

**REPORT ON THE GEORGIAN LAW ON
OBLIGATION TO COMPENSATE FOR HARM
CAUSED BY HAZARDOUS SUBSTANCES**

**Georgia Oil and Gas Sector Reform
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Final Report

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REPORT ON THE GEORGIAN LAW ON OBLIGATION TO COMPENSATE FOR HARM CAUSED BY HAZARDOUS SUBSTANCES

Background

The manufacture, use and transportation of hazardous materials, including numerous chemicals, crude oil and natural gas, can present significant risks to humans, property, and the environment. The Soviet legal system dealt with the harm caused by the escape of such materials and resulting contamination by creating an extensive system of standards for the handling of hazardous material, the cleanup of spills, and the restoration of contaminated property. In practice, these facially high quality standards were subordinated to industrial production goals and ignored. Because all property and almost all enterprises that caused contamination were state-owned and basic needs were in theory provided for citizens, no system of compensating individuals, enterprises, or the public interest was established under Soviet law. A framework of criminal and administrative penalties, including fines, was in place.

The re-emergence of private property ownership and the disappearance of the system of social guarantees following the elimination of the communist regime has re-created a need for a system to compensate for harm to private and public health, property, and national resources, both environmental and cultural, for damage caused by contamination by hazardous materials.

The existing Georgian "Law on Hazardous Chemicals" provides a modern regulatory framework governing the handling of many of the chemicals of concern. In addition, a number of regulations set exposure limits and cleanup standards. The Civil Code of Georgia establishes a civil liability framework, but the bases of liability are limited to harm caused by intentional or negligent acts, either of which can in practice be difficult and expensive for an injured party to prove. The Anglo-American concept of strict liability, now incorporated into a variety of international agreements and legislation, has proved relatively effective in placing responsibility and risk of loss on persons and firms who manufacture and handle materials that present a significant risk to people, property, and the environment. The introduction of this concept into Georgian law could prove similarly effective, and serve to bring into actual practice the general principles of responsibility stated in Georgia's environmental legislation.

Principal Features

The proposed law would establish the legal principle of strict liability, a new concept in Georgian tort law. It clearly fixes the legal responsibility for harm on the party owning or

controlling dangerous materials, defines the harm for which compensation should be made, and sets out limited circumstances under which a party may be excused from liability. The clear allocation of risk under established international standards should create a more certain basis for evaluating investments in petroleum, chemical, and transportation related sectors, as well as encouraging the development of private insurance coverage, and, finally, encouraging potentially liable businesses to use safe practices in handling hazardous materials.

The proposed law would establish the principle that persons and firms who manufacture, handle, use, or transport hazardous materials may be held liable for personal injuries and damage to public and private economic interests and to natural and cultural resources caused by release of such materials. The hazardous substances to which the law would apply are those currently identified in Georgia law as hazardous materials or pollutants, with the addition of oil and its wastes and products and natural gas. The definition of hazardous materials is largely based on European Union law, which was considered to be consistent with Georgia's trading patterns and familiar to most foreign investors.

Exceptions from liability consistent with international practice are provided. These exceptions would excuse liability for harm caused by hazardous substances released as the result of acts beyond the control of the person controlling or owning the hazardous materials. These include acts of war and damage caused by third persons and natural disasters. However, in order to be excused from liability arising from third party acts or natural events, a responsible person would be required to show that he took reasonable precautions to prevent or reduce the effects of such harm. In order to attempt to assure the highest level of environmental protection, no excuse from the obligation to pay for the cost of response, cleanup, and remediation occasioned by to hazardous material releases is available for third party or natural disaster caused events. Releases of hazardous materials in compliance with permits issued by the Government of Georgia (GoG) would not give rise to liability under the law. Compulsory insurance or proof of ability to pay an award of damages is not required under the proposed legislation, but provision is made for the application of future financial responsibility laws.

The proposed law would encourage the replacement of the existing rigid and outdated Soviet era system of fixed penalties for damages to natural and cultural resources by requiring the Environmental Protection and Culture ministries to establish, through consultation with experts, methodology for assessing damages, on a case by case basis, for damage to public owned natural and cultural resources.

Development of the Draft Law

Creation of the draft law was undertaken as part of the continuing provision of technical assistance to the Georgia International Oil Company (GIOC), in connection with GoG's meeting World Bank requirements for funding of an Energy Sector Adjustment Credit. One of these requirements was the enactment of strict liability legislation related to oil and gas transit. As

consultation with counterparts on this legislative initiative commenced, however, GIOC indicated that broader legislation was appropriate to cover potential environmental liabilities arising from a multiplicity of potential sources. World Bank concurred with this broader approach.

In developing the proposed law under Task Order 5, Hagler Bailly consulted with key personnel from the GIOC, the Ministry of Environmental Protection and Natural Resources, the Ministry of Culture's Board of Protection and Usage of the Relics of History and Culture of Georgia, the chairman (Hon. Givi Gigineishvili) and staff experts of the Parliamentary Committee on Environmental Protection, the Georgian Young Lawyers' Association, and technical experts from the World Bank. As a result of these consultations and a review of relevant existing Georgian law, Hagler Bailly circulated draft legislation, accompanied by numerous references and source materials, to interested parties for further comment. The process of circulating further drafts and receiving further comments culminated in a workshop conducted on 18 May 1999, which was designed both to explain the concepts and potential application of the law and to provide a forum for discussion of issues raised by the legislation. We have attached a schedule of consultations and a list of attendees at the workshop.

Following the seminar, receipt of further comments, and discussion of associated legal issues on the proper integration of the law into the Georgian legal structure, Hagler Bailly distributed a final recommended draft law to interested parties in May, 1999, and consulted further consultations with Parliamentarians regarding the draft. On 22 June 1999 Parliament approved the draft law on its first reading; three readings are required for enactment.

Conclusion

Georgia's adoption of strict liability hazardous materials legislation will provide an enhanced means for assigning legal responsibility for compensation for damages caused by hazardous materials and of assessing damages for harm to public resources.

Attachments

1. Draft Law on Obligation to Compensate for Harm Caused by Hazardous Substances (English translation, passed by Parliament on first reading 22 June 1999)
2. Consultation schedule

ATTACHMENT 1

**DRAFT LAW ON OBLIGATION TO COMPENSATE FOR HARM CAUSED BY
HAZARDOUS SUBSTANCES**

**ENGLISH TRANSLATION
PASSED BY PARLIAMENT ON FIRST READING
22 JUNE 1999**

Law of Georgia
on Obligation to Compensate for Harm Caused by Hazardous Substances

Chapter I. General Provisions

Article 1. Aim of the Law

Aim of the Law is to provide compensation for damage and loss to personal health, environmental and cultural quality, private and public property and economic interests caused by the release of hazardous substances into the environment, without the existence of fault or negligence of the responsible person.

Article 2. Definitions

1. "Hazardous substance" means an element, compound, or mixture that presents a imminent and substantial danger or threat of harm to humans, property, or natural or cultural resources, including, but not limited to animals, vegetation, microbiota, soils, marine resources and water resources, either directly or through the accumulation of such substance in the environment or living creatures, including: oil; natural gas and gases and substances extracted from it; radioactive materials, excluding unprocessed or unrefined naturally occurring radioactive materials; those substances listed in the law of Georgia "On Tax on Pollution of the Environment with Harmful Substances," and Georgia Tax Code; also substances defined as a "dangerous substance" under the Convention on Civil Liability for Acts Dangerous to the Environment (21 June 1993).
2. "Oil" means a liquid hydrocarbon or a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, gasoline, diesel fuel, kerosene, sludge, oil refuse, or other petroleum-related product or by-product.
3. "Pollution" means the discharge, escape, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding: any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' direct employer; and emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel.
4. "Initial response" means all steps necessary to:
 - (a) stop the release of a hazardous substance;
 - (b) stop the further spreading of a released hazardous substance;
 - (c) provide adequate warning of the hazards or potential hazard to persons and the environment presented by the release of the hazardous substance;
 - (d) notify the public authorities of the fact of the release and the hazard or potential hazard, and cooperate with the authorities in all further measures taken in response to the release;

(e) provide evacuation, temporary shelter, subsistence, and emergency medical care to persons exposed to or threatened by the released hazardous substance; and

(f) take all further steps reasonably necessary to protect persons and the environment from immediate harm caused by the released hazardous substance.

5. "Responsible person" means:

(a) Any person who releases one or more hazardous substances into the environment of Georgia as a result of the production, manufacture, processing, refining, storage, transportation, use, or disposition of a hazardous substance (either directly or in combination with other substances), including any person who owns, controls, or has the right to control the hazardous substance; and

(b) Any person producing, manufacturing, refining, storing, transporting, using, or disposing of a hazardous substance on behalf of another person.

6. "Crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed or to which certain distillate fractions have been added.

Article 3. Persons Exempt from Requirements under this Law

1. Individuals using hazardous substances, for consumer purposes, and in amounts normal for consumer purposes are exempt from this law.

2. A finding that a person is exempt from this law shall not excuse that person from liability or the obligation to pay compensation for harm under any other laws.

Chapter II. Obligations and Responsibilities

Article 4. Basis for Obligation

1. Responsible persons shall be obligated to pay compensation for harm caused by the exposure of any person or place to any hazardous substance:

(a) in connection with the manufacture, processing, refining, storage, transportation, and use of the hazardous substance; or

(b) by the release of the hazardous substance, whether intended, accidental, or caused by the acts of third parties, except as otherwise provided in this law.

2. Responsible persons shall be obligated to compensate for harm without regard to fault or negligence of the responsible person, his, her or its officers, directors, representatives, or employees.

3. Responsible persons shall be obligated to compensate for harm for the acts or omissions of their officers, directors, representatives, and employees. ?

Article 5. Joint Obligation.

1. If a hazardous substance is released from two or more sources, the responsible persons for each of the sources shall be jointly and severally obligated to pay compensation for all damages. However, if a responsible proves that only part of the damage was caused by the release from the source owned or controlled by him, he shall be obligated to pay compensation only for that part of the damage.
2. If a release occurs over a period of time during which the source of the release is owned or controlled by two or more responsible persons, the responsible persons shall be jointly and severally obligated to pay compensation.
3. All responsible persons owning, controlling, or having the right to control hazardous substances released at the time such substances are released shall be jointly and severally obligated to pay for damages.
4. Responsible persons may assert any claims for recourse for obligations under this law between and among themselves or against any other person in the manner provided by the law of Georgia.

Article 6. Excuse from Obligation.

1. Responsible persons shall not be obligated to pay compensation for harm caused by:
 - (a) acts of war, whether declared or undeclared, civil war or insurrection, or
 - (b) compliance with a specific written or verbal order or compulsory measure of a relevant public authority issued prior to the release of a hazardous substance by a public authority. In the event the public authority, which has issued the order, shall be responsible for compensating for such harm in the manner provided by the law then in force.
 - (c) a release that does not exceed the amount permitted to be released from the location at which the release occurred under a valid permit, allowance, license, or other authority granted by the government of Georgia under applicable law.
2. Responsible persons may be excused, entirely or partially, from the obligation to pay compensation for damages caused by the acts of third persons (excluding the responsible person's officers, directors, agents, servants, or employees) and natural events of an exceptional, inevitable, and irresistible character if:
 - (a) the responsible person with respect to availability of information and other relevant circumstances would not have foreseen the act or event; or
 - (b) if the event was reasonably foreseeable, and the responsible person took all precautions to prevent or reduce the effects of the event, including the use of the best available design or technology in conformity with internationally accepted standards for the relevant industry or activity; and

(c) the responsible person, within a reasonable period of time after the release occurred, discovered the release of the hazardous substance and began initial response to the release.

3. (a) A responsible person may not be excused from the obligation to pay compensation under this section if the damages are caused in whole or in part by the responsible party's knowing violation of any applicable health or safety laws.

4. A responsible person shall not be excused under the provisions of paragraph 2 from the obligation to pay for the costs of initial response to the release of hazardous substances and any further response, including, but not limited to, containment, removal, remediation, and restoration performed by any person, including the state or state enterprises. The responsible person shall be obligated to compensate for the costs of initial response to the release of hazardous substances and any further response, including remediation and restoration according the standards in force in Georgia. In the absence of such standards in the laws and regulations of Georgia, compensation shall be determined by using prevailing practices in the states of the European Union.

5. A responsible person shall not be required to pay compensation for harm to the person or property of a person if the harm resulted wholly or partially from:

(a) an intentional act or omission of that person done with intent to cause the release of hazardous substance or damage to the property of the responsible person; or

(b) a negligent act or omission of that person occurring during a course of conduct intended to cause the release of a hazardous substance or cause harm to the property of the responsible person.

5. A responsible person shall not be required to pay compensation for harm to the person or property of a person who voluntarily exposed himself or his property to the risk of harm with knowledge of the danger.

Article 7. Damages.

1. Responsible persons shall obligated to pay the following:

(a) Compensatory damages for personal injury or death;

(b) Compensatory damages for the costs of responding to the release of hazardous substances, including, but not limited to, initial response, containment, removal, remediation, and restoration performed by any person, including the state or state enterprises;

(c) Compensatory damages for economic loss, including harm to land, buildings, improvements, crops, orchards, vines, and water resources and lost income therefrom suffered by an owner, occupant, or user thereof;

(d). Damages to the state for harm to natural resources in an amount determined by the legislation in each such case, including the costs and expenses of assessing, monitoring, and evaluating damages;

(e) Damages to the state for harm to cultural resources, in an amount determined by the legislation, including the costs and expenses of assessing, monitoring, and evaluating damages.

2. The method of calculating damages specified in this article shall be determined, to the extent applicable, in the manner specified in Section 3 ("Delictual Obligations") of the Civil Code.

Article 8. Liabilities under other Law

The payment of compensation or finding of obligation to pay compensation under this law shall not relieve or excuse a responsible party from liability under any other applicable legislation. Provided, however, that a responsible person shall not be required to pay additional compensatory damages for harm for which compensation has been paid pursuant to this law.

Article 9. Financial Responsibility

Persons subject to this law shall obtain and keep in force insurance insuring against claims under this law, amount and type of insurance shall be in accordance with Georgian legislation; or provide proof of the ability to pay an amount at least equal to the minimum amounts of such required insurance.

Chapter III. Transitional and Final Provisions.

1. Not later than 3 months after adoption of this law, the Ministry of Environmental Protection and Natural Resources shall issue an order, stating the method of determining the appropriate amount to be paid to the State in compensation for damage to natural resources under Article 7 of this law, including methods of determining and valuing ecological impacts and long term damage on a case by case basis.

2. Not later than 3 months after adoption of this law, the Ministry of Culture shall issue a regulation, stating the method of determining the appropriate amount to be paid to the State in compensation for damage to cultural resources under Article 7 of this law. The regulation shall also envisage methods of determining and valuing ecological impacts and long term damage on a case by case basis.

11. Final Provision

This Law shall enter into force at the date of publication.

Eduard Shevardnadze

President of Georgia

ATTACHMENT 2
CONSULTATION SCHEDULE

CONSULTATION SCHEDULE

The following reflects the meetings and other contacts that Stroud Kelley, Hagler Bailly consultant, held with counterparts in connection with developing the environmental liability law. All dates 1999.

9 March - Met with Dr. Giorgi Vashakmadze and Giorgi Tsurtsunia of Georgia International Oil Co. on environmental concerns and impacts from oil and gas transportation activities and manufacture, transportation and use of hazardous materials.

16 March - Met with Solomon Tsabadze, Ministry of Environment and Natural Resources concerning treaties and international conventions, current environmental liability assessment practices, scope of prospective legislation, specific environmental concerns; met with Nino Gvenetadze, Chair of Georgian Young Lawyers' Association and legislative expert, on potential Administrative and Criminal Code implications of prospective legislation, drafting methodology.

19 March - Met with Dr. Vashakmadze and GIOC staff concerning project status and work plan

7 April - discuss draft legislation with Giorgi Vashakmadze

14 April - Meeting with Nino Geventdze, president Young Lawyers Association, re: technical drafting aspects; meeting with Solomon Tsabadze, Ministry of Environment and Natural Resources re: technical standards for hazardous materials; meeting with Herb Emmrich re: status

29 April - meet with Dr. Giorgi Vashakmadze, GIOC, and Jonathan Walters and Allan Rotman, World Bank, re: third party and natural disaster caused harm and parliamentary strategy

30 April - meet, with Sophika Berishvili, with Chairman Givi Gigineishvili and senior staff, Committee on Environmental Protection and Natural Resources

5 May, 1999 - Meet with parliamentary Environmental Committee staff, with Sophika Berishvili; meet with Solomon Tsabadze, Environment Ministry; with Thea Kitarishvili, Sophika Berishvili; t/c with Giorgi Vashakmadze; revise draft to meet issues raised by Tsabadze

6 May, 1999 - t/c with Giorgi Vashakmadze; meet with Leri Medzmariashvili, Deputy Culture Minister/Head of historical protection agency; with Sophika Berishvili to discuss cultural resource damage issues

17 May—meet with Nino Chkoadze, Minister of Environmental Protection and Natural Resources, Solomon Tsabadze, Head, Department of Environmental Impact Assessment EPNR, Herb Emmrich, USAID, Patrick Grammar, Sophika Berishvili, Hagler Bailly concerning draft legislation; meet with Giorgi Vashakmadze, Sophika Berishvili, on revisions to draft legislation.

18 May—conduct workshop on proposed legislation. Attending were:

Giorgi Vashakmadze, Director General, GIOC

Goga Tsurtsunia, Lawyer, GIOC

Soso Tsabadze, Head, Department of Environmental Impact Assessment, Ministry of Environment and Natural Resources

Temur Tsabadze, Deputy Minister, Ministry of Fuel and Energy

Sergo Petrosian, Head of Private Law Department, Ministry of Justice

Gia Gachechiladze, Deputy Head, Parliamentary Committee on Environmental Protection and Natural Resources

Nana Gogitidze, Expert, Parliamentary Committee on Environmental and Natural Resources

Nino Burjanadze, Chairmen, Parliamentary Committee on Constitutional and Legal Affairs and Rule of Law

Giorgi Papuashvili, Head of Staff, Parliamentary Committee on Constitutional and Legal Affairs and Rule of Law

Temur Gochitashvili, Expert, Parliamentary Committee on Sector Economy

Representative of Leri Medzmariashvili, Deputy Minister, Ministry of Culture, Chairmen, Department of Monument Protection

Herb Emmrich, USAID

Patrick Grammar, Hagler Bailly

Sophika Berishvili, Hagler Bailly

Kheti Matashvili, Hagler Bailly