbaijan ratified in 1998 and signed in 1999, respectively. In this case, as a party to both treaties, the country should be directly interested in complying with the requirements of the two treaties, especially if the comparison takes into account specificities of the country context.

A number of issues, in addition to those mentioned earlier, indeed require closer attention in the contemporary Azerbaijani EIA system. Thus, the practice of the past years shows the need for more precise EIA process timeframes, which would take into account the specifics of carrying EIA in the country, particularly of the public participation process. The monitoring provisions of the national legislation could also essentially benefit from incorporating all the experience of the national and local governmental organisations, companies and NGOs involved in various types of monitoring activities, and further enhanced by taking on board experience of foreign organisations and experts, where applicable. For example, the practice of the application of the EIA procedure in the country, especially of involving the public in EIAs, has showed a need for a requirement to prepare EIA documentation in the national language in order to cover wider groups of the society during public participation campaigns. Implementation of the World Bank's Urgent Environmental Investment Project led to the understanding of the necessity of having, inter alia, a long-term national monitoring programme for heavy metals and related environmental indicators. Development of Environmental Management



Plans, an integral part of many EIA systems, has become especially important for Azerbaijan who has recently committed itself to complying with international EMS standards. Such plans help ensure the developers of the proposed activities care about the environment and the population not only on the stage of project preparation, but also during its implementation, thus substantially increasing the quality of EIAs and their effectiveness.

Here it is worth mentioning the role of the SEE in the EIA process. On the one hand, SEE could be viewed as the quality review stage of the EIA process, when the EIA documentation is being reviewed by a designated group of experts who have to decide whether the documentation complies with the EIA requirements, is comprehensive (i.e. covers all the important environmental, health, social and economic issues), is clear and scientifically and technically correct, reviews alternatives and their impacts, takes into account the outcomes of public consultations or explicitly explains why public opinion couldn't be taken into account, etc.. According to the *EIA Handbook*, this function in the Azerbaijani EIA system is performed by the Environmental Review Expert Group (EREG).

On the other hand, the aim of the SEE procedure is to check the proposed developments against the existing environmental standards (e.g. those for pollution levels, discharges, etc.) in order to decide on whether this particular proposal can take place and on what conditions. Thus certain similarity between the functions of the EREG and SEE are obvious and could become the advantage of the Azerbaijani EIA system, as happened in many other post-soviet republics (e.g. in Russia and Kazakhstan). For this, a clear link between the *Law on EP* and the *EIA Handbook*, which is now absent from our legislation, needs to be created. It should also be remembered that the SEE on its own in its today's form is a non-transparent process, which can sometimes create perception of being a means to approve environmentally dangerous activities thus causing social tension, most of which can be removed by linking SEE to the EIA process at the quality review stage. The good news in this regard is that Azerbaijan's expert capacity to undertake EIA quality reviews is actually quite high owing to the experience in carrying out SEEs for many years now, which means that this stage of the EIA process could (and already is) significantly improve the overall effectiveness of EIAs in the country. Moreover, national NGOs and academia have by now acquired sufficient experience to undertake independent EIA quality reviews for both EIA processes and EIA reports, which could also play its role in improving the quality of EIAs and promoting principles of democracy and transparency in the country.

Another its function SEE actually performs is decision-making, however this function is shared with state institutions responsible for approving economic activities in various sectors. The strongest feature of the Soviet SEE procedure was that its "no-objection", whether conditional or unconditional, was necessary for the decision-maker to approve the proposed activities. Thus, provided adequate enforcement of the *Law on EP*, findings of EIAs could be used directly to aid the decision-makers in making environmentally sound decisions. However, as mentioned above, the gap in the Azerbaijani EIA legislation, namely the absence of the link between the *Law on EP* and the EIA process outlined in the *EIA Handbook*, may significantly reduce the efficiency of EIAs through preventing them to become a useful tool for decision-makers. At the same time, the SEE procedure as it exists in the national legislation now, implies rather a mechanism whereby the decision-makers are dictated rather than advised on the best decisions in terms of environment and sustainable development. This, together with other reasons, commonly observed in EIA systems (e.g. the lack of commitment of the decision-makers to take into account environmental issues implied by the economic activities (a problem traditional for many states world-wide); insufficient levels of awareness of decision-makers of the environmental problems in the country and the region; low levels of economic development leading to prioritisation of economic and social goals; the low quality of environmental information provided to the decision-makers; and the resistance of some decision-makers to take EIA on-board as an aid to enhance the quality of the decisions made), results in decreased efficiency of EIAs in the country.

Of other aspects vital for effective EIA systems, it is worth mentioning having a feedback mechanism which would allow different parties to the EIA process exchange experience with each other and with their international colleagues, regularly update the national EIA system based on the past experience, and deal with statistical aspects of EIA application to various in all sectors of the country's economy. Various parties to the EIA process in Azerbaijan admit that there is a sharp need for EIA methodological guidelines in the country, which would take into account country context and experience of the past EIAs and provide guidance on issues like predicting and managing cumulative impacts, EIA in a transboundary context, and elaborate on the specifics of the assessment of impacts of strategic-level activities, such as policies, plans, programmes, strategies and legislative acts (the so-called Strategic Environmental Assessment). The issue of developing a comprehensive EIA methodology for Azerbaijan's EIA stakeholders is all the more important in the absence of relevant vocational training and education in the Republic and the fact that foreign and international investors

use a range of EIA methodologies, which not always can be effectively used in post-soviet countries. Thus, the issue of having an EIA methodology is closely related to the issues of relevant capacity in the country. These are, first of all, EIA expertise and human resources, but also financial, technical and administrative capacity of various stakeholders to effectively undertake EIAs.

Azerbaijan is the only post-soviet state, which has not yet adopted an EIA, or OVOS, (the Russian abbreviation for the Assessment of Environmental Impacts) act, leaving the question of enforcement of the non-binding EIA Handbook open for almost a decade now. As a result, most, if not all, EIAs carried out in the country are initiated by foreign and international investors, while local and national developers follow the requirements of the *Law on EP*, i.e. tend to comply with the SEE procedure only (however, the absence of official statistics on this issue does not allow for precise estimation). In fact, enforcement of the national legislation (including the environmental protection legislation) has been one of the major issues for the country since Azerbaijan gained its independence in the early 1990s. The recent increase of the activities of NGOs and promotion of better environmental performance by various international institutions, the issues of enforcement of legislation have become possible to address. However, the *Law on EP* and other relevant legislation are still lacking well-developed mechanisms of enforcement. For example, too low fines and penalties are believed to be encouraging developers to pay them rather than invest in environmental protection measures. As a result, inadequate penalties and fines eventually diminish the effect of EIA application in the country.

On the overall, the EIA system in Azerbaijan is rooted in the Soviet central planning system, which was highly non-transparent, undemocratic and viewed environmental and social issues as opposing to the economic goals of the country. This explains to a large degree why a “top-down” approach (i.e. initiated by the government) in reforming the EIA system in the country would have more chances to succeed than a “bottom-up” approach (i.e. lobbying by NGOs). Despite notable democratic changes in the Azerbaijani society in the past decade, the country is still struggling to follow the example of some states of the fSU, which managed to gradually overcome this legacy of their Soviet past. Therefore, any attempts to help the country improve, among others, its EIA system should take into account this factor and should build any collaboration based on the knowledge of the internal driving forces influencing the economy and societal and cultural life and order in the country.

There is no doubt that Azerbaijan is in a need to improve its EIA system, especially in light of the rapid development of its economy, and that the only way to tackle this issue is to make EIA legal in the country and to bring it in accordance with international standards. This is necessary in order to increase effectiveness of this process and make it capable of coping with the growing number of projects of various scales and sectors. This is necessary in order to make sure economic activities in the long term do not result in further degradation of the unique environment of the country, even if in the short term it would mean slightly increased costs for developers. It would also allow the country enjoy being a peer partner on the international arena through implementing its international obligations. The scale of the reform of the national EIA system may seem large, but it should be remembered that a large part of the way from the old Soviet SEE procedure to the contemporary EIA process the country has already gone through. Azerbaijan's current potential to plan, launch and successfully implement such a reform on its own may not be sufficient, but with a good will and readiness of the government to act for the benefit of the country and its people could lay a desirable and strong basis for an EIA reform in the nearest future.

## 1. Introduction

### 1.2 The aim of the research

Environmental Impact Assessment (EIA) is recognised as an effective tool to support environmentally conscious decision-making world-wide. Its development started with the adoption of the NEPA (National Environmental Protection Act) in the USA. Soon the idea of having a stand-alone, yet dynamically integrated into decision-making, system spread across the world giving birth to what is nowadays known as EIA.

According to one of the most comprehensive definitions of EIA as it's understood nowadays is "a process of systematic analysis and evaluation of environmental impacts of planned activities, consultation with affected parties, and using the results of the analysis and consultations in planning, authorising and implementation of this activity"<sup>1</sup>. It is thus based on a number of principles, such as transparency, public involvement and accountability.

However, EIA is not the only existing procedure for taking into account environmental considerations in economic decision-making. The majority of the states of the former Soviet Union (fSU) have preserved a different system of environmental assessment (EA) known as State Ecological Expertise (SEE)/OVOS (the Russian abbreviation for the Assessment of Environmental Impacts). Together, SEE and OVOS formed a system which was aimed at preventing environmentally dangerous projects from being approved and implemented, however, the effectiveness of this system was often too low, and eventually it proved incapable of providing the necessary level of environmental protection within economic activities.

With the dismantling of the Soviet regime, the Republics of the former USSR entered the so-called period of transition, most distinctive features of which have been sharp economic decline, degradation of social and environmental conditions and extremely high levels of poverty. It was inevitable that issues of environmental protection would be largely overlooked and overruled by the goals of economic and social development in the region. However, as the states' economies gradually restore and approximate levels at which environmental protection ceases to be a burden and becomes an achievable and necessary measure, tools of environmental protection gain increasing attention of various economic actor.

Development of EIA, as one of such tools, in Azerbaijan has been conditioned, apart from the economic growth, by increasing activity of international and multilateral institutions, such as the World Bank, European Bank for Reconstruction and Development, and the Asian Development Bank, but also by the development of the oil and gas sector. At the same time, the awareness of the population of the environmental problems of the country and the region has also raised, and the number of non-governmental organisations (NGOs) more actively promoting EIA and participating in them has increased dramatically.

However, most of the EIA-related activities in the country presently associate with the oil projects and the above-mentioned organisations, while only a small number of domestic developers are known to appreciate and apply this tool during developing of various projects in the country. The situation is aggravated by the fact that the only legislative document in the country stating the basics of EA in the form of SEE is the Law on Environmental Protection (hereinafter *Law on EP*), and the EIA guidelines (hereinafter *EIA Handbook*) developed for Azerbaijan in 1996 by a UNDP expert and with assistance from national NGOs have never been upgraded to a binding document since then.

A research carried out in 2001 at the Central European University<sup>2</sup> investigated the legal framework for EA in Azerbaijan as well as the state of the EA practice and the relevant capacity. The main conclusion of the research was that despite the absence of binding EIA regulations, the country possesses an EIA system which complies with most requirements of EIA in its international understanding. Azerbaijan's capacity to undertake EIAs, knowledge of the relevant issues preserved since the Soviet period, and the increasing interest towards environmental issues in the country were mentioned to be among the driving forces of the development of the Azerbaijani EIA system, too.

At the same time certain obstacles were outlined that prevented the system from further development, among which were the still low level of general public awareness, the absence of the relevant

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<sup>1</sup> Cherp *et al.* 2001

<sup>2</sup> Bektashi, L., 2001b

environmental education and vocational training, low commitment of the decision-makers to environmental protection issues in comparison to the issues of economic and social development, the low institutional capacity to undertake, and the lack of financial resources to support the development of the EIA system.

The Assessment of the Effectiveness of Environmental Impact Assessment (EIA) Systems in the South Caucasus States Project provided up-to-date information on the EIA system and practice in Azerbaijan (as well as in Armenia and Georgia) and helped to understand the functioning of the system and the ways to improve it. During the project, various aspects of the system were studied in order to evaluate the effectiveness of the Azerbaijani EIA system and to come up with certain conclusions and recommendations regarding the possibilities of its increasing. Besides, the Project line suggested looking at the existing EIA legal framework from the point of view of the European legislation in order to outline the major advantages and drawbacks of the country's EIA system and to find out about the necessity of, and conditions for, the approximating the latter to the standards of the European Commission (EC) EIA Directives.

### **1.3 Structure**

Chapter 2 of the current Report presents an Executive Summary for the Report. In Chapter 3, a brief summary of the country context within which the Azerbaijani EIA system has been developing since the collapse of the former USSR, while the history of the Azerbaijani EIA system as well as the present EIA legislative framework are described in Chapter 4. Chapter 5 deals with the administrative framework issues related to the present state of the EIA system in the Republic, and Chapter 6 gives a more in-depth evaluation of the existing EIA legislative framework and relevant practice in the country.

The effectiveness of the Azerbaijani EIA system is further analysed in Chapter 7. Issues related to strategic environmental assessment (SEA) are discussed separately in Chapter 8. Finally, Chapter 9 presents a brief analysis of the possible amendments to the national EIA legislation in order to harmonise it with international standards, and Chapter 10 presents the overall conclusions and recommendations drawn as a result of the current Project.

### **1.4 Methodology**

The current Project is comprised of the following three stages:

- 1. Collection of the basic data through a review of the existing literature and legislative framework of the Azerbaijani EIA system.** At this stage, a range of literature sources were analysed with a particular focus on the Azerbaijani EIA system as well as more general data about the contemporary EIA and the Soviet-type of environmental assessment procedure. At this stage of the Project, the national legislation was also thoroughly analysed based on previous research data as well as on the relevant national legislation in force. This data formed the basis for Chapters 3, 4, 6 and 8 of the current Report.
- 2. Collection of up-to-date information about the EIA system, practice, institutional capacity and current basic needs of the sector through interviews in the country.** For this purpose, a number of questions were developed to assist in the process of collection of information among various stakeholders of the EIA process in the country. Based on these questions, 25 structured interviews were planned to be held in the first stage of the Project that would provide the most up-to-date information about the EIA system and its functioning in Azerbaijan. Of these, five interviews were to be held with representatives of each category of EIA process stakeholders, i.e. governmental officials, EIA experts, NGOs, international organisations, and foreign and national donors, in order to achieve the necessary diversity of opinions.  
  
Unfortunately, the target of 25 interviews was not achieved due to a number of external to the Project reasons, such as difficulties experienced by the Project staff in finding competent sources of information and approaching the EIA process stakeholders, and the lack of the information disclosure tradition inherited from the Soviet regime. Nevertheless, the information collected in this stage of the Project proved sufficient for the Project purposes and was further included in Chapters 5, 6 and 7.
- 3. Discussion of the information collected at the two previous stages at a round table organised for the parties to the EIA process in the country, and summarising the comments and suggestions received during the round table into the final Project Report.**

In this stage of the Project, a draft Project Report was introduced to various stakeholders of the EIA process in Azerbaijan in a round-table in order to obtain further comments on the Report and discuss suggestions and recommendations for further improvement of the Azerbaijani EIA system. The round table involved some 40 participants representing all the groups of stakeholders mentioned above. The outcomes of the round table as well as the analytical part of the Report were further utilised in recommendations for the improvement of the EIA system and its effectiveness in Azerbaijan outlined in Chapters 9 and 10.

## 2. Country Background

Being one of the five Caspian littoral states, Azerbaijan is a relatively small country with the population of 8 million people. The country is known as one of the world's oldest oil reserves, which, together with the country's location at a crossroads between Europe and Asia, have shaped its economic and social development throughout centuries.

Of the republics of the former Soviet Union, Azerbaijan was among those whose economy suffered the most severe devastation as a result of the collapse of the USSR in the early 1990s. As a matter of fact, the country's economy contracted by 60% followed by stagnation in all its sectors, and the inflation rates reached 1600% in 1994. The situation was further aggravated by the long-lasting military conflict with the neighbouring Armenia over Nagorno-Karabakh. It was only in 1994-1995 that foreign and domestic policy of Heydar Aliyev, who became the President of the Azerbaijan Republic in 1993, had led to cease-fire between the two countries thus providing for opportunities to rehabilitate the country's economy.

Successful efforts by President H. Aliyev to achieve political stability in the country have soon resulted in re-establishing diplomatic and economic relations with foreign partners and multilateral institutions which have been providing their financial and technical assistance to the country's macroeconomic and social reforms since 1994. As a result, the estimated annual growth of gross domestic product (GDP) per capita in 2002 exceeded 10%, and the inflation rates have long stabilised. Since mid-1990s, and particularly after signing the so-called "Contract of the Century"<sup>3</sup>, favourable environment has been created for domestic and foreign investments into the country's economy, which totalled over USD 1 bln. in 2001 (of which oil sector investments comprised USD 820.5 mln.). The oil boom of the late 1990s and the consequent inflow of foreign investments in the country's economy ensured high rates (40%) of economic growth related mainly to the oil sector, but also to agricultural and service production. On the other hand, the rapid growth in the oil and gas sector presents a serious challenge for the government as it exposes the other sectors of the economy to the risk of being overshadowed by the prospects of quick oil money.

The process of economic development has been closely followed by the process of democratisation of the society of a country which had been experiencing the lack of democratic traditions over the decades of the Soviet regime. However, the country's progress is acknowledged to be rather slow being hampered by high corruption rates and weak legislation enforcement mechanisms.

The war with Armenia has severely affected the society through, among others, its disastrous demographic implications of approximately 900 000 refugees and internally displaced persons (IDPs) which eventually lead to an 11% increase in Azerbaijan's population. As a result, in 2002 estimated 49% of the country's population was still living below poverty line, and the unemployment rates were estimated to reach 16% (against the official estimated rates of 1.1%). The State Oil Fund established in 1999 by a Presidential decree is expected to help reduce poverty and eliminate social problems, particularly of the rural population, through directing essential part of the oil revenues into education, health and other needs of the country<sup>4</sup>. Many Azeris' hopes nowadays lie with the construction of the Baku-Tbilisi-Ceyhan Main Oil Pipeline (BTC) and the Azerbaijan-Georgia-Turkey Gas Pipeline, through which the Azeri oil and gas - are to be exported.

Azerbaijan has also inherited a number of environmental problems such as air, water and soil pollution, decreasing biodiversity, desertification and deforestation, loss of arable lands, and the loss of the population of the Caspian sturgeon. Some of these indicators, mainly those related to pollution levels, decreased in early 1990s, however this is acknowledged to be a result of the economic decline rather than improved environmental management. It is expected that the growth of the country's economy, and particularly the oil and gas industry and production, will lead to further deterioration of the environment unless the government takes the necessary steps to prevent that from happening. Among the nature protection mechanisms which could be successfully applied to the economic activities in Azerbaijan is EIA which was introduced in the Republic in 1996 and has been actively promoted by various foreign companies, international organisations and donors, as well as local and national non-governmental organisations (NGOs).

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<sup>3</sup> The first oil contract signed between the State Oil Company of the Azerbaijan Republic (SOCAR) and leading international oil companies since the country's independence in 1991.

<sup>4</sup> According to the World Bank, health and education expenditures in 2001 comprised 0.6% and 4.2% of GDP, respectively.

### 3. History of the Development of the Azerbaijani Environmental Assessment System

Separate provisions related to the environmental indicators of enterprises existed in the economic legislation of the Soviet period. However, their role in regulating the environmental performance of those enterprises had been largely overlooked over years as economic profits constantly prevailed over environmental considerations. The “polluter pays” principle was employed in the majority of cases of exceeding the allowed amounts (the so-called Maximum Permissible Concentrations, or MPCs) of pollutants. The system of the so-called ecological passports issued for large enterprises was introduced in the mid-1980s in order to define the expected emissions/discharges by these enterprises, but existed until the early 1990s only.

The beginning of the Transition had signalled about the necessity for the Azerbaijani Government to review its environmental policy within the economic and social domains. In 1991-1995, the absence of an EA framework that would provide the economic development with a functioning environmental protection mechanism further contributed to moving away from sustainable development towards short-term economic goals. In such conditions, the Government’s reliance to a large extent upon the vast natural resources of the country, particularly its oil and gas, would no doubts encourage the development of highly polluting sectors of the economy and systematic neglecting of environmental considerations in economic activities. On the other hand, the very same oil and gas resources started attracting foreign investors and financing institutions, whose environmental requirements included, among others, an EIA procedure to be carried out for each proposed development. These created certain pressure for the Government of Azerbaijan to review its own EA requirements.

#### 3.1 National EA legislative framework

Today’s environmental assessment (EA) system of Azerbaijan presents largely the old Soviet system of State Ecological Expertise (SEE) adopted in the fSU in the late 1980s in response to the raising levels of environmental degradation and also increasing public awareness of the environmental problems. The purpose of SEE lies in formal verification by the state authorities of all the submitted developments, regardless of their scale, sector and type of activities, for their possible environmental impacts. Another procedure developed not long before the breakdown of the USSR is OVOS, which was supposed to complement SEE at the project level, has never been adopted in Azerbaijan.

The basics of the Azerbaijan’s EA system are stated in the legal acts and documents listed in Table 4.1 below. All the documents listed in the table, except the *EIA Handbook*, are legally binding.

**Table 4.1. EA Legislation of the Azerbaijan Republic**

Legislative document	Year of adoption	System implied
Law on Environmental Protection, Clause VIII: State Ecological Expertise	1999	SEE
Decree on ratification of the Espoo Convention	1999	EIA
Decree on Accession to the Aarhus Convention	2000	EIA
<i>EIA Handbook</i>	1996 (non-binding)	EIA

The main legislative document of the country, stating SEE as the main EA procedure in the country, is the Law on Environmental Protection (hereinafter the *Law on EP*), which is actually not a specific EIA-related legislative document. Clause VIII of this Law outlines the core principles according to which SEE of any proposed development activity should take place. However, a closer look at the Law reveals two aspects of at least this particular Clause of the Law on EP: a) Clause VIII of the Law on EP actually repeats the outdated Russian Law on Environmental Protection of 1991, and b) it also largely repeats Clause VIII of the previous Law on Protection of Nature and Natural Resources Utilisation of 1992. The *Law on EP*, thus, states the basics of SEE in Azerbaijan as a process of “identification of the environment’s correspondence with the quality norms and ecological requirements aimed at revelation, prevention, and prediction of possible negative impact of economic activities on the environment and related consequences” (Article 50). Such definition, although acknowledging the necessity of taking into account environmental considerations by the developers, presents a technocratic approach to environmental issues, whereby the legislation provides the

economic activities with certain limits for using natural resources rather than mechanisms to achieve minimal environmental impacts through preventive and mitigation measures.

In addition to the *Law on EP*, another document is claimed to play a major role in shaping EIA practice in Azerbaijan, that is the Handbook for the Environmental Impact Assessment Process in Azerbaijan (hereinafter, the *EIA Handbook*) developed in 1996 with the assistance from a UNDP expert and local NGOs. The *EIA Handbook* introduced the main principles of the 'western'-type EIA process to the country, however, its major drawback to date has been its non-binding nature (this document was acknowledged and approved by the former State Committee for Ecology and has never received a status of a law in the country). The *EIA Handbook* defines the EIA process as "a process whereby the potential environmental consequences of development proposals are identified and evaluated from the point of view of the physical, biological and socio-economic environment, and ways and means are developed by which negative impacts are either avoided or minimised to acceptable levels" (Paragraph 1.1). This definition, in fact, suggests that not only should the developers design their proposals in a way least harmful for the environment, but they also should consider certain activities under each proposal to eliminate or minimise its possible negative impacts.

As Table 4.1 shows, the *Law on EP* was actually adopted after the basics of the EIA procedure in Azerbaijan were laid down by the *EIA Handbook* in 1996. However, neither the *EIA Handbook* has received the status of a legislative act, nor does the *Law on EP* mention the new aspects of the EA procedure in the country. Moreover, the Law on EP specifically provides for application of international agreements in case their provisions are different from the provisions of the Azerbaijani legislation (Law on Environmental Protection 1999, Article 81). This relates, *inter alia*, to the principles established by the Espoo and Aarhus Conventions, which therefore become directly applicable to the EIA process in Azerbaijan. Nevertheless, as mentioned earlier, neither the *EIA Handbook*, nor any other document laying down the basics of the EIA process in Azerbaijan, has not yet received an official status of a legislative act in the country to support Azerbaijan's decision to ratify the Espoo Convention.

Also, no changes have been made so far to the *EIA Handbook* to reflect the administrative changes related to the abolishment of the former State Committee for Ecology (fSCE) in May 2001 and establishment of the Ministry of Ecology and Natural Resource Utilisation (MoENRU) soon after. The *EIA Handbook* still refers to the fSCE as the «Environmental Authority» which is one of the main parties to the EIA process in Azerbaijan.

### **3.2 Enforcement of the national legislation**

Enforcement of the national legislation has been one of the major issues for the country since Azerbaijan gained its independence in the early 1990s. This equally relates to all the aspect of the country's life, including environmental protection. Only recently, with the increase in the activities of NGOs and with international institutions pushing for better environmental performance, the issues of enforcement of the legislation have become possible to address. Nevertheless, the mechanisms of enforcement of this legislation, particularly of the *Law on EP*, are still often absent or underdeveloped (see, for example, section 6.8 below on liabilities for environmental damage, and 6.10 on public participation in the EIA process). Azerbaijan's environmental protection legislation, as admitted by some EIA process stakeholders, performs the functions of a punishment tool to ensure economic activities are developed and implemented in accordance with the existing environmental standards. On the contrary, environmental protection legislation, and an EIA system in particular, in its international understanding is a tool developed to provide decision-makers with unbiased and comprehensive information on the possible impacts of the proposed economic activities and thus to ensure environmentally conscious, transparent and accountable decision-making. However, the fact of understanding and acknowledging the purpose of any EIA legislation by the EIA process stakeholders in Azerbaijan may soon eventually shape the development of the national EIA system towards western-type EIA.



## 4. Administrative Framework

### 4.1 Human resources (staffing, professional skills, etc.)

State institutions, as one of the parties to the EIA process, play an important role in the Azerbaijani EIA system, as most of the national medium- and large-scale projects are being developed and implemented by the government alone or jointly with other – national, foreign and international – organisations<sup>5</sup>. The capacity of these organisations to take part in the EIA process, whether as project developers, decision-makers or as stakeholders, varies from lower medium (often peripheral institutions, regional and local authorities) to high (many ministries, capital city municipalities). This relates to both professional experience and qualifications of their specialists and sufficiency of human resources involved in EIA-related issues. Some of the state institutions, such as the MoENRU, may indeed possess human resources sufficient for the needs of EIA, while others (e.g. the Ministry of Economic Development) acknowledge the lack of such resources. However, the overall capacity of the governmental institutions in terms of qualifications of those involved in EIAs is rather underdeveloped comparing to the amounts of economic activities these institutions are often responsible for. In most cases, intensive and regular training activities are needed to arm state institutions, especially those responsible for development of numerous projects, policies, plans and programmes, with the necessary knowledge and skills in contemporary EIA process.

Consulting companies, providing professional services in EIA, are among the organisations in the possession of the highest capacity in undertaking EIAs and related activities, such as training, seminars and advice. Skills of scientists, participating in the EIA process is, as a rule, also quite well-developed, especially in what relates to baseline studies within EIAs. Regular training and seminars are therefore required in order to maintain high levels of professionalism and to update experts on the international trends in environmental assessment. At the same time, it is rather legally inaccurate to speak of independent EIA experts in Azerbaijan, as there is no system of EIA expert licensing in the country, although practice of participating in EIAs as independent consultants is becoming more common especially among representatives of NGOs and academia<sup>6</sup>.

Azeri NGOs represent a diverse group of EIA stakeholders. There is no doubt that many of the ecological NGOs in Azerbaijan have indeed gained valuable experience in participating in EIAs and can sometimes assist project developers in undertaking EIAs. Many of them have experienced and knowledgeable scientists and professionals as their members, which sometimes results in NGOs possessing the largest capacity among all the participants of some EIAs. At the same time, some of these organisations often have limited information on the EIA process in general and in Azerbaijan in particular and are therefore deprived of a chance to make a valuable contribution in the environmentally sound economic development of the country.

The capacity of investors in terms of professionals experienced in EIAs seems to depend on the volume of these organisations' investment portfolios: the larger the portfolio (and the organisation), the more projects are being finance, and consequently, the more experience is being gained in EIAs. This is especially true for the national investors in Azerbaijan: while international organisations and foreign companies have, as a rule, already gained an extensive experience in EIAs world-wide, most of the local and national investors are still on the very first stages of development and do not possess the necessary and sufficient experience. Nevertheless, the State Oil Company of the Azerbaijan Republic (SOCAR) is named among the organisations possessing sufficient capacity in terms of undertaking, or participating in, EIAs.

Donor organisations, depending on the type and sector of their activities, are admitted to often possess capacity to at least provide various parties to the EIA process with the required advice,

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<sup>5</sup> No statistical data is actually produced on the numbers of small-, medium- and large-scale projects in the country, especially with regard to EIAs, and the lack of relevant information (whether direct or indirect) does not allow for any reliable assumptions to be made on the overall EIA-related capacity of various organisations, enterprises and institutions in the country.

<sup>6</sup> In fact, the experts of the Academy of Sciences of Azerbaijan and its Scientific Research Institutes are acknowledged to have acquired very thorough knowledge in various fields of environment and are often contributing significantly into the both SEE and EIA.

comments and training and can sometimes participate in EIAs in Azerbaijan as experts (e.g. Caspian Environmental Programme).

The lack of technical and financial resources to undertake EIAs is regarded as one of the major factors affecting EIA practice in Azerbaijan. However, this relates mostly to state institutions-developers of projects (and also policies, plans and programmes) responsible for financing EIA and SEE for the economic activities they have proposed. As a rule, the majority of organisations participating in the EIA process, as its stakeholders, allocate the necessary and sufficient technical resources and budget participation in EIAs may involve. The problem of the lack of technical and financial capacity of some of the EIA stakeholders (presumably, but not solely, some local and national small-scale investors with limited financial resources) may root in the lack of commitment to take into account environmental issues, but may also result from the deficiencies of the relevant national legislation.

At the same time, financial resources of the country at a more general level are considered rather insufficient to provide the necessary levels of environmental protection, including supporting and improving an EIA system. It is widely believed that at the current stage of economic development, Azerbaijan is rather incapable of devoting adequate attention to its environmental problems and cannot direct the necessary financial recourses into the development of an EIA system that would comply with international requirements and would be systematically and successfully applied in the country.

#### **4.2 Co-ordination with other parties to the EIA process**

It is widely acknowledged by various stakeholders, that co-ordination between the parties to the EIA process in Azerbaijan is the weakest point of EIA practice in the country, to which there are a number of possible reasons. Thus, not all the potential participants of EIAs are systematically involved in this process, partly due to the lack of information made available during the public information campaigns held in each particular case. Co-ordination with investors is sometimes difficult due to the low levels of their activities with regard to participation in EIAs, and donor organisations are also viewed as often having low interest in financing EIAs and relevant activities, despite their often active participation in increasing public awareness of the EIA process.

State institutions maintain co-ordination with other parties to the EIA process in the country through various meetings, round tables, consultations and discussions. Within each institution or organisation there is usually a unit (e.g. relevant Departments of Ministries, Ecological Commissions for the District Municipalities of Baku City) responsible for the environmental aspects of its activities, including inter-organisational communication and collaboration in environmental issues. The latter relates, in fact, to the majority of the organisations-parties to the EIA process in Azerbaijan (obviously, organisations like environmental NGOs and environmental consultancies would by definition not require such an internal structure).

Many NGOs choose to actively participate in EIAs and clearly express their intentions to do so through maintaining regular contacts with the MoENRU, investors (mainly oil companies responsible for the largest share of economic activities in Azerbaijan), national and international organisations and donors. However, NGOs sometimes fail to work in collaboration with each other, which eventually weakens their cases during public hearings and consultations and helps developers to avoid taking responsibilities for environmentally harmful activities as it is much easier to disregard comments of single organisations than those made by groups.

#### **4.3 Mandates**

Before the establishment of the MoENRU in May 2001, its functions were scattered between several state environmental institutions, such as the former State Committees for Ecology, for Hydrometeorology, for Geology and Mineral Resources as well as the Azerbmesha Production Association, which had overlapping mandates, especially in EIA-related decision-making. With the establishment of the MoENRU, all or most of such functions were transferred to this institution thus increasing chances of significant improvement of the quality of SEE/EIA performance in the country.

Currently, the Ecological Expertise Department of the MoENRU is the only body responsible for carrying out SEE and making decisions on environmental soundness of the development activities (through issuing Environmental Permissions). The other ministries and state committees are responsible, through the relevant environmental departments, for taking into account environmental considerations in their economic activities and for ensuring these activities continuously comply with the conditions defined by the respective Environmental Permission. Besides ministries and committees, local municipalities also make their contribution into EIA practice in the country through

preparation of recommendations, inviting specialists, informing public, discussions with the population, representation of the interests of the population at various EIA-related meetings, and generally, ensuring the necessary levels of public participation in their respective areas.

Of other parties to the EIA process, environmental consulting companies' functions comprise undertaking EIAs and preparation of EIA reports, development of recommendations to minimise environmental impacts in various sectors of the economy and on different scales, as well as training and consultations provided to EIA stakeholders (including developers, decision-makers and representatives of the public). Mandates of NGOs are quite wide and vary from the exchange of information on, and experience in, EIAs with other stakeholders to participation in EIAs as experts and more generally, as interested parties, and to providing EIA-related legal advice and training. Similarly to the two previous groups of stakeholders, investors often define their role in the EIA process as consultations and comments on various projects.

## 5. Assessment of Azerbaijan's EA/EIA Legislation and Practice

### 5.1 The parties to the EIA process

As mentioned earlier (see Chapter 4), the Azeri EA system is based mainly on two documents: the Law on Environmental Protection (*Law on EP*) of 1999 and the non-binding *EIA Handbook* of 1996.

The main parties to the EIA process in Azerbaijan, outlined in the *EIA Handbook*, are the Developer, the Environmental Authority, the Experts and the Public.

Of these, the **Developer** is responsible for the completion and submission of the Application for the Environmental Permission (hereinafter 'Application') and all the related fees, for undertaking an EIA and public consultations and for the subsequent documenting of both processes; and for the compliance of the proposed activity to the conditions of approval during the whole project life-cycle (Paragraph 2.3.1).

The main responsibilities of the **Environmental Authority** include reviewing Applications; consultations with Experts; making initial public enquiries; informing the Developer of the required depth of the EIA process; appointment of the date for the Scoping Meeting; setting the Environmental Review Expert Group (EREG) for consideration of the EIA Document and announcing the results to the public; attaching any necessary environmental performance-related conditions to the Environmental Permission; and processing the relevant monitoring and audit information (Paragraph 2.3.2).

The **Experts**, comprising the EREG, are responsible for undertaking the EIA process according to the field of their expertise, analysing all Applications and comments received from the public, as well as for drawing its own conclusions on the proposed activities (Paragraph 5.1).

The **Public** is generally "anyone who is in any way affected by the proposal or shows a genuine interest in it" (Paragraph 4.1). After the information on the development proposal has been made available to the Public, the latter is expected to provide its written comments and suggestions on the proposed activity to the Developer through various types of public involvement techniques (such as public hearings, discussion forums, public and consultations).

### 5.2 EIA principles

As provided for in Article 53 of the *Law on EP*, SEE is carried out in accordance with:

- Azerbaijan's international legal commitments,
- principles of legality, scientific validity, transparency, integration of environmental, social, engineering and technological, technical, architectural and planning, economic and other assessments,
- the results of comprehensive socio-economic and ecological assessment of environmental impacts of economic activities,
- the people's right to healthy environment,
- the principles of sustainability,
- the presumption of potential danger of the unregulated use of natural resources,
- the risk of disasters, and
- the necessity to preserve the nature as an integral part of the society.

The *EIA Handbook*, defines EIA as a process aimed at identification of, evaluation of, mitigation of, or avoiding, possible negative impacts of development proposals, but also mentions principles of integrated approach to such assessment. It is acknowledged to introduce transparency in the process of decision-making through involving the interested public in the discussion of the proposed activities and taking the public opinion into account (Paragraph 1.1).

### 5.3 EIA timeframes

There is no mention of any timeframes for the SEE process by the *Law on EP*, and the only explicitly expressed requirement in this regard is that SEE of any development should be undertaken before the decision on this development is made.

Unlike the *Law on EP*, the *EIA Handbook* is more precise on timeframes, specifying that within one month after the submission of the Application the Developer should be informed of whether the proposed activity requires a full EIA or not (Paragraph 2.7). In case a full EIA process is needed, the Environmental Authority must make its decision on the proposed development within three months upon the submission of the EIA documentation. Thus, the timeframes of the EIA process for each particular project depend on the type of the activities under consideration.

At the same time, the *EIA Handbook* states that the Developer is not limited, in terms of time, in undertaking EIA investigations and producing an EIA report, but is obliged to submit the report within 12 months after the Environmental Permission is issued by the Environmental Authority. This last provision is rather controversial as it implies that the Environmental Permission on any type of activity can actually be issued before the EIA findings are shaped into an EIA report.

### 5.4 EIA objects

Article 54 of the *Law on EP* lists activities subject to SEE. According to this list, following economic activities should undergo SEE before they can be implemented:

- drafts of state and local programmes for development and allocation of labour forces according to sectors and regions,
- feasibility studies (the so-called technical-economic substantiation documentation),
- projects of construction (reconstruction, extension, technical upgrading) and demolishing of economic objects and complexes,
- OVOS documents,
- documents related to development and import of new techniques, technologies, materials and substances,
- draft vocational and regulatory and technical documents on environmental protection,
- ecological conditions established as a result of economic activities or emergencies,
- ecological conditions of the region, isolated natural objects and ecosystems,
- ecology-related sections of the draft agreements providing for use of natural resources based on the decision of the respective executive authority.

As stated in the *EIA Handbook*, “[t]he EIA Process is applied to all development proposals in principle” (Paragraph 2.1). The Environmental Authority further decides on the extent to which the EIA procedure should be applied to each particular activity based on the severity of the likely impacts which the activity under consideration may have. Thus, both the *EIA Handbook* and the *Law on EP* have to a large degree similar ‘generalised’ approach to the objects of the SEE/EIA process rather than a structured screening system, despite the fact that the experience gained by all the parties involved in EIAs in Azerbaijan since 1996 could provide a solid and extensive basis for establishing such a system.

### 5.5 Contents of the EIA report

While obliging the Developer (“the customer or the project documentation developer”) to submit the necessary documentation in the form required by the SEE, the *Law on EP* does not further specify these requirements. Moreover, the *Law on EP* mentions “OVOS documents” subject to SEE (Article 54), but provides neither for a definition of OVOS, nor for a description of the OVOS documentation. Nevertheless, the SEE documentation is claimed to represent one of the most developed aspects of SEE, supported by vast experience and scientific knowledge.

The *EIA Handbook* is more precise on the contents of the EIA reports defining them as separate documents describing the proposal, the environmental baseline, potential environmental impacts of

the proposal and the measures to avoid, mitigate, remedy or compensate for them, and containing an introduction and conclusion sections (Paragraph 3.2.2).

## **5.6 EIA stages**

### **5.6.1 Screening**

There is no distinctive screening procedure outlined by either the *Law on EP* or the *EIA Handbook*, in the country, despite the ratification of the Espoo Convention by Azerbaijan in 1999. According to the *Law on EP*, nearly all types of developments, regardless of their scale and sector, are subject to SEE, e.g. state and local development programmes, feasibility studies, new developments as well as re-construction, extension and upgrading of the existing objects, new technologies, regulatory and technical documents on environment protection, and environmental sections of draft contracts for the use of natural resources (Article 54).

The *EIA Handbook* lays down a two-tiered EIA procedure, in which the Developer is required to submit an Application containing basic information on the proposal for any type of activities. Based on the experience of the past EIAs and sometimes on screening lists of various organisations (e.g. the World Bank), rather than on specifically developed lists of activities, the Environmental Authority further decides on the necessity of a full-scale EIA for each particular development. It is most probable that the decision on granting a non-conditional or conditional Environmental Permission, as well as on a full-scale EIA, is made within the SEE frames, although neither of the two documents is clear on this particular aspect of the EIA process.

It is a widely accepted opinion, that the majority of the EIA documentation is prepared by the oil companies and some by international organisations and investors. Developments at smaller scales (mostly local and national small enterprises and businesses) are rarely (if at all) required to undergo an EIA procedure, regardless of the scale of their potential impacts.

### **5.6.2 Scoping**

There is no distinctive scoping process outlined in the *Law on EP*. The Law, however, mentions tasks of SEE, which include identification of the degrees of ecological safety of the planned and implemented economic activities; assessment of the compliance of the developments with the environmental and health legislation and regulations; and verification of the proposed nature protection measures (Article 52).

According to the *EIA Handbook*, the Environmental Authority holds a Scoping Meeting for the Developer, experts and representatives of the concerned public, aiming at reaching the consensus on the scope of EIA (Paragraph 3.2.1). In case the consensus has not been reached, the Environmental Authority decides on the contents of the EIA Document which the Developer should then produce. At the same time, there is no explicit requirement for the scoping stage to cover certain aspects of the EIA process, such as its timeframes, financing, participants and issues to be covered by the EIA (e.g. risk, health and/or sustainability assessment).

### **5.6.3 Assessment - environmental studies**

The *Law on EP* does not mention environmental baseline studies as a necessary component of the documentation to be submitted for SEE.

The *EIA Handbook* requires a study of baseline environment as part of the EIA Document (Paragraph 3.2.2). A description of the environment should cover physical, ecological and social aspects of any development and should relate to all the sites affected by the proposed development. It is claimed that only few indicators are usually used during the studies of the baseline environment, but nevertheless, in the opinion of the majority, the baseline studies are one of the strongest features of the EIA process in Azerbaijan.

### **5.6.4 Alternatives, mitigation and impact management**

The *Law on EP* does not provide for any precise requirements for the consideration of mitigation measures or impact management, as well as for the discussion of alternatives to the proposed development.

The *EIA Handbook*, on the contrary, requires the Developer to include the description and assessment of all the potential adverse environmental impacts of the proposed activity, as well as the description of any measures to avoid, reduce, mitigate, or compensate for, these impacts, in the EIA documentation (Paragraph 3.2.2). It is argued, however, that practical application of mitigation and impact management measures is limited and covers mostly on-site safety measures rather than the affected population. The *EIA Handbook* does not require discussion of alternatives, including the so-called “do-nothing” alternative<sup>7</sup>, and their potential impacts, in the EIA documentation except the description of alternative technologies, but nevertheless, they are often discussed either in the EIA Document or during its review.

It should also be stressed that the absence of any methodological guidelines, developed particularly for the parties to the EIA process in Azerbaijan, some important aspects of EIAs are often missing from the process even though they are not necessarily new to these parties. Among such aspects is consideration of cumulative effects. There is currently no methodology that would guide developers, EIA experts, the public involved, environmental authorities and the decision-makers through the process of dealing with such effects. This gap in the country's EIA system allows for separate developments with initially insignificant or low impacts to be developed and implemented simultaneously or within limited areas, which eventually results in accumulation of “insignificant” impacts into significant, but unforeseen, and therefore not dealt with, ones.

### **5.6.5 Reporting**

The *Law on EP* is brief on the reporting issue, stating only that the Developer should timely submit the documents for SEE in the form required by SEE, but this is not further elaborated upon (Article 55). The Developer is also obliged to submit any additional information should it be required by the experts carrying out the SEE. There is no provision, and subsequently no relevant practice, to make the final SEE document available to the interested parties, but it is believed that it would be advantageous for the environmental authorities to make such information public. There is a clear need, repeatedly stressed by various participants of EIAs, to make the SEE procedure more transparent and understandable for the public.

The purpose of the EIA Report, as stated in the *EIA Handbook*, is to describe the proposed development, the environment likely to be affected by this development, and to identify potential impacts and suggest ways to minimise these impacts (Paragraph 3.2.2). The EIA Document is a means expected to provide the Environmental Authority and the affected public with the relevant information about the planned activity, and to convince the stakeholders that the negative impacts are going to be controlled and minimised to acceptable levels.

The reporting should be done in a way acceptable to, and easily understood by, the public at large, which can be achieved through bringing all the technical details in annexes, and using maps, diagrams and photographs. During the public hearings, the relevant documentation is provided to all the interested parties to the process through the Environmental Authority (in hard copies and, most recently, through the Internet) which is responsible for making it available through central libraries and mass media. Reporting to the Environmental Authority should also reflect upon the most important comments received from the public as well as statistical data on all submissions from the public and the justification of why some of these comments have not been included in the documentation on the proposal. At the same time, only five hard copies of the EIA Document are required to be submitted to the Environmental Authority, which can hardly satisfy the increasing demand for such information, especially as the experience shows that it may sometimes take months for these documents to be added to the libraries' collection and to be made available to the readers.

### **5.6.6 Reviewing**

The essence of the SEE procedure lies largely in the fact that it was established as a tool to check the compliance of various economic developments to the existing environmental standards. Thus, SEE *per se* can be viewed as a quality review stage of the EIA process, however, the absence of a legislative link between the *Law on EP* and the *EIA Handbook* prevents these two processes from merging into a single, stronger system of environmental assessment.

While the *Law on EP* is not quite precise on who actually undertakes SEE stating this as a responsibility of the relevant environmental authorities (Article 51).

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<sup>7</sup> The likely scenario of the development of the project site in case the project does not take place.

In accordance with the *EIA Handbook*, the EIA Document review for those developments, which are expected to have significant impacts and are thus required to undergo EIA, is undertaken by the EREG chaired by the Environmental Authority, but comprised of experts hired from outside it (Paragraph 5.1.). The outcomes of such reviews have to be produced in the form of a Review Document which contains an introduction, critical review of the EIA documentation, statistical information on submissions received from the concerned public, comments on the proposal and the environment, analysis of the potential environmental impacts of the development, conclusions, and recommendations. Unfortunately, many admit that the quality review process is not the strongest point of the Azeri SEE/EIA system. Besides, neither the *Law on EP*, nor the *EIA Handbook* contains provisions for quality review of the EIA process itself.

### **5.6.7 Decision-making and environmental clearance (permitting & licensing)**

One of the distinguishing features of the SEE system is the obligation for any development activity to obtain a positive SEE resolution before receiving an approval for implementation (Article 51). However, despite the seemingly clear link between SEE and the decision-making process, the lack of guidance on the stages of consideration of environmental impacts, that would logically precede the SEE resolution, weaken the position of, and eventually diminish the importance of, this resolution.

The *EIA Handbook* unambiguously states that the Developer is obliged to obtain the Environmental Permission for any type of economic activities through submitting an Application to the Environmental Authority, carrying out EIA, and submitting the EIA Document to the Environmental Authority for approval (Paragraph 2.3.1). Thus, the *EIA Handbook* provides for a strong link between issuing permissions for the proposed activities and the EIA process, but does not elaborate on the role of Environmental Permissions in the final decision-making. In fact, the two documents (the *Law on EP* and the *EIA Handbook*) are rather complementary to each other, but unfortunately, both are lacking an explicit link between each other, which again weakens the EIA system in the country.

### **5.6.8 Post-decision monitoring - monitoring, implementing and auditing**

Articles 75-77 of the *Law on EP* lays down some very basic norms of environmental audit in Azerbaijan without linking these provisions to SEE and implementation of projects. Interestingly enough, the *Law on Nature Protection and Utilisation of Natural Resources* of 1992 provided a clear link between SEE and post-project analysis (Article 40), which was later eliminated from the *Law on EP* of 1999.

As stated in the *EIA Handbook*, the Developer is responsible for continuous compliance with the conditions of the Environmental Permission through a monitoring programme (Paragraph 2.3.1). The Environmental Authority undertakes “surprise” inspections of the implementation of the proposed activities in order to verify accuracy and reliability of the Developer’s monitoring data. It is the Developer who is responsible for notifying the Environmental Authority and taking the necessary measures in case the monitoring reveals inconsistencies with the conditions of the Environmental Permission. However, the practice of environmental monitoring and audit is still considered rather weak, which is partly caused by obscure requirements.

## **5.7 Exemption from EIA**

Neither the *Law on EP*, nor the *EIA Handbook* mentions any particular activities subject to being exempt from EIA. However, through establishing a two-tier EIA process, the *EIA Handbook* allows for certain developments to be exempt from undergoing a full-scale EIA process given they do not consume natural resources and are thus known to have only minor or no negative impact on the environment. In this case, the Developer is granted, either conditionally or unconditionally, an Environmental Permission (Paragraph 2.5).

On the other hand, it would be logical to assume that certain types of activities (e.g. military projects and programmes) would not undergo EIAs or perhaps even SEEs due to their nature. However, in the situation whereby the majority of the economic developments are not known to undergo the EIA procedure, and taking into account the scarcity of the relevant information, it would be difficult to differentiate between the initially EIA-exempt activities (which could be called “primary exceptions”) and those which were acknowledged to not require EIA (“secondary exceptions”).



## **5.8 Liability for violation of EIA legal framework**

Despite the fundamental role attached to the *Law on EP* as the central legislative act establishing the basis for an environmental assessment system in Azerbaijan, it is rather vague in what concerns the liabilities for violation of its provisions. Charges and penalties for violation of the *Law on EP* established by the Azerbaijani regulatory framework are considered rather low, which is believed to make enterprises more willing to pay these charges rather than invest in costly environmental protection measures. It is also worth mentioning that the enforcement and liability provisions of the current *Law on EP* are actually weaker than those of the Law on Nature Protection and Utilisation of Natural Resources of 1992.

As mentioned earlier, the *EIA Handbook* is a non-binding document approved by the former State Committee for Ecology and thus having no judicial power.

## **5.9 EIA in a transboundary context**

Although Azerbaijan had ratified the Espoo Convention in 1999, neither the *Law on EP*, nor the *EIA Handbook* has been amended to reflect upon the requirements of the Convention thus leaving the issues of transboundary co-operation to be solved at the voluntary level.

The Caspian Environmental Programme has recently developed principles of EIA in a transboundary context, however, it is not clear how these principles are applied to the EIA practice in the country, what the legal provisions for the application of these principles to EIAs are, and more generally, how well the potential parties to the EIA process are informed of these principles and the benefits of their application.

## **5.10 Public participation in the EIA process**

Recognition by the Government of Azerbaijan of the public's role in the process of environmental decision-making can be viewed as an important achievement of democracy in Azerbaijan. The *Law on EP* mentions public participation in SEE in the form of Public Ecological Review (PER), but fails to provide an explicit definition of PER (Article 58). Moreover, while stating that public organisations may conduct PER, the *Law on EP*, does not specify whether PER is supposed to complement the main EIA process or is a completely independent process which should be treated separately. Furthermore, the *Law on EP* does not contain clear regulations on the access for the public to the relevant information as well as on the mechanisms to ensure consideration of the outcomes of PER by the decision-makers, which are the key conditions of any form of public participation. As we can see, the *Law on EP* does not actually provide for public participation in decision-making and therefore cannot be considered as meeting international requirements for public participation stipulated by the Aarhus Convention which Azerbaijan signed in 2000. There is also no clear evidence that any PERs have been initiated in the country in the last several years. This can equally signal, among others, inaccessibility of project sites to the representatives of public organisations who are willing to carry out an independent assessment as well as graduate substitution of the PER procedure by various public participation techniques applied in the country nowadays.

The *EIA Handbook's* public involvement procedure is rather unstructured and vague. It requires informing the affected public about the planned activities twice: when the Application is submitted to the Environmental Authorities for the preliminary assessment and during the EIA process *per se*. The Developer is expected to involve the affected public in the discussions of the proposal, but there are no clear mechanisms provided to ensure that the public's comments are taken into account at the stage of project development. The Developer should inform the public of the planned activity once the application procedure has been launched. Surprisingly, it is not the Developer, but the Environmental Authority who is responsible for making the relevant EIA documentation available to the public through its office(s), local government offices, schools and libraries, according to the *EIA Handbook* (Paragraph 4.1.). The *EIA Handbook* further states that the EREG should "also actively seek public input" at least until the public in the country is used to participating in EIAs (Paragraph 4.2). However, it remains unclear how the Developer and the EREG are going to co-ordinate their efforts in collecting public comments in order to not duplicate each other's activities. Also, on the one hand, the EREG is expected to seek the advice and opinion of the affected parties, whether these are professional institutions and specialists or NGOs and the general public, and to acknowledge the receipt of the comments. On the other hand, there is no explicit requirement for the EREG to actually take into account the comments it received during the public information and participation campaign in its final report submitted to the Environmental Authorities.

On the whole, unlike the *Law on EP*, the *EIA Handbook* takes into account many important requirements of the Aarhus Convention, but leaves others (such as provisions for timing, the absence of a list of activities development of which should take place with public involvement, and mechanisms to take public opinion into account during the project development and decision-making) unattended. Besides, it is not clear how the Developer should take into account public opinion expressed during the EIA process, and there is no mechanism developed to control the consideration of public opinion by the Developer, the EREG or decision-makers. As mentioned earlier, the *EIA Handbook* has not been amended to reflect Azerbaijan's signing the Aarhus Convention, despite the reference to the Azerbaijani legislation that "will provide adequate legal standing and adequate means for public participation removing any barriers that might make it difficult for members of the public to participate in the [EIA p]rocess" (Paragraph 4.1). Nevertheless, the fact that certain provisions for public participation exist and are followed to in the Azerbaijan's EIA system signals the emergence of democratic features that distinguish this system from the original non-democratic SEE/OVOS system. This is also supported by the increasing number of cases of taking into account public opinion by the Developers. For example, many believe that the example of the EIA for BTC is among such successful cases owing its success to the large public participation campaign and further consideration in the project design of the comments collected during this campaign. Some other foreign and national companies, mostly oil companies (such as Exxon-Mobile and Salyan Oil), are also viewed as improving their environmental performance and increasing their transparency through the means of, among others, more democratic, open and clear EIAs.

### **5.11 Special rules of EIA application**

There are currently no special rules for SEE or EIA application in Azerbaijan as all the development activities, regardless of the scale and sector, are subject to either EIA/SEE (projects) or SEE (strategic-level activities – see Chapter 8). A tendency exists among various parties to the EIA process in the country to include military and defence projects in the group of activities to which special regimes of EIA might be applied. However, as mentioned above, factual evidence of this appears neither in the national legislation or the *EIA Handbook*, nor is made available to the public in any common way. At the same time, stakeholders of the EIA process in the country consider that a well-developed EIA system should be flexible in order to be able to adequately address economic activities of various scales, types and in different locations, which could be partially achieved through developing certain special rules of EIA application, and partially through the development of comprehensive methodological guidelines for EIA practitioners in the country.

### **5.12 Methodological aspects**

Despite the relatively long period (at least since 1996) of application of the EIA procedure to economic activities in the country, there are no methodological guidelines developed for the EIA practitioners in the country. This may create certain difficulties for the parties to the EIA process in Azerbaijan, especially in the absence of a relevant law. As a result, different developers may choose to stick to EIA guidelines of different organisations, which in turn may result in EIAs of different contents and qualities, and can make it rather unclear for the EIA process stakeholders, which methodology they should follow apart from the non-binding national *EIA Handbook*.

Table 6.1. Comparative Analysis of Azerbaijan's EIA Legislation and Procedures with EIA Practice

#	Issue	National Legislation (EIA System)	EIA Practice	Shortcoming	Recommendation for Improvement
1.	Binding EIA regulations	<b>Law on EP:</b> Does not deal with EIA, establishes the basics of SEE <b>EIA Handbook:</b> Establishes basics for the EIA procedure in Azerbaijan	EIAs being carried out mainly by international and foreign investors and donors	Non-binding nature of the EIA regulations and the absence of the link between the <i>Law on EP</i> and the <i>EIA Handbook</i>	Upgrade the status of the <i>EIA Handbook</i> to a legally binding law or act and link it clearly to the <i>Law on EP</i>
2.	EIA timeframes	<b>Law on EP:</b> absent <b>EIA Handbook:</b> Developers are informed of the necessity to carry out a full EIA within 1 month and should submit the EIA Document within 3-12 months; Environmental Authority makes its decision based on the EIA Document within 3 months	There's no sufficient and precise data on timeframes of EIAs, however, it is assumed that most of EIAs are carried out in accordance with the requirements of the <i>EIA Handbook</i>	A gap in the <i>EIA Handbook</i> suggests that the Environmental Permission on any type of activity can be issued before the EIA report (i.e. before the findings of the EIA process are known)	Make the requirement for the Developer to undertake EIA and submit EIA report <b>before</b> the Environmental Permission is issued, clear.
3.	EIA screening	<b>Law on EP:</b> Absent. All types of activities should undergo SEE <b>EIA Handbook:</b> No screening list. All activities should undergo a preliminary assessment, some activities are further subject to a full EIA	Past experience is used as aid to help Environmental Authorities decide on the necessity to undertake full EIAs, however, according to these Authorities, a screening list exists that was developed based on the experience of EIA application in the country and is being utilised at the screening stage of EIAs	The absence of the screening list makes the process of EIA less transparent and requires extra resources – human and financial, especially in what relates to the application of the SEE procedure.	Bring the experience acquired during the decade of application of the EIA procedure into a clear screening list that would also reflect the international experience of EIA application.
4.	EIA scoping	<b>Law on EP:</b> Absent <b>EIA Handbook:</b> In the form of a Scoping Meeting,	The purpose of the scoping stage is not always fully understood, but stakeholders find it useful to have their tasks clearly specified at the very early stages of EIAs	It is not always clear what should be covered by EIAs, which may lead to some substantial aspects of economic development (such as health issues) not being covered during the EIA process, or elements of particular EIAs (such as the timing, target audience and	Training on the scoping stage of EIA is perhaps needed along with some minor amendments to the EIA legislative framework in order to make the scoping requirements clear.

#	Issue	National Legislation (EIA System)	EIA Practice	Shortcoming	Recommendation for Improvement
				public participation issues) being unclear to the parties to the process	
5.	Public Participation	<b>Law on EP:</b> In the form of PER <b>EIA Handbook:</b> Public should be consulted during EIAs and public comments should be taken into account	There is no information available on PERs held in the country in the last decade. EIA public consultations, if held, comply with the requirements of the <i>EIA Handbook</i> and help solve a large share of potential conflict situations linked to various developments	Projects not undergoing EIA (but subject to SEE) are not discussed publicly. Often insufficient time allocated for consultations and collection of public opinions	The first of the two major drawbacks could be eliminated by adopting an official EIA screening list and either creating a link between the <i>Law on EP</i> and the <i>EIA Handbook</i> , or upgrading the <i>EIA Handbook's</i> status to a binding document. Some flexibility in terms of timeframes of public participation campaigns for different types/scales of economic activities might be necessary in order to overcome the second drawback.
6.	EIA report	<b>Law on EP:</b> Report required, but its contents are not specified <b>EIA Handbook:</b> Report required, contents specified	Due to inaccessibility of SEE documentation and information about it, it is difficult to comment on the contents of the relevant reports and documents. EIA reports, as a rule, are structured and contain information required by the <i>EIA Handbook</i> and often more than that.		The EIA report requirements of the <i>EIA Handbook</i> might need some minor adjusting, but otherwise are sufficient for the current level of EIA practice.
7.	Quality review	<b>Law on EP:</b> SEE by its nature represents a process which could be regarded as EIA quality review <b>EIA Handbook:</b> Undertaken by EREG	Is undertaken in the form of SEE and involves specialists from various fields.	No link between the two documents/processes	Create a clear link between, or merge in a new EIA legislation, the EIA report review process and the SEE process.
8.	Environmental baseline studies	<b>Law on EP:</b> Not required <b>EIA Handbook:</b> Coverage of	Carried out with high levels of professionalism		

#	Issue	National Legislation (EIA System)	EIA Practice	Shortcoming	Recommendation for Improvement
		physical, ecological and social aspects of environment is required			
9.	Assessment of alternatives	<b>Law on EP:</b> Not required <b>EIA Handbook:</b> Required only for alternative technologies	Alternatives for project sites, technologies, etc. usually discussed; the “do-nothing” alternative often studied as well (however, the difference between the baseline studies and the “do-nothing” alternative is not always understood)	The absence of requirement to consider alternatives in the <i>Law on EP</i> , and limited requirements of the <i>EIA Handbook</i> may lead to major omissions and inadequacies in the development of economic activities.	Enhancing the requirements of the <i>Law on EP</i> and the <i>EIA Handbook</i> (or alternatively, of a single EIA act) by adding the requirements to assess alternative sites, scenarios, etc. as well as the “do-nothing” alternative
10	Mitigation measures and impact management	<b>Law on EP:</b> Not required <b>EIA Handbook:</b> Required	Cover mostly on-site safety issues. Sometimes poorly and inaccurately developed	Developers do not systematically consider comprehensive measures to avoid, eliminate, mitigate, or compensate for the possible impacts of the proposed activities, which eventually negatively affects the environment and the population	Enhance the legislation with the necessary requirements for avoiding, eliminating, mitigating or compensating for possible impacts; add respective requirements to the SEE/EIA quality control provisions
11	EIA reporting	<b>Law on EP:</b> Implied, but not specified <b>EIA Handbook:</b> Requires the EIA Document to be written in an acceptable way; the Developer must provide 5 copies to the Environmental Authorities	EIA reports are made available to the public, as required by the <i>EIA Handbook</i> . It is often argued, however, that the availability and accessibility (in terms of languages) of such documents leaves room for improvement, especially in what relates to the timing issues	No requirement for SEE documentation to be made publicly available; No requirement for EIA documentation to be prepared in the national language	Relevant legislation to clearly require final SEE resolution to be made available to the public; SEE and EIA documentation to be available to the interested parties in a more flexible way and in the national language.
12	Decision-making	<b>Law on EP:</b> No economic activities can be approved without a positive SEE resolution <b>EIA Handbook:</b> Developers must obtain an Environmental Permission for all types of	There is no systematic information on SEEs, their procedure results are not made available to the public. Only few developments are known to have undergone	Despite the requirement for developers to obtain a positive SEE resolution for any type of economic activities, the role of SEE in the country’s economic	The <i>EIA Handbook</i> needs to be upgraded to a legally binding document (act) in order to provide the necessary level of environmental consideration

#	Issue	National Legislation (EIA System)	EIA Practice	Shortcoming	Recommendation for Improvement
		economic activities	EIA, and it is claimed that decision-makers always take into account the EIA outcomes. However, the actual link between EIA findings and decision-making is unclear	development is not known, i.e. SEE is not accountable and is non-transparent. <i>EIA Handbook</i> is a non-binding document, therefore its findings, unless restated by SEE, may not be necessarily followed by the developers	to the economic activities and to aid environmentally conscious decision-making
1 3	Post-decision monitoring and audit	<b>Law on EP:</b> Required, but not linked to SEE <b>EIA Handbook:</b> Required	Is often undertaken by NGOs specialising in relevant fields of monitoring and is claimed to be carried out at high levels of professionalism. However, the national system of monitoring seems to be rather underdeveloped and poorly supported by the government, monitoring and audit data is rarely available, especially if undertaken by governmental institutions.	Except for few major developments (most of which take place in the oil sector), information on environmental performance and compliance of the majority of economic objects of various scales and types is not available to the interested parties. The country is currently lacking capacity to establish a comprehensive and functioning environmental monitoring system.	The national system of environmental monitoring needs major improvement in terms of capacity, legal framework and link with EIA findings and penalties for non-compliance.
1 4	Exemption from EIA	<b>Law on EP:</b> Absent <b>EIA Handbook:</b> Absent	There is no relevant information available in the country, although some believe that certain activities are indeed being excluded from EIA (such as military objects and programmes)	It is not clear, what types of activities are initially exempt from the EIA procedure, which damages credibility of the EIA process	Having clear provisions for certain activities to be exempt from undergoing EIAs would help keep credibility of the EIA system/processes
1 5	Liability for violation	<b>Law on EP:</b> Vague provisions <b>EIA Handbook:</b> Absent	Too low fines and penalties encouraging developers to pay them rather than invest in environmental protection measures	Inadequate penalties and fines diminish the effect of EIA application	Considerably improve the system of environmental penalties and fines
1 6	EIA in a transboundary context	<b>Law on EP:</b> Not required <b>EIA Handbook:</b> Not required	Is currently receiving an increased attention, mainly by NGOs and international organisations, but is still underdeveloped	Environmental issues of international scale do not receive adequate attention, which relates to both the development initialised on the	The provisions of the Espoo Convention ratified by Azerbaijan should be reflected in the national legislation, enforced and their

#	Issue	National Legislation (EIA System)	EIA Practice	Shortcoming	Recommendation for Improvement
				territory of the Azerbaijan Republic and affecting the neighbouring states and to those taking place in the neighbouring countries and affecting Azerbaijan	performance monitored
1 7	Special rules of EIA application	<b>Law on EP:</b> Absent <b>EIA Handbook:</b> Absent			There is no immediate need for such rules in the country at the moment.
1 8	Methodological aspects	No methodological guidelines to undertake EIAs in Azerbaijan developed so far	International and foreign investors using EIA methodologies they are most familiar with (there is no information on local/national developers)	EIA methodologies used by various developers may be not fully applicable to the country context.	There is a sharp need in developing EIA methodology particularly for EIAs in Azerbaijan, that would take into account peculiarities of the national EIA system and country context.

## 6. Analysis of the Effectiveness of Azerbaijan's EIA System

Although Azerbaijan has not legally adopted an EIA procedure as the main environmental assessment tool, this procedure is still being applied to the major developments in the country in combination with SEE. This leads many parties to the EIA process in the country to speak about Azerbaijan's own EIA system despite the absence of a legal basis and clear and legitimate requirements to apply EIA in a systematic way. At the same time, it is acknowledged that unless the status of EIA in Azerbaijan is considerably improved, its efficiency in protecting the environment and securing sustainable development would unavoidably decline facing the continuous economic growth.

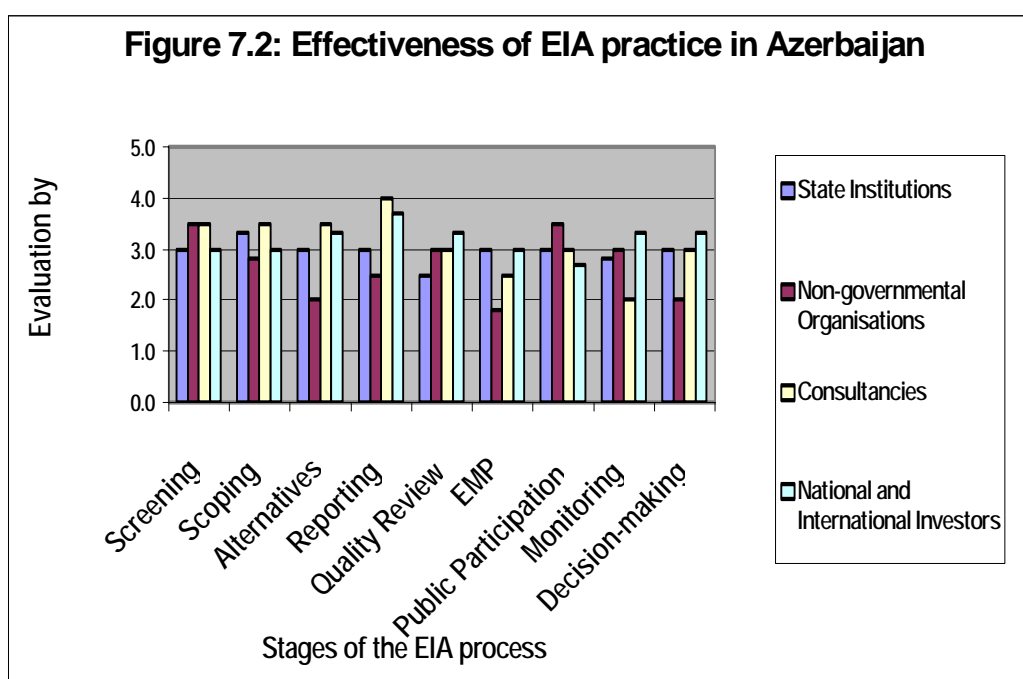
The overall evaluation of the EIA system in Azerbaijan by various stakeholders of this process in the country revealed a number of deficiencies of the relevant legislation and practice described below. All the evaluations were based on a scale between 1 and 5, where 1 stands for 'low effectiveness', and 5 for 'high effectiveness'. The average results of the evaluation of the effectiveness of relevant legislation and practice in Azerbaijan by various parties to the EIA process in the country are brought together in Table 7.1 below.

**Table 7.1. Evaluation of the effectiveness of the EIA legislation and practice**

Stages of the EIA process	EIA Legislation					EIA Practice				
	S	N	C	I	Ave	S	N	C	I	Ave
Screening	3.3	3.0	4.0	4.0	<b>3.5</b>	3.0	3.5	3.5	3.0	<b>3.3</b>
Scoping	3.8	3.8	4.0	3.3	<b>3.7</b>	3.3	2.8	3.5	3.0	<b>3.1</b>
Consideration of alternatives	3.5	3.7	4.5	3.7	<b>3.8</b>	3.0	2.0	3.5	3.3	<b>2.9</b>
Reporting	3.5	3.8	4.0	4.0	<b>3.8</b>	3.0	2.5	4.0	3.7	<b>3.2</b>
Quality Review	2.8	3.3	3.0	3.7	<b>3.2</b>	2.5	3.0	3.0	3.3	<b>2.9</b>
Environmental Management Plans (EMP)	3.3	2.0	3.5	3.3	<b>2.9</b>	3.0	1.8	2.5	3.0	<b>2.5</b>
Public Participation	3.5	3.0	3.5	3.3	<b>3.3</b>	3.0	3.5	3.0	2.7	<b>3.1</b>
Monitoring	3.0	3.5	2.5	3.3	<b>3.2</b>	2.8	3.0	2.0	3.3	<b>2.8</b>
Decision-making	3.0	3.7	4.0	3.7	<b>3.5</b>	3.0	2.7	3.0	3.3	<b>3.0</b>
Average by groups of stakeholders	<b>3.3</b>	<b>3.3</b>	<b>3.7</b>	<b>3.6</b>	<b>3.4</b>	<b>2.9</b>	<b>2.7</b>	<b>3.1</b>	<b>3.2</b>	<b>3.0</b>

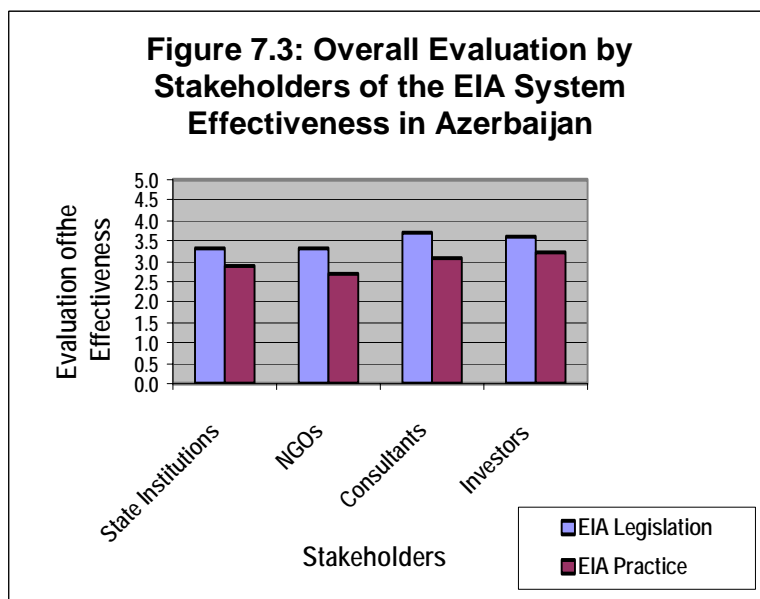
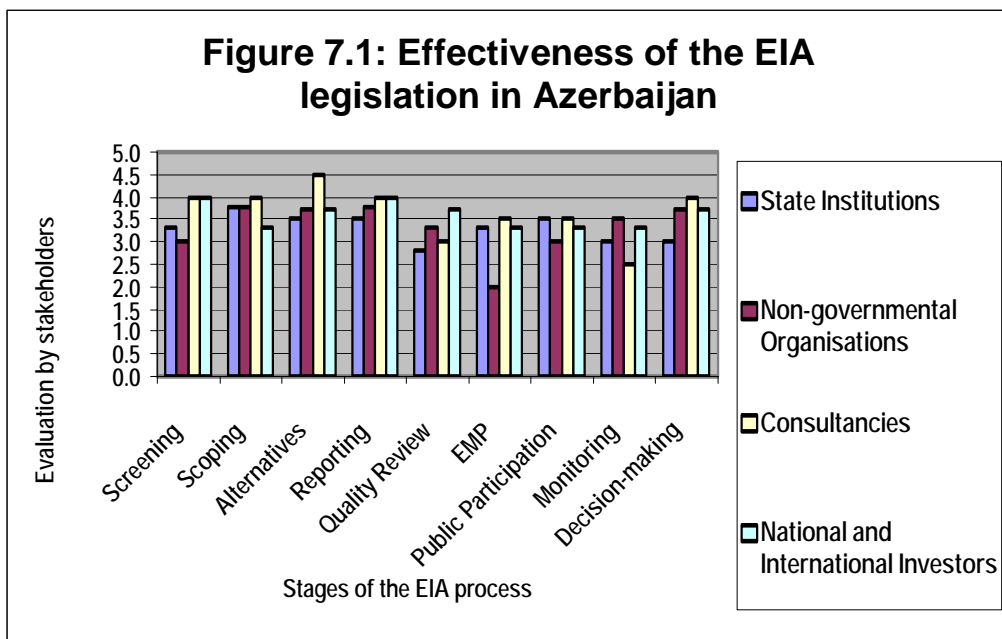
Legend: S – state institutions; N – NGOs; C – consultants; I – national and international investors.

Based on the overall evaluation by four different groups of stakeholders of the relevant legislation and practice, the opinions collected could be actually divided into two groups, with the first one having provided lower evaluation of the two aspects of the Azerbaijani EIA system than the second one. One of the most important, and to an extent surprising, observations of the Project was that the first of these groups united the two parties to the EIA process often regarded as incompatible, namely the government and NGOs. These stakeholders' overall evaluation of various stages of EIA in the





Azerbaijani EIA legislation and practice was lower in comparison to the evaluation by the representatives of consultancies and investors (see table above and Figures 7.1 – 7.3 below).



The following analysis of effectiveness of various aspects of the EIA system and practice in Azerbaijan is made based on the major common goals of an EIA process as a tool to improve environmental quality of, and introduce elements of sustainability to, economic activities; increase transparency of the decision-making process; ensure environmentally conscious decision-making; contribute to the development of democratic institutions; increase the levels of public awareness of environmental issues; and introduce and promote stakeholder ownership in the country's economy.

### 6.1 Screening

Even though stakeholders sometimes experience difficulties in naming drawbacks of screening in the Azerbaijani EIA process, this stage EIA needs considerable improvement in terms of both the legislative basis and practical application due to the reasons explained in Chapter 6. There is a great chance that the drawbacks of the screening provisions negatively influence EIA performance in this

stage of the process, leading to the practice being perceived as even less effective than the requirement of the legislation.

Statistical data on the number of proposals submitted by the state, private and foreign developers, as well as the number of SEEs/EIAs undertaken in Azerbaijan annually (including the shares of rejected and approved by SEE developments) is not available in the country. Some approximate figures based mostly on the data provided by the fSCE for a research undertaken at the Central European University are shown in Table 7.2 below.

**Table 7.2. Number of EIAs Conducted in Azerbaijan between 1996 – May 2001 (source: Bektashi 2001b).**

Year	Number of EIAs
1994-1996*	615
1996	6
1997	7
1998	13
1999	13
2000	8
2001, Jan.-May	6

Note: \* - number of SEEs (source: SCE 1998)

As the table shows, between 1995 and 1996 there was a sharp decrease in numbers of EIAs submitted to the fSCE annually. One of the most realistic explanations of this is the development of the *EIA Handbook* in 1996, with which SEEs and EIAs started to be differentiated from each other. The vast majority of these EIAs were claimed to be undertaken for oil projects. It was, however, impossible at the time of collecting information to obtain any further detail on the sectors and developers of the EIAs.

It is claimed that proposals can be rejected on environmental grounds at the stage of preliminary considerations only, and all those passed this stage and proceeded to the EIA eventually receive conditional or unconditional approval of the environmental authorities. International experience shows that even within the most developed EIA systems such high levels of performance are unachievable due to highly developed systems of environmental, social, health, risk, and sustainability assessments and indicators which help control economic activities, so that even projects which initially received a preliminary approval may be turned down after more thorough examination of their possible impacts. The current state of the screening procedure in the SEE/EIA system in Azerbaijan roots in the sharp necessity to develop the country's economy and combat poverty, however, there some other reasons, generated as a result of rapid, and sometimes crucial, reforms of the past decade, may play a certain role in this situation. These altogether suggest that the effectiveness of EIA as an environmental protection tool may be artificially lowered already at the stage of screening by the prevailing economic and social goals of development.

## 6.2 Scoping

The effectiveness of the scoping stage of EIA is one of the aspects of the system that require increased attention of all the parties to the EIA process. On the one hand, stakeholders tend to consider the scoping requirements of the relevant legislation as to a large extent effective in terms of achieving the goals of EIA. On the other hand, practical application of the scoping provisions of the Azerbaijani EIA system, in the view of the very same stakeholders, suggests that either there is a lack of enforcement of these provisions, or the provisions for scoping are indeed underdeveloped. Indeed, as described in Chapter 6, the *EIA Handbook* states that a Scoping Meeting should be called for each case of a full EIA, at which the contents of an EIA report should be discussed. At the same time, there are no requirements for the Scoping Meeting to cover other aspects of EIAs, such as timing, participants, other assessments the EIA should be integrated with, etc. Subsequently, the absence of such requirements results in important aspects of the EIA process underdeveloped and unattended, which eventually weakens the EIA procedure and negatively influences the effectiveness of separate EIAs as well as the system as a whole increasing the gap between the system and relevant practice.

## 6.3 Consideration of alternatives

The incongruity of the situation with consideration of alternatives in the Azerbaijani EIA system lies in the fact that there are actually no requirements for the considerations of alternatives in either of the

two basic documents under consideration (i.e. the *Law on EP* and the *EIA Handbook*), while various stakeholders claim that in practice EIAs indeed cover alternatives as well as their impacts. While in some cases such divergence between the legislation and practice could be explained by the pressure from international investors and donors to conform to international EIA requirements, it seems fair to assume that certain role in this process belongs to the developers committed to achieving higher environmental performance. But no matter what the underlying reasons, consideration of alternatives in today's EIA practice in Azerbaijan no doubts effectively helps achieve the goals of EIAs, i.e. cover more environmental (and often social) aspects of economic activities enhancing the chances of lessening their negative impacts on the environment and the society.

#### **6.4 EIA reporting**

EIA report requirements in the Azerbaijani EIA system are acknowledged as relatively clear, which increases the chance for the developers, as well as the experts carrying out EIAs, to cover all or the majority of the important aspects of the developmental proposals. Despite this advantage of the system, EIA reports are often claimed to be of poor quality in terms of both the contents and the language (which, despite the requirements of the *EIA Handbook*, can sometimes be technical and therefore too complicated for many stakeholders to comprehend). As a result, the effectiveness of EIAs in Azerbaijan suffers considerably in the absence of clear and comprehensive information to support informed, environmentally conscious decision-making. Among possible reasons of this could be, for example, the lack of experience and the absence of feedback mechanisms to share good practices among various parties to the EIA process – the reasons admitted by many EIA practitioners world-wide.

#### **6.5 Quality review**

It is worth mentioning that, although quality review in Azerbaijan is actually represented by SEE applied to all economic activities in the country, and despite the acknowledgement of high professionalism of those involved, its effectiveness in helping achieve the goals of EIA still leaves room for improvement. Thus, the high levels of non-transparency of the SEE procedure is often perceived as a means to approve environmentally dangerous activities, which makes the whole EIA system incapable of providing the decision-making process with adequate information. Another drawback of the SEE procedure lies in its definition as a procedure aimed at checking the compliance of the proposed activities against the existing environmental standards. As a result, the quality review procedure may be actually simplified in comparison to the aims of this stage of the EIA process in international practice. In addition, the fact that, according to the representatives of the government, no activities pass SEE without being returned for the necessary changes, leaves the effectiveness of the preceding EIA process (if any) under a question mark. It is not clear how the EIA stakeholders see the role of EIA, including public hearings, and how their outcomes are taken into account by the developers and the decision-makers, if all the proposals are returned for amendments as a result of SEE. On the other hand, the absence of negative SEE resolutions claimed by the governmental officials once again shows how economic goals are prioritised before the goals of environmental protection preventing various mechanisms of the latter to be fully engaged in the decision-making process.

#### **6.6 Preparation of environmental management plans**

Environmental management plans (EMPs) are largely overlooked by the *Law on EP* and the *EIA Handbook*. Similarly to alternatives, this important aspect of any economic activity could be taken into account by at least some of the developers (especially those with rich international experience in preparing EMPs for their activities), however there is currently no information on this aspect of EIAs readily available from any sources in the country. Consequently, it is difficult to speak of the effectiveness of EMPs in achieving overall goals of EIAs apart from the fact that their absence would no doubt weaken the environmental performance of various economic activities.

#### **6.7 Public participation and consultations**

The issue of public participation in EIAs has long been among the most debated. Taking into account the low pace of establishing the democratic traditions in independent Azerbaijan, the application of the EIA procedure, democratic by definition, suggests higher rates of EIA effectiveness in providing transparency and accountability in the decision-making process. However, in the view of the majority

of stakeholders, public involvement in EIAs on practice in the country is not high enough, and many important aspects of this component of the EIA process are not covered sufficiently by the relevant legislation.

Although Azerbaijan committed itself to the consideration of public opinion in environmental decision-making by signing the Aarhus Convention, there is still much to be done to improve the effectiveness of public participation in the EIA process in the country. Despite the comprehensive knowledge base and skills claimed by various parties to the EIA process in the country, the effectiveness of public participation depends largely on, but is not limited to, the existing legislative provisions, which are still weak in Azerbaijan. Thus, as the practice of public hearings for BTC showed, public involvement in the EIA process should start considerably earlier in the development of economic activities, namely at the stage of designing the proposals and consideration of various developmental options. Of other reasons for the low effectiveness of public participation in the existing EIA practice, the still insufficient levels of environmental awareness and informing the population of the proposed activities, prioritisation by the population of social issues (which are often not tackled satisfactorily by the developers), poor timing of EIAs, and the language barrier often ignored by the developers, could be named. These altogether result in the perception by the public at large of being left over board of the country's economic life with the following weak public support to economic activities and low levels of participation of the public at large in the economic life of the country.

The public participation campaign launched by the British Petroleum for the Inam oilfield has resulted in the preparation of the plan to address oil spills and to decrease negative impact on the wildlife within the project design. As a result of EIA on Phase 2 of the Azeri-Chirag-Guneshli oilfield, a decision was made to develop a programme for rehabilitation of the population of turtles on the territory of the oil terminal. Although the changes to both projects would have a rather long-term effect, it is believed that public hearings in both cases have achieved their goal of making the project more transparent and environmentally friendly.

## **6.8 Monitoring and post-project analysis**

This particular aspect of the Azerbaijani EIA system is also among the weak ones, with the vague requirements of both the *Law on EP* and the *EIA Handbook* for monitoring and audit of economic activities. The failure of the monitoring and audit provisions of the legislation to secure systematic practical implementation of these components can be explained, among others, by the weakness of the provisions themselves, but also by the lack of adequate and contemporary mechanisms of monitoring, up-to-date systems of indicators applied world-wide, the necessary equipment and sometimes human resources. Consequently, the overall effectiveness of the EIA system to enhance environmental protection not only at the stage of preparation, but also during implementation of various economic activities, remains quite low despite the scattered attempts of some stakeholders to design and implement monitoring measures. Among the EIAs, which suggested ways to improve it, was a sub-project of the World Bank's Urgent Environmental Investment Project, which dealt with mercury clean-up in Sumgayit. Its EIA and the following implementation showed the necessity of developing a long-term national monitoring programme for heavy metals and related environmental indicators.

Besides, a well-developed and implemented system of environmental, particularly EIA-related, monitoring could largely involve the capacity and expertise of local and national NGOs and in some cases the population, thus contributing to the social development, education and awareness raising and removing mistrust and misunderstanding through exposing the nature of the economic activities and making it more understandable and acceptable to various strata of the society.

## **6.9 Integration of EIA findings in the decision making process**

As a matter of fact, EIA findings are indeed taken into account in decision-making, however, the effectiveness of this process is only partially adequate. The implementation of the relevant provisions is commonly admitted to be one of the most difficult tasks imposed by EIA on the system of policy- and decision-making in any country; which is also true for Azerbaijan. Provisions of the *Law on EP* for the SEE resolution to determine the final decision on any developmental proposal, together with the requirement of the *EIA Handbook* to take into account EIA findings during decision-making, are no doubt advantageous for the Azerbaijani EIA system, which could have determined higher levels of the effectiveness of the relevant legislation. However, the same provisions also weaken the case of EIA as a tool aimed at assisting (but not dictating) the decision-makers, as it provides no link between the two documents (see Chapter 6). Among other reasons of the low performance of EIAs in terms of

decision-making the most commonly named are: the lack of commitment of the decision-makers to take into account environmental issues implied by the economic activities (a problem traditional for many states world-wide); insufficient levels of awareness of decision-makers of the environmental problems in the country and the region; low levels of economic development leading to prioritisation of economic and social goals; the low quality of environmental information provided to the decision-makers; and the resistance of some decision-makers to take EIA on-board as an aid to enhance the quality of the decisions made.

## 6.10 Conclusions

It should be remembered that the effectiveness of an EIA system is judged based not on the number of rejected or approved proposals, but on the improvement of environmental, social and health conditions as well as of sustainability indicators taking place as a result of application of EIA to the economic activities. Some direct and indirect effects of having EIAs undertaken for at least some economic activities in Azerbaijan are indeed taking place. Thus, EIAs help to some extent to raise public awareness of environmental and social issues, linked to various types of economic activities, and to reach the consensus on the acceptable for the population levels of impacts. They also help achieve lower levels of environmental damage through the application of preventive principles in designing and implementing economic activities. They, to a certain degree, show the ability of decision-makers to successfully take into account environmental and social issues through introducing greater transparency and elements of democracy to the decision-making process.

Unfortunately, in the case of Azerbaijan due to the absence of the EIA legislation, the resulting unsystematic application of EIA and the absence of relevant official statistics and analysis of the link between EIAs and environmental and social indicators, it is rather difficult to speak of the effectiveness of the EIA system and practice in the country. It is not clear how well the *Law on EP* is enforced in the country, however, from the overall performance of the national legislative and judicial system, it can be concluded that in its enforcement the *Law on EP* might be overruled by the prevailing economic and social goals of development. It could also be a case that high levels of corruption and shadow economy (which, according to some sources, reached 60% in the early 1990s) negatively influence the EIA effectiveness in the country, however no analysis of the link between these two indicators has ever been carried out in or for the country, which makes commenting on this issue mostly a matter of personal opinion. Such factors as the state of democracy and transparency of the government also have huge influence on the EIA system and practice in the country. However, despite Azerbaijan is acknowledged to have made a significant step in developing democratic traditions since the independence, and having the government expressed its intention to combat corruption, the EIA system in the country seems to have benefited rather uncertainly from all these changes, which eventually prevents EIA from fulfilling its objectives.

All spheres of the country's life are significantly affected by the long-lasting Nagorno-Karabakh conflict, which keeps the political, economic and social priorities shifted towards coping with its consequences. Thus, as highlighted earlier, economic and social goals have remained the priority direction for the country's development since the independence. For example, one of the outcomes of such prioritisation could be simplification of the process of environmental licensing, which in the current economic and social conditions of Azerbaijan would encourage economic activities. This, in turn, would undermine the significance of a high quality EIA process and would considerably weaken the effectiveness of the latter. However, the absence of official data on this particular aspect of any development does not allow for any further conclusions. Separate EIAs could partially provide such information, however the absence of a functioning monitoring system that would provide the EIA system with reliable data and the desired feedback makes collection of such scattered information a laborious task. Considerably larger amounts of information and much higher level of detail would be necessary for more in-depth analysis of the effectiveness of the national EIA system.

All the above-mentioned factors can be referred to as **external factors** influencing the national EIA system. Of other external factors, international institutions and foreign companies are recognised to be the most active promoters of EIA in Azerbaijan, however, since the development by the UNDP of the *EIA Handbook*, their influence has not extended beyond the application of the EIA procedure to their own projects. Azerbaijan's joining various international conventions (including the Aarhus and the Espoo Conventions) has also had little effect on the EIA system and practice in the country, although recent project of TACIS aims at increasing awareness among the public of environmental issues and opportunities provided by the Aarhus Convention.

The last but not the least external factor playing a significant role in the development of any EIA system is the state of the environment. It is widely recognised (in the country as well as outside it) that

Azerbaijan's state of the environment is currently in a sharp need of immediate measures which would prevent the environment from further degradation and would hopefully reverse this process. Surprisingly enough, EIA has so far not been seemingly taken on-board by the government as one of the realistic mechanisms to help the country solve its environmental problems, as EIA has not gained any official status in the country for almost a decade.

Most of the **internal factors** influencing the state of the EIA system and practice in Azerbaijan (such as weak institutional capacity, lack of knowledge and understanding of the EIA process as such, its principles and mechanisms, lack of human and financial resources, and the still insufficient national and local expertise to carry out EIAs) have been described earlier. Here it seems worth mentioning once again such a significant factor as commitment and motivation of the major parties to the EIA process. Although the public (mainly NGOs) and some developers (mainly foreign companies and international institutions committed to environmental protection) express their concerns about the environment and make efforts to prevent environmental damage from happening, it is the government who is expected to lead this process, to encourage other stakeholders' initiative and to make every effort to support such initiative. Unfortunately, this component of success of any process has so far played a rather insignificant role in the development of the national EIA system with EIA practice, as repeatedly stressed earlier, having been promoted from outside the national system.

Another aspect significantly weakening the national EIA system and its performance is the absence of the system of selection of consultants, which corresponds to the lack of relevant education and training. This issue can be viewed as an immediate outcome of the deficiencies of the national legislation (i.e. the absence of a law leads directly to the absence of grounds upon which professional requirements for EIA experts/ consultants could be built and upon which a selection mechanism would be designed).

Altogether, these factors shape the today's state of the EIA system and practice in Azerbaijan, influence (often negatively) the effectiveness of the EIA process and therefore need close attention and addressing in order for the EIA system to be able to evolve in the most desirable way.

## 7. Strategic Environmental Assessment (SEA)

Following the emergence of Environmental Impact Assessment (EIA), a similar concept was developed to introduce elements of environmental assessment to higher levels of planning and policy-making, that is Strategic Environmental Assessment (SEA). SEA is currently recognised as one of the tools created as an aid for decision-makers to ensure environmentally sound decision-making at strategic levels of planning. This implies development of policies, plans, programmes, strategies, concepts, legislative acts, and similar types of economic activities (i.e. levels higher than project development).

Unlike EIA, SEA is a newer concept which is much more difficult to limit within a strictly defined procedural context due to the often vague nature of the activities it assesses. It often involves stages similar to those of an EIA process, but can take various forms depending on the nature and scale of the activities being assessed (e.g. involves lower levels of details and greater uncertainty, as well as wider layers of the public affected by the development).

Although acknowledged as a necessity by many states, SEA has so far not been widely introduced through the legislative system. To date, a number of European, Asian and South American countries have incorporated SEA into their environmental and planning legislation.

It is claimed that the practice of carrying out the SEE in Azerbaijan since the adoption of the SEE procedure, has been relatively systematic during the Soviet period, ensuring the compliance of many strategic-level developments to the existing ecological norms. The situation changed in the early 1990s with the downfall of the Socialist regime and the concentration of the developmental priorities almost purely on economic and social issues.

Neither the Law on Environmental Protection, nor the *EIA Handbook* provides for a specific procedure for EA of strategic-level development activities. The *Law on EP* refers to state and local developments and programmes in regions and sectors of the country's economy as the objects of SEE (Article 54). The *EIA Handbook's* provisions for EIA of strategic-level activities are somewhat the same, stating all the developments to undergo an EIA procedure the depth of which, however, is subject to the severity of the potential environmental impacts of the proposed activity.

Despite these requirements, very few (if any) strategic-level developments undergo even the simplest environmental checks nowadays. Surprisingly, this relates even to the developments supported by internationally recognised promoters of EIA (e.g. the State Programme for Poverty Reduction and Economic Development, or SPPRED, developed with the World Bank's assistance). On the other hand, some of the developments submitted as projects and undergone an EIA procedure would qualify as strategic-level activities in the international practice (e.g. oil projects dealing with multiple offshore oil fields within one project frame). The same relates to such a large and controversial development as BTC, cumulative effects of which have so far been largely overlooked by the interested parties due to the fact that the project has initially been viewed as three, which artificially diminished the scale of its impacts.

There are three main groups of factors influencing the application of the EIA or at least SEE procedure to strategic-level activities in Azerbaijan: political considerations, which are strong at these levels of planning and decision-making; capacity-related issues; and financial obstacles. While the Azeri economy is rapidly growing, and the awareness of the population of environmental and EIA-related issues is constantly increasing, a substantial amount of efforts is still required to encourage planners and policy- and decision-makers to pay adequate attention to environmental, or more generally, sustainability issues entailed in any economic activity. No doubt that issues of economic and social development should remain the priority for the country, however, they should not overshadow the environmental issues associated with such developments leading to any type of EAs carried out as a formality rather than a deliberate necessity. It is therefore believed that the unfavourable condition of the EIA system and practice in Azerbaijan, and particularly the prospects of the development of an SEA system, could be improved through awareness raising not only among the population but more important within the local and national governmental institutions. Another issue of concern is the level of environmental, and particularly EIA-related education, which is underdeveloped in Azerbaijan and currently needs close attention.

Azerbaijan's prospects in terms of developing an SEA system at this point in time can be defined as ambiguous based on the country's experience with the enforcement of the current nature protection legislation and the application of the SEE procedure to strategic-level activities. It is most probable that policies, plans, programmes etc., developed for the country by national and international institutions and organisations, touch upon environmental issues only briefly due to the absence of clear

requirements for environmental considerations in such development activities. Thus, however optimistic the evaluation of the country's potential, the future of an SEA system in Azerbaijan would depend on the ability and commitment of the government to shift its priorities towards sustainability in the country's economic and social development.



## 8. Country's EIA System and EU Standards (Guidelines, etc.): Possible Amendments for Harmonisation

It would be difficult to speak of harmonisation of the EIA legislation with the European Union (EU) EIA Directives (the Council Directive 85/337/EEC of 1985 and the Council Directive 97/11/EC of 1997) for a country like Azerbaijan, which has not yet legally adopted such a system. It would be more appropriate to speak of such harmonisation between the Azerbaijani EIA system and that implied by international treaties, such as the Espoo Convention (ratified in 1999) and the Aarhus Convention (signed in 2000). The process of harmonisation of the EIA procedure with their requirements (and, more generally, with any requirements, including those of the EU) should be understood as a process of eliminating the contradictions within the existing system and between it and those requirements, rather than bringing the existing Azerbaijani EIA in a total compliance with the advanced western systems. Thus, it doesn't mean that whatever referred to as the Azerbaijani EIA system needs immediate and radical changes. However, it was repeatedly stressed by the government officials, that even though EU standards cannot serve as a priority given the current economic and social conditions, targeting these standards in the near future could become a strong positive incentive for significant reforms of Azerbaijan's economy and society. Therefore, although in the discussion of the ways of harmonisation of the country's EIA system with the European standards the priority should be given to the above-mentioned Conventions, EU EIA standards can also provide useful comparative information.

- **The legal status of the EIA system**, to begin with, defines most of the times its systematic application on practice. One of the most significant drawbacks of the Azerbaijani EIA system is its non-binding nature, which leads to the rather ad-hoc application of the EIA procedure, mainly to the developments financed by foreign and/or international donors and investors. This is all the more important that Azerbaijan so far has not undertaken any visible steps towards harmonisation of its EIA system with the requirements of the Espoo Convention (not speaking of the EU Directives which oblige states to bring the relevant national legislation into conformity with the EU legislation).
- **Parties to the EIA process**, defined by the EIA Directives and the Espoo Convention, cover all the main groups of stakeholders, i.e. developers, decision-makers, various affected parties and the general public. As discussed in Chapter 6, parties to the EIA process in Azerbaijan, according to the *EIA Handbook*, are represented by similar groups of stakeholders. While the non-binding nature of the *EIA Handbook* does not eventually affect these parties' rights to participate in EIAs, upgrading this document to the status of a law would help Azerbaijan to fulfil its international commitments and help potential stakeholders to better understand their role in economic development of the country.
- **The screening stage** introduced by the EU EIA Directives and the Espoo Convention to a large degree differs from that in Azerbaijan. All the three treaties introduce two screening lists each, the first one containing activities subject to EIA in any circumstances, and the second one introducing activities which may or may not be made subject to EIA depending on circumstances<sup>8</sup>. In Azerbaijan, as explained in Chapter 6, at least legally the SEE-type approach is still used, and all the proposals must undergo the phase of the preliminary assessment, during which it is decided whether each particular project needs to undergo a full EIA. With the recent increase in Azerbaijan's economic development rates it would be logical to assume that the number of activities being developed in various sectors of the country would be growing as well. In this situation, however experienced and professional the staff of the Ecological Expertise Department, and taking into account the almost absent EIA-related education in the country, the Department would soon be experiencing the lack of human resources, which in turn would lead to a significant decrease of the quality of SEEs.

However, as a result of seven years of application of the EIA procedure, the Azerbaijani EIA practitioners have now sufficient empirical knowledge of which activities normally undergo EIA and for which a preliminary assessment is usually considered sufficient. Judgement on various proposals is often made based on this experience, even in the absence of an official screening list.

<sup>8</sup> This is achieved through either setting thresholds for such activities, or through a case-by-case examination of them against specific criteria, a possible list of which is presented in Annex III of the Council Directive 97/11/EC.

Bringing all this knowledge into a regularly updated official screening list would strengthen the screening stage of EIA, significantly improving the performance of EIA as a legal aid to developers, environmental authorities and decision-makers. As to the activities not subject to EIA due to, e.g. the small scale or the absence of significant impacts on the environment and humans, a simplified procedure (like the currently applied preliminary assessment) could be developed to assess such proposals against a check-list of possible impacts (similar to the one outlined in Annex III of the Council Directive 97/11/EC or Annex III of the Espoo Convention).

- **Scoping** provisions under the Council Directive 97/11/EC require Member States to adopt an appropriate procedure that would allow developers to provide the competent authorities with the information listed in Annex IV. The procedures adopted in EU states may vary significantly, but all of them are aimed at providing by developers of basic information on, *inter alia*, project activities, alternatives, possible impacts and mitigation measures, consultations, timeframes of these consultations as well as of the project itself, and the affected parties to be consulted. The outcomes of scoping carried out by the competent authority would be a Scoping Opinion, and in case scoping is carried out by the developer, the latter submits the Scoping Report. The scoping requirements of the *EIA Handbook*, as appears, do not differ much from those of the EIA Directives and could be considered compatible with the latter. The main difference in that case would be, that, unlike the Directives, the *EIA Handbook* does not specify the issues that the scoping procedure (in this case – the Scoping Meeting) should cover. However, taking into account the experience of the past Scoping Meetings, the task of improving the existing scoping requirements of the Azerbaijani EIA system should be an easy one, and the effect such an improvement would have on the quality of EIAs in the country would be indeed significant.
- **Environmental baseline studies.** The requirements for studies of environmental baseline by the *EIA Handbook* cover not only environmental (physical and ecological), but also social aspects of the development activities. This conforms to the requirements of the Espoo Convention and, to a certain extent, to the requirements of the EIA Directives, which are, however, more specific on the factors to be covered by these studies (e.g. the Directives mention “material assets and the cultural heritage”, which are not specified in the *EIA Handbook*, but are believed to be nevertheless studied during EIAs in Azerbaijan).
- **Consideration of alternatives, mitigation measures and impact management** is required by both the Espoo Convention (Article 5), and the EU Directives. The *EIA Handbook*, as discussed in Chapter 6, also covers the impacts and mitigation measures-related issues, but has very weak provisions for consideration of alternatives. At the same time, it is a common practice among the EIA experts and developers in the country to consider alternatives not only to the suggested technologies, but also to other aspects of the proposed activities (e.g. site location), and the “do-nothing” alternative is often considered, too. These once again indicate that EIA experience in Azerbaijan, if used to update the existing system, has a real chance to significantly improve the existing requirements.
- **Reporting.** The same requirements of the EU Directives for information at the scoping stage apply to the EIA report as well, and the Espoo Convention has somewhat similar provisions for this stage of the EIA process. As discussed earlier (see Chapter 6), the *EIA Handbook's* provisions for the contents of an EIA Document to a large degree conform to the above-mentioned multilateral treaties, with few exceptions (such as the weak requirements for consideration of alternatives). All the interested parties are further consulted based on the EIA report/documentation, however, the limitations imposed on the ways to make the relevant information available to the parties to the EIA process may create certain obstacles in obtaining this information.
- **Quality review.** The *EIA Handbook's* provisions for the EIA quality review process are quite advanced and contain all the major requirements of both the Espoo Convention and the EU Directives (e.g. making the relevant information on the final decision available to public).
- **Decision-making.** Provisions of the Espoo Convention and of the EU Directives for decision-making clearly state that findings of EIAs **must** be taken into account by the competent authorities when making the decision on each particular project. The *EIA Handbook*, as discussed in Chapter 6, is lacking such a strong link between the EIA process and the decision making process. This is, in fact, one of the most significant drawbacks of this document, to a certain degree compensated by the provisions of the Azerbaijan's *Law on EP* for SEE. Nevertheless, even though there is no legally provided link between these two documents, EIA practice shows that decisions indeed are not made unless EIA findings are submitted to the environmental authorities.
- **Post-project monitoring.** The EU Member States may develop monitoring programmes, and the parties to the Espoo Convention are obliged to include, where appropriate, relevant monitoring

and post-project analysis information in the EIA documentation and follow these in implementing the planned activities. Taking into account the fact that the *EIA Handbook* has specific provisions for monitoring and audit (see Chapter 6), but the practice of environmental monitoring can be regarded rather as underdeveloped, it is possible that at least one of the reasons for this is the non-binding nature of this document.

- **Exemption from EIA.** The EU Directives' requirements are obligatory for all the projects listed in Annexes I and II, except those on which the Member States' national regulations and administrative provisions impose limitations. Similarly, the Espoo Convention states the right of its parties to decide upon the disclosure of information related to industrial or commercial secrecy and national security. As discussed in Chapter 6, neither the *Law on EP*, nor the *EIA Handbook* limits the application of its provisions to certain types of economic activities, but realistically, there is no doubt that such limitations would exist in the country and would be imposed on certain developments anyway. Having such limitations officially outlined in the national legislation would not only enhance the EIA procedure, but also show better understanding of the issues of transparency and democracy in economic development.
- **EIA in a transboundary context.** Application of the EIA procedure to activities likely to have transboundary impact through informing, and consultations with, the affected Member States is required by the EU Directives, and it is a key issue on which the Espoo Convention is based. Azerbaijan's EIA system, however, does not imply any relevant co-operation with the neighbouring states in case of likely transboundary environmental impacts of the proposed activities. Taking into account Azerbaijan's geographical situation and the nature of the major projects developed in the country (such as BTC), the adoption of the legal requirements for EIAs in a transboundary context would not only help the country to fulfil its international obligations, but secure better quality of economic activities.
- **Public participation.** The EU Directives oblige Member States to involve relevant environmental authorities and all the interested organisations and the general public in consultations on the proposed projects. In case the development is likely to affect any neighbouring Member States, the latter should also be notified and consulted in due course. The same steps are required by the Espoo Convention. However, it is the Aarhus Convention that states the basics of public participation in the EIA process, and it is this Convention's provisions to which Azerbaijan has committed itself in 2000. Table 9.1 below compares the obligations set by Article 6 of the Convention and those of the *Law on EP* and the *EIA Handbook*, and illustrates that Azerbaijan has not yet fulfilled the requirements of the Aarhus Convention with regard to the EIA process as the no legal act on EIA has been passed in the country so far.

**Table 9.1. Correspondence of the Public Participation in EIA Requirements of Article 6 of the Aarhus Convention and those of the Law on Environmental Protection of the Azerbaijan Republic (1999) and the Handbook for the Environmental Assessment Process in Azerbaijan (1996)**

Provision of the Aarhus Convention	Obligation	Implementation Guidance	Corresponding Provision of the EIA Handbook	Corresponding Provision of the Law on EP
Paragraph 1	Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact	<input type="checkbox"/> List of activities (annex) <input type="checkbox"/> Non-listed activities <input type="checkbox"/> National defence exemption	Paragraph 4.1, 4.2 <input type="checkbox"/> No <input type="checkbox"/> No <input type="checkbox"/> No	N/A
Paragraph 2	Sets requirements for notifying the public concerned about the decision-making	<input type="checkbox"/> Early in the process <input type="checkbox"/> "Adequate, timely and effective" <input type="checkbox"/> Minimum contents	Paragraph 2.3, 4.1 <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> No	N/A
Paragraph 3	Sets time-frames for public participation procedures within a decision-making process	<input type="checkbox"/> Specific time limits must be established <input type="checkbox"/> Must provide enough time for notification, preparation and effective participation by the public	No	N/A
Paragraph 4	Requires that public participation takes place early in decision-making	<input type="checkbox"/> Options are open <input type="checkbox"/> Public participation may not be pro forma	Paragraph 2.3, 2.5 <input type="checkbox"/> Yes <input type="checkbox"/> Yes	N/A
Paragraph 5	Encourages exchange of information between permit applicants and the public	<input type="checkbox"/> Before permit application <input type="checkbox"/> Provide explanations <input type="checkbox"/> Enter into dialogue	Paragraph 4.1 <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Yes	N/A
Paragraph 6	Requires public authorities to provide the public concerned with access to all information relevant to the decision-making	<input type="checkbox"/> Free of charge <input type="checkbox"/> As soon as available <input type="checkbox"/> Minimum contents	Paragraph 4.1, 4.3 <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> No	N/A
Paragraph 7	Procedures for public participation	<input type="checkbox"/> In writing or public hearing <input type="checkbox"/> Any comments, information, analyses or opinions <input type="checkbox"/> Public to judge relevance	Paragraph 4.2 <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> No	In the form of PER
Paragraph 8	Parties must ensure that decision takes due account of public participation		Paragraph 4.1, 4.2, 5.2	N/A
Paragraph 9	Public must be informed of final decision	<input type="checkbox"/> Promptly	Paragraph 2.2, 2.3 <input type="checkbox"/> No	N/A

		<input type="checkbox"/> Publicly accessible texts <input type="checkbox"/> Reasons and consideration	<input type="checkbox"/> Yes <input type="checkbox"/> Yes	
Paragraph 10	Public participation if activities are reconsidered or changed		No	N/A
Paragraph 11	Decisions on genetically modified organisms		No	N/A

Note:

N/A – not applicable

**Table 9.2. Comparative Analysis of Country's EIA Legislation and Procedures with the EU Requirements**

#	Issue	National Legislation (EIA System)	International Requirements & Procedures	Comments
1.	The legal status of the EIA system	EIA is legally non-binding.	EIA provisions should be stated in the legislation	The majority of the EIA stakeholders admit that the country is in a need for an EIA act which would provide for high compliance with international requirements
2.	Parties to the EIA process	Developer; EIA Experts; Environmental Authorities; Decision-makers; Public	Developers; Experts; Decision-makers, Public	All the main parties to the EIA process present in the national EIA system
3.	Screening	All activities are subject to EIA, some require full EIAs while others – only preliminary assessments	Detailed screening lists	As EIA-related experience is acquired, screening process approximates international screening procedure, but remains formally underdeveloped
4.	Scoping	Issues to be covered by EIAs are not clearly specified	Issues to be covered by EIAs are explicitly specified	It is admitted by various stakeholders that having clearly defined scoping requirements would significantly improve EIA performance
5.	Environmental baseline studies	Coverage of social and environmental issues required by the <i>EIA Handbook</i> ; economic issues often covered as well	Coverage of a range of issues (health, social, economic, cultural) required	No major differences
6.	Consideration of alternatives, mitigation measures and impact management	All present, but the requirements are not comprehensive (e.g. there's no requirement to consider site and scenario alternatives and the "do-nothing" alternative; measures to avoid, eliminate or compensate possible impacts)	Alternatives for project site and scenario and the "do-nothing" alternative required; measures to avoid, eliminate or compensate possible impacts required	National EIA system's provisions for alternatives and mitigation measures need substantial improvement in accordance with international practice
7.	Reporting	EIA report requirements approximate international standards	Precise requirements for EIA report contents and the reporting procedure	No major amendments needed, however some minor changes might still be desirable (e.g. the requirement to include Environmental Management Plans)
8.	Quality review	Represented by the SEE procedure not linked to the <i>EIA Handbook</i> and the EIA process, subsequently. The <i>EIA Handbook</i> quality review provisions comply with the international requirements	Required	The <i>EIA Handbook</i> should be upgraded to a legally binding act or at least a clear link between the <i>EIA Handbook</i> and the <i>Law on EP</i> should be established.

9.	Decision-making	<i>EIA Handbook</i> cannot require taking its findings into account by decision-makers. On the contrary, positive SEE resolution must be obtained for all types of activities	Findings of EIAs must be taken into account during decision-making	To avoid doubling the decision-making process (first – SEE, then – the actual decision on the activity), the <i>EIA Handbook</i> should be upgraded to a legally binding EIA act, or at least clearly linked to the <i>Law on EP</i>
10.	Post-project monitoring	Required by the <i>EIA Handbook</i> , but the practice is to a large degree underdeveloped	Optional in the EU; required by the Espoo Convention	Upgrading the <i>EIA Handbook</i> to a legally binding EIA act could significantly improve EIA-related monitoring and audit activities
11.	Exemption from EIA	No provisions	Exceptions provided	Stating EIA-exempt activities would improve the EIA performance and increase credibility of the EIA system
12.	EIA in a transboundary context	No provisions	Required explicitly	There is a sharp need to harmonise the national legislation with the requirements of the Espoo Convention
13.	Public participation	<i>EIA Handbook</i> to a large extent complies with the international standards	Required explicitly	Some provisions of the Aarhus Convention should be taken into account in order to further enhance the national EIA system

## 9. Conclusions and Recommendations

As the analysis above shows, the Azerbaijani EIA system indeed possesses the main features of a western EIA system. Thus, it has all the major stages/components of the internationally recognised EIA process, such as screening, scoping, baseline studies, preparation and review of the EIA report, and post-EIA monitoring and audit. An EIA process in the country involves certain types of parties (in other words, stakeholders), considers public opinion and is aimed at supporting environmentally conscious decision-making. Presently, the major drawback of the national system is its non-binding nature: the basics of the EIA process in Azerbaijan are laid down by the *EIA Handbook*, which, as its title shows, represents non-binding guidelines on the EIA process in the country. The only legal document currently related to EA in the Republic is the *Law on EP*, which states the basics of the SEE procedure, but does not provide any link to the *EIA Handbook*.

Despite this, EIA practice in the country developed since 1996, signals Azerbaijan's gradual approximation to the international EIA requirements. At the same time, the state of EIA system and practice in the country has not significantly changed in the last five years. As a result, what could be called a progress after only four or five years of application of the EIA procedure, can soon become an indicator of the lack of interest and commitment to the environmental issues. Thus, despite joining two major international treaties dealing with EIA, namely the Espoo Convention and the Aarhus Convention, Azerbaijan has not yet adopted a law on EIA in order to start fulfilling its obligations within the framework of the two documents.

In this situation, it is rather early to speak of harmonisation of the national EIA legislation with the EU standards. This was repeatedly stressed by various stakeholders of the EIA process in the country during the discussion of the Project results. This is explained to a large degree by the fact that EU standards (Directives, guidelines, etc.) are not perceived by the parties to the EIA process in Azerbaijan as a driving force that might shape and direct the development of the national EIA system in the nearest future. Besides, it should be taken into account that the EIA system, as much as any other aspect of the country's economic and social life, is still struggling to overcome the legacy of the centrally planned systems. It is believed that gradual changes to this system are more realistic for the country, would have a much more positive effect and would eventually bring the national EIA system in compliance with international standards in a more efficient way than any radical reforms. Attempts to harmonise the national legislation with that of the developed countries would mean destroying the current system and development of something that the country with its current levels of institutional, professional and financial capacity, would not be able to address in a short-term perspective.

However, the evidence shows that, despite all the fears of the western intervention, Azerbaijan has so far been successful in introducing at least elements of the western EIA systems into its own system, and development of the *EIA Handbook* as early as in 1996 can serve as a supporting argument for this point of view. From this point of view, it indeed makes sense to at least try and compare the Azerbaijani EIA system with international standards (if not those of the EU, then at least those of the Conventions joined by Azerbaijan, which makes such comparison legitimate) in order to highlight its major deficiencies and possible ways to address them.

Taking into account the current state of EIA system, practice and relevant capacity in the country, consideration of the following steps could significantly improve EIA performance in Azerbaijan.

- There is a clear need in an EIA Act in the country, which would allow the national EIA system function and develop in a systematic way and would provide it with the necessary governmental support. This could be done based on the *EIA Handbook* which complies with the majority of international EIA requirements, but nevertheless needs certain improvements to it. Unfortunately, the *Law on EP* does not comply with the majority of the international EIA requirements, therefore the subsequent recommendations are made mainly for the *EIA Handbook* and would be of use for the system in case the *EIA Handbook* is upgraded to a legally-binding document;
- Adoption of an EIA act would also help make the EIA practice in the country more systematic, which in turn would improve co-ordination between various parties to the process;
- The issue of timing within the EIA process is to a large extent clear and well-thought. However, some consideration should be given to harmonising the timing requirements of the *EIA Handbook* which are not currently quite clear on certain issues;
- The national EIA screening procedure needs significant improvement based on the experience of the EIA application since 1996 as well as on the screening lists of the major



- international treaties which could serve as a basis for the development of such screening procedure;
- The scoping procedure provided by the national EIA system is not clear enough. Parties to the EIA process are in a need for more explicit guidance on what should be covered during EIAs, and international EIA requirements could provide the necessary basis for the development of such guidance;
  - Assessment of alternatives is carried out in the country on a regular basis and is acknowledged to cover a much wider range of issues than required by the Azerbaijani EIA system. While such practice clearly shows good will of the developers to provide better quality economic development, it would be nevertheless desirable to have the necessary amendments made to the *EIA Handbook*. The same relates to mitigation measures which are required by the *EIA Handbook* only partially;
  - There is currently no way to study, predict and deal with cumulative impacts within the existing EIA system in the absence of the relevant methodological guidance. In light of the rapidly developing economy, development of relevant guidelines and providing the necessary training to various parties to the EIA process is vital;
  - The EIA report quality review procedure as it currently appears in the country's EIA system is rather confusing. On the one hand, this function is performed by a group of experts (EREG), according to the *EIA Handbook*. On the other hand, the *Law on EP* states the basics of the SEE procedure which can be seen as a stand-alone check of the compliance of the proposed activities with the existing environmental standards. In practice, this actually means that all EIA reports are submitted to the environmental authorities responsible for undertaking SEEs, however, the *Law on EP* (which was adopted three years after the *EIA Handbook*) does not provide any link between the *EIA Handbook* and the SEE procedure. Besides, the *Law on EP* states that no economic activities can be approved without a positive SEE resolution, which means basically a double-stage decision-making process. Thus, SEE actually converts a tool designed to help environmentally conscious decision-making, that is EIA (since the two processes are related on practice), into a means of decision-making on its own, which may eventually increase the unwillingness to take EIA on board by decision-makers;
  - Public participation requirements are covered rather explicitly in the *EIA Handbook*, and moreover, the practice of public involvement in EIAs in the country is constantly growing as a result of increasing activities of NGOs, but also as an indicator of the recognition by the developers of the role of the public in economic development. Most of the aspects of public participation in EIAs in Azerbaijan comply with the international EIA requirements. However, there is still much to be done, and this relates first of all to reflecting upon the fact that Azerbaijan has signed the Aarhus Convention. While many of the requirements of this treaty are covered by the *EIA Handbook*, it should be remembered that this document was developed before Azerbaijan signed the Convention and has never been amended to include the requirements of the latter;
  - The monitoring provisions of the *Law on EP* are rather weak and are not linked to the SEE process, yet alone the EIA process in the country. On the contrary, the necessity to have a monitoring programme developed for the proposed activities is explicitly covered by the *EIA Handbook*. However, the fact that this document is non-binding prevents it from being able to control the implementation of such programmes. However, apart from these, there are other problems related to monitoring issues in Azerbaijan, and these are the lack of capacity (human, technical and financial) to undertake monitoring programmes, and the absence of a well-developed centralised system and mechanisms of monitoring. Nevertheless, these issues are gaining an increasing attention by the government, NGOs and other parties to the EIA process, and there are certain improvements in the field in the country already now;
  - The issues of EIA in a transboundary context have been overlooked in the national EIA system so far, but various stakeholders of the EIA process in Azerbaijan have now started actively seeking for international co-operation in EIA, and EIA in a transboundary context becomes more and more attended nowadays;
  - As repeatedly mentioned earlier, the current EIA system in Azerbaijan does not provide for any EIA exemptions. While this aspect of the national EIA system may not require immediate attention, it should be remembered that this and similar issues define credibility of EIA systems and should by no means be overlooked;

- There are no requirements for developers to submit environmental management plans. While this aspect of EIA may not be among the priorities of EIA development in the country, it nevertheless could be quite important for Azerbaijan, a country which has recently embarked on the issue of complying with international environmental management standards in various economic activities;
- Ideally, the EIA system is expected to be flexible in order to address various types of developmental activities depending on their scale, location and other characteristics. This could be achieved through developing a screening process consisting of two stages or based on different lists of activities to undergo an EIA procedure depending on certain features of the proposals;
- There is currently a clear need in methodological guidelines for various parties to the EIA process, which is especially desirable in the absence of the relevant education and the lack of vocational training;
- It is worth mentioning such aspect of the EIA systems as SEA, which deals with policies, plans and programmes. SEA is widely recognised as a tool which is much more difficult to develop and apply systematically even in countries which have been applying EIA for decades now. It is no doubt too early to speak of an SEA-like system in Azerbaijan, however, depending on the pace of development of its EIA system, the country may reach the stage, when it will be ready to develop its own SEA system, quite soon;
- The issue of the country's capacity in terms of further improving its EIA system and its practical application is rather complicated. On the one hand, the stakeholders of the EIA process in Azerbaijan claim acquiring sufficient experience to undertake high quality EIAs. It is also believed that the Azerbaijani EIA system is at the moment sufficient in what relates to the country's needs and abilities. On the other hand, a number of factors are believed to hinder the development of the EIA system and practice in the country, among which are the lack of financial and human resources; the absence of vocational training and relevant education; and, despite all the efforts of the government, the still overlapping mandates of various organisations involved in the EIA process. In fact, the absence of an EIA law in the country can be named as one of the most significant outcomes of the low levels of the relevant capacity in the country. The fact that the only information on EIAs carried out in the country is related to international/foreign investors is another example of the consequences of various underdeveloped aspects of the relevant capacity;
- The national EIA system is in a clear need for a comprehensive feedback mechanism that would allow various parties to the EIA process in the country to exchange experience with each other and with their international colleagues. Such system would also deal with statistical aspects of EIA application in the country as well as analyse links between the EIA system and various indicators of economic and social development in Azerbaijan;
- One of the major issues which are still to be addressed in the country is the overall lack of the mechanisms of enforcement of the legislation. There are a number of reasons for this, including high levels of corruption, gaps in, and deficiencies of, the legislation, etc. All these equally relate to the Azerbaijani EIA system in the country. The situation is further aggravated by the non-binding nature of the *EIA Handbook*, which is followed mainly by the experienced foreign and international developers while national developers concentrate mostly on complying with the requirements of SEE. Improvement of the existing EIA system in Azerbaijan seems therefore to be not only the matter of improved approaches and harmonisation with international standards, but first of all the matter of developing reliable and functioning mechanisms of enforcement of the national legislation.
- In line with the issue of enforcement of the relevant legislation is the issue of liabilities for violation. It is widely acknowledged that the relevant provisions of the environmental protection legislation are rather weak, charges and penalties imposed on the violators are low and do not discourage developers from applying highly polluting technologies. This significantly undermines the effectiveness of the environmental protection function of EIA in Azerbaijan and requires close attention of the environmental authorities and policy-makers.

To a certain degree, the state of EIA in Azerbaijan is still influenced by the deep roots of the Soviet central planning system, whereby all the major decisions were made within certain governmental circles, and the developers often represented decision-makers. The political and, to a large degree, moral dependency upon the "centre" has been preserved through the period of transition. Therefore, at the current stage of its development, and taking into account the still underdeveloped traditions of lobbying of environmental issues by NGOs, any changes to the existing EIA system are more likely to

be successful if they follow the top-down approach, i.e. are initiated by the government. This factor, which shapes to a large degree the development and state of the Azerbaijani EIA system (as well as any other aspect of the country's life) is often referred to as mentality – certain cultural traditions which became now an integral part of all the societal and economic processes in the country at all levels, from inter-personal to policy-making. While some states of the fSU managed to gradually overcome this legacy of their Soviet past, Azerbaijan is still struggling to follow their example, despite some changes in the society towards democracy in the past decade. Therefore, any attempts to help the country improve, among others, its EIA system should take into account this factor and should build any collaboration based on the knowledge of the internal driving forces influencing the economy and societal and cultural life and order in the country.

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## **Appendix I: List of stakeholders**

### ***State institutions***

- Baku City Mayor's Office
- Cabinet of Ministers of the Azerbaijan Republic
- Commission for Energy & Environment, Milli Mejlis (Parliament)
- District Municipalities
- Ministry of Agriculture of the Azerbaijan Republic
- Ministry of Ecology and Natural Resource Utilisation of the Azerbaijan Republic
- Ministry of Economic Development of the Azerbaijan Republic
- Ministry of Energy (?) of the Azerbaijan Republic
- Ministry of Health of the Azerbaijan Republic
- Ministry of Transport of the Azerbaijan Republic

### ***Consulting companies***

- Azerbaijan Ecological Technical Centre (AETC)
- Alliance for Business Development
- ART
- Baker & McKenzie
- Currier & Braun
- Dems & Moore

### ***Academia***

- Academy of Science of the Azerbaijan Republic
- Baku State University
- Eco-Energy Academy
- Khazar University
- Scientific Research Institutes
- State Oil Academy

### ***Non-governmental organisations***

- Azerbaijan Centre for Environmental Programmes
- Azerbaijan Society for Animal Protection
- Caucasus Local Lore and Tourism Centre
- Centre for Ecological Forecasting
- Ecograf
- Ecolex
- Ecores
- ECOS
- Ecosfera
- The Greens' Movement of Azerbaijan
- Saniya Humanitarian Information Analytical Agency
- TETA Khazri

### ***National or international investors***

- Asian Development Bank (ADB)
- Azerbaijan International Oil Consortium (AIOC)
- Azpetrol
- Baku Cement
- Baku Coca-Cola
- British Petroleum
- BTC Co
- Caspian Fish Co
- Chevron
- European Bank for Reconstruction and Development (EBRD)
- Exxon Azerbaijan Operating Company LLC.
- Global Environmental Facility (GEF)
- Gobustan Ltd.
- Islamic Bank for Development
- Japan-Azerbaijan Oil Consortium (JAOC) (?)
- LukOil
- McDermott
- OSCE

- Pepsi-Cola Co.
- State Oil Company of the Azerbaijan Republic (SOCAR)
- Statoil
- The World Bank

***Donor organisations***

- Aarhus Information Centre
- Caspian Environmental Programme
- Crude Accountability
- Ecological Stability
- TACIS
- UNEP

***Other***

- British Embassy
- Independent experts
- Local communities
- Public at large