

MEASURING AND IMPROVING THE PERFORMANCE OF ENVIRONMENTAL ENFORCEMENT IN GEORGIA

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1 INTRODUCTION

In Georgia, there is recognition that the system of environmental enforcement has many obsolete characteristics and it does not function properly. The instruments used for the assessment of its performance are also underdeveloped. This article analyses performance indicators, which are currently used, and the ways in which the reform process should follow.

2 DESIGN OF ENVIRONMENTAL ENFORCEMENT SYSTEM AND PERFORMANCE MANAGEMENT

2.1 The Environment Protection Authority and Its Enforcement Unit

The environment protection authority was established in Georgia in 1974. Since then, it went through many institutional reforms. Currently, the Ministry of Natural Resources and Environment Protection is the main competent authority as regards environmental regulation and oversight over activities that might influence the rational use of natural resources and the state of the environment.

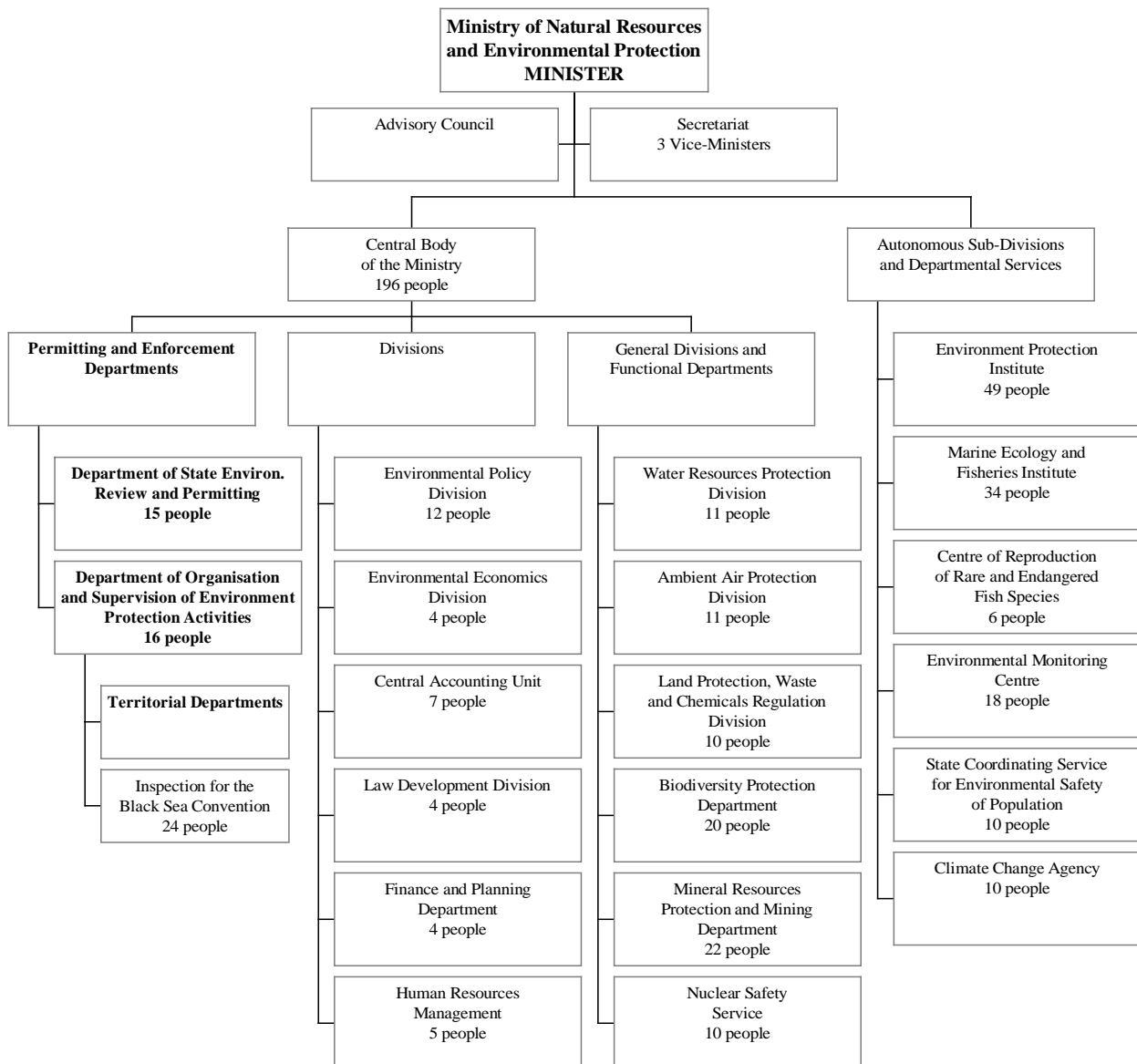
The Ministry of Environmental Protection and Natural Resources has the following tasks:

- Cross-sector co-ordination of environmental protection and natural resource use;
- Environmental policy development and international relations;
- Development of laws and regulations;
- State environmental review, licensing and permitting; and
- Environmental monitoring, inspection and enforcement.

The Ministry's activities cover ambient air, in-land waters and marine ecosystems, land, underground resources, flora (including forests) and fauna, and waste management. In 2002, the regulation and control of nuclear safety was assigned to the Ministry. Figure 1 presents the organisational structure of the Ministry.

The main unit responsible for compliance assurance is the Department for Organisation and Supervision of Environmental Protection Activities (DOSEPA). In addition the department is responsible for planning and supervision of the Ministry's activity as well as public relations. The department subordinates territorial and municipal departments/committees of environmental protection and natural resources management who carry environmental inspections. However, significant emphasis in the Department is put on administrative functions (e.g. reporting on the activity of the Ministry), while the compliance assurance *per se* receives marginal attention. The wide range of responsibilities prevents DOSEPA from effectively monitor my compliance with environmental requirements.

Figure 1. Organisational structure of the Ministry of Environmental Protection and Natural Resources of Georgia



Inspections are carried out by territorial environmental departments which inspect all facilities – large or small. A specialised inspectorate monitors compliance with the Black Sea Protection Convention. The DOSEPA only supervises the inspection activity done by these sub-national units. The supervision is limited to receiving weekly reports (often only over the phone) and organising monthly meetings with heads of these territorial units. High level of discretion is left to the territorial units even though their institutional capacity is low. The Department neither participates in inspection activities, nor provides detailed guidance in procedures or priority setting at the local level. It also does not organise training for inspectors. Although DOSEPA staff is willing to perform all these tasks, the available resources do not allow doing so.

2.2 Key Indicators

Several indicators are in use to evaluate the performance of environmental enforcement system in Georgia. These are mostly indicators of activity (see Table 1). Indicators that would make the connection between input (available infrastructure, human

and financial resources, inspection and enforcement activities) and outputs/outcomes (level of compliance, state of environment) are missing.

Overall, the use of output and outcome indicators is considered to be extremely difficult due to several factors. The level of compliance is impossible to assess due to the restricted access to facilities. Ambient monitoring is very limited, if not to say absent. At the same time, the level of pollution decreased as a result of economic recession. Under such circumstances, the signals given by outcome indicators might be misleading: for instance, a better state of the environment could occur at the time as the absence of inspection.

Table 1. Key performance indicators in Georgia

Category	Indicators in use
Infrastructure	Human resources; Facilities; Financial resources.
Inspection indicators	Number of inspection.
Non-compliance indicators	Number of revealed violations; Number of violations leading to damage.
Enforcement response indicators	Deterrent effect of fines; Fines imposed, numbers; Fines imposed, amount; Damage compensation imposed, amount; Number of cases transmitted to court; Number of cases audited in courts.
Compliance reaction indicators	Fines collected, amount; Damage compensation collected, amount.
Management indicators	Implementation of activities as defined by the Annual Co-ordination Plan of the Ministry; Implementation of annual inspection plans.

2.3 Reporting Lines

The existing hierarchy of reporting of environmental results includes individual inspector's reports, reports from territorial departments to DOSEPA, and DOSEPA's semi-annual and annual reports to the Ministry. Reports are also presented to the Department of Statistics according to the standard reporting form "Environment Protection". Such a form contains data on number of revealed violations, the number of cases where damage occurred and the total amount of damage compensation, number of cases transmitted to courts and amount of fines imposed, etc.

At the regional level, staff members prepare weekly plans and report on their implementation to the head of the regional department. However, these reports have a limited influence on management decisions. For instance, they do not allow management to assess time loads for inspecting a particular facility or sector.

In 2001, the DOSEPA tested a new type of report that required every inspector to provide the following information: number of inspections performed, number of violations discovered, and number of cases transmitted to courts. Unfortunately, these reports brought no added value, since data were not accurate enough, for example a team inspection could be reported by each member of the team thus considerably increasing the number of inspections.

Results of DOSEPA activity are reported to the Minister who may request further information or action (for instance, a more severe response to certain violations). Following this feedback, the DOSEPA usually communicates it to territorial departments. The general public is not informed regularly about the performance of the enforcement system, although press releases can occasionally present important cases and the annual reports of the Ministry contain data on enforcement and compliance.

2.4 Self-reporting by Industry

Every six months, industries are obliged to provide the MNREP with statistical reports on air and water protection. *Inter alia*, these reports contain data on emissions and discharges. Emission levels are estimated based on technological and production parameters.

Many facilities fail to report on their emissions. To address this kind of non-compliance, an innovative tool was introduced requiring industries to endorse their tax declarations with territorial environmental departments. Before sending its declaration to tax offices, industries are asked to obtain a certificate that they possess all environmental licences. A standard form for this certificate was developed. Unfortunately, the tax authorities are not very insistent and accept the declarations without any environmental information.

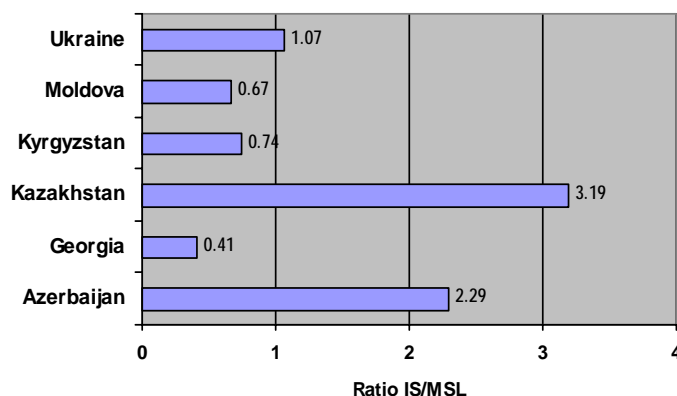
Industry is not required to disclose violations and accidents pro-actively. The incentive to do so is very low, since sanctions exist only for providing false information. Due to a very poor capacity of authorities to monitor the state of environment and emissions, the DOSEPA and its territorial units have very limited opportunities of discovering, and timely responding to, violations or even accidents.

3 ANALYSIS OF PERFORMANCE INDICATORS

3.1 Input Indicators: Human and Financial Resources

The lack of adequate human and financial resources is a major issue preventing DOSEPA from functioning effectively. The most acute problems with human resources are experiences at the local level. This concerns both the number of staff and their training. Furthermore, the motivation of staff is very low. Salaries are substantially under the minimum subsistence level that gives a perverse signal as regards inspectors' integrity and, in fact, unwittingly institutionalises corruption.

Figure 1. Ratio between inspectors' salary (IS) levels and minimum subsistence levels (MSL) in Georgia (2001)



The inputs available to implement enforcement programmes in Georgia are by far less than the (declared) targets set by politicians and the scope of activity. Furthermore, no clear compliance targets exist. Comprehensive analysis is needed to determine at what extent the existing facilities and human resources are matched with targets. Such a target-oriented approach in assessing inputs would provide a more solid basis for estimating budget needs and would give less room for *ad hoc* budget cuts.

3.2 Indicators of Activity

The presently applied activity indicators are not reliable. Some basic data, such as number of facilities and number of inspections, are not collected nationally. As a result, the statistics on violations alone might give a distorted picture of the level of compliance.

Since compliance assistance is not part of inspectors' work, indicators that would signal knowledge and acceptance of regulatory requirements, or capacity of the regulated community to implement these requirements, are absent. In general, the perpetuation of the repressive approach resulted in tense relations between inspectors and the regulated community.

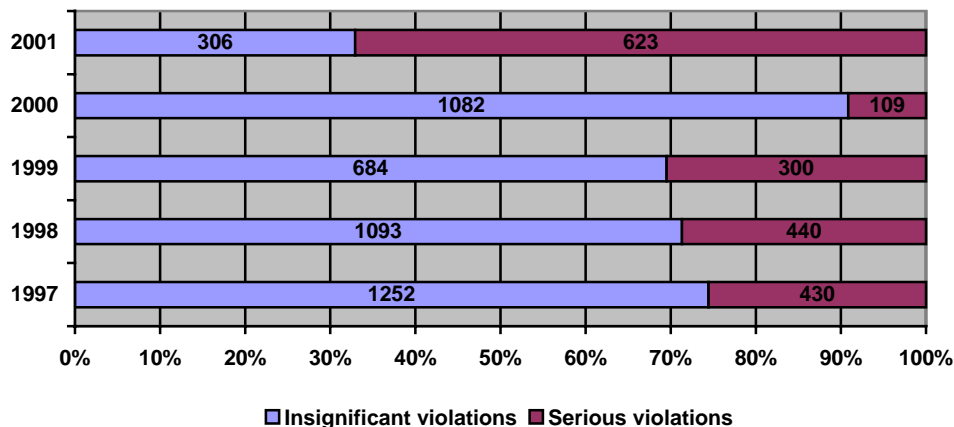
3.3 Indicators of Environmental Compliance

The rate of environmental compliance is difficult to assess in Georgia. Ideally, in order to determine a statistically valid rate of compliance, an environmental inspectorate would need to be able to accurately identify and assess the compliance of the entire regulated community in a particular area. This could be done (a) through periodic checks of all regulatees or (b) through random checks of parts of the regulated community to decrease costs. In practice, even the lower cost option is not feasible in Georgia because random inspections would not be authorised.

If the situation with non-compliance in Georgia is to be judged according to the total number of revealed violations, it would seem to have improved in the last few years. However, the decreased number of instances of revealed non-compliance could be a simple consequence of limited access to sites, lower quality of inspection, and declining capacity to perform ambient and emission monitoring.

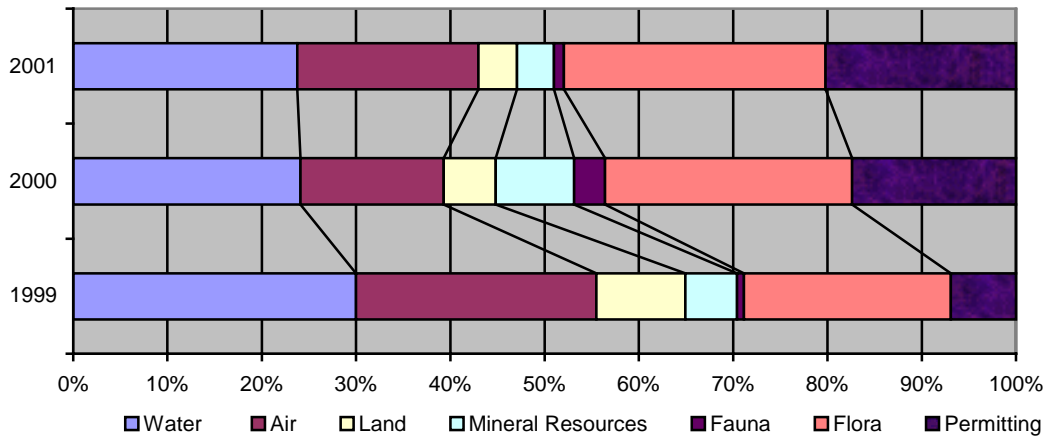
Although the number of violations dropped, the percentage of serious violations where environmental damage occurred increased (see Figure 4). A substantial part of damage is related to the failure of pollution control facilities in emergency situations. This is clearly a consequence of ageing infrastructure, though it is not clear whether the right of inspectors to intervene in emergency situations have increased the likelihood of being inspected thus increasing the proportion of this type of violation.

Figure 2. The increase in the percentage of serious violations (1997-2001)



In the structure of non-compliance by environmental media, the violations of nature conservation requirements are in the lead. It is obvious that these violations are much easier to discover in comparison with violations occurred at industrial sites (see). Another factor is the high level of poverty and the energy crisis that forced the poorest to seek access to resources through illegal logging, fishing and hunting.

Figure 3. Overall structure of non-compliance in 1999-2001 in Georgia



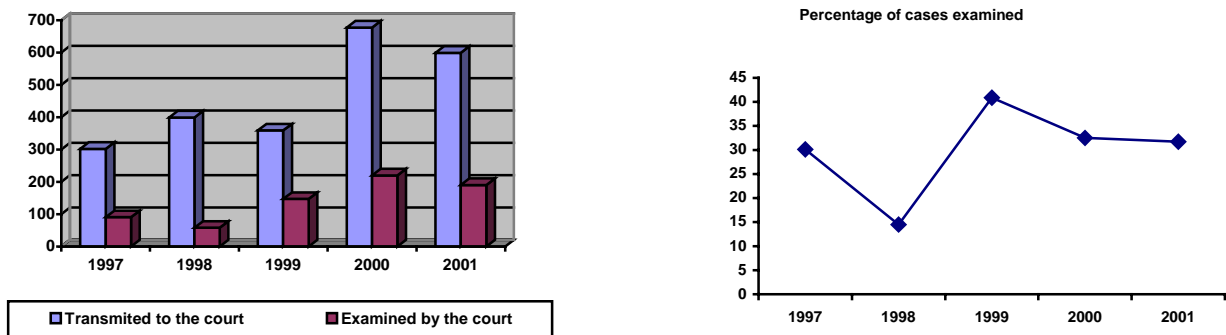
3.3 Indicators of Enforcement Responses

The level of sanctions is low in Georgia. Therefore they do not have any deterrent effect. For example, the legislation on marine environment protection foresees fines that are up to 5 US dollars for violations of requirements to register any activity involving handling of hazardous substances, including international marine transport.

The relationships between environmental inspectors and courts are an example of how performance and effectiveness of regulation is influenced by institutional problems, including poor communication. In many instances, courts are reluctant to authorise environmental inspectors to enter a facility. This fact can have several explanations. Judges are not well acquainted with environmental problems and particularities of environmental cases. Inspectors, in their turn, are not well trained to prepare the files so that courts accept environmental cases. The evidence of non-compliance is difficult to obtain because the ambient monitoring system collapsed. It is not clear whether the decision to authorise the entry of a facility is influenced by lobbying from industry.

Many environmental cases, transmitted to courts, are not examined (see Figure 6), or the enforcement response is not adequate. There is dissonance among different territorial environmental departments, some of them getting full support from courts, other ones being constantly refused. This shows that there is no consistent decision-making policy within the court system regarding environmental enforcement. The new system seems to be as discretionary as previously, with discretion being "transferred" from environmental inspectors to courts.

Figure 4. Trends in number of cases examined by courts as compared to number filed (1997-2000)



Although inspectors kept the right to propose the enforcement response, the courts usually prefer sanctions milder than proposed by inspectors. For instance, the amount of damage compensation is systematically lowered. Moreover, the courts are very slow in examining the environmental cases.

There also are difficulties at the stage of executing the court decisions. According to the current legislation, any complainant has to conclude a contract with the court executor and to pay in advance 7% of the claimed money. The Ministry's budget does not provide for such money. The damage compensation claims are very significant and so are the necessary sums for being advanced while the DOSEPA has no guarantee at all that the compensations will be collected since most of the defendants are quasi bankrupt. As a result, the rate of collected fines dropped to 6 per cent in 2001 and even 4 per cent in 2002.

4 KEY LESSONS LEARNED FROM THE ANALYSIS OF INDICATORS

The general conclusion from this case study is that indicators cannot exist separately from enforcement strategies and the overall conditions of their implementation. To this end, a standard set of indicators could be complemented with indicators that would relate to specific programs and their elements. The "standard" indicators, among other things, should allow measuring the institutional capacity of enforcement authorities, the potential deterrent effect of tools used, but also the integrity of inspectors.

An important goal of performance management is to obtain a picture of the enforcement system's effectiveness as a whole. The knowledge of the roots of non-compliance can help in this regard. For example, a rating system could be introduced to evaluate factors that are detrimental to environmental compliance.

Also the case study leads to several conclusions on priority actions to improve environmental enforcement in Georgia. First, the environmental inspectors will have to be endowed with powers, knowledge and infrastructure necessary to effectively enforce environmental requirements. To limit the discretion in inspectors' actions, decision-making policies on inspection frequency and procedures should be developed, and an appeal mechanism should be established. If motivation and integrity is expected from inspectors, the Government needs to set the salaries at a level that at least covers the minimum subsistence. To strengthen the regulatory chain as a whole, the environmental awareness of courts should be improved.

An early measure in improving the effectiveness of the enforcement system is a better identification of the regulated community. The Ministry should define the information that is necessary, with delineation of minimal, intermediate and full data sets. The Ministry should be in constant liaison with other governmental agencies (e.g. tax authorities) that might possess data on new companies. The regulatees should be required to track their own compliance regularly and report the results for government review. Preventative activities would need to be started to complement the current repressive character of the enforcement system.