

Ukraine

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1. The issue of adherence to environmental rights by Ukraine has not been addressed in the process of the Universal periodical survey in 2008, neither in the official report, nor in the reports of the respective stake-holders. Recommendations to Ukraine did not address the environmental issues either.

2. The initiative to include the special chapter on the situation of the environmental rights adherence in Ukraine into the stake-holders report was predetermined first of all by the recognition of the materiality of existing environmental crisis. Pursuant to the official data, around 15 % of the Ukrainian territory with the population over 10 million residents is in a critical environmental condition. Ukraine has the highest percentage of cultivated land in Europe and the highest rate of water and power resources consumption. The density of pollutants' emissions into the atmosphere of late constitutes over 130 kg per capita which is several times higher than that in the developed countries of the world. The consequences of the largest technogenic disaster in the history of mankind – Chornobyl NPP catastrophe – have not been resolved. Ukraine has accumulated over a billion tons of industrial toxic waste. The national natural reserve lands stand only for 5.6 % of the territory, while the same indicator in Europe amounts to 10 - 25%.¹

3. Meanwhile, environmental policy remains is not a priority in the Ukrainian political structure. The government traditionally cultivates a resource-consuming model of development which translates into wastes of natural resources. These trends seem even more dangerous once one considers the scope of technogenic transformations and degrees of negative impact on public health. Erroneous trends of economic development combined with increasing legal arbitrariness deprive a country of its European future and cause mass and systematic violations of its citizens rights.

4. We believe that updating public understanding of environmental rights through the modern concept of human rights is an important factor in mobilizing citizens and state efforts in fighting environmental problems. Under the principles and goals defined by the Stockholm Declaration of the United Nations Conference on the Human Environment, the UN Conferences on Environment and Development in Rio-de-Janeiro and Johannesburg, the observance of environmental rights will contribute to the development of global society based on the respect towards nature, universal human rights, economic justice and safety.

5. Therefore, in 21st century the concept of human rights should be enriched with environmental issues and understanding of humanity's responsibility for its operation in the natural environment due to unprecedented scope of androgenic intervention into the Earth ecosystem, fraught with irreversible global consequences.

6. The international law also should raise to the qualitatively new level, becoming the law of universal safety and common responsibility of the states before humanity. The main way of its further development is using current international legal agreements as a foundation for the new legal principles and obligations aimed at creating environmentally safe world and safeguarding every person's environmental rights. It is high time to enhance international mechanisms for monitoring environmental rights' observance by the countries with the active participation of the civil society in the process. Proposals set out in the Vienna Declaration of 2008 remain actual in this light.²

7. The essence of environmental rights is set out in the Constitution of Ukraine. Over ten articles contain the principles of environmental safety and use of natural resources. Article 16 underlines the state's obligations in guaranteeing environmental safety and environmental balance on the territory of Ukraine. Article 50 directly stipulates everyone's right to safe environment, reimbursement of damages suffered as a result of the violation of the said right and the right of free access to environmental information. The general principles of environmental rights and legal guarantees of their observance are provided for in Ukrainian laws. Ukraine is a party to more than 40 international environmental conventions of global and regional nature as well as their protocols.

8. Therefore, generally speaking, Ukraine has a normative and legal base addressing environmental issues in place. The problems, however, arise at the stage of implementation of

international legal standards into the national legislation. Specifically, the most crucial problems relate to the practices of the application of the respective laws.

9. Over the last four years the requirements of the law concerning free access to information³ have been systematically disregarded. For example, the Ministry of Environment and Natural Resources of Ukraine failed to develop and make public its Annual National report on the Environmental Situation. As of March 2012 the official web-portal of the Ministry showed the latest National Report for 2007.⁴ Over seven years, in violation of the law, the report has not been submitted to the Verkhovna Rada for consideration, nor published as a separate volume. The report for year 2011 has not been published or submitted to the Parliament either. Even more dramatic lagging behind is noted in publishing special reports of the Ministry of Environment and Natural Resources – not a single one of those appeared on the Ministry's web-portal over the year 2011.⁵

10. The Ministry of Regional Development consistently ignores its legal obligations⁶ pursuant to which the National report on the quality of drinking water and water supply system is to be devised annually. The last known report dates back to 2006.

11. Local state administrations in neglect do not make public the information on environmental situation in their subordinate mass media . In 2010 only Zaporizhzhya state administration became an exception to the rule having launched on its web-site “The information system with regards to environmental issues”. Unfortunately, since the first half of 2011, the information has not been updated.⁷

12. Rather often we observe in Ukraine the situation when progressive legislative innovations are reduced to nil by certain regulations or not complied with at all. For example, in 2011 two new laws, i.e. the Law on Information and the Law on Access to Public Information, came in force. They brought the notion of environmental information and access to it into compliance with international standards.

13. Some bodies of state power brought their own norms and regulations into compliance with the law. For example, in 2011 the State Agency for Land Resources issued an order, under which four categories of data concerning the condition of land have become open to public.⁸

14. On the other hand, the State Agency for Forest Resources still adheres to its tradition of total secrecy and confidentiality. It systematically violates the norms of articles 28 and 35 of the Forestry Code of Ukraine with regards to monitoring, state registration of forests and state forests cadastre. In May 2011 the Agency issued an order approving the list of classified data.⁹ The list includes a chapter on environmental information concerning forest management: projects' documentation for forestry development, state forest cadastre, forests' layout in oblast's and individual forestries. In this respect, EHA “Green World” filed a petition with the Circuit Administrative Court of Kyiv requesting classifying this order as illegal. The agency in its objection stated that it made classified the information concerning forest potential as that “having commercial confidentiality”. In this case the state forest agency ignores the Law on Access to Public Information which does not have a definition of “confidential information of public property”, alongside with the provisions of the Law on Information, under which environmental information, apart from information on military units deployment, cannot be treated as classified information with limited availability to public.

15. Over the recent years NGOs have voiced their concern with respect to numerous facts of deliberate ruination of the institute of state environmental inspection in Ukraine. For example, the Law on Regulating Urban Development Activity of 2011 has dramatically reduced the list of grounds warranting environmental inspection of urban development documentation and construction projects, thus devaluating the norms of the Law on Environmental Protection and the Law on Environmental Inspection as concerns the mandatory environmental control of investment and economic activity, which may affect the environment. The said law also restricts public rights as to their participation in decision-making concerning zoning and construction and area development.¹⁰

16. More and more often legal guarantees on access to information, contained in the conclusions of state environmental inspections and in environmental impacts' chapters of investment

projects, are violated. The public may not always defend its right to environmental information in the Ukrainian courts.

17. Thus, in January 2012 the High Specialized Court of Ukraine for Civil and Criminal Trials refused to grant an appeal in a case concerning the violation of the right of free access to environmental information¹¹. In this case the courts of three levels ignored the norms of the laws¹², under which the economic agents in possession of environmental information are classified as information managers.

18. In October 2011 the Circuit Administrative Court of Kyiv passed a decision on a claim of “Environment-People-Law” Foundation filed against the Ministry of Environment and Natural Resources concerning its inaction which consisted in a failure to make public results of state environmental inspection on its official web-portal, in violation of the Law on Environmental Inspection. The court ruled that the Ministry within two months’ period should publish 1 293 conclusions made over the years 2009-2011¹³. However, by March 2012 the Ministry of Environment and Natural Resources failed to comply with the court’s decision – its web-portal offers only 6 conclusions of the environmental inspections dating back to the years – 2009¹⁴.

19. The rights of citizens to participate in environmental decision-making are systematically violated in Ukraine. Thus, the illegal cutting of one-hundred year old trees in the process of constructing a highway running through the park caused a confrontation between the Kharkiv residents and public authorities in the Gorky park in 2010. The public protest was brutally suppressed by the authorities. The urban development documentation was not offered for public discussion in violation of the Law on Zoning and Area Development.¹⁵

The Confrontation around the Gorky Park had a significant public response in Ukraine and beyond its boundaries. In August 2010 the Ukrainian Ombudsman filed a petition with the Prosecutor’s General Office; the actions of Kharkiv authorities were negatively assessed in the report “Observance and protection of human rights in Ukraine – 2010”. The Ombudsman had to state: “In Kharkiv authorities used bulldozers not only to build the ill-famed highway, but also to smother human rights”¹⁶. The EU Commissioner on human rights T. Hammerberg sent a letter to city mayor H. Kernes and governor M. Dobkin, expressing concern with regards to the facts of human and environmental rights’ violations in the park incident¹⁷.

20. Amendments, introduced into the Law on the State Budget of Ukraine for 2011, invalidated a number of provisions of the Law on Status and Social Protection of the Individuals – Victims of the Chernobyl NPP Disaster. The right of the said individuals to reimbursement for damages to their health, caused by environmental disaster, in the amount, stipulated by the law, was violated.¹⁸ The Constitutional Court ruled on 26 December 2011 that these amendments are in line with the Constitution.¹⁹ The violation of the right to restitution for damages incurred in Chernobyl disaster caused most large-scale protests of Ukrainian citizens and Kyiv and the majority of oblast’ centres in Ukraine.

21. Over the years of 2009 through 2012 international institutions pointed out the systematic to the violations of Ukrainian obligations within the frame of international conventions. Thus, in 2011 the conferences of convention parties for the umpteenth time recognized Ukraine’s failure to comply with three international agreements on environmental protection: Aarhus Convention, Espoo convention and Kyoto Protocol to UN Framework Convention on Climate Change.²⁰

22. At the earlier meetings of Aarhus Convention parties Ukraine was labelled as a country systematically neglecting its provisions²¹: the strategy for convention implementation has not been devised; legal and judicial system have not been brought into compliance with its provisions; strict procedures for public participation in decision-making have not been defined; same applies to practical mechanisms of convention implementation.²² Public at large also criticized Government’s operation a lot, claiming that this latter is keeping itself aloof from meeting its obligations under Convention and delegating respective competences to institutionally weak Ministry of Environment and Natural Resources²³.

23. The fourth meeting of Aarhus Convention parties (2011) arrived at the conclusion that Ukraine still fails to meet the Convention requirements. The members of the meeting pointed out extremely slow progress achieved by Ukraine in implementing decisions of earlier meetings and issued another warning to Ukrainian Government²⁴. The meeting approached Aarhus Convention Compliance Committee with the proposal: if Ukraine fails to comply with earlier decisions, respective report would be submitted to the fifth session of the parties' meeting, and decisions should be made banning preferential treatment privileges, which Ukraine has been granted under convention. So far similar sanctions have not been used against a single country. Meanwhile the Government and the Ministry of Environment and Natural Resources for seven years have been hiding the deplorable decisions of three earlier meeting of the Aarhus Convention members (in Almaty, Riga and Chisinau) from Ukrainian public. They have never been published in the official mass media.

24. Ukraine did not ratify either the Protocol on Pollutant Release and Transfer Register (Kyiv protocol) to Aarhus Convention²⁵, or GMO Amendment to it²⁶.

25. The situation with regards to Ukrainian obligations under the UN Framework Convention on Climate Change is no better. That's why on 12 October 2011 the Compliance Committee under the Kyoto Protocol requirements passed a decision suspending the Kyoto Protocol mechanisms' action for Ukraine²⁷. This decision was passed as a result of non-compliance of hot-house gases' emissions cadastre to international standards. The experts argued that the system of emissions registration and hot-house gases absorption in Ukraine is not transparent enough, consistent, complete or accurate. Among the other criticisms it was pointed out that Ukrainian cadastre lacks information on Ukrainian energy balance, the system of forests registration is not transparent, many data concerning industrial operation still remain confidential. Only after these notes were taken into account in March 2012 sanctions were removed and Ukraine resumed its participation in the Kyoto Protocol mechanisms²⁸.

26. The list of Ukrainian obligations under Espoo Convention, which it failed to comply with, is growing on yearly basis.²⁹ Under the estimate, provided by analytical centre "Society and environment",³⁰ the list of negative developments for Ukraine in terms of its compliance with the Convention, started with Ukrainian-Romanian conflict around construction of Danube-Black Sea channel. The fifth meeting of the parties (2011) for the first time in the whole history of Convention issued a warning to Ukraine as a country which violated the Convention provisions. The meeting initiated international proceedings within the framework of Convention with respect to finalizing III and IV blocks of Khmelnytsky NPP. Under Convention construction of new reactors should be preceded by consultations with all the parties involved on the basis of trans-boundary assessment of environmental impact. Such consultations have not started yet.³¹

27. Other large-scale investment projects with potential trans-boundary impact have not been subjected to strategic environmental assessment either. Thus, State Target Program for Comprehensive Anti-Flooding Protection in Dnister, Prut and Syret Rivers' basins, with the cost of over 31 billion UAH, adopted by the Government after disastrous flooding of 2008, did not undergo state environmental inspection or public discussion and was not assessed strategically in the trans-boundary focus.³² The strategic assessment or public consultations concerning ambitious plans for constructing Hydroelectric Power Plants on trans-boundary rivers of Carpathian region, have not been carried out either, despite the fact that about 300 HEPP are to be built in Trans-Carpathian oblast' only.

28. Hence, it is high time to ratify the Protocol to Convention on Environmental Impact Assessment in a Trans-boundary Context.³³

Recommendations:

- Compliance with legal requirements concerning annual development, publication and parliamentary discussion of national and specialized reports on environmental status should be ensured.

- The state authorities should bring their regulations concerning access to environmental information into compliance with the norms of the Aarhus Convention and Ukrainian laws.
- Recommendations of Aarhus convention parties' meetings should be implemented by developing a strategy for its implementation, envisaging strict procedure for public participation in decision-making and practical mechanisms for convention implementation. The Ukrainian legislation should be brought into compliance with the Aarhus Convention provisions. Draft laws should be developed to amend the Land, Forestry, Water and Subsoil Codes of Ukraine with the goal to harmonise them with the international environmental protection conventions, principles of sustainable development and integrated management of natural resources.
- Protocol on pollutant release and transfer register to the Aarhus Convention³⁴ or GMO Amendment to it should be ratified.
- Protocol on SEA to the Espoo convention should be ratified and its provisions should be implemented into the national legislation.
- The following draft laws should be passed: on amendments to the laws "On Environmental Inspection", "On Regulations in Urban Development", to rehabilitate the concept of environmental inspection, evaluation of environmental impact, public rights to participate in decision-making and to free access to information in the issues of zoning, construction and area development.
- Illegal practices of restricting constitutional rights of citizens in adopting state budget and delegating the authority of establishing social guarantees and compensations to the Government doing so arbitrarily must be eliminated.
- Governmental resolution "On Procedure for Access to Environmental Information" should be adopted.

¹ "National report on Environmental Status in Ukraine" - <http://www.menr.gov.ua/content/article/6004>.

² Vienna Declaration of European Eco-Forum to the third meeting of Aarhus convention parties" Use Aarhus convention to establish true democracy!" - <http://www.participate.org/documents/vienna-decl-rus-final.pdf>

³ pp. 25 – 25-1 Law of Ukraine "On Environmental Protection"

⁴ <http://www.menr.gov.ua/content/article/6004>

<http://www.ecobank.org.ua/GovSystem/EnvironmentState/Pages/National.aspx>

⁵ <http://www.menr.gov.ua/content/article/6010>

⁶ Art. 9 Law of Ukraine "On Drinking Water and Drinking Water supply"

⁷ <http://www.zoda.gov.ua/sitemap>

⁸ Order of the State Committee for Land Resources of 29.08.2011 № 549 «On Amendments to the List of data containing confidential information, which is state property and bears the stamp "classified", thus restricting access to it".

⁹ Order of the State Agency for Forest Resources of Ukraine of May 26, 2011 poky № 196 with the List of data containing confidential information pertaining to the State Agency for Forest Resources

http://dklg.kmu.gov.ua/forest/control/uk/publish/article?jsessionid=B1DA47F07BBD070CEFD5B2D6D901A376?art_id=82020&cat_id=82019

¹⁰ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3038-17>

¹¹ Chapter „Assessment of environmental impact" of the working draft "Exploration of Pylypchanske gypsum deposit Borshchiv raion, Ternopil obl.

¹² Art. 25, 25-1 Law of Ukraine, "On Environmental Protection" pp 2 - 3 art. 13 Law of Ukraine "On Access to Public Information"

¹³ http://epl.org.ua/fileadmin/user_upload/dodatky_do_anonsiv/%D1%80%D1%96%D1%88_%D0%92%D0%95%D0%95.pdf

¹⁴ <http://www.menr.gov.ua/content/article/6037>

¹⁵ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3038-17>

¹⁶ http://www.ombudsman.kiev.ua/dopovid_6/d_06_3_6.htm

¹⁷ <http://www.khpg.org.ua/index.php?id=1286112719>

¹⁸ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=796-12>

¹⁹ Ruling of the Constitutional Court of Ukraine re: compliance of p. 4. Chapter VII "Final provisions of the Law of Ukraine On State Budget for 2011" with the Constitution of Ukraine of December 26, 2011 poky № 20-pp/2011 - <http://www.ccu.gov.ua/uk/doccatalog/list?currDir=166235>

²⁰ Complete title., Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (AARHUS CONVENTION), ratified by Ukraine in 1999 .

²¹ http://www.unece.org/index.php?eID=tx_nawsecured1&u=0&file=fileadmin/DAM/env/pp/mop3/ODS/ece_mp_pp_2008_2_add_14_r_Ukraine.pdf&t=1322732135&hash=357c5ecde70d7c886a349285d1da09c582d492de

²² Decision 2/5b «Ukraine's compliance with its obligations under Aarhus convention», II meeting of parties, Almaty 27.05.05 r. <http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.8.r.pdf>.

²³ <http://helsinki.org.ua/index.php?id=1298361303>; <http://helsinki.org.ua/index.php?id=1309335837>

²⁴ http://www.unece.org/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/DAM/env/pp/mop4/Documents/Post_Session/ece.mp.pp.2011.2.Add.1-as_submitted_adv.pdf&t=1322720553&hash=2b48b05653a1141794aa5c30a60495841cac8e0e

²⁵ Complete title protocol on pollutant release and transfer register or Kyiv protocol, came in force on October 2009 - <http://stop-x-files-ua.org/?p=5197>

²⁶ Complete title: Amendment to Aarhus convention on public participation in decision-making on deliberate release of genetically modified organisms into environment

²⁷ http://unfccc2.meta-fusion.com/kongresse/enf15/templ/play.php?id_kongresssession=4055

²⁸ <http://www.menr.gov.ua/content/article/10256>

²⁹ Complete title: (Convention on Environmental Impact Assessment in a Transboundary Context – IAE Convention, - Espoo, 1991). Ratified by Ukraine on 19.03.1999

³⁰ <http://www.rac.org.ua/>

³¹ <http://www.enpi.org.ua/novina/article/konvencija-espo-sudnii-den-dlja-ukrajini/>

³² <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1151-2008-%EF>

³³ Complete title: «protocol on strategic environmental assessment to Convention on assessment of environmental impact in trans-boundary context», signed by Ukraine in 2003.

<http://www.unece.org.unecedevelo.iway.ch/fileadmin/DAM/env/eia/documents/legaltexts/protocolrussian.pdf>

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4-b&chapter=27&lang=en

³⁴ Complete title protocol on pollutant release and transfer register or Kyiv protocol, came in force on October 2009 - <http://stop-x-files-ua.org/?p=5197>