

**COMMENTS ON THE IMPLEMENTATION
OF ACCC DECISION VII/8a PARAGRAPH 2 (a) and (b)**

by *Transparency International Anticorruption Center, Ecolur Informational NGO, Armenian Forests NGO, Centre for Community Mobilization and Support, Green Armenia Environmental-Educational NGO and Ecological Right NGO*

The following observations are submitted by the Armenian civil society organizations in response to the request for comments to the Aarhus Convention Compliance Committee's Draft Advice to Armenia regarding the implementation of paragraphs 2 (a) and (b) of decision VII/8a.

We mostly agree with the provided Draft Advice, however we would like to inform about additional concerns related to access to information and public participation, which have been revealed recently in process of development of Yerevan Master Plan, a major urban development program of the capital city that affects at least 1/3 of the population of the whole country.

While the Law on Environmental Impact Assessment and Expertise (shortly referred as EIA Law) rather clearly outlines the types of activities and documents requiring Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA), the provisions regulating public participation are somewhat ambiguous.

- EIA Law Article 11 obligates local self-government bodies to organize public hearings and ensure public involvement throughout EIA and expert examinations. The language related to SEA is unclear, which obscures responsibilities of the local self-government bodies, including in cases when those also appear as developers of plans and programs.
- Article 16 details the role of self-government bodies in public hearings, referring to Article 12 on proposed activities and focusing exclusively on getting the agreement of local self-government bodies without yet having done the environmental assessment to have an idea on impacts.
- Article 28, which regulates the notification and organization of public hearings clarifies two phases of organization of hearings in process of EIA/SEA (in process of getting agreement of local communities in accordance to Article 16 and in process of the state-conducted expert examination). As Article 16 itself relates only to EIA, one may conclude that there shall be only one public hearing for plans and programs - in the latest phase of SEA, during the expert examination by the Ministry of Environment.
- Article 29, which guides the organization of public hearings and submission of proposals, ensures equal approach for EIA of Category A projects and SEA, and sets a deadline of 25 business days for getting comments on both. Yet, very illogically, the number of mandatory public hearings is not treated equally for EIA and SEA, and SEA for plans and programs appears to be in a weaker position.

Additionally, the sub-legislation legislation fails to establish clear and consistent principles and rules for conducting public hearings.

- Government Decision No. 2343-N of December 28, 2023 (amending the Decision No. 1325-N of November 19, 2014) sets out procedures of public hearings. It vaguely outlines the requirement for two public hearings for EIA reports - one to be organized by local self-government bodies during the formulation of agreement on the economic activity, and another - organized by the Ministry of Environment during the expert examination phase, on the EIA report. The same Decision mandates to organize a public hearing on SEA only in the latest – the expert examination phase. Furthermore, the same Decision does not clearly detail the SEA public hearing procedures and responsibilities - leaving significant discretion to relevant players.
- Government Decision No. 2343-N, Article 1, Provision 8 states that the public’s opinion is considered positive if no one attends the hearing (except the cases of absence conditioned with force majeure or non-compliance with the legally prescribed procedures for notification and organization of hearings) or if no oral or written comments, suggestions, or objections are submitted. In practice, the inadequate announcement of public hearings often prevents the to-be-affected communities and civil society organizations (CSOs) from timely and meaningful participation. Sometimes the interested public learns about the hearings after those occur and get the needed approvals.
- Another controversy in Government Decision No. 2343-N proposes that the “affected community” is decided by the Ministry of Environment’s EIA agency based on the draft plan/program and EIA/SEA reports, which implies that the scope of communities can be decided at a latest phase of the expert examination, hence failing to be reflected in the assessments.
- Another relevant legal act - the Government Decision No. 2294-N from 23 December 2023 on the Procedure of SEA and Criteria of SEA report, vaguely outlines the necessity of public participation in SEA and inclusion of outcomes of public hearings in SEA report by referring to EIA Law, which, as mentioned, is unclear on public participation criteria and procedures in case of SEA.

The case of recent development of SEA and promotion of Yerevan Master Plan additionally illustrated the failures in practice.

- *Notification of and outreach to the interested public:* Yerevan’s Master Plan was developed without proper notification of the interested public, including the to-be-affected communities. Even the professional/expert organizations (e.g. Chamber of Architects, relevant thematic institutes of the National Academy of Sciences, environmental CSOs) have not been duly notified or involved in the process of development of the Master Plan or its SEA report.
- *Content of notification:* A notification was published on April 9, 2024, on Yerevan Municipality website and in a print newspaper daily print newspaper with circulation of 3,000. The content of notification did not comply with requirements of national and international laws, given that it did not include the nature of the decision to be taken, the information about the content of the hearing, the timeline for the provision of comments. Municipality’s website failed to explicitly state that the announcement on inviting a public hearing was related to the SEA of Yerevan Master Plan.
- *Content of the first public hearing:* The hearing announced on April 9, 2024, and held on May 14, 2024, was obviously not aimed to invite much attention and interest. It was organized in a small audience in the administration of the Central district in Yerevan

and was attended by municipal servants and the developers of the plan with no external actors from the public. As the protocol of the hearing showed, the discussion did not touch at all the plans, the scoping, the possible environmental impacts, assessment of strategic approaches, etc.

- *Access to information:* Already after learning about the first ‘public hearing,’ Transparency International Anticorruption Center (TIAC) made multiple attempts to obtain documents of the Master Plan or any other information related to SEA through the phone contacts provided in the announcement. These attempts were not successful. No document was provided by Yerevan Municipality (developer) or Yerevan Project CJSC (contractor). Instead, it was recommended by these entities to address such requests to the Ministry of Environment, which was in charge of the latest phase of SEA – the expert examination. The latter posted an announcement on the upcoming public hearing and two documents – Yerevan Master Plan and SEA report on its website on July 24, 2024. Some of the supporting documents (e.g. bigger resolution maps) were additionally made available to TIAC only after a written information request.
- *Second public hearing:* On August 8, 2024, Yerevan Municipality organized another hearing, which was claimed by both the Municipality and Ministry of Environment representatives as the only public hearing held in accordance with EIA Law requirement. This meeting, which was attended by a broader audience due to the outreach efforts of TIAC, did not address any potential environmental impacts. Actually, SEA report of Yerevan Master Plan did not contain any assessments either. In spite of the major failures in the collection/presentation of baseline data and assessment of environmental impacts, an announcement was made that Yerevan Master Plan is going to be adopted in early September, hence disregarding the timing of expert examination (up to 80 business days) and the potential for a negative conclusion, and the need to engage additional experts for the review of such a complicated document.
- *Timing of the public hearing and input:* The timing of public hearing and further request for documents (25 working days since July 24), including the submission of proposals by the interested public were scheduled during the period of summer vacations for many Yerevan residents. As a result, due to absence, travels and limited operational capacity, many organizations and experts of the interested public, including those from the affected community, were unable to actively engage in discussions or submit proposals in a timely manner.
- *Expert examination:* Although the EIA Law allows for an expert examination period of up to 80 business days, the expert conclusion was issued on September 4, just in a few days following the deadline of August 28 for submitting comments. Though the expert conclusion is not yet published (there is a requirement for publishing it within 7 working days) it is clear that it was not carried out in an adequate quality. No external expert was engaged, while the Ministry of Environment's Environmental Expertise Unit capacities are obviously not enough to ensure comprehensive review of multidisciplinary SEA of Yerevan Master Plan. We will comments on the expert examination conclusion at a later stage, once the document becomes accessible and once we check how TIAC's or others' comments have been taken into consideration.
- *Adoption of the Master Plan.* Yerevan Master Plan was adopted on September 10, 2024 disregarding all the comments received from the interested public.

The above-mentioned shows that current legal framework and practices for EIA/SEA do not fully meet international public participation standards. The legal amendments of 2023, though addressed some recommendations of ACCC, in a larger sense messed up the public participation related regulations – shrinking the possibilities of public engagement and obscuring regulations, roles and responsibilities of relevant actors.

To ensure effective public participation both in EIA/SEA Armenia must develop clearer and more robust legislation, better aligned with its international commitments.

Also, given the Armenian authorities constant predisposition to implement the requirements of the Aarhus Convention at a minimum rather than at a maximum extent and continuous imitation of meeting its international commitments, we believe that ACCC should push for a stricter compliance for Armenia and, particularly, demand that its EIA/SEA legislation is revised as soon as possible to include at least the following requirements:

- Mandate early engagement and public hearings of EIA/SEA in all the affected communities (which is not many, given the recent community enlargement), though providing a privileged consideration of comments received from the actually affected neighborhoods;
- Set a minimum number of public hearings throughout the actual EIA/SEA by the developer along with two hearings - in the scoping stage and state examination by the Ministry of Environment;
- Clarify some limits for the organization of public hearings in cases when the engaged interested public rejects and resist against certain controversial projects, so that the developers do not push and disturb the communities with series of public hearings;
- Set standards for modernization of the notification process in accordance with contemporary standards/technologies (beyond print announcements in print newspapers, who are not read), e.g. improved visibility and advertised/boosted dissemination of announcements through at least the official websites of developer entities, affected community municipalities and the Ministry of Environment;
- Set participation quota/standards for public engagement in public hearings to avoid the abuse by more influential individuals and to ensure representation of broader community interests;
- Refine the content and responsibilities for the organization of public hearings to ensure substantial consultations and consideration of comments;
- Set oversight and liability mechanisms for failing of developers to put due efforts for notification and engagement;

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