

**Clarifications to the Aarhus Convention Compliance Committee Draft recommendations with regard to request for advice ACCC/A/2023/4 by Armenia**

Introduction

1. On March 10 2023, the translation of the RA draft Law on making amendments to the “ Environmental Impact Assessment and Expertise” was provided/ handed over to Aarhus Convention Compliance Committee (hereinafter Committee) pursuant to Decision VII/8a concerning Armenia.
2. On April 23, 2023, the Party received a letter from the Secretariat stating that the Committee had identified a number of points in the draft Law that are important to be taken into account in the final version of the draft law, asking the Party to provide the timeframe for the subsequent steps in the legislative procedures.
3. The Party informed the Secretariat that the Government of the Republic of Armenia (RA) had approved the EIA Draft Law and that it had been submitted to the National Assembly.
4. We regret that it was not possible to wait for the recommendations/advice of the Committee on amendments to the Draft Law, in particular concerning the recommendations of paragraphs 2 (a) and (b) of the decision VII/8a. The point was that the Party, within the framework of processes and obligations, also had other obligations to make appropriate changes in the EIA Law, which had already been exhausted and we were forced to speed up the process. E.g.
  - The policy drawn up in the context of supporting and attracting credit funds for budget support from the World Bank (WB) for 2022, the following point was established as a precondition within the jurisdiction of the Ministry of Environment:  
Point 3-b that is to effectively prevent and reduce the hazardous impact of an intended activity on the environment and human health, the result of which is the date of adoption/enactment of the Law On Amending the RA Law «On Environmental Impact Assessment and Expertise» was set for 2022.
  - To make amendments on RA Law «On EIA and Expertise» was envisaged with the guidelines of CEPA Implementation as well.

5. Meantime, we informed the Secretariat via e-mail and telephone about our readiness to amend or supplement the law in case of necessity or to fill in possible gaps through by-laws, once we receive the recommendations on the draft law.
6. We are grateful for the cooperation and appreciate the Committee's efforts to improve the RA EIA Law, and the implemented in-depth work aimed at bringing it in line with the Aarhus Convention.
7. After receiving the draft recommendations of the Committee on December 14, 2023, we reviewed them in detail and below you can find attached our comments and observations on the Draft recommendations (ACCC/A/2023/4).

#### Clarifications by the Party

#### **8. Regarding Paragraph 15. of the Draft recommendation**

The Committee correctly noticed that "opinion" was mentioned instead of "conclusion" in the translation, and we are grateful that the Committee, based on the translation of the previous law, adopted the "state expert conclusion" option.

#### **9. Regarding Definition of the “public concerned” – article 2 (5) of the Convention, paragraphs 16-19**

In the new EIA Law (HO-150-N, 03.05.2023) the term **person or public concerned (hereinafter referred to as "the public concerned"** is interpreted as follows: one or more natural or legal entities having a direct or probable influence as a result of the operation of the founding document or the implementation of planned activities, or showing an interest in the decisions made regarding them."

We thank the Committee for its observations, and inform at the same time that according to the Legislation of the RA, non-governmental organizations are considered to be legal entities, so we believe that there is no need to go into details and say what do we mean by saying «legal entity» or mention non-governmental organizations separately. In particular, Article 50 of the Civil Code of the RA (NO-239 of 05.05.1998) defines the term "legal entity", and article 51 defines the types of legal entities. The fact that non-governmental

organizations are legal entities is also stipulated by the RA Law «On non-governmental organizations» (NO-22-N, 16.12.2016).

**10. Concerning Foreign “public concerned” – article 3 (9) of the Convention, paragraphs 20-22 of the Committee Draft recommendation**

There is not any restriction or discrimination in the new EIA Law in regard for considering foreign citizens as a “public concern”. We also would like to inform you that the same wording was in the previous law and it didn't hinder foreigners from exercising their rights on an equal basis with RA citizens.

**11. Concerning Effective notification of the “public concerned” regarding proposed activities – article 6 (2) of the Convention, paragraphs 23-31**

*11.1 Identification of the “public concerned”*

The concept of "affected settlement" is defined in the EIA Law as the smallest unit of administrative territorial division of the RA.

According to Article 16 (2) of the EIA Law, public notification is carried out at the earliest stage, before the examination process is commenced, and a public hearing shall be held in the affected settlement no earlier than on the 21st day after the notification.

On the other hand, due to the RA Government's decree No. 2343 of December 28, 2023, the RA Government decree No. 1325 of November 19, 2014 was adopted with a new title and a new edition: “On adoption of the content of Public Awareness and Notification on the Public Hearings, the Procedures of Public Hearings, Public Opinions, Comments and Suggestions Delivering during the Environmental Impact Assessment and Expertize Process and Deadlines for Delivering Preliminary Agreement or Disagreement by Local self-government bodies”. In accordance with the above procedure, the public notification and public hearing procedures are described in detail, which enable the “public concerned” to be informed about the planned activity in a timely manner, including through electronic tools.

*11.2 Proposed activities of more than local scope – article 3 (9) and article 6*

Article 28 (6) of the EIA Law defines:

The notification on public hearings shall be published in other mass media with a

circulation of at least three thousand, posted on the announcement board of the residence of the marzpetaran (regional administration) or the local self-government bodies of the affected community and the administrative head of the settlement or of buildings of public significance (buildings of culture, art, of scientific and educational significance), published on the official websites of the local self-government bodies of the affected community and the initiator (where available). During the expert examination, the notification shall also be posted on the official website of the authorised body.

Which means that the information is available to a wider public than the public concerned, including those outside the RA territory.

In addition, according to paragraph 14 of the Annex to the above-mentioned Government decree (1325-N), the administrative head of the community, after receiving the notification of the initiator, within five working days, notifies the public concerned, providing all the necessary information, including information about all possible forms of submitting suggestions, opinions or comments by public concerned.

### 1.3 *Effective means of notification*

According to Article 16 (5) of the EIA Law: “In case of holding hearings in more than one community, the disagreement by at least one of the communities shall — in compliance with part 3 of this Article — be considered as a disagreement on the proposed activity”.

According to the Article 16 (8) of the RA Law "On Normative Legal Acts" if the word is indicated in the singular number in the normative legal act, then this also applies to the plural of that word and vice versa, if nothing else is stipulated by the given legal act, or nothing else simply follows from the content of that legal act.

With regard to effective notification of the public concerned, taking into account the concept of the proposed activity and including the potential impact of the proposed activity may extend far beyond the administrative self-government body, the public concerned has opportunity to be informed through the websites of the community and the initiator, as well as the authorized body. The information on the mentioned sites is open and available to everyone, so we believe there are no restrictions.

Chapter 6 of the Law (ASSESSMENT OF DRAFT FUNDAMENTAL DOCUMENT OR PROPOSED ACTIVITY HAVING TRANSBOUNDARY IMPACT) describes in detail the relevant procedures.

Paragraph 24 of the Annex to the above-mentioned Government decree (1325-N) defines:

"Answers to all raised opinions, remarks and suggestions raised by the interested public during the hearing are given by the initiator or moderator immediately, and in case of its impossibility, an explanation must be provided regarding the submission of the answer in a written form."

Paragraph 25 defines that during the public hearing, the opinions, remarks and suggestions submitted by the public concerned in written on paper or electronically, regardless of the circumstances of their presence, are also discussed. If the author isn't participating at the public hearing, the answer to the opinions, remarks and suggestions is given through feedback within 5 working days from the day of the hearing.

We would also like to inform you that currently the procedure regarding the EIA examination process has been drafted and circulated, in which a more detailed description of the procedures is planned.

#### **12. Concerning Adequate notification – content of the public notice regarding an EIA procedure – article 6 (2) of the Convention, paragraphs 32-35**

Thanks to the Committee for the suggestions.

We would like to inform, that among the measures to ensure the implementation of the EIA law, it is also planned to develop a guideline, in which it is planned to clarify what kind of information the "brief description" should contain. If necessary, we can also give an official clarification about it (according to the Law on Normative Legal Acts, Article 15 (3): "If there is are new or confusing, or concepts or terms in the normative legal act that are not clearly understood without clarification, or a different definition of these concepts or terms is given by another normative act, then the given act gives their definitions arising from the essence of that normative act. The definitions should ensure their uniform and unambiguous understanding and application."

#### **13. According Notification of the public concerned in the transboundary context – article 6 (2) of the Convention, paragraphs 36-40**

Please kindly note that there are no any restrictions in the EIA Law for the proper, timely and effective notification and participation in the assessment procedure of the public concerned, including the foreigners in case of transboundary impact. At the same time, we believe that it is necessary to consider the issue in the light of the EIA framework of neighboring countries of Armenia.

#### **14. According Access to a non-technical summary of the EIA report – article 6 (6) (d) of the Convention, paragraphs 41-46**

We appreciate the Committee's recommendations, at the same time, we would like inform that there is no necessity to make an amendment in the EIA Law, as the issues raised should be regulated by the measures that ensure the implementation of the Law, in particular, by the Government decree (drafted) and Guideline on the EIA Examination Process.

**15. Access to all information relevant to the decision-making on the state expert conclusion – article 6 (6) of the Convention, paragraphs 47-51**

Regarding the observation mentioned in paragraph 50, we would like to inform that the EIA Law doesn't provide any fee for making the EIA and SEA documents available. Hence, it is assumed that the authorized body provides the "package of documents" to the public free of charge as soon as it becomes available.

The issue has also been regulated by paragraph 47 of the Annex to Government Decree No. 1325-N.

We would also like to inform that in practice the EIA "package of documents" is also published on the official website of the authorized body (go via the link: <http://env.am/shrjaka-mijavayr/naxagcer> ).

**16. Taking due account of public's comments on the EIA report – article 6 (8) of the Convention, paragraphs 52-57**

The Party appreciates the Committee's recommendations.

We would like to inform you that the issues raised are regulated by the the Government decree No. 1325-N, in particular by paragraphs 52 and 53.

**17. Taking due account of the public's comments in the decision-making on the state expert conclusion – article 6 (8) and (9) of the Convention, paragraphs 58-65**

Attaching importance to the Committee's observations and suggestions.

At the same time, we would like to inform you that on December 21, 2023 the Government adopted the decree No. 2294-N on the approval of the Procedure for the SEA and the Requirements for SEA Report, which addresses the issues raised. An additional clarification will be given by the Government decree on EIA examination, which is currently being developed.

**18. Public participation on the revised package issued under article 17 (10) of the Law "On EIA", paragraphs 66-69**

We would like to clarify that Clause 10 of article 17 of the law refers to informal or substantive inaccuracies or deficiencies in the information contained in the EIA package. The revised version is published on the authority's website and is available during and after the process. But before this stage, the law envisages a stage of preliminary consent, within the framework of which the provided information is also available to the public concerned.

**19. Plans and programmes “relating to the environment” – article 7 of the Convention, paragraphs 70-73**

We would like to inform you that the raised issues are regulated by the Government's Decree N 2294 (SEA). The drafts that are not subject to SEA, are posted on the unified website for the publication of Legal Acts' Drafts (<https://www.e-draft.am/>) (in accordance with the RA Regulatory Legal Acts (HO-180-N, 21.03.2018)) which is an electronic instrument for public participation in decision-making processes.

**20. Identification of the “public which may participate” on plans and programmes – article 7 of the Convention, Paragraph 74-77**

Attaching importance to the Committee's suggestions, we also inform you that the raised issues are settled by Government Decrees 1325-N and 2294-N.

**21. Effective public notification regarding an SEA procedure – article 6 (2) and article 7 of the Convention, paragraphs 78-81**

The Party expresses its gratitude to the Committee for its observations and recommendations. Please be informed that the raised issues will be settled in the guidelines that are currently being developed. It is stated in the guidelines that the brief description should contain mentioned content as well as. The guidelines will state that the summary must also contain the specified content.

**22. Access to justice regarding positive state expert conclusion – article 9 (2) of the Convention, paragraphs 82-92**

We would like to inform you that there is positive experience and many examples in judicial practice, when the Administrative Court of the Republic of Armenia accepted the statement of *claim* of non-governmental organizations and the issues of appealing EIA opinion by the

by the initiator (for example, Cases VD/6516/05/19, VD/0166/05/18, VD/12630/05/21 cases , which are available on <http://www.datalex.am/> website.

### **23. Clear, transparent and consistent framework – article 3 (1) of the Convention**

Paragraph 3 (2) of the EIA Law is mentioned, as it is a constitutional requirement (article 5 (3)) about the hierarchy of legal norms. At the same time, we have made great efforts to improve and bring the EIA law as close as possible to the provisions of the Aarhus Convention.

#### **Conclusion**

The Party once again expresses its gratitude to the Compliance Committee for its efforts to support the Republic of Armenia in bringing its national legislation in line with the Aarhus Convention and ensuring the improvement of the EIA processes. The Committee's recommendations are generally acceptable to us. Meantime, we confirm that most of them have already been regulated by the by-laws adopted in December 2023, whereas others will be taken into account in the documents being developed.

The translations of these documents will be further provided to the Committee.