Assessment of the draft Law of the Republic of Armenia "On the environmental impact assessment and expertise"

Opinion paper
Summary[1]

Background

1. The Committee initiative on Armenia was prompted by Armenia's responses to a questionnaire on Parties' implementation of the Convention in the context of the second review of implementation (mid-2003 to end 2005) and by Armenia's request for technical assistance from the Committee to review existing and draft legislation on EIA in more detail. Further to the review conducted by an international consultant and the Committee's findings and recommendations, the MOP at its fourth session (2008) requested Armenia to revise its legislation in accordance with the Committee's findings to ensure full implementation of the Convention and include in the workplan (for the period 2008-2011) an activity providing technical assistance to Armenia in that respect (decision IV/2, paras. 15-17).

Further to the report by the international consultant and the work undertaken by Armenia to prepare new draft legislation, the Committee made recommendations to the MOP. At its fifth session, the MOP and the Committee welcomed the work carried out and requested Armenia to adopt the draft legislation (decision V/4, paras. 27-28).

Since 2011, the Committee considered reports by Armenia on its progress in adopting the draft legislation on environmental assessment. At its thirtieth session (Geneva 25–27 February 2014), the Committee considered the opinion of the international consultant on the concordance of the draft environmental assessment legislation with his recommendations and the report provided by Armenia. It then invited Armenia to adopt the draft law as soon as possible. In doing so, Armenia was also encouraged to address the issues raised by the consultant in his opinion and in discussions with the Committee. The Committee also invited the secretariat to explore opportunities to assist Armenia in this regard by contracting the international consultant to review again the draft law on EIA and, as needed, propose amendments for aligning the draft law with the Espoo Convention prior to its adoption by the National Assembly of Armenia at its second reading.

2. This assessment is based on the English translation of the draft Law of the Republic of Armenia "On the environmental impact assessment and expertise" provided on 28 of April 2014. (the draft Law is attached to the Opinion paper)

3. This opinion paper is prepared by the experts Mr. Dmytro Skrylnikov, Ms. Elena Laevskaya and Mr. Gor Movsisyan.

General comments

4. The draft Law reflects the desire of the Republic of Armenia (RA) to improve national environmental impact assessment (hereinafter - EIA) legislation on proposed specific activities and strategic environmental assessment (hereinafter - SEA) in accordance with the principles and requirements of international agreements.

5. Generally, it is noted that the draft has been elaborated thoroughly: the competent authority is determined; the provisions on elaboration and approval of the terms of references (TOR) for EIA (OVOS) as well as the identification at an early stage by the competent authority of likely transboundary impact (at the initial stage of expertise of environmental impact) are stipulated; number of activities and also the time frames for all stages are significantly increased (except for the public participation) contributing to more effective national and transboundary impact

[1] This document is the English summary of the opinion paper. The full text with detailed comments is available in Russian only.

assessment procedures. A separate section is dedicated to the procedures of transboundary assessment that includes procedures for both the Party of Origin and for the Affected Party.

6. Draft Law attempts to cover EIA and SEA, as well as the state environmental impact expertise which according to the draft Law is similar to the state ecological expertise - the institutional element common to the legal systems of the post-Soviet countries (hereinafter - expertise).

7. Several procedures and methodologies, according to the draft Law shall be approved by the Governmental decisions, such as: the procedure of expertise, the methodology of impact assessment, the methodology of the assessment of potential economic losses for environment, procedure of the compensation of the economic damage, the procedure for notification and public hearings, and the procedure of repelling of the expertise conclusion. Due to the fact that the drafts of the mentioned decisions have not been developed yet, comprehensive evaluation of these procedures in terms of completeness within the framework of this assessment is impossible.

8. It should be noted that there are some inconsistencies of definitions and terms used in the draft Law that affect the understanding of the proposed concept of environmental assessment. For example, in the Article 1 it says that "the Law shall regulate public relations concerning environmental impact assessment in the Republic of Armenia, including state expertise of transboundary and environmental impact. If the state expertise included in the EIA, then the question arises: why it is used in the title of the draft Law and further in the text combination of "EIA and expertise"?

9. The Law should be clear about the concept of environmental assessment it follows. In other words, the Law should be constructed upon one of the following concepts ("models"): 1) EIA (SEA) as the general process of assessment of environmental impact that includes expertise (expertise is a part (element) of EIA (SEA) process; 2) expertise that includes EIA/OVOS (SEA) as the procedure of elaboration of documentation by initiator/developer; or 3) the draft Law regulates the separate procedures EIA/OVOS + expertise or SEA + expertise, where EIA/OVOS and SEA is the procedures of elaboration of documentation by initiator/developer. At this stage the concept is not clear about which of the above concepts it follows. and any further choice shall ensure compliance with the relevant international agreements.

10. There are some other inconsistencies of definitions and terms used in the draft Law that need to be revised. For example, a new term «environmental and human health impact assessment» appears in the title of Chapter 4 and Articles 15, 17, 18, the content of which is not elaborated in Article 4. It is obvious that there is a problem with legal technique and it should be «environmental impact assessment». In addition, Article 17 uses the term «main environmental and human health impact assessment», which implies any other impact assessment.

11. In our opinion, the term «strategic environmental impact assessment» (Article 4) does not correspond to the definition of the SEA Protocol, as well as the definition of «environmental impact» does not fully comply with applicable relevant terms in the Espoo Convention and the SEA Protocol.

12. Analysis of the terms "baseline (planning) document", "intended activity", "strategic environmental impact assessment", and "environmental impact assessment" in the draft Law shows that attempt has been made to develop a common legal framework for the environmental impact assessment of both specific activities and the strategic documents. Unfortunately, with such approach the compliance with the provisions of the Espoo Convention and the SEA Protocol has not been achieved. It should be noted that the requirements for public participation procedure, transboundary consultations and a number of other elements of the assessment of strategic documents under the Protocol on SEA are not identical to the requirements of the Espoo Convention to assessing individual projects.

13. In general, the national procedure (or the procedure of EIA + expertise) as it proposed in the draft Law with some improvements meets the main requirements of the Espoo Convention on the national procedures of environmental impact assessment. However, the procedures of public notification and participation are the most contentious and still require

systemic revision to achieve compliance with the provisions of Espoo Convention as well as with the Aarhus Convention and SEA Protocol.

14. The main requirements on public participation are concentrated in article 26, paragraph 9 of which refers to the Governmental decision which later will adopt the procedures of public notification and public hearings. In this regard, full assessment of the public participation procedure without reviewing of the proposed regulation does not seem possible.

15. Analysis of the existing provisions of the draft Law shows that proposed public participation procedure is not fully in compliance with international agreements (e.g. the process of notification and public hearings, forms of public participation, the terms of notification (7 working days), due taking into account comments from the public, responsibilities of public authorities and other stakeholders in organizing of public participation, etc.). In addition to public hearings, the public should have the possibility to submit in writing any comments related to the respective decision-making during the entire commenting period without the requirement that the comments be reasoned.

16. The draft law in the paragraph 2.12 of Article 18 refers to the post-project monitoring, but no other provisions have been identified throughout the draft Law on the matter. Provisions establishing the mechanism of post-project analysis in order to reflect in the draft Law principles of Article 7 of the Espoo Convention should be included in the draft. The experience on the post project analysis gained through the implementation of the ENVSEC Project 'Impact Assessment in a Transboundary Context - Joint Pilot project in Belarus and Ukraine on post project analysis"[2] may be also used.

17. More specific comments on what has already been discussed in this paper and other additional comments related to the list of activities, transboundary EIA, final decision are provided in the opinion paper (available in Russian).

Recommendations

Before its finalization, the law should:

1. Clearly define the conceptual approaches and interrelations between impact assessment and expertise (See. p.9 above).

2. Solve conceptual challenge: what is the best possible way of regulating the SEA? Chosen approach of uniform requirements for organizing and conducting impact assessments of projects on specific activities and strategic documents gives no opportunity to take into consideration in the draft Law the specificities of the SEA. Methodological and fundamental differences between EIA and SEA, peculiarities of international legal requirements on EIA and SEA need to be the starting point for differential regulation. It is proposed to revise the provisions on SEA and elaborate them in a form of separate Law or a separate section in the current draft Law.

3. Be revised to clarify, harmonize and ensure uniform use of legal terms, especially in Article 4, taking into account the definitions and terms used in international agreements.

4. Be revised to take into account the comments on the specific issues identified in paragraphs 12-31 of the opinion paper (full version available in Russian).

5. Address with due attention in the relevant provisions public participation in the EIA process, taking into account comments and recommendations contained in the opinion paper. In case the

[2] http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/meetings-and-events/environmental-impact-assessment/workshops-eap-green/2014/subregional-conference-on-pilot-project-an-post-project-analysis/enveiameetingssubregional2014.html

procedure for public participation will be defined by Governmental decision, it is recommended in the law to set as a minimum the following elements:

- requirements for notification and informing the public in an adequate, timely and effective manner;

- possibility to examine the documentation;

- forms of public participation (hearings and the possibility to submit in writing any comments) ;

- specific time frames for notification and public participation ;

- responsibilities of public authorities for the organization of public participation;

- taking into account of public comments;

- requirement that in the decision due account is taken of the outcome of public participation.

6. For the further elaboration of the draft Law it is recommended to consult with the General guidance on enhancing consistency between the Convention and environmental impact assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia (ECE/MP.EIA/2014/2)[3].

[3] http://www.unece.org/fileadmin/DAM/env/eia/documents/mop6/ECE.MP.EIA.2014.2_r.pdf