

Concerns of NGOs regarding the presented Law on EIA and Expertise

The Government of the Republic of Armenia has prepared a Draft law on amending the Law on EIA and Expertise. During last year non-governmental organizations sent their proposals to the Ministry of Environment, participated in hearings, but these suggestions and comments were not taken into account. The Draft of Law on EIA and Expertise was submitted to the RA National Assembly. Numbers of comments, suggestions and indications of serious legal errors were also presented at the meeting of the National Assembly Commission on Environmental Issues, but despite this, the Commission gave a positive conclusion and the Draft of Law is ready for adoption.

This project is much weaker than the current law in terms of public participation in decision-making process and legal regulations. The basis of all changes is not to make environmental impact assessment and expertise more effective, to ensure broad public participation and to identify alternative opportunities with lower impact, but to free business from the "headache" of EIA, to make public participation formal, to make the self-governing bodies a consultant to the businesses, and to make the EIA conclusion an act higher force of the law, because annulment of this conclusion becomes almost unrealistic.

• Principles of EIA and Expertise and the scope of activities considered in the expertise process.

We suggested to add the precautionary principle in the draft, according to which public bodies should monitor the implementation of risk assessment tools, the implementation of current and proportionate measures. Draft of Law not only did not take into account this important principle, but also left out the three principles mentioned below, which are fixed by the existing law.

It is necessary to clearly mentioned that EIA is carried out, taking as a basis the guarantee of the human right to have a favorable environment for health, normal living and creativity, and on the other hand, the need to maintain the balance of ecological systems and all species of plants and animals. Other principle reflects the biocentric approach, when ecosystems have their own value, independent of the human factor, human activities and human rights. Therefore, EIA is carried out, also based on the balance of ecological systems.

Should be provided as a principle, the recognition of compensability of the damage caused to the environment and human health, as well as reference should be made to the principle of precaution, widely applicable in the western world today.

EIA tasks are also incompletely stated. It is necessary to add at least the following issues:

- analyze the feasibility and feasibility of the planned activity, concept and their alternatives, taking into account all environmental constraints;
- assess the potential impact of the basic document, planned activities and their alternatives on the environment and human health and the degree of danger; verify the degree of possible ecological impact of the planned activity, concept and their alternatives on the environment, the completeness and accuracy of the analysis of the consequences, the sufficiency of the measures for the prevention, elimination or reduction of these consequences, both during operation and

implementation, and during emergency situations; prohibit any planned activities that have an irreversibly harmful effect on the environment;

- ensure public involvement and participation at all stages of the review.

- provide measures to eliminate or reduce the potential impact of the planned activity on the environment, while assessing risks, it is necessary to consider alternative solutions, including the alternative of zero action (exclusion of the planned activity), their comparative analysis and selection of the most acceptable option.

- take into account the socio-economic, ecological and historical-cultural characteristics of the given area. Furthermore, it is necessary to clarify that the environmental objects and characteristics described in the EIA document should only refer to the area of operation and not to the whole region, as regulated in the current EIA documents, and it is not possible to understand what species are present in the concrete operation area, or the surrounding environment. What objects are there in the environment?

The absence of the tasks, proof that the Ministry of Environment does not want to assume any function in order to insure itself from the irreversible consequences of the activities subject to the EIA, claiming that it had nothing to do here.

• **Scope of documents subject to EIA, project-report correlation.**

The activities described by the businesses in the EIA report, the steps taken, which give grounds for claiming a reduced impact on the environment, should also be mentioned in the project. Meanwhile, the Law stated that the contents of subsoil mining, for example, the mineral extraction project, are set forth in the subsoil code. Since it is about the EIA, therefore, the Ministry of Environment can demand what kind of information the project presented to it should contain in order to be able to carry out the EIA. The project must clearly present a complete description of the planned activities in all three stages of mining: construction, operation and closure of the mine, with cause-and-effect relationships, technical and technological solutions and relevant cartographic and drawing materials. The entire project should be subjected to an EIA, where the conclusions, steps and assertions in the report should be reflected. Moreover, in the proposal presented by us, the project should also include the environmental management plan, environmental measures, waste management, closure, etc. Any changes were subject to EIA according to the law.

In addition to the comprehensive project, the report that describes the impact on the environment based on the project, it is also necessary to submit the "environmental-social assessment report." All financing organizations require this document in order to decide whether to participate in project financing or not, and we do not have in the draft any provision about this document.

• **Types of activities subject to EIA**

The types of activities subject to EIA should be according to international standards. The Draft provides the production of household chemicals (detergent, cleaning or other substances) at 50 tons per month, which is a very large amount. It is necessary to reduce

it. The law still provides for the possibility of manufacturing asbestos or asbestos-containing materials, which is subject to EIA. Meanwhile, it should be removed in general, because it is prohibited. Similarly, it is defined that wind power plants with a total capacity of 5 MW or more, solar power plants - floating solar plants occupying an area of 3 ha or more are subject to EIA. It is proposed to make three into one. As a separate type, the construction of urban development facilities with a total built-up area of 15,000 square meters or more, including the surfaces of all floors, including the underground floors, and the surfaces of the impermeable improvement area is planned. In the current law, provided ten times smaller number - 1500 square meters.

The Draft provides afforestation as a type of activity subject to EIA, which is non acceptable. This directly creates artificial and additional obstacles for organizations working in afforestation. Moreover, it is contradicts the fulfillment of the obligations undertaken by RA under international agreements to increase forest areas. The permission for afforestation should be given by the Forest State Committee without an EIA and expertise.

- **Public Hearings**

The Draft does not provide clear rules for holding public hearings. Instead of providing for all the basic rules for conducting hearings in the Law, it is envisaged to provide all these rules by decision of government that lower legal force, than law and could change frequently.

In the Draft provided that with the application, the applicant also submits the decision of the local self-government body on giving consent to the implementation of this activity. However, this creates conflicts in the communities and has corruption risks.

Community members must give consent without reading all project documents. There is a corruption risk, because the applicant is in direct contact with local residents and local governments without a representative of the ministry, without normal hearings and without publishing documents on the website of the ministry. We proposed to provide in the Law that the first hearing and the first consent should be given after the publication of documents on the website of the Ministry and on the public hearing, organize according the Law with the presence of a representative of the Ministry.

The Draft provides that the Ministry can give a positive opinion even if all communities are against this activity. There is no way to dispute the conclusion of the expertise in the court, because it is not approved by a decision of Minister..

List of affected communities drafted by the applicant, but not by the Minister, so usually large cities are not recognized as affected communities, because there is a possibility of rejection. We proposed that the list of affected communities be approved by a decision of the Minister, which can be dispute in the court

The draft states that if the expert does not give an opinion on time, then it is considered positive. Also, if the community has not held a hearing, then considered that community give positive decision.

In the Draft reduced number of public hearings from 4 to 2.

In Law should be provided to holding hearings in all affected communities.

The law should provide for the maximum number of times hearings can be organized if the communities are against it. There is no limit in the law and the applicant can disturb communities endlessly.

The Draft does not provide for a quota for the participation of community members in hearings and in practice 2-3 people can make a decision on behalf of the whole community

The package of laws adopted together with this Law should include changes to the Law on NGOs, according to which there are restrictions for NGOs on access to justice.

- **The legal status of the expertise conclusion.**

The Draft states that the conclusion of the expertise is an official document, but this is not a legal concept and it cannot be dispute in court. We suggested to approve the conclusion of the expertise by the decision of the Minister, which will be an administrative act and can be appealed to the court. Minister does not like to be responsible for this document.

- **Losing the legal power of the expertise conclusion**

The process of losing the power of the expertise conclusion has become more difficult, it has become almost impossible.

In current Law if the Company in a 1 year did not start activity for what he received expertise conclusion, it is annulated. Now this term changed on 2 years. It is additional opportunity for business organization do not start activity.

Other provisions related to losing legal power of expertise conclusion also changed. For example, if company violated rules and requirements of expertise conclusion and cause damage to the environment, the Company should be punished under Code of Administrative offences then Minister will annulate expertise conclusion. It is mean that during 5-10 years will be court litigation on administrative penalties, then Minister will started process of annulation. This means that if a company or an official is not punished under Code of Administrative Offences for any reason, then the company will continue to harm nature, because. the conclusion of the expert review of this project has not lost its force. What will happen with nature nobody cares.

In current law there is provision that Minister should annulate expertise conclusion if there is new ecological factor, which was not familiar during EIA process. The Draft states that these factors should not exist in nature during the expertise. The factors, which are not exist in nature could be do not find during of period of enforcement of this Law. Environmental factors that for some reason have not passed the EIA assessment and may have a negative impact on nature and human health will continue to negatively affect nature and people.

