

INFORMAL TRANSLATION

Questionnaire for the

REPORT OF AZERBAIJAN FOR 2003-2005 ON THE IMPLEMENTATION OF THE ESPOO CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

for the period mid-2003 to end of 2005

Information on the Focal Point for the Convention

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PART I – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

Please provide the information requested below in Part I, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should not be used to describe your experience of applying the Convention, i.e. just the framework for its implementation.

Article 2

General Provisions

DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (Art. 2.2).*

The only instrument that regulates matters relating to the EIA Convention is the internal ministry document on appointing a Focal Point. There are no laws regulating the application of the Convention.

TRANSBOUNDARY EIA PROCEDURE

2. *Describe your national and transboundary EIA procedures and authorities (Art. 2.2):*
 - a. *Describe your EIA procedure and indicate which steps of the EIA procedure include public participation.*

There are no procedures specifically laid down in law for EIAs, including transboundary EIAs.

National EIA procedure is based on chapter 13 of the Law “On Environmental Protection” 1999, which defines the objectives and tasks for administrators of environmental expert reviews, and in the “Provision on EIA in Azerbaijan”, 1996.

EIAs are conducted in accordance with the “Provision on EIA in Azerbaijan”. As stated above, there are no specific laws for EIA procedures. However, environmental expert review (of which EIA is one type) is conducted in accordance with the Law “On Environmental Protection”. This Law defines cases subject to environmental expert review, its administrators, its sources of financing and the role of the public. The opinion of civil society organisations is heard for information and advice (its consideration is not mandatory).

In practice the following procedures apply to EIA:

- The project developer informs the Ministry of Ecology of plans to initiate a specific activity and submits a report on the volume of work the project entails to the office for expert review.
- The volume of work is discussed and agreed upon.
- A preliminary EIA document is prepared.
- Consideration of the preliminary document with a group of outside experts that normally includes representatives of civil society environmental organisations.

- Communication to the project developer of the draft decision of the state environmental expert review, which takes account of the opinion of outside experts.
- Submission to the Office for Expert Review of the final EIA document, which takes account of observations on the preliminary version.
- Drafting of the final decision of the State Expert Review. In practice, a positive decision is equivalent to authorisation to proceed, while a negative decision constitutes a denial of authorisation.
- The “Provision on EIA...” provides that the Applicant (project developer) shall publish, in the mass media, notification of the proposed activity and the submission of an application to the Ministry for Ecology and shall also ensure that sufficient copies of the EIA document are available to the public. The “Provision...” does not specify procedures for participation, but it is understood that these may involve meetings with the public, private letters from members of the public or groups of individuals, individual opinions communicated verbally.

The only condition is that all observations be submitted before the official decision of the State Expert Review and that the draft EIA be written in language that any educated member of the public can understand.

- b. *Describe how the different steps of the transboundary EIA procedure mentioned in the Convention fit into your national EIA procedure.*

In accordance with national procedures and procedures under the Convention (Article 2.7), the impact assessment (environmental expert review) is conducted during the planning phase of the activity.

In accordance with Article 4 of the Convention and national procedures, an EIA contains the information listed in Appendix II, with the exception of points “g”, “h” and “i”, which are not mandatory for EIA.

- c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure. Also list the authorities responsible for the domestic EIA procedure, if they are different.*

The authority responsible for the EIA Convention in Azerbaijan is the Ministry for Ecology and Natural Resources. The executive body directly responsible for all stages of implementation of the Convention is the Office for Expert Review. The Focal Point is the head of this office, Gakhraman Khalilov.

- d. *Is there one authority in your country that collects information on all the transboundary EIA cases under the Convention? If so, name it. If not, do you intend to establish such an authority?*

No such authority exists. We are planning to create one.

3. *Do you have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

There are no special provisions for different types of activity.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING EIA UNDER THE CONVENTION

4. *Is your country’s list of activities subject to the transboundary EIA procedure equivalent to that in Appendix I to the Convention?*

There is no national list of activities subject to transboundary EIA.

5. *Please describe:*

- a. *The procedures and, where appropriate, the legislation you would apply to determine that an “activity”, or a change to an activity, falls within the scope of*

Appendix I (Art. 2.3), or that an activity not listed should be treated as if it were (Art. 2.5);

There is no specific legislation in this area. In the event of a difference of views of the Party of origin and the affected Party in assessing the level of impact and its “transboundary” character, we consider that the Convention Secretariat must play the role of arbitrator. A group of independent experts could also be created to determine whether an activity should be added to the category of activities listed in Appendix 1. To this end, we can offer the assistance of experts from our own country.

b. How a change to an activity is considered as a “major” change;

Create a group of independent experts to decide whether a specific activity should be included in the category of activities listed in Appendix 1 and in the “major” category. It could even take decisions without meeting, by using the internet.

c. How such an activity, or such a change to an activity, is considered likely to have a “significant” adverse transboundary impact (Art. 2.5, Guidelines in Appendix III); and

Because dispersion and dissolution modelling is not conducted during the decision phase, an evaluation of the “significance” of an impact may be based on prior experience in various countries. For such information, a database on past projects in Europe and the world is required.

d. How you would decide whether it is “likely” to have such an impact. (Art. 2.3)

It is likely that there will be no disagreement with the Party of origin, but in the event of such disagreement, we will seek advice from the Convention Secretariat and renowned scientists and ecologists from throughout the world.

PUBLIC PARTICIPATION

6. Do you have your own definition of “the public” in your national legislation, compared to Article 1(x)? How do you, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your own public as required in Article 2, paragraph 6?

The term “the public” is not defined in environmental legislation. There have been no cases of working with an affected Party. However, the public in neighbouring countries was able find information on the activities of multinational enterprises producing fossil fuels in the Caspian Sea and information on the Baku-Tblisi-Ceyhan pipeline on the web-site www.caspiandevlopmentandexport.com.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

7. Describe how you determine when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure do you usually notify the affected Party? (Art. 3.1)

Notification must be sent immediately after approval is given for the volume of work as per the draft EIA, concurrently with information to the public in our own country.

8. Describe how you determine the content of the notification? (Art. 3.2)

Satisfactory.

9. Describe the criteria you use to determine the time frame for the response to the notification from the affected Party (Art 3.3, “within the time specified in the notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?

No practical experience.

10. Describe when you provide relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in Article 3, paragraph 5. Already with the notification or later in the procedure?

No practical experience.

11. How do you determine whether you should request information from the affected Party (Art. 3.6)? When do you normally request information from the affected Party? What kind of information do you normally request? How do you determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (Art. 3.6)?

No practical experience.

12. How do you consult with the authorities of the affected Party on public participation (Art. 3.8)? How do you identify, in cooperation with the affected Party, the “public” in the affected area? How is the public in the affected Party notified (what kinds of media, etc are usually used)? What is normally the content of the public notification? Does the notification to the public of the affected Party have the same content as the notification to your own public? If not, describe why not. At what stage in the EIA procedure do you normally notify the public of the affected Party?

No practical experience.

13. Do you make use of contact points for the purposes of notification as decided at the first meeting of Parties (ECE/MP.EIA/2, decision I/3), and listed on the Convention website at http://www.unece.org/env/eia/points_of_contact.htm?

No practical experience.

14. Do you provide any information to supplement that required by Article 3, paragraph 2? Do you, furthermore, follow the proposed guidelines in the report of the first meeting of the Parties (ECE /MP/2, decision I/4)? If not, in what format do you normally present the notification?

No practical experience.

QUESTIONS TO AFFECTED PARTY

15. Describe the process of how you decide whether or not you want to participate in the EIA procedure (Art. 3.3)? Who participates in the decision-making, for example: central authorities, local competent authorities, the public and environmental authorities? Describe the criteria or reasons you use to decide?

No practical experience.

16. When the Party of origin requests you to provide information relating potentially affected environment: (a) how do you determine what is “reasonably obtainable” information to include in your response; and (b) describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “promptly” in the context of responding to a request for information? (Art. 3.6)

No practical experience.

Article 4

Preparation of the EIA documentation

QUESTIONS TO PARTY OF ORIGIN

17. *What is the legal requirement for the content of the EIA documentation (Art. 4.1)?*

There is no specific legislation relating to the content of EIA documentation in Azerbaijan. General European standards, which correspond with Appendix 2 of the Convention, are applied.

18. *Describe your country's procedures for determining the content of the EIA documentation (Art. 4.1).*

There is no specific legislation relating to the content of EIA documentation in Azerbaijan. General European standards, which correspond with Appendix 2 of the Convention, are applied.

19. *How do you identify "reasonable alternatives" in accordance with Appendix II, alinea (b)?*

Reasonable alternatives are understood as being alternatives occasioning little additional expense (entailing relocation, substitute technology, changing the source and quality of raw materials, energy, etc.) and resulting in a major beneficial environmental effect.

20. *How do you identify "the environment that is likely to be affected by the proposed activity and its alternatives" in accordance to Appendix II, alinea (c), and the definition of "impact" in Article 1(vii)?*

We understand this expression as described under "impact" in Article 1.

21. *Do you give the affected Party all of the EIA documentation (Art. 4.2)? If not, which parts of the documentation do you provide?*

We do not have any relevant experience in implementing the provisions of the Convention.

22. *How is the transfer and reception of the comments from the affected Party organized? How does the competent authority in your country (as the Party of origin) deal with the comments? (Art. 4.2)*

We do not have any relevant experience in implementing the provisions of the Convention.

23. *Describe the procedures and, where appropriate the legislation you would apply to determine the time frame for comments provided for in the words "within a reasonable time before the final decision" (Art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

We do not have any relevant experience in implementing the provisions of the Convention.

24. *What material do you provide, together with the affected Party, to the public of the affected Party?*

We do not have any relevant experience in implementing the provisions of the Convention.

25. *Do you initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?*

We do not have any relevant experience in implementing the provisions of the Convention.

QUESTIONS TO AFFECTED PARTY

26. *Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of the words “within a reasonable time before the final decision”, this being the time frame for comments (Art. 4.2)?*

There are no special procedures or legislation in Azerbaijan. The "Guidance on EIA in a Transboundary Context in the Caspian Sea Region" may be used.

27. *Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, or with the legislation of the Party of origin, or with ad hoc procedures, or with bilateral or multilateral agreements?*

No experience.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

28. *At which step of the EIA procedure does the consultation in accordance with Article 5 generally take place? Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “undue delay”, with regard to the timing of entry into consultation? Do you normally set the duration for consultations beforehand? If there seems to be no need for consultation, how do you determine not to carry out consultations?*

No relevant experience.

29. *On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?*

No relevant experience.

QUESTIONS TO AFFECTED PARTY

30. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means do you usually communicate in consultations, for example by meeting or by the exchange of written communications? How do you indicate if there is no need for consultations?*

No relevant experience.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

31. *Describe what is regarded as the “final decision” to authorize or undertake a proposed activity (Art. 2.3). Do all projects listed in Appendix I require such a decision?*

The final decision is the positive or negative decision from expert review. A positive decision is obligatory for projects listed in Appendix 1.

32. *How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity? (Art. 6.1)*

The Law "On Environmental Protection", Article 51, paragraph 3 states "in the absence of a positive decision, the manufacturing of industrial goods or food products, the provision of labour and services, or their import into the territory of the Republic of Azerbaijan, is forbidden".

33. *Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and public in your country (Art. 6.1)?*

No experience.

34. *How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (Art. 6.2)*

No experience.

35. *If additional information comes available according to paragraph 3 before the activity commences, how do you consult with the affected Party? If need be, can the decision be revised? (Art. 6.3)*

No experience.

Article 7

Post-Project Analysis

36. *How do you determine whether you should request a post-project analysis to be carried out (Art. 7.1)?*

No experience in a transboundary context. The procedure applied within Azerbaijan provides for the carrying out of post-project analysis.

37. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how do you inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to Article 7, paragraph 2?*

No experience in a transboundary context. The procedure applied within Azerbaijan provides for the carrying out of post-project analysis.

Article 8

Bilateral and multilateral agreements

38. *Do you have any bilateral or multilateral agreements based on the EIA Convention (Art. 8, Appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on Appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

There are no bilateral or multilateral agreements based on the Espoo Convention.

39. *Have you established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

No.

Article 9

Research programmes

40. *Are you aware of any specific research in relation to the items mentioned in Article 9 in your country? If so, describe it briefly.*

Oil and gas developers in the Azerbaijani section of the Caspian Sea have carried out specific research. For example, the company BP's work on the impact that developing fossil fuel operations has on the state of fish stocks, sea grass and birds; mandatory monitoring of water strata and benthos in the vicinity of oil and gas operations in the sea, and the state of the soil, flora, fauna, surface and ground water, etc., on land. At the end of the last century, Elf monitored the impact of seismic prospecting on shallow waters. Because of the high level of development in the fossil fuels industry, each company carries out research on possible oil spills and clean-up operations. Many such studies have been carried out. With some of the companies leaving Azerbaijan, the amount of research has fallen somewhat.

Ratification of the amendments to the Convention and of the Protocol on SEA

41. *If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Yes, in the very near future.

42. *If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Yes, in the very near future.

43. *If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?*

Azerbaijan is planning to ratify the Protocol on SEA in the near future.

PART II – PRACTICAL APPLICATION DURING THE PERIOD 2003-2005

Please report on your practical experiences of applying the Convention (not your procedures described in Part I), whether as Party of origin or affected Party. The focus here is on identifying the best practice as well as difficulties Parties encountered in applying the Convention in practice to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve application of the Convention.

CASES DURING THE PERIOD 2003-2005

44. *Do you have any practical experience of applying the Convention in this period (yes/no)? If you do not have any such experience, why not?*

No.

45. *Does your national administration have information on the transboundary EIA procedures that were underway during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If you have not provided a list of transboundary EIA procedures in connection with previous reporting, also provide a list of those procedures. If possible, also indicate for each procedure why it was considered necessary to apply the Convention.*

No, as there has been no experience of implementing the provisions of the Convention.

46. *Are there other projects than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.*

There have been such projects. Given the absence of bilateral and multilateral agreements on transboundary EIA with neighbouring countries, this procedure was not followed. The majority of neighbouring countries are not yet Parties to the Convention.

47. *Provide information on the average durations of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

No experience.

EXPERIENCE OF THE TRANSBOUNDARY EIA PROCEDURE IN 2003-2005

48. *If you have had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

No experience.

49. *How have you interpreted in practice the various terms used in the Convention, and what criteria have you used to do this? Key terms include the following: “promptly” (Art. 3.6), “a reasonable time” (Art. 3.2(c), Art. 4.2), “a reasonable time-frame” (Art. 5), and “major change” (Art. 1(v)). If you are experiencing substantial difficulties interpreting particular terms, do you work together with other Parties to find solutions? If not, how do you overcome the problem?*

There is no experience of applying transboundary EIA procedures or of cooperating with neighbouring countries in the field.

50. Share with other Parties your experience of using the Convention. In response to each of the questions below, either provide one or two practical examples or describe your general experience. You might also include examples of 'lessons learned' in order to help others.

a. *How in practice have you identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?*

No experience.

b. *Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How do you determine how much information to include in the EIA documentation?*

No experience.

c. *What methodology do you use in impact assessment in the (transboundary) EIA procedure (for example, impact prediction methods and methods to compare alternatives)?*

No experience.

d. *Translation is not addressed in the Convention. How have you addressed the question of translation? What do you usually translate? What difficulties have you experienced relating to translation and interpretation, and what solutions have you applied?*

No experience.

e. *How have you organized transboundary public participation in practice? As Party of origin, have you organized public participation in affected Parties and, if so, how? What has been your experience of the effectiveness of public participation? Have you experienced difficulties with the participation of your public or the public of another Party? (For example, have there been complaints from the public about the procedure?)*

No experience.

f. *Describe any difficulties that you have encountered during consultations, for example over timing, language and the need for additional information.*

No experience.

g. *Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public.*

No experience.

h. *Have you carried out post-project analyses and, if so, on what kinds of projects?*

No experience.

i. *Do you have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your experiences describing, for example, any bilateral agreements, institutional arrangements, and how practical matters are dealt with (contact points, translation, interpretation, transmission of documents, etc.).*

No experience.

- j. *Name examples of good practice cases, whether complete cases or good practice elements (e.g. notification, consultation or public participation) within cases. Would you like to introduce your case in a form of Convention's fact sheet?*

No experience.

CO-OPERATION BETWEEN PARTIES IN 2003-2005

51. *Do you have any successful examples of how you have overcome difficulties arising from different legal systems in neighbouring countries?*

No examples.

EXPERIENCE IN USING THE GUIDANCE IN 2003-2005

52. *Have you used in practice the following guidance, recently adopted by the Meeting of the Parties and available on-line? Describe your experience of using these guidance documents and how they might be improved or supplemented.*

- a. *Guidance on public participation in EIA in a transboundary context;*

No.

- b. *Guidance on subregional cooperation; and*

No.

- c. *Guidelines on good practice and on bilateral and multilateral agreements.*

No.

CLARITY OF THE CONVENTION

53. *Have you had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in Part I or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which you encounter when actually applying the Convention.*

It is possible that imprecise language in the Convention may come to light as we acquire experience of applying the procedure in practice. At the current time we have no observations. Azerbaijan did submit observations to the Secretariat in 2001.

AWARENESS OF THE CONVENTION

54. *Have you undertaken activities to promote awareness of the Convention among your stakeholders (e.g. the public, local authorities, consultants and experts, academics, investors)? If so, describe them.*

A meeting has been held with public non-governmental delegations at the Ministry for Ecology. Representatives of the public and of scientific institutions have been appointed members of the group for the practical implementation of the Convention's provisions.

55. *Do you see a need to improve the application of the Convention in your country and, if so, how do you intend to do so? What relevant legal or administrative developments are proposed or on-going?*

A new Law on EIA is being drafted in Azerbaijan, which will provide for transboundary EIA procedures. Efforts will be undertaken in the near future to conclude bilateral agreements with the neighbouring states of Kazakhstan, Russia, Iran and Turkmenistan.

SUGGESTED IMPROVEMENTS TO THE REPORT

56. Please provide suggestions for how the report may be improved.

We consider it necessary to enhance relations between countries through full transparency of the activities of one (the Party of origin) and the possibility for the other (the affected Party) to participate in discussions on the proposed activity. There should be more insistent calls for the signing and ratification of the Convention and the subsequent application of its principles.