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**Master's degree in
Human Rights and Multi-level Governance**



SELECTED PROBLEMS OF
IMPLEMENTATION OF THE
ESPOO CONVENTION

ON THE EXAMPLE OF THE REPUBLIC OF UZBEKISTAN

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“The respect for human rights is nowadays not so much a matter of having international standards, but rather questions of compliance with those standards”

Michelle Bachelet

United Nations High Commissioner for Human Rights

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Introduction

In recent years the relationship between human rights and environment has become an issue of strong debates, especially in the context of climate change. Increasing frequency of extreme weather events and natural disasters such as floods, heat waves, water shortages, droughts have the adverse impacts of climate change. The negative impacts caused by climate change are complex and global. They threaten the enjoyment of a range of human rights by people, in particular, the rights to life, water, food, health and development throughout the world. Therefore, a decent environment is a precondition for living a life of dignity.

Governments have an obligation to take effective measures to develop and implement mitigating measures as a response to climate change. This includes establishing, implementing and enforcing laws, policies and programmes to fulfil their citizens' rights and protect the environment. Applying a rights-based approach in environmental decision-making helps implementing ambitious actions and empowers people to become involved in designing and implementing solutions. States also have an obligation to assess and disclose foreseeable environmental risks when developing and implementing various economic activities as part of their positive duties to protect and fulfil human rights, in particular the obligation to acquire information through environmental impact assessments (EIA), to communicate that information to the public and to provide the public with an opportunity to take part in environmental decision-making.

The human rights obligations related to environment have been explored by various organizations, including United Nations Economic Commission for Europe, under which auspices the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Context) was adopted. The fundamental value of the Espoo Convention is that it recognizes the importance of public participation in the EIA process, including in a transboundary context, which in its turn helps to facilitate the relations between states, promote democracy, good governance and implementation of green economy through supporting disclosure of the environmental information to public and ensuring its participation in environmental decision-making process.

Uzbekistan is experiencing the strong economic growth. However, it is faced with an increasing demand to incorporate environmental considerations into economic and development planning in the country and beyond. Thus, the Government has recognised the need to improve environmental management, to develop and adopt a number of strategies on environmental protection, including on environmental impact assessment system and strengthening the role of public participation in environmental matters.

Public participation is the key precondition for transparent and accountable governance, democratisation of social values and better planning and fulfilment of public needs, especially for countries in a transition. However, more efforts are needed to ensure that the public has its rights and is able to enjoy them to influence the decision-making process, in particular on environmental matters. The implementation of the public participation process is not easy and faces some challenges caused by the lack of a systematic approach.

Recently the Government of the Republic of Uzbekistan had realized the benefits of the Espoo Convention in greening economy and good governance and expressed its wish to study feasibility of the accession to the Espoo Convention and implementation of its provision into national legislation. Since 2018 UNECE has been assisting the country in its efforts to introduce a modern environmental impact assessment and strategic environmental assessment systems in line with the Espoo Convention and the Protocol on SEA.

The process of implementing international treaties is rather complex and require comprehensive approach. The aim of this thesis is to examine the main challenges associated with implementation of the Espoo Convention in the Republic of Uzbekistan and to reveal possible ways to overcome it. The relevance of this study is also based on the fact that at the moment there are only two out of five Central Asian countries are Parties to the Espoo Convention and this study, in its turn, could also contribute to better understanding and building an appropriate approach to implement the Espoo Convention in other countries of Central Asian region that are not yet ratified the Convention.

Objectives

In order to achieve the aim of the thesis there is a need to carry out the following objectives:

- a) to outline the interlinkages between human rights and environment focusing on importance of public participation for ensuring sustainable development;
- b) to analyse the mechanism of ensuring effective public participation in environmental decision-making set under the Espoo Convention;
- c) to present the main challenges associated with implementation of the Espoo Convention in the Republic of Uzbekistan and to develop an appropriate approach to overcome them.

Methodology

The research is based on the qualitative research strategy. The required information was available in the UN official documents and publications, literature, press releases, case studies and obtained during the interviews with relevant stakeholders.

Thesis Scope

The problems of the implementation of the Espoo Convention in general have been discussed in various papers. However, the issues related to the implementation of the Espoo Convention in Uzbekistan which in its turn might facilitate the country's accession to the Convention have not been a subject of a recent research. Therefore, this research aims to analyse challenges of the implementation of the Espoo Convention in the Republic of Uzbekistan and to reveal some possible ways to overcome them.

Thesis outline

The chapters follow the order and logic of the thesis objectives. Chapter I explains the link between human rights and environment, outlining the importance of effective public participation in environmental decision-making process, in particular in environmental impact assessment procedure. Chapter II provides an overview of the concept, objectives and the main features of the Espoo Convention and explains the mechanism of ensuring effective public participation established under the Espoo

Convention. Chapter III provides an overview of the rapid development of Uzbekistan and presents the national context for the implementation of the Espoo Convention, focusing on main challenges revealed and provides recommendations on how to overcome them.

Chapter I

Human rights and the environment

1.1 Link between Human Rights and the environment

In the past decade, the relationship between the environment and human rights has received increasing attention from the international community, governments and academia.¹ A healthy and sustainable environment is necessary for the full enjoyment of a vast range of human rights. But environmental degradation and, in particular climate change, have various implications for the effective enjoyment of human rights, posing a serious risk to a safe environment and to fundamental rights to life, health and an adequate standard of living of individuals and communities across the world.² Consequently, human rights and the environment are interdependent.

Throughout the late 1950s serious environmental disasters occurred in various regions of the world. Such accidents demonstrated a need to develop legal measures to control unhealthy and dangerous activities and to protect the environment. In the late 1960 a modern environmental movement began, and after that, a reference to environmental rights did start to appear. So far, key international human rights treaties do not contain explicit right to a healthy environment, but they do recognize the right to life, that can be affected by environmental disasters and degradation.

International human rights treaties and the right to a healthy environment

Article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR) stipulate the right to life, as a fundamental and “non-derogable” right. In accordance with article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), State Parties shall ensure full realization of the right of everyone to the enjoyment of the highest standard of physical and mental health through, among other measures, improving all aspects of environmental hygiene.³ Only the African Charter on Human and Peoples’ Rights (“Banjul Charter”) and the Additional Protocol to the American

¹UN Human Rights Council, Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: preliminary report, 24 December 2012, A/HRC/22/43.

²Knox, John H., Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Mission to Costa Rica (March 21, 2014). United Nations Human Rights Council, A/HRC/25/53 Add. 1, 2014.

³UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") make explicit references between human rights and the environment. Article 24 of African Charter on Human and Peoples' Rights enshrines the right of people to live in satisfactory environment conducive to their development.⁴ According to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, people shall have the right to live in a healthy environment.⁵

The first recognition of the close relationship between human rights and the environment was in 1972 at the Stockholm Conference on the Human Environment. The Principle 1 of the Declaration of the United Nations Conference on the Human Environment (Declaration) stipulates that the right to adequate conditions of life in an environment of equality is a fundamental right and man are responsible for environmental protection for present and future generations. In accordance with Principle 21 of the Declaration, States have the sovereign right to exploit their own resources and the responsibility to ensure that those activities do not cause damage to the environment of other States.⁶ The theoretical discussions resulted to the development of the following approach in identification of the relationship between human rights and the environment.

First of all, the environment is a precondition to the enjoyment of human rights. Environmental degradation, including pollution of air, water scarcity and land degradation may deprive the realization of particular rights, such as the rights to life, food, water and health. At the same time, the human rights are tools to address environmental issues, both procedurally and substantively. From a procedural perspective, rights such as access to information, participation in public affairs and access to justice are central that enable citizens to take part in decision-making processes on environmental issues. From a substantive perspective, this underscores the environmental dimensions of protected rights. In addition, the human rights and the environment incorporated into the concept of sustainable development. This approach

⁴Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

⁵Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999, A-52.

⁶UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994.

has influenced global policymaking and further development in the field of human rights and the environment and facilitated the recognition of a new human right to a healthy environment.⁷

Environmental rights are sometimes described as third generation rights because it does not fit within the category of civil and political rights - the first-generation rights, and of economic, social, and cultural rights - the second-generation rights. The first-generation rights aspired to guarantee individual liberties, the second-generation rights - equality, while the third-generation rights are conceived as collective rather than individual, and they tend to challenge the sovereignty of the states.⁸

Nonetheless progress in defining and enforcing environmental rights continues on the international, regional, and national levels and the development and adoption of a number of international instruments that reflect the growing relationship between human rights and environment have been taking place in the last decade. By applying human rights prospective in environmental protection, it helps to better understand how environmental harm does interfere with the values that human rights are designed to protect. By confirming a strong link between human rights and the environment, it significantly contributes to ensuring the enjoyment of human rights and building a healthy environment.

In 1989, the UN Commission on Human Rights appointed a Special Rapporteur to undertake an examination of the linkages between human rights and the environment. The outcome of this examination was a draft declaration of principles on human rights and the environment. Although this document was not adopted formally by the UN, it provided a strong foundation for further work.⁹

In 1992 the Rio Declaration on Environment and Development was adopted. The Declaration recognizes the importance of preserving the environment and sets principles that serve as a guidance for UN Member States in creating national and international environmental policies and legislation. For instance, Principle 10 of the Rio Declaration states that each individual should have appropriate access to

⁷A/HRC/19/34

⁸Environmental Rights. Available at: <<https://www.encyclopedia.com/science/encyclopedias-almanacs-transcripts-and-maps/environmental-rights>>

⁹Environmental Rights. In S. Turner, D. Shelton, J. Razzaque, O. McIntyre, & J. May (Eds.), *Environmental Rights: The Development of Standards* (pp. I-Ii). Cambridge: Cambridge University Press, 2019

information concerning the environment and that States should encourage public participation in environmental decision-making process by making the relevant information publicly available.¹⁰ Principle 11 stipulates that States should develop and implement effective environmental legislation, and Principle 17 points out the importance of environmental impact assessment procedure, that should be undertaken for proposed activities that are likely to have a significant adverse impact on the environment.

Public participation in environmental decision making

A number of multilateral environmental agreements (MEAs) recognise the link between the environment and human rights and set out obligations on states to prevent environmental damage that could cause infringement of human rights. Some of these environmental agreements incorporate procedural obligations.¹¹ These obligations include: assess environmental impacts and make environmental information public; facilitate public participation in environmental decision making; and provide access to remedies for harm.¹² By including provisions related to public access to information, public participation in decision-making, and access to justice illustrate the links between human rights and the environment. There are various MEAs guarantee the provision of access to information, participation in environmental decision making and access to remedies, among others, the UN Framework Convention on Climate Change (UNFCCC)¹³ contains procedural obligations for Member States to ensure public access to information on climate change and its effect, the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade requires that Parties ensure that public has an access to information on chemical handling and accident management,¹⁴ the Minamata Convention on

¹⁰ Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, adopted at the eleventh special session of the United Nations Environment Programme Governing Council/Global Ministerial Environmental Forum.

¹¹ Cullet P, Definition of an Environmental Right in a Human Rights Context, 13 Netherlands Quarterly of Human Rights 25, 1995.

¹² Environmental Rights. In S. Turner, D. Shelton, J. Razzaque, O. McIntyre, & J. May (Eds.), *Environmental Rights: The Development of Standards* (pp. I-ii). Cambridge: Cambridge University Press, 2019.

¹³ United Nations Framework Convention on Climate Change (entered into force 21 March 1994) 1771 UNTS 107, 1992.

¹⁴ Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (entered into force 24 February 2004) (1998) 38 ILM 1.

Mercury states that each Party shall promote the provision to the public of available information on the health and environmental effects of mercury,¹⁵ the Protocol on Environmental Protection on the Conservation of Antarctic Fauna and Flora imposes the obligations on Parties to make available information on Specially Protected Species and relevant protected areas¹⁶, the Stockholm Convention on Persistent Organic Pollutants promotes public participation in addressing health and environmental effects of organic pollutants.¹⁷

UNHRC Resolution 2005/60 (2005) also recognized the link between human rights, environmental protection, and sustainable development. It encourages States to implement the principles of the Rio Declaration on Environment and Development, in particular Principle 10 and to take into account the environmental degradation and effect of climate change when developing environmental policies.¹⁸

The Human Rights Council in its resolution 7/23 of March 2008 and resolution 10/4 of March 2009 focused specifically on human rights and climate change, noting that climate change-related effects have a range of direct and indirect implications for the effective enjoyment of human rights. These resolutions have raised awareness of how fundamental the environment is as a prerequisite to the enjoyment of human rights.

The Committee on Economic, Social and Cultural Rights in its general comment No. 15 (2002) on the right to water stated that individuals should be given full access to information concerning water. It also urges States to assess the actions that may have adverse environmental impact on the right to health and to adopt comprehensive strategies to ensure that population is provided with safe water resources.^{19,20}

Another significant development in the field of environmental human rights occurred in 1998 with the adoption of the Aarhus Convention, which came into force in

¹⁵ Convention on Persistent Organic Pollutants (entered into force 17 May 2004) (2001) 40 ILM 532 (Stockholm Convention); UN Doc UNEP/POPS/CONF/4 arts 10 (1)(b)10(2).

¹⁶ Protocol to the Antarctic Treaty on Environmental Protection (entered into force 14 January 1998) (1991) 30 ILM (Madrid Protocol).

¹⁷ Lallas, P. (2001). The Stockholm Convention on Persistent Organic Pollutants. *American Journal of International Law*, 95(3), 692-708. doi:10.2307/2668517

¹⁸ UN Commission on Human Rights, Human Rights Resolution 2005/60: Human Rights and the Environment as Part of Sustainable Development, 20 April 2005, E/CN.4/RES/2005/60

¹⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11

²⁰ Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Report: Wastewater Management in the Realization of the Rights to Water and Sanitation, U.N. Doc. A/68/264 (Aug. 5, 2013)

2001. This is the only international legally binding instrument giving the public concrete rights of participation in decision-making and access to information and justice regarding the environmental matters that links environmental rights and human rights. The Convention stands on three “pillars” and imposes obligation on Parties to make environmental information available to the public, ensure the public participation in environmental decision-making process and provide an access to justice on environmental matters. This is reinforced by the compliance mechanism under the Convention, which allows members of the public to bring issues of compliance before the Compliance Committee.

The former Secretary General of the United Nations, Kofi Annan, called the Aarhus Convention “the most ambitious venture in environmental democracy undertaken under the auspices of the United Nations. Its adoption was a remarkable step forward in the development of international law.”²¹ This clearly demonstrates that democracy, good governance, participation and the rule of law are at the heart of sustainable development. The Aarhus Convention aims at assisting countries in achieving the Sustainable Development Goals, in particular Goal 16, by implementing commitments on access to information, public participation and access to justice on environmental matters. The Aarhus Convention is a unique treaty which addresses procedural environmental rights.

By promoting and supporting environmental democracy, it helps to ensure that citizens’ interests are addressed in decision-making process on environmental matters. The obligation to protect human rights from environmental harm does not mean that States should strictly prohibit all economic activities that may cause any environmental damage but they should find a balance between environmental protection and technological development.²²

European Court, as a regional body, has concluded that States must provide access to environmental information and provide for assessments of environmental impacts on human rights. The decision-making process must be accompanied by studies in order to evaluate in advance the effects of those activities that might have infringe

²¹Statement of Kofi Annan, Secretary General of the United Nations, cited in United Nations Economic Commission for Europe Press Release of 29 October 2001, ‘Environmental Rights Not a Luxury’

²²Council of Europe, Manual, p. 20. *Hatton and others v. United Kingdom*, No. 360022/97, 8 July 2003, para. 98.

people's rights and to ensure balance between the economic and environmental considerations.²³

On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. The Resolution calls upon States and international organisations to conduct capacity-building activities in order to ensure safe, clean and accessible drinking water for all.

In 2011, the Human Rights Council made a decision to appoint an Independent Expert in the field of human rights and the environment. In March 2012 the Human Rights Council established a mandate on human rights and the environment, which studies the relations between the human rights and the enjoyment of a sustainable environment and promotes best practices of incorporation of issues of human rights and environment into policies. The mandate was given to Prof. John Knox. The work done under the mandate resulted in a set of sixteen 'Framework Principles', a number of human rights obligations that are recognised by the international community. In particular, it is worthy to mention that some very important principles are included in this Framework, such as Principle 6 that highlights obligation of states to provide for education on environmental matters since childhood that will strengthen the capacity of the public to understand environmental challenges and better exercise their rights to take part in environmental decision making; Principle 7 that relates to access to information; Principle 8 that refers to the importance of environmental impact assessments which helps addressing potential environmental impacts, including transboundary effects that may occur as a result of the development of the proposed activities and Principle 9 that facilitates public participation in decision-making.²⁴

After adopting the 2030 Agenda for Sustainable Development States confirmed that sustainable development based on the following pillars, among others, promotion of

²³Taşkin v. Turkey, 2004-X European Court of Human Rights 179, para. 119 and Öneriyildiz v. Turkey, 2004-XII European Court of Human Rights 1, para. 90 (applying the right to information in connection with the right to life) and Ogoniland case, para. 53 (deriving obligations from the right to health and the right to a healthy environment).

²⁴Knox, John H., Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Framework Principles (January 24, 2018). United Nations Human Rights Council, A/HRC/37/59. Available at SSRN: <https://ssrn.com/abstract=3148450>

participation of all groups in decision-making and integration of environmental protection into all policies and programmes. Some Governments have initiated the national institutional reforms in order to establish coherent system of incorporation of environmental consideration when making decisions in various policies. This approach helps to enhance economic development and incorporate environmental issues into consideration when developing national and local plans and programmes.²⁵

Obligations of States to promote human rights and to protect environment

The number of domestic laws, judicial decisions, and academic studies on the relationship between human rights and the environment have grown rapidly. Human rights law imposes certain procedural obligations on States in relation to environmental protection.²⁶ States should, in all climate change-related actions, fully respect human rights and have obligations to protect environment and to adopt and implement relevant national legal frameworks. Many states have adopted the relevant national legislation, including environmental impact assessment laws, in accordance with principle 17 of the Rio Declaration. After a State has adopted environmental regulation, it must implement and comply with those laws. Regulators need to have the capacity, in terms of human and financial resources. States are responsible for providing relevant education that helps to increase understanding of environmental effects on the health and well-being of people and nature and strengthen the capacity to address those challenges.²⁷ The enjoyment of fundamental human rights depends on the fulfilment by the governments their obligations.

Current social inequalities and environmental degradation around the world pressure social-economic development of countries. In its turn, environmental impacts of the economic and social development are also cumulative and sometimes irreversible. Increasing number of countries have developed green economy policies that focus on the link between the economy and environment. By implementing green economy

²⁵Report of the United Nations Conference on Environment and Development (UNCED) was held in Rio de Janeiro, Brazil, from 3 to 14 June 1992.

²⁶Knox, John H., Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Mission to Costa Rica (March 21, 2014). United Nations Human Rights Council, A/HRC/25/53 Add. 1, 2014;

²⁷Knox, John H., Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Framework Principles (January 24, 2018). United Nations Human Rights Council, A/HRC/37/59

policies, governments trigger a catalyser to enhance national growth, sustainable development and international cooperation.²⁸ It is obvious that the relationship between democracy, good governance and the environment is multidimensional. Good governance is essential for efficient implementation of green economy. Transparency and public participation are effective tools for enhancing democracy and good governance. In order to ensure environmental democracy in the country, government should be transparent and accountable.

Human rights bodies have repeatedly stated that in order to protect human rights from infringement through environmental harm, states should provide access to environmental information and to conduct the assessment of environmental impacts that may interfere with the enjoyment of human rights.²⁹ The human rights obligations and commitments have the potential to strengthen international, regional and national cooperation in various fields. The challenge posed by sustainable development is to ensure that environmental protection is fully integrated into economic policy.

While recognizing that the right to pursue economic development cannot lawfully be exercised without taking into account impact on the environment or on human rights, it raises the question of whether States have obligations to protect human rights in other countries when activities carried out within its own territory affect the enjoyment of human rights in the neighbouring State. A State that implements activities within its own territory which causes a risk of environmental harm extraterritorially does owe obligations to those potentially affected countries. It is most likely to violate the human rights of those affected extra-territorially if it does not permit them equal access to environmental information and participation in environmental impact assessment procedure.

In general according to international law, countries have a duty to exercise due diligence over the planned activities within their own territory that may cause significant effect to other states or areas, including the global environment.³⁰ The

²⁸“Towards Green Growth (Summary in Russian)” [2011] OECD Green Growth Studies Towards Green Growth

²⁹ Knox, John H., Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Mission to Costa Rica (March 21, 2014). United Nations Human Rights Council A/HRC/25/53 Add. 1, 2014.

³⁰Alan Boyle, Human Rights and the Environment: Where Next?, *European Journal of International Law*, Volume 23, Issue 3, August 2012

Committee on Economic, Social and Cultural Rights has interpreted the International Covenant on Economic, Social and Cultural Rights as requiring its parties “to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries”.³¹ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights stipulates that States have an obligation to avoid causing harm extraterritorially and States are obliged to protect human rights extraterritorially.

The good example of effective instrument of strengthening environmental policymaking, especially in the areas of environmental protection and management is an environmental impact assessment procedure. In the next chapter we will consider in more details the nature of the environmental assessment, including in a transboundary context, its importance as well as the main challenges of the effective public participation in this process.

³¹UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11

1.2 Environmental impact assessment and public participation as effective instruments for ensuring human rights in the process of environmental decision-making

Environmental impact assessment procedure

Economic, social and environmental change is inherent to development. The need to avoid adverse impacts and to ensure long term benefits of economic activities led to the concept of sustainability. In order to predict environmental impacts of any development activity and to provide an opportunity to mitigate the negative impacts, the procedure of environmental impact assessment (EIA) was introduced. EIA is a systematic process that examines the environmental consequences of development actions in advance and helps to avoid costly mistakes that interfere with the enjoyment of human rights. At the same time, EIA is an effective management tool for decision-makers which provides them with an information on the likely consequences of their decisions in relations to new projects and helps them to evaluate environmental and health impacts of the proposed activity prior to the final decision. The aim of EIA is to assess how the environment is expected to be affected by planned activities such as highways, power stations, water resource projects and large-scale industrial facilities. EIA is a special form of procedural protection unique to environmental law and human rights law, which is linked to the rights to information and public participation. The EIA seen as a technique for ensuring that the environment and development are mutually reinforcing.

EIA is still relatively new in some countries, while most of the countries have it as a legal or administrative requirement.³² Under the EIA a number of specific forms of environmental assessment have developed, including social impact assessment (SIA), health impact assessment (HIA) and strategic environmental assessment (SEA). SEA is a more recent tool, it emerged in the late 1980s and applies to development and adoption policies, programmes and plans since the implementation of such actions could have significant environmental consequences.

³² Dougherty TC and Hall AW, Environmental Impact Assessment of Irrigation and Drainage Projects (FAO 1995)

EIA was first introduced in the United States of America in 1970s and has spread rapidly since then to all parts of the world. The National Environmental Policy Act (NEPA) represented the first formal legal act incorporating the impact assessment process. The Act served as a guide for national agencies whose actions had the power to affect the environment in significant ways. According to the NEPA, national authorities were required to prepare a statement of environmental impacts of the planned activities and to make it available to the public to demonstrate how the environmental considerations had been addressed. Following this example many other countries have incorporated some form of environmental impact assessment into their legislation.³³

EIA was one of the first pieces of the European Union environmental legislation. The original EIA Directive was adopted in 1985 and applied to a wide range of public and private projects, such as nuclear power plants, long-distance railway lines, motorways, airports and others. The EIA Directive has been amended three times, in 1997, bringing it in line with the Espoo Convention by widening its scope and increasing the types of projects covered, in 2003 by aligning it with the provisions on public participation of the Aarhus Convention and in 2009 by adding projects related to the transport, capture and storage of carbon dioxide in the list of activities that fall under the scope of screening procedure. In 2011 the EIA Directive, together with its three amendments, was codified by Directive 2011/92/EU and was further amended in 2014 by Directive 2014/52/EU.³⁴

In general, EIA requires a comprehensive assessment of the environmental impacts of the planned activity and therefore has proved to be an important tool for an integrated approach for the environmental protection. EIA aimed at identifying and assessing likely environmental impacts of the proposed activity, considering alternatives, integrating of environmental, economic, social and health concerns.

³³Richard K. Morgan (2012) Environmental impact assessment: the state of the art, *Impact Assessment and Project Appraisal*, 30:1, 5-14, DOI: 10.1080/14615517.2012.661557

³⁴Oleg Cherp, Norman Lee Evolution of SER and OVOS in the Soviet Union and Russia (1985–1996), *Environmental Impact Assessment Review* Volume 17, Issue 3, May 1997

EIA consists of the several important steps. The first step is screening, helps to determine whether an activity may have significant environmental impacts. If so, then the next step applied, scoping, which seeks to identify at an early stage all possible impacts and all the alternatives that could be addressed. The consideration of alternatives is very important since it helps to ensure that the alternative project locations, operating conditions and the 'no action' option have been considered. The description of the project should include a clarification of the purpose and rationale of the project, as well as its characteristics. Next step – mitigation, it introduces the measures to avoid, reduce and remedy of any significant adverse impacts. As an outcome of the procedure, EIA report should be prepared and contain the following information: a description of the project, assessment of the main effects which the project is likely to have on the environment, a description of the measures envisaged to avoid, remedy significant adverse effects, a description of reasonable alternatives and an indication of the main reasons for the option chosen.

Public participation in the environmental impact assessment procedure

A very important step is ensuring effective public participation in environmental impact assessment procedure conducted for the proposed activity. Public should be given with an opportunity to access the relevant importation, provide its comments in the reasonable timeframe and the outcomes of this consultations should be taken into account in the final decision. Final decision is a decision taken by the relevant authorities regarding the proposed activity.

Properly implemented EIA with effective public participation has a very important benefits for decision makers. It includes cost savings, since incorporation of public opinion into environmental considerations at early stage of planning helps to avoid costly mistakes in the future during the project implementation. Another benefit is effective promotion of dialogue between the authorities, community and developer, which raises awareness of public about the proposed activity and increases public trust in governmental decisions. The main indicator of EIA effectiveness is whether environmental concerns of citizens were taken into account in the final decision. EIA assigns different roles and responsibilities to various actors and if properly implemented, contributes to the increased accountability and transparency of decision-

making process at national level and effectiveness of projects in terms of financial resources and reduced environmental damage. However, there are some challenges for effective implementation of EIA, among them are: difficulties in ensuring effective public participation, insufficient integration of EIA outcomes to the final decision, limited understanding of the roles of various stakeholders, insufficient integration of health aspects, limited technical, financial and human national capacities to implement EIA.³⁵

EIA is a special form of procedural rights which is linked to the rights to information and public participation, and implies the right to be heard during decision making process concerning the environmental issues. Public participation in EIA has a quantitative and qualitative dimension. Quantitative dimension means that public opinion may influence the decision of the relevant authorities, while qualitative dimension means that the public can contribute to adding perception of the aspects of proposed activities by relevant authorities when making decisions.

In order to ensure effective public participation, it is important to provide public with timely access to environmental information. The information provided should be sufficient, relevant and easily understood by non-experts; time must be sufficient to allowed members of the public to consider information and submit their comments and views; the views expressed by public should be taken into account before the final decision is made by relevant authority.³⁶

The right of access to environmental information means is not only providing an access to information related to the specific procedure of environmental impact assessment but to all the information that in connection with the protection of essential environmental values. That enables educating and raising awareness of the public about the state of the environment. The right of access to environmental information is the basis for public's participation in the environmental impact assessment.

Public participation is given some prominence, as it is a topic which has developed substantially in the last 20 years, is critical to all forms of impact assessment, but is still the source of many problems in practical impact assessments. By conducting

³⁵ Wood C, *Environmental Impact Assessment: a Comparative Review* (Routledge 2014)

³⁶ Prem Kumar Dara, T. Byragi Reddy, and KetemaTilahunGelaye. (2017). "PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT-LEGAL FRAMEWORK." *International Journal of Research - Granthaalayah*, 5(5), 270-274

a proper environmental assessment of the proposed activities and ensuring effective public participation in the environmental decision-making, the states can ensure the proper and effective realization of human rights.

Globalization accelerates economic growth and increases environmental deterioration in developing countries. Thus, many developing countries are attempting to strengthen EIA systems. However, many developing countries face financial, structural and resource constraints on introducing EIA arrangements in line with international standards.

To ensure an effective public participation under EIA, it is important to take into consideration in the beginning of the planning process that public participation procedure is important part of EIA, to include in the budgets financial resources for ensuring public participation in EIA, to organize awareness raising activities as well as education and training programmes on EIA and disseminate the relevant information about importance of public participation and the rights of people to take part in environmental decision making.

The United Nations has played a significant role in developing international instruments promoting sustainable development, protecting environmental rights, and assisting countries, especially those are in transition in developing national policies and legislation in line with international standards and Agenda 2030.

Economic Commission for Europe (ECE) is one of five regional commissions of the United Nations aims at promoting sustainable development and pan-European economic integration and supporting countries in the implementation of the 2030 Agenda. Special focus is given to the environmental issues through formulating environmental policy and supporting international initiatives. Under the auspices of UNECE were negotiated and adopted several international treaties, known as multilateral environmental agreements, setting up the requirements for environmental impact assessments, including in a transboundary context and promoting the public participation in environmental decision making, such as the Convention on the Transboundary Effects of Industrial Accidents, the Convention of the Protection and Use of Transboundary Watercourses and International Lakes, the Convention on Long-range transboundary air pollution and the Convention on Access to Information, Public

Participation in Decision-Making and Access to Justice in Environmental Matters and the Convention on Environmental Impact Assessment in a Transboundary Context.

The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) perfectly combines the requirement for conducting environmental impact assessment, including in a transboundary context and ensuring effective public participation. Moreover, the secretariat of the Espoo Convention has been assisting countries of Eastern Europe, Caucasus and Central Asia in enhancing their environmental policies and legislation in line with international standards, in particular with the Espoo Convention. In the next section we are going to discuss the main features of the Espoo Convention that will help us to better understand the functioning of the treaty and to see the main challenges of its implementation.

Chapter II

The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)

2.1 Overview of the concept and objectives of the Espoo Convention

The consequences of climate change and environmental degradation have no borders. Thus, it is important when developing a new infrastructure project to consider the impact it may have on the environment of neighbouring states. After the 1972 Stockholm Declaration experience of taking into account a transboundary environmental impact when taking decisions has been growing. Usually, in most cases it involves two countries – the country of origin, where the project is located and the potentially affected country, on whose territory it may cause significant environmental impact. However, in recent years, there has been a growing number of cases where more than two countries involved (large-scale infrastructure projects).

The Espoo Convention sets out the obligations of the Parties to assess the potential environmental effects of certain projects, to notify and consult with other Parties and to ensure that consideration of environmental factors is given well in advance before the final decision is taken and that people living in areas likely to be affected by an impact of the activity are informed and provided with an opportunity to submit comments. The Espoo Convention is an innovative international instrument that has influenced the development of EIA processes in many countries and is the only international instrument that offers a legal framework that helps to ensure international cooperation in assessing environmental impacts of proposed activities, and in particular in a transboundary context.

The Espoo Convention was elaborated under the auspices of the United Nations Economic Commission for Europe (UNECE) and was adopted in Espoo, Finland on 25 February 1991. By the end of 2019 there were 45 Parties to the Espoo Convention.³⁷ It was first amended on 27 February 2001 and the amendment entered into force on 26 August 2014. It opened the accession to the Convention by United Nations Member States that are not members of the UNECE, and clarified that the public may participate

³⁷ Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, European Union.

in procedures under the Convention including civil society and, in particular, nongovernmental organizations.³⁸ On 4 June 2004 the second amendment was adopted and on 23 October 2017 entered into force.³⁹ This amendment allowed affected Parties to participate in scoping procedure conducted within EIA. It also revised the list of activities included in Appendix I of the Convention and addressed institutional issues under the Convention such as review of compliance, powers of the Meeting of the Parties and entry into force of amendments. In 2003, the Convention was supplemented by the Protocol on Strategic Environmental Assessment, which entered into force in 2010. The Protocol ensures that Parties integrate environmental and health considerations into their plans, programmes, policies and legislation.

The Espoo Convention is one of the most progressive multilateral environmental agreements that is intended to help make development sustainable by promoting international cooperation in assessing the likely impact of a proposed activity on the environment in a transboundary context and promoting right to participate in environmental decision making.⁴⁰

However, environmental impact assessment including in a transboundary context existed before the adoption of the Espoo Convention, it is still the most specific international environmental treaty that addresses issues associated with environmental transboundary impacts.

Procedural steps under the Espoo Convention and the main challenges of implementation

The procedure set up by the Espoo Convention consists of several steps. First of all, the Convention applies with regard to the activities listed in Appendix I to the Convention. The transboundary EIA procedure starts with a process of screening. First, it is necessary to determine whether a proposed activity may have significant impacts across borders and fall under the scope of the Convention. Usually Convention is applied between neighbouring Parties but in some cases it also applies to long-range

³⁸ 2nd Meeting of the Parties (MoP), Decision II/14, Sophia 26-27 February 2001, Un Doc. ECE/MP.EIA/4 at 144 Annex XIV

³⁹ 3rd Meeting of the Parties (MoP), Decision III/7, Cavtat (Croatia) 1-4 June 2004, ECE/MP.EIA/6 at 93 Annex VII

⁴⁰ Mari Koyano (2008) The significance of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) in international environmental law: examining the implications of the Danube Delta case, Impact Assessment and Project Appraisal

transboundary impacts, including more than one potentially affected country. This means that notification of potentially affected Party is always necessary, unless significant adverse transboundary impact can be certainly excluded. Once it was determined that the planned activity is likely to have adverse transboundary impact, the Party of origin sends notification to potentially affected Parties which should include sufficient amount of information for affected Party and its public to decide whether it intends to participate in EIA transboundary procedure or not. When notification was sent, a response by the notified country, indicating whether it wishes to participate in transboundary EIA is required.

If a Party of origin after screening procedure concludes that the Convention does not apply in that particular case, the affected Party can, if it considers appropriate, to request the initiation of discussions on the potential transboundary impact with the Party of origin, requesting to provide the relevant information. In accordance with the Convention, for the large-scale transboundary projects, the precautionary and preventive approach should apply, which includes early consultation between the Party of origin with potentially affected Parties on whether notification is necessary. When Parties are not sure about environmental significance of planned activities, they may refer to the Appendix III to the Convention which provides criteria to determine of the environmental significance of activities that are not listed in Appendix I to the Convention. The main criteria include size, location and effects. In terms of location it should be assessed whether the proposed activity is located close to an area of special environmental importance and whether it be likely to have significant effects on the population. In terms of effects, it should be considered whether proposed activities will likely to cause serious effects on population or on species.

The next stage is scoping. Scoping can be an opportunity to present benefits of the project and to identify ways of improving environment. Sometimes scoping report produced before the full EIA report to facilitate the consultation process with relevant parties and public before the option has been chosen.⁴¹

Next important step is the preparation of the environmental impact assessment documentation. Appendix II to the Convention sets out the requirements concerning the content of that documentation. After completion of the required documentation by the

⁴¹ UNECE Protecting our environment. How environmental impact assessment help, 1998

Party of origin, it has to be provided to the potentially affected Party. The information should include, among others, a description and a purpose of the proposed activity, a description of reasonable alternatives, including the no-action alternative, a description of the potential environmental impact of the proposed activity and mitigation measures, a non-technical summary and EIA report. The documents should be prepared by the competent national authorities of the Party of origin, who is responsible for collecting and assessing such information. The relevant EIA documentation should be translated into the official languages of the Party of origin and potentially affected Parties to enable the effective consultation process with relevant authorities and the public. The Convention requires to ensure that public of the affected Party is given an opportunity to participate in the environmental impact assessment process, which means that public should be provided with the right to be informed and with the right to express its views concerning the proposed activity as early as possible but no later than when informing the public of the Party of origin about that proposed activity. The Party of origin taking part in the process should ensure that the public of the affected Party (as well as its own public) is informed and provided with possibilities to submit its comments. Each Party is responsible for dissemination of relevant information and collection of comments from the public. Thus, each Party should ensure effective public participation in a transboundary EIA procedure. The Party of origin should start the formal consultation with the affected Party within the reasonable timeframe and send the information to the relevant national authorities of the affected Party for further consideration and possible comments. Official consultations should take place at sufficiently high level. After receiving comments from the affected Party, the Party of origin should take them into account during the final decision on the proposed activity. The Convention also provides an opportunity for the Parties to determine whether a post-project analysis shall be carried out.

By applying transboundary EIA states raise awareness of the environmental consequence of project implementation, contribute to enhancing international cooperation in protecting environment and promote the rights of public to take part in environmental decision making. However, some challenges associated with application of transboundary environmental impact assessment still remain. For instance, if the affected Party does not respond to the notification, it is not clear whether it wish to

participate in the procedure. Lack of public access to hearings as well as unwillingness of the public to participate, insufficiency of national systems for public participation may lead to delays and decrease the quality of assessment. The transboundary EIA may cause costs for preparing and sending the notification, translating documents into the language of the affected Party, translating comments and opinions received from the affected Party, organizing public hearings. Among other challenges: disagreement about who covers costs of public hearings and translation of documentation, political trade-offs with national interests interfering with the transboundary environmental impact procedure.⁴²

To facilitate the effective procedure of transboundary EIA, the Convention provides a legal basis for concluding bilateral or multilateral agreements in order to implement the obligations under the Convention. It can be whether general or more specific agreement containing detailed guidance for the application of the Convention between the Parties concerned.

The main bodies of the Espoo Convention

The decision-making body under the Espoo Convention is the Meeting of the Parties to the Espoo Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment (MoP) which keeps under continuous review the implementation of the two treaties, including reviewing the relevant policies and approaches to effectively apply environmental impact assessment in a transboundary context, exchange the relevant practices and assisting the Parties in applying the Convention and the Protocol. The MoP takes all necessary decisions to support the implementation of the Convention, including on the content of its work plan and on its budget, developing the reporting system and considering individual cases of non-compliance and it meets approximately every three years.

To enhance the effectiveness of implementation of the Espoo Convention and to support the work of the MoP, additional subsidiary bodies were established, the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Working Group) and the Implementation Committee. Working Group assists Parties in the implementation of the Convention and the Protocol and in

⁴² REC and UNDP Benefits of Strategic Environmental Assessment, Brochure, 2003

management of the workplan. It also monitors the expenditure of funds associated with the implementation of the workplan and makes recommendations for consideration at subsequent sessions of the MoP.⁴³ The aim of the Implementation Committee is to review compliance by the Parties with their obligations under the Convention with a view to assisting them fully apply the Convention and the Protocol. The Committee was established by the MoP in February 2001 and comprises eight members, nominated by Parties that are elected by the MoP.⁴⁴

The MoP is the plenary organ of the Parties to the Convention. MoP as the highest treaty body has a final decision discretion, which is exercised after receiving the report with findings and recommendations from the Implementation Committee. When the non-compliance is found, the MOP can take measures towards the country that in non-compliance with the Convention. For instance, it might request adoption of new legislation that in line with the Convention, it might request the suspension of the project or even issue a caution. Certain elements of enforcement in a form of noncompliance response measures having sanction-oriented features. The normative guidance provided in the decisions of the MOP is authoritative. Such decisions of the MOP put political pressure on the country. After the decision is taken by the MOP, the implementation Committee follows up and monitors and reports to the MOP at its next session on its implementation by a Party.

⁴³Excerpt from ECE/MP.EIA/SEA/2Decision I/5

⁴⁴Decision II/4 of the second Meeting of the Parties, revised as decision III/2

2.2 Public participation in the context of the Espoo Convention

The public and non-governmental organisations (NGOs) play an important role in environmental decision making. The Espoo Convention enshrines the right of public to participate in the environmental assessment of projects, including in a transboundary context and establishes an effective mechanism for promoting and ensuring effective implementation of the right of people to participate in the process of decision-making that may have an impact on their lives and promotes the right to live in healthy and sustainable environment. To better understand how the treaty contributes to the promotion of human rights we are going to study in more details the mechanism of ensuring public participation under the Espoo Convention.

The public and NGOs have a very important role to play in the implementation of the Espoo Convention. Public participation in transboundary EIA contributes to enhancing the relations between states, developing good governance and democracy in the country, promoting peoples' right to participate in environmental decision-making and raising the public trust in governmental decisions.

The Party of origin triggers the application of the Espoo Convention in case if it considers that the planned activity at its own territory is likely to have an adverse transboundary impact on the environment of neighbouring state, by sending a notification to the potentially affected Party. By sending the notification the Party of origin provides an opportunity to the relevant authorities and the public of the affected Party to participate in transboundary EIA and submit their comments or objections concerning the proposed activity, e.g. provides the public of the affected Party with right to participate. From that moment the both Parties are responsible for ensuring the effective public participation at the territory of the affected Party.

In case if no notification has taken place and if the public of the affected Party considers itself potentially affected, it may request the national competent authority to enter into a discussion with the Party of origin on whether the proposed activity is likely to have an adverse transboundary impact and to request the provision of relevant

information and documentation that would enable the public of the affected Party to participate in a transboundary EIA procedure.

If the Government of the affected Party becomes aware and receives notification from the Party of origin about the planned activity but does not intend to participate in the EIA procedure, while the public of affected Party wishes to be notified and consulted it can't trigger the application of the Convention because the Convention regulates the relations between states. In that case the public of the affected Party might use the mechanism set under the Aarhus Convention. While the Espoo Convention regulates the relations between the states, the Aarhus Convention regulates the relations between citizens and the state and empower people with the right to participate. The Espoo Convention and the Aarhus Convention are complementing each other in regulating the matter of public participation in environmental decision making.

The application of the Espoo Convention can be triggered by the Party against another Party (affected Party against Party of origin) when the latter failed to fulfil its obligation under the Convention to notify and to consult with potentially affected Party and its public on the proposed activity that is likely to have adverse transboundary impact.

The Espoo Convention imposes obligations on states with regard to ensuring public participation, in particular, it requires to establish national EIA procedure that permits effective public participation in environmental decision making. It requires not only ensure effective public participation on the territory of the state (Party of origin) where the proposed activity is planned, moreover, article 3.8 of the Convention requires that the Party of origin has a responsibility to inform public of neighbouring state about the activity that is likely to cause significant adverse transboundary impact on their state and provide them with an opportunity to submit their comments and objections.

As set by article 3.1 of the Convention, notification of the affected Party should be made not later when the Party of origin informing its own public concerning the proposed activity and this notification should contain as much as possible information to allow affected Party and its public to make a decision regarding their participation in transboundary EIA. The notification should be sent to the point of contact regarding the

notification, specifying the timeframe within which the response to the notification should be sent to the Party of origin, according to common practice the timeframe given usually between six and seven weeks.

After notification was sent by the Party of origin, the affected Party should ensure that its own public is informed about the proposed activity and provided with an opportunity to make comments and objections. In such a way the Convention imposes obligation on states to promote and protect not only rights of its own public but also the right of people living in another country that are likely to be affected by the implementation of the proposed activity. The Convention applies only with regard to the activities listed in appendix I to the Convention that is likely to cause a significant adverse transboundary impact.⁴⁵

In case if the affected Party takes a decision to participate in a transboundary EIA, then the both parties (an affected Party and a Party of origin) share the responsibility to ensure effective public participation in transboundary EIA. Party of origin is responsible for providing the public of the affected Party with an equivalent opportunity as its own public to participate in the EIA process, including distribution of the relevant documentation.

If the Party of origin denies any possible adverse transboundary impact on the territory of the affected Party, but the affected Party wants to enter into discussion and to take part in EIA with regard to the proposed activity, it may request the Party of origin to exchange sufficient information and hold the discussion on whether the proposed activity is likely to have a significant adverse transboundary impact. If the Parties cannot find an agreement on this matter, any such Party may submit the request for an inquiry procedure. So far, the inquiry procedure was invoked only once in 2004, regarding the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian Sector of the Danube Delta.

As we can see the Espoo Convention actively promotes the right of the public to participate in decisions regarding environmental matters and provides a Party with an

⁴⁵ Espoo Convention on Environmental Impact Assessment in a Transboundary Context, February 25, 1991 (entered into force Sep. 10, 1997).

effective instrument to ensure public participation not only for public of its own but what is more important, the public of the another country.

2.3 Compliance mechanism to ensure effective public participation under the Espoo Convention

To ensure effective review of implementation of the Convention and to assist Parties to fully comply with their obligation, an additional treaty body was established in 2001 at the second Meeting of the Parties to the Espoo Convention – the Implementation Committee.⁴⁶ The Implementation Committee is an important body of the treaty that has considerable discretion to interpret and apply the Convention.

The developed compliance mechanisms functioning under the Espoo Convention is based on facilitative approach: non-adversarial and assistance-oriented procedure and has a provision on dispute settlement. The Implementation Committee consists of eight members and holds its meetings at least once a year. The main objective of the Committee is to assist Parties to comply with their obligations under the Convention by examining the information received concerning possible non-compliance by a Party, reviewing the information concerning national implementation of the Convention based on the reports submitted by Parties and by providing the recommendations on procedural, technical or administrative matters of compliance and implementation of the Convention to the Parties concerned. The established mechanism provides several opportunities for consideration of matters on non-compliance by the Committee.

Performance review mechanism under the Espoo Convention

To ensure incorporation of the relevant provisions of the Convention concerning public participation into national legislation and its effective implementation, the performance review mechanism was established under the Convention. Each party on a regular basis is obliged to submit a questionnaire containing the list of questions with regard to the legislative, regulatory and other measures taken by the Party to effectively implement relevant provisions of the Convention, including on public participation in EIA procedure in a transboundary context, and their practical implementation. The questionnaire is a ‘soft’ law instrument and can be modified after each reporting period.

⁴⁶ 7th session of the Meeting of the Parties (MoP), Decision III/2, Minsk, 13-16 June 2017, appendix (ECE/MP.EIA/6) as amended by decision VI/2 (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1)

Based on the analysis of the filled questionnaires submitted by the Parties, on a regular basis the secretariat prepares the review of implementation of the Convention and submits it for consideration of the Implementation Committee, which after its consideration submits it to the MOP. If the Implementation Committee found that a Party is not fulfil its obligations under the Convention, it can provide its recommendations for further consideration and actions by the MOP. Such mechanism allows for a proper assessment of facts in view of compliance and for monitoring that facilitates the dialogue between the treaty bodies and the reporting member states. Reporting mechanism is very essential element in the compliance mechanism under the Espoo Convention.

According to the Fifth Review of Implementation of the Convention with regard to the implementation of relevant provisions of the Convention on ensuring effective public participation under EIA procedure, in almost all cases Parties of the Convention reported that the relevant provisions of national legislation were put into place. When they act as Parties of origin, the public of the affected Party can submit comments on the proposed activity through their relevant national authority and can take part in public consultations. When Parties act as affected Parties, in most of the cases, their own public provided with an opportunity to take part in public consultations with regard to the proposed activity that undergoing the transboundary EIA.⁴⁷

Compliance mechanism under the Espoo Convention

Another mechanism to protect the right of citizens to participate in decision making process on environmental matters is to trigger the consideration by the Implementation Committee of the information on possible non-compliance. One of the key functions of the Implementation Committee is to examine the matter on possible non-compliance by a Party with its obligations under the Convention and make the recommendations to the Parties concerned on measures required. There are several ways to trigger this process. First of all, the process of examination of the matter by the Implementation Committee under the Espoo Convention can be triggered by the Party itself in relation to its own obligations. It can be also triggered by a Party against another Party concerning its compliance with the Convention. The process also can be

⁴⁷ Fifth review of implementation of the Convention (as adopted by MOP 7) ECE/MP.EIA/2017/9

initiated by the Implementation Committee itself if it finds profound suspicion of non-compliance by a Party. The Committee can become aware of the possible non-compliance through different sources, including information from the public.⁴⁸

When the Committee receives the information for its consideration and decides that it is admissible, the Parties involved in the matter gets notified on their right to present to the Committee with the relevant information on that matter. Then the Committee starts the process of information gathering. During this process it might request the relevant information from Parties involved in the matter and it also might invite them to participate in the hearings during the sessions of the Committee, if required. In case if the information was submitted by NGO, it also gets informed about the progress made in consideration of the case and it also have an opportunity to present to the Committee any additional corroborating information on the matter. If after the information gathering procedure the profound suspicion of non-compliance is conformed the Committee opens a Committee Initiative.

The most recent example of the Committee initiative concerning, among others, the matter of public participation in transboundary EIA is a case regarding the planned construction of NPP Hinkley Point C by the United Kingdom (EIA/IC/CI/5) where the United Kingdom failed to comply with the Convention by not notifying the potentially affected parties, including Germany and Ireland about the construction of the Hinkley Point C nuclear power plant project and failed to ensure participation of the public of the affected Party with regard to the proposed activity. After thorough consideration of the case by the Implementation Committee, and as an outcome of deliberations held with the Parties concerned, the Implementation Committee provided the relevant recommendations to the United Kingdom, which in its turn were addressed: the United Kingdom entered into discussions with the Parties that requested notification or additional information with regard to the construction of NPP Hinkley Point C and shared the relevant information with the potentially affected Parties (Denmark, Germany, Ireland, Luxembourg, the Netherlands and Norway). The Parties concerned accepted the consultation process offered by the United Kingdom and considered that at the current stage of the project no further action from the United Kingdom was

⁴⁸ Operating rules of the Implementation Committee// Espoo Convention Annex to MoP decision IV/2, ECE/MP.EIA/10, rule 15;

required.⁴⁹ At the intermediary session of the MOP the Decision S/1h on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention in respect of the Hinkley Point C nuclear power plant (ECE/MP.EIA/2019/9) was adopted.

The compliance mechanism under the Espoo Convention developed over time. For instance, at its fifth meeting, the Committee was asked to consider the information that was brought by an NGO regarding a potential non-compliance by a Party. The Committee did not consider this information because it decided that considering the information from NGOs and the public relating to specific non-compliance cases was not within the Committee's existing mandate. However, the MoP has subsequently decided not to limit initiatives with reference to the source of the information regarding non-compliance.⁵⁰

The Espoo Convention sets out obligations on states to ensure effective public participation in a transboundary EIA. Parties of the Espoo Convention have various types of EIA processes enshrined in national legislation with different methods and degrees of public participation. To better implement the Convention, an effective national legislative and institutional framework should be put in place. In some cases, at the moment of ratification of the Convention the country already has in place the legislation that is in line with the Convention. On the other hand, there are many examples when the country had started the process of bringing its national legislation in line with the Convention only after accession to the Convention. For the last 20 years the support has been provided by UNECE to various countries to develop relevant legislation and to put into place the effective mechanism of public participation in accordance with the Convention. Taking in account socio-economic development of countries, the degree of acceptance of the proposed amendments vary from country to country. But in general, capacity building activities carried out in each country helped to promote the acceptance of the newly introduced concept.

⁴⁹ Convention on Environmental Impact Assessment in a Transboundary Context, Implementation Committee, "Findings and recommendations further to a Committee Initiative concerning the United Kingdom of Great Britain and Northern Ireland (EIA/IC/CI/5) in "Report of the Implementation Committee on its Thirty-Fifth session (2016) UN Doc. ECE/MP.EIA/IC/2016/2

⁵⁰ 4th session of the Meeting of the Parties (MoP), Decision IV/2, Bucharest, 19-21 May 2008, (ECE/MP.EIA/10)

The Espoo Convention sets out obligations for countries to incorporate the right to public participation into national legislation and implement it effectively. In the next chapter we will consider in more details the case of Uzbekistan, a Central Asian country that had realized the benefits of implementation of the Espoo Convention for greening the economy and expressed its interest in studying feasibility of joining the Convention and enhancing its national legislation in line with the requirements of the Convention.

Chapter III

Implementation of the Espoo Convention in the Republic of Uzbekistan

Introduction

Uzbekistan is undergoing the rapid process of economic and social development resulted in the process of implementation of comprehensive reforms in the country, including on enhancing public participation in environmental decision making and has recently realized the benefits of application of the Espoo Convention for greening economy and good governance. It has requested UNECE to provide technical support and legal advice in developing relevant draft amendments into national legislation in line with the Espoo Convention and study feasibility of accession to the Convention. In order to ensure efficient and smooth incorporation of the provisions of the international treaty into national legal framework many different factors should be taken into account and a comprehensive approach should be developed. Being involved in the process of coordination of the activities on provision of technical support to Central Asian countries, including Uzbekistan in enhancing its national capacity to develop, implement and apply the relevant legal framework in line with UNECE legal instruments, in particular the Espoo Convention, I have observed and revealed a number of features and important aspects on how to advance the efficiency of the assistance provided to countries in transition to support country's reforms in bringing the national legislation in line with international standards. In this Chapter we will have an overview of the stay of play in the country that will help us to better understand the main national priorities for economic and political development of Uzbekistan. Then we will consider the technical assistance that has been provided by the UNECE Espoo Convention secretariat to the county in enhancing its national capacity to implement and apply modern environmental impact assessment system in line with the Espoo Convention, highlighting the main challenges and ways to overcome them.

3.1 Overview of political, legal and institutional framework of the Republic of Uzbekistan

Independent Central Asian countries emerged from the fall of the Soviet Union in 1991, they share economic, political and administrative traditions and have experienced a turbulent period of economic, constitutional and social changes. Uzbekistan is a landlocked country in Central Asia, the most populous, when the majority of the population is concentrated in the agricultural heartland of Central Asia, the Fergana Valley. Uzbekistan is the only country in the region with border to all other Central Asian states and is a significant producer and exporter of oil and natural gas. Uzbekistan is an important component of the Belt and Road Initiative, a project that aimed at improving connectivity between China and Asia, the Middle East, Africa and Europe and to facilitate the easy exchange of goods across the region. The initiative was launched in 2013 and was driven by economic development and encompasses more than 65 countries. China is one of the most important strategic, trade and investment partners of Uzbekistan.⁵¹ Due to fast development of the Belt and Road Initiative, approach towards incorporating environmental consideration into economic and infrastructure development have been taken into account. Thus, the concept of green economy is being promoted and considered by Central Asian countries, including Uzbekistan.⁵²

The progress in developing country' economy and building strong partnerships with other countries can be seen as main priorities for Uzbekistan today. Since the collapse of the Soviet Union, the country has gone through gradual political, social and cultural development.

The first president of Uzbekistan Islam Karimov was appointed in 1989 and transitioned to the presidency of independent Uzbekistan in 1991 where he served until 2016. He ruled the country for almost twenty-five years, focusing on the sovereignty and had a gradual approach to reforms. The post-Soviet transformation of Uzbekistan

⁵¹ "Reforms Make Uzbekistan Attractive to Investors" (Available at <https://global.chinadaily.com.cn/a/201904/20/WS5cba7331a3104842260b74a6.html>)

⁵² CCICED. "Special Policy Study on Green Belt and Road and 2030 Agenda for Sustainable Development". 2018 Policy Paper for discussion, CCICED 2018-2019.

revealed a gap between democracy and autocracy in the country, that caused criticism abroad and inside the country. The major growth of state-controlled economy were exports of cotton, gas, copper and gold. At the same time country's borders were tightly controlled for security reasons which reduced the opportunity for hosting transit trade. Uzbekistan's economic isolation was aggravated by lengthy border delays, complexity of customs regulations, and poor relations with neighbouring countries. Another major issues was widespread corruption that created challenges for further economic and social development, such as political monopolization, low levels of democracy, a higher level of bureaucracy, weak civil participation, and low transparency of public institutions.

Under the long-time leader Islam Karimov, human rights abuses were widespread, including child and forced adult labour, restrictions on religious freedom, the media and civil society. All this factors caused stagnation in socioeconomic development. Freedom of expression and freedom of press also had some restrictions in the country. The structure of the political system of Uzbekistan looked like a pyramid with the president at the top with some particularities of authoritarian regime in the country.

Economic and political development of the Republic of Uzbekistan

In 2016 a new President Shavkat Mirziyoyev was elected. He introduced the new approach to further development and decided to create a new strategy, to boost the country's economy and to build a more open country and attractive economic zone for investors. In 2017 Uzbekistan has launched an ambitious market-oriented economic reforms in the country following more than 25 years of a relatively closed state model. Thus, at the beginning of 2017, "Action Strategy on Five Priority Directions for Development of Uzbekistan for the period 2017–2021 (Action Strategy)" was adopted. It focuses on the main areas for development, in particular on further deepening the democratic reforms and modernization of the country, strengthening the role of political parties and society, reforming of public administration and public service through decentralization, ensuring transparency of government bodies, introducing modern forms with regard to rights and freedoms, increasing efficiency, quality of and access to

public services for people, strengthening the role of media, ensuring independence of the judiciary, facilitating economic growth, attracting foreign investment, reducing the state's role in the regulation of social and economic development, enhancing the role of local authorities. Protection of environment and promotion of human rights are present under various sections of the Action Strategy. The Roadmap for Structural Reforms for the period 2019–2021 in support of the implementation of the Action Strategy, prioritise the implementation of the green economy, drafting an Environmental Code, improving public access to information on inspection activities and strengthening economic mechanisms of environmental protection.

Another significant reform was carried out in September 2017, when the Central Bank of Uzbekistan reunified national exchange rates. This currency reform was followed by increased activity in foreign financial markets.

On 20 October 2018 the Government of Uzbekistan adopted the resolution “On measures to Implement the National Goals and Targets in the Field of Sustainable Development for the Period Until 2030.” By doing this step, Uzbekistan confirmed its strong will to achieve the ambitious targets in the economic, social, and environment dimensions under the Global Goals by 2030. This envisages a significant increase in transparency and accountability of state bodies and enhancing citizen participation in decision-making.

In 2018 a new “Strategy for Innovative Development to be achieved by 2030” was adopted. The main priorities for further development include human development and education, removing administrative barriers for business and the private sector.

Uzbekistan is implementing ambitious market-oriented economic reforms aimed at improving business and investment climate and boosting economic growth. The new changes in tax system, state monopolies and in banking sector were introduced. The government fosters trade and investment opportunities in the region with other Central Asian countries by opening borders and initiating links with neighbouring countries. In reforming governance, the priority was given to delegating power to local and regional leaders.

Under the leadership of Shavkat Mirziyoyev, steps have been taken to introduce some changes in human rights sphere, such as making the public sector more accountable to citizens and giving media and civil society more freedom to operate, making courts more efficient and independent. Steps were also taken to end child labour, especially in cotton industry, which traditionally relied on child and forced adult labour. Restrictions on civil society were lifted. For instance, no need of prior approval to hold meetings for associations, consultations with civil society on new laws, inviting international human rights observers to visit the country. On the other hand, the situation with restrictions on religious freedom still remain difficult. Such restrictions apply not only to minorities such as Orthodox Christians, but also to the Sunni Muslim majority. Membership of non-official religious groups are punished by fines and jail sentences. Authorities justify it by the risk of extremism. Another positive improvement is that some political prisoners have been released. Despite all abovementioned improvements, Uzbekistan still remains relatively closed country, where the reform process remains controlled, however significant progress has been made in the last years.

After economic and political reforms, foreign policy is another prioritized area of development. Uzbekistan and its neighbouring countries have cultural similarities and a shared history. By improving relations with them, Uzbekistan opens the door to better cooperation. Kazakhstan and Uzbekistan are region's largest economies and have bilateral agreements on joint energy and transport projects. Relations with Turkmenistan are fairly straightforward, but not particularly close. Relations of Uzbekistan with Kyrgyzstan and Tajikistan are progressing.

Uzbekistan has excellent conditions for the development of agriculture and is the world's fifth exporter of cotton. The government of Uzbekistan has acknowledged the extent of the country's environmental problems, one of the heaviest man-made environmental disasters - the drying up of the Aral Sea. It now holds only one-fifth the volume of water it held in 1960. Another main environmental problem is soil salinity, land pollution, and water pollution. Large-scale use of chemicals for cotton cultivation and inefficient irrigation systems are examples of the reasons that caused water pollution and therefore, large underground fresh-water supplies in Uzbekistan are

polluted by industrial and chemical wastes. Spraying of pesticides for the cotton crop and poor management of natural resources have led to degradation of air quality as well. Factories and auto emissions are threat to air quality in urban areas. Decades of environmental neglect combined with weak economic policies created environmental crises.

The country enjoys vast natural resources, including gas, gold, non-ferrous metals and has a good climate conditions for agriculture and cultivation of cotton, fruits and vegetables. Yet the country needs more favourable institutional and legal framework for further sustainable development and environmental protection.

2017 was proclaimed as ‘The Year of Dialog with People and Human Interests’ where the main priorities for the near future is decentralization of the government, administrative and social reforms. Still the transition to market oriented, green economies and democratic societies is ongoing. Much more efforts needs to be done for the strategies and policies to be effectively implemented at national levels. The success of Uzbekistan’s massive effort to modernize its system of governance will depend significantly on the effort to cut corruption, reduce the bureaucratic burden on businesses and individual citizens. In general, the current government strategy is highly business oriented, considered to be a priority for economic development and focuses on the elimination of burden of governance on businesses and citizens.

The Government’s priority is to transform Uzbekistan into an upper-middle-income country by 2030. To achieve the highly ambitious goal the Government has been developing and implementing the list of measures and will require further comprehensive reforms to ensure the implementation of international standards into national legal framework in the field of environmental protection and human rights.

Another important step to mention, the “Strategy for the transition of the Republic of Uzbekistan to a green economy in the period of 2019-2030” was approved by the Resolution of the President of the Republic of Uzbekistan on 04.10.2019. By implementing the Resolution, is expected to reduce emissions of greenhouse gas, promote the use of renewable energy sources, improve energy efficiency, adapt and

mitigate the effects of climate change, increase preservation of natural ecosystems and develop financial and non-financial support mechanisms for the green economy.

In its address to Oliy Majlis on 24.01.2020 the President of Uzbekistan Shavkat Mirziyoyev emphasized the need of establishing the obligation to consult with public when making decisions on the socio-economic issues when they are of particular interest to the population, he also stressed the importance of enhancing the system of ecological control, improving environmental control system and revision of the environmental audit procedure. The government is tasked with developing a program of measures for 2020–2025 to prevent the negative impact of industrial development on the environment and developing a National Human Rights Strategy, where a lot of attention will be paid to the protection of freedom of speech, religion, access to information and economic rights. Modern information and communication technologies started to be introduced in the country to establish an effective dialogue with the public. Uzbekistan has prioritized the sustainable economic growth. The sustainable and inclusive economic development requires further strengthening the rule of law and protection of the rights of citizens, transparency and accountability of government.

Environmental dimension in the economic development of the Republic of Uzbekistan

Uzbekistan has ratified the Rio Declaration on Environment and Development and the UN Framework Convention on Climate Change (UNFCCC) and gets support from international donors in its efforts to strengthen national capacities for development and implementation of comprehensive strategies to ensuring economic growth and sustainable development. The growing international interest in respect to Central Asia's energy resources and environmental issues had led to a major shift in international attention into the region. European Union states seek to increase their cooperation with Central Asia across a spectrum of issues, including energy, security, environment, transport and human rights.

Another important step is an approval of the Concept on Environmental Protection until 2030 in 2019. The Concept facilitates further development of international cooperation, greening the economy, improving mechanisms of

environmental management, enhancing the system environmental assessment and public participation in environmental protection. In particular, it requires to implement in the relevant national legislation the provision ensuring the public participation in environmental impact assessment, introducing modern environmental assessment systems in line with international standards and to study the feasibility of accession to the Espoo Convention and its Protocol on SEA.

The ongoing rapid development of the policy framework represents opportunities for mainstreaming environmental protection throughout introducing the new legislation. In such circumstances, effective coordination mechanisms and meaningful public participation become of outmost importance to ensure environmental protection. The country is entering a new level of its development and actively participates in international relations, that in its turn, enhancing the prestige of Uzbekistan in the international arena. At the same time, many promising reforms are yet to be implemented. The obligation to involve public and to held public consultations when making decisions on the socio-economic issues in the country should be clearly incorporated, including the mechanism for its implementation. It is necessary to establish practical interaction between the government and civil society in achieving the United Nations Sustainable Development Goals.

At the beginning of 2020 the development of Uzbekistan is positive. Especially with regard to regional economic cooperation and international engagement. However, as we have observed earlier, legal and judicial reforms take time. Despite the government's attempts to promote more active citizen involvement, it will take time and strong continuous commitment from the high-level decision makers to allow an independent civil society to contribute significantly to the growth of the national economy and environmental protection.

Current important reforms in the country include amending the relevant environmental legislation by incorporating the international norms, including with regard to the environmental impact assessment. As we can see, the ground for the implementation of international standards on public participation, in particular in environmental matters was prepared and seems timely and needed in the context of

current and rapid development of the country. By introducing and applying an effective mechanism for public participation it will bring many benefits to the country.

3.2 Overview of public participation in environmental decision making in the Republic of Uzbekistan

State of play with respect of public participation in Uzbekistan

The engagement of members of the public in decision-making, including on environmental matters in the Republic of Uzbekistan is not yet very well developed. The national legislation is lacking the detailed procedures to enable effective public participation on projects, strategic documents and legislation. Different pieces of legislation enshrine the rights of citizens to request and receive information about the state of the environment and measures taken to protect it. The procedures and deadlines for public authorities to provide information to the public, the process of dissemination of the information by governmental authorities as well as a system of public inspectors of environmental control were established. However, there is no specific strategic document on access to information and public participation on environmental matters. In practice, there is no strong mechanism in place to ensure effective public participation. Governmental institutions lack adequate capacity and expertise to introduce and effectively implement the relevant legislation on access to information and public participation on environmental matters in line with international standards.

In general, the information on environmental matters is disseminated in the country, but the quality of information and timeliness of its dissemination needs to be improved. In some regions of the country the public is passive and lacks interest in accessing information on environmental matters, which might be due to a lack of awareness about its availability and the public's right to access it.

The environmental assessment system in Uzbekistan

The environmental assessment system in Uzbekistan was inherited from the Soviet Union and after the collapse of the Soviet Union was centred on state environmental review as a “socialist” system, according to which a permit cannot be issued without a positive conclusion of the review, where environmental considerations are mandatorily for economic decision-making. But in terms of public participation, the

state environmental review lacking adequate provisions for consultation and public participation.

In early 2000s, an extensive reform of environmental assessment system was started due to economic and political changes in the country. The system of environmental assessment of project activities in Uzbekistan consists of two subsystems: environmental impact assessment (EIA) and state ecological expertise (SEE). The activities for which EIA is required are determined based on the lists of four categories of activities that may have an impact on the environment and human health. Project developer is responsible for carrying out EIA for the preparation of EIA documentation while relevant authorized body is responsible for organizing and conducting SEE. Developer also holds responsibility for public participation during the EIA procedure. Public participation is explicitly required at two stages of EIA – the submission of declarations of environmental impact and the submission of declarations of environmental consequences. However, there is no detailed procedure for public hearings and there is no regular review by the relevant authorities of compliance by developers with the public participation requirements.

Since 2000 NGOs and citizens allowed to conduct public ecological expertise on a broad scope of activities but this option was not used very often due to human and financial resources constrains.

With regard to the procedure of transboundary EIA, including ensuring public participation, there are no such requirements in the national legislation. Uzbekistan is planning to build its first nuclear power plant. In this regard, in February 2019 the President of the Republic of Uzbekistan signed a Resolution “On approval of a concept of development of atomic energy in the Republic of Uzbekistan for the period 2019-2029”. Nuclear energy-related activities can lead to significant transboundary and long-range adverse environmental impacts. Therefore, one of the main objectives of EIA is to increase the availability of information to all citizens and provide a possibility to public to participate in the planning of projects. In light of large-scale reforms in the country, including on new course towards nuclear energy, introducing the relevant provisions into national legislation on transboundary EIA when planning nuclear power plants would be feasible. In this context, Kazakhstan, as a neighbouring country expressed its

wish to enter into discussion with Uzbekistan with regard to the construction of nuclear power plant. Public hearings are expected to be held in Uzbekistan and neighbouring countries, including Kazakhstan within the environmental impact assessment procedure related to the building of the Uzbek NPP in accordance with international standards and requirements of the IAEA.⁵³

⁵³ Public hearings to be held in neighbouring countries on Uzbekistan's NPP construction project. (Available at <https://kun.uz/en/news/2020/02/06/public-hearings-to-be-held-in-neighboring-countries-on-uzbekistans-npp-construction-project>).

3.3 Selected problems of implementation of the Espoo Convention in Uzbekistan and the way to overcome them

Due to recent development of the Silk Belt and Road initiative, newly adopted national policies and developing programs in the countries of Central Asian region, in particular in Uzbekistan, set out priorities towards rapid economic and political development and fostering the partnerships and collaboration with European countries. In this regard the environmental considerations and public participation when planning new activities appear inevitable. The Espoo Convention is an effective instrument for greening economies which brings a positive impact for protecting the environment and promoting the right of people to take part in a decision-making process.

The “Action Strategy on Five Priority Directions for Development for the period 2017–2021” emphasizes expanding international cooperation and enhancing the image of Uzbekistan at international arena among priority. Priorities for international cooperation on the environmental issues are defined in the Concept on Environmental Protection until 2030, which includes study the feasibility of Uzbekistan’s accession to UNECE Espoo Convention and development of relevant national legislation to ensure effective public participation in environmental assessment and establishing the relevant provisions for transboundary EIA. This is the strong legal basis for further work towards implementation of the provisions of the Espoo Convention into national legislation. It is important to mention that in post-Soviet Union countries the hierarchy in decision making process and strong compliance with national strategic documents when making decisions by relevant authorities is very important.

Review of national legal framework of Uzbekistan vis-à-vis the Espoo Convention

In 2018 Uzbekistan expressed its wish to study the feasibility of application of modern environmental impact assessment system in accordance with international standards, in particular the Espoo Convention. In this regard, since 2018 the technical and legislative assistance has been provided by the secretariat of Espoo Convention to the Republic of Uzbekistan within the activities foreseen in the workplan for 2017–2020

of the Convention and its Protocol (adopted through decision VII/3–III/3) and consisted of several steps.

The review of national environmental assessment system of Uzbekistan vis-à-vis the requirements of the Espoo Convention was conducted by UNECE international experts upon request of the Government of Uzbekistan.⁵⁴ As the result of a comprehensive analysis of national legal framework some gaps and inconsistencies with international standards were revealed. In general, the legal and institutional frameworks of Uzbekistan are not in line with the Convention, although some elements of the required systems are exist. There is lack of scoping procedure as part of the EIA in the national legislation. The established requirements for the content of the EIA documentation have a too general nature and is not in line with the requirements of the Espoo Convention. There is no requirement to consider no-action alternative or prepare non-technical summary for the proposed activity. The public participation is absent in EIA procedure. Thus, there is an obvious lack of citizen engagement and lack of awareness of public of its right to participate in decision-making on environmental matters. There is also lack of strong mechanism to ensure effective public participation. And there are insufficient human and financial resources to implement it. The public in general is not consulted on planned activities and projects and there is no effective system put in place to monitor the public participation. Information about the public hearings and the related documents are not available to the public in advance. The timeframe for making comments is too short to ensure meaningful participation of the public. The system of evaluation of how the comments provided by public were taken into account is not transparent. In general, the existing system of environmental assessment of project activities in Uzbekistan does not correspond to the international standards. Although, there is a clear legal basis for development of modern EIA system in the country, there are still some challenges to overcome. The main challenges revealed during the analysis include lack of clarity of some definitions in the legislation with regard to EIA, limited public participation provisions, lack of mechanism of follow-up and to monitor how public opinion was taken into account and limited capacities of national authorities, including limited awareness of staff as well as

⁵⁴ Review of national legislative framework of Uzbekistan vis-à-vis the Espoo Convention, UNECE, 2019 (available at http://www.unece.org/fileadmin/DAM/env/eia/meetings/2018/uzb/SEA_review_ENG.pdf)

developers and public about EIA procedure.⁵⁵ Another important challenge is lack of awareness of governmental authorities on the importance and benefits of EIA conducted in line with the Espoo Convention for environmental management and sustainable development.⁵⁶ A comprehensive, long term commitment will be necessary to overcome the existing challenges in Uzbekistan in implementing EIA.

Based on the results of the review the recommendations were provided to the Government of Uzbekistan on how to align the national environmental legislation with the Espoo Convention. To achieve compliance with international standards there are some measures should be introduced, including defining some terms of the EIA procedure, amending the list of the activities subject to EIA, introducing requirements on ensuring effective public participation in EIA procedure. It is important to highlight that public participation should be responsibility of the relevant authority while at the moment in Uzbekistan public participation is under responsibility of developer. It was also recommended to introduce relevant provisions for transboundary EIA consultations procedure, especially in light of planning the construction of nuclear power plant in the country.⁵⁷

The capacity-building activities were carried out in the country to enhance awareness of relevant stakeholders and decision-makers about the treaty and the benefits of application of the Espoo Convention. It is very important at early stage of implementation of international agreement to provide sufficient information and to raise awareness of key decision-makers about the benefits of implementation of the treaty in the context of country's development and main national priorities. This, in its turn, facilitates the greater support and acceptance by the relevant national stakeholders of the development of a new system of environmental impact assessment in line with international standards. Particular attention should be paid also to the promotion of this information among citizens. Since the Convention empowers citizens with their rights to have access to information and to take part in environmental decision making, it will

⁵⁵ G. Khusnutdinova (2004) Environmental impact assessment in Uzbekistan, *Impact Assessment and Project Appraisal*, 22:2, 167-172

⁵⁶ Abaza H, Bisset R and Sadler B, *Environmental Impact Assessment and Strategic Environmental Assessment: towards an Integrated Approach* (UNEP 2004)

⁵⁷ A. Cherp, *Environmental assessment in countries in transition: Evolution in a changing context*, *Journal of Environmental Management*, Volume 62, Issue 4, 2001.

enhance the public interest and support of the legislative and institutional reforms carried out in the country in this context.

Capacity-building activities carried out in the country included workshops to present the results of the review and to raise awareness of national decision-makers about the benefits of transboundary EIA as well as its practical application.

Based on the outcomes of the draft reviews carried out with the support of UNECE and presented to the Government of Uzbekistan, the Government expressed its interest in initiating a comprehensive legislative reform with a view to aligning its EIA system with the provisions of the Convention. It requested UNECE to provide further support in developing the relevant amendments to primary and secondary legislation on environmental impact assessment in line with the Espoo Convention.

Technical assistance provided by UNECE to the Republic of Uzbekistan in enhancing the national environmental assessment system in line with the Espoo Convention

In 2019 Uzbekistan has committed to undertake ambitious legislative reform with a view to aligning the country's environmental assessment legislation with international standards, in particular the Espoo Convention. This perceived as a considerable step undertaken by the country to enhance its national legislation in line with international standards. Taking into account the economic development of the country, application of modern EIA procedure will significantly contribute to the prevention of significant adverse environmental impacts of the proposed activities in the country and in the Central Asia region. In 2019 UNECE has initiated technical assistance to the Republic of Uzbekistan in enhancing its national legislative framework for environmental assessment, including in a transboundary context in line with the Espoo Convention within the process of comprehensive legislative reforms in the country.

The assistance began with the development of a comprehensive project implementation plan. The drafting process has been proved to be more effective if conducting together with capacity-building activities in the country. During the planning phase it is important to take into account the legal, institutional and political aspects of the country. During the planning stage, there were some changes in the

management of the relevant national environmental authorities involved in the realization of project activities, which delayed in a way the implementation of project. In addition, due to often personnel changes there was a need to repeat some awareness raising events in order to keep the relevant stakeholders updated about the benefits of implementation of the Espoo Convention and familiarize them with the procedural steps of EIA in line with the Convention. During the national workshops the surveys to study the current situation in the country were conducted. The main goal was to study the context for further implementation of the Convention in the country, focusing on existing challenges of development and implementation of effective EIA system that ensures effective public involvement into decision-making process, collecting suggestions as well as relevant questions on further implementation of the international standards into national legislation with regard to EIA.

The environmental assessment system in Uzbekistan remains in a post-Soviet format, the national experts and relevant authorities apply the system as it set in the current legislation. The form of environmental assessment set by the Espoo Convention is different and new for national stakeholders in Uzbekistan. Therefore, it requires sufficient amount of time to introduce the system in the country. That's why raising awareness of relevant stakeholders about the Convention, its application is very important since the beginning. Awareness raising workshops, national seminars, round tables and regional conferences have proved to be effective for enhancing the capacity of relevant stakeholders in application of the Convention's norms and increasing their understanding about benefits of EIA and best practice examples. Sometimes it requires to conduct several events to make sure that all the relevant stakeholders get familiar with the Convention and the system.

Challenges of implementation of the Espoo Convention in Uzbekistan and the way to overcome them

Coordination of the project activities was conducted in close cooperation with the national point of contact to the Espoo Convention. The effectiveness of the promotion of the Convention in the country greatly depends on the collaboration with the national point of contact. However, sometimes he or she is not very well aware of its own role and responsibilities due to fast changes of personnel in the relevant national

institutions. It is important to maintain on the regular basis the communication with national point of contact in order to ensure that the point of contact is very well aware about its role, about the concept of the Espoo Convention, the benefits and main principles of its application and exchange the relevant information about the ongoing and upcoming developments in the country. It would also help to develop the right course of action to further support the smooth process of implementation of the Convention in the country.

To ensure effective coordination of the legal drafting process at national level the legal drafting group was established. The drafting group consisted of representatives of various national authorities. The representatives of the working group were always invited to take part in all the capacity-building activities within the project, working meetings with national stakeholders and key decision-makers. During the working meetings the discussions on the concept and timelines for development of relevant draft amendments were held to facilitate the process of legal drafting. Due to the fact that there are some changes in legal or institutional framework might occur on the unpredictable basis, it is very important to maintain the effective communication with the national point of contact as well as other relevant stakeholders and key decision makers to keep on track in implementing the project activities.

Based on the comprehensive work conducted within capacity-building activities in the country, the awareness of relevant stakeholders on practical benefits of application of EIA in line with the Espoo Convention were increased and support of key decision makers to implement modern environmental assessment system in the country was acquired. However, it is worthy to mentioned that due to fast changes in the management and in staff personnel in the relevant national authorities, it was required to conduct additional capacity building events in order to effectively promote the knowledge about the Convention among newly appointed personnel. The workshops and seminars proved to be an effective mechanism to improve understanding and acceptance of modern EIA among the national stakeholders.

In close cooperation with national legal expert, involved in the process of legal drafting within this project, UNECE legal experts developed the draft amendments to the national legislation on EIA in line with the Espoo Convention. To promote the

developed draft legislation, intergovernmental consultations and public hearings expected to be held in April 2020 in Uzbekistan.

To effectively promote the process of implementation of the Convention in the country it would be very useful to conduct regular working meetings with national stakeholders of middle and high levels during which the updates on the recent developments are provided and the relevant feedback and comments are collected. This help to better understand the view, and to be updated about all possible unforeseen challenges that might happen. Outreach campaigns play an important role in implementation of the Convention and building strong network of likeminded stakeholders. Understanding the institutional structure, the process of decision making, division of the power, social, economic and cultural development would greatly enhance the effectiveness of implementation of the Convention in the country. After the concept of the upcoming legislative reforms established and agreed among all the relevant stakeholders involved in legal drafting process, all the final decisions should be communicated through the official correspondence between the stakeholders involved in the project implementation. Only in this case the timely and efficient implementation of the agreed plan is ensured. It is very important to establish strong partnerships with the relevant representatives of the Ministries concerned at the higher level. This can be done, among other, by inviting them to the national capacity building activities and providing them with an opportunity to take part at the treaty bodies meetings to share the best practices of implementation of Convention in countries of ECE region, to participate at the study tours organized in the countries were the practice of EIA, including on ensuring public participation is advanced in accordance with the requirements of the Convention.

The accession to international agreements by the Republic of Uzbekistan is regulated by the 2019 Law on Treaties. The preparatory process involves coordination with the Ministry of Foreign Affairs, the Ministry of Justice and other ministries and other relevant government bodies. During the preparatory process a feasibility study is conducted. The conclusion of a treaty requires approval by the President. In the past two years, Uzbekistan became party to several MEAs, including the Paris Agreement (in 2018), the Stockholm Convention (in 2019) and the Cartagena Protocol (in 2019). This

trend is likely to continue due to the country's aspiration to further strengthen its place and role in international relations. However, MEA implementation remains a challenge due to insufficient administrative capacity, and deficiencies in coordination among relevant institutions. Since Uzbekistan is going through a growth in terms of international cooperation it will likely to set up a mechanism that ensures comprehensive and systematic approach in support of Governmental activities.

Conclusion

The Espoo Convention is an effective tool for ensuring public participation in environmental matters. The effective compliance mechanism was set under the Convention. However, the further development of the implementation and compliance mechanisms is required.

The Espoo Convention provides an indispensable framework for international cooperation and discussion for finding solution to important environmental issues, in particular in a transboundary context and facilitates the realization of several principles stipulated by the Rio Declaration.

The Republic of Uzbekistan is undergoing a process of rapid economic and political development with the main focus of the country reforms towards greening economy and enhancing its position at international arena. The Republic of Uzbekistan has not ratified the Espoo Convention yet but is making considerable steps forward. Due to recent adoption of the strategic documents at national level, such as the Concept on Environmental Protection until 2030, the solid base for further implementation of the relevant provisions on modern environmental impact assessment and effective public participation, including in a transboundary context in line with the Espoo Convention has been laid. In order to provide the efficient technical and legal support to the country and to promote the implementation of the Espoo Convention an effective approach has been applied.

The draft relevant amendments to the national primary and secondary legislation with assistance of UNECE have been developed and now under the consideration of the relevant national authorities. Significant attention has been paid to the incorporation of the relevant provisions on public participation into draft amendments. The degree of acceptance of the proposed amendments will be known after the consideration of the proposed amendments by all the relevant stakeholders and it will depend on the final decision of the key decision makers in the country.

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