



December 1, 2011

Dear Ms. Marshall,

I am writing to express the opinion of Transparency International Anti-corruption Center (TIAC) regarding the process of implementation of decision IV/9a of the Meeting of the Parties on compliance by Armenia with its obligations under the Aarhus Convention.

In our view, there are no apparent developments in respect with drafting an action plan for implementation of the Aarhus Convention as recommended in decision IV/9a. Armenian government intends to dissolve the intergovernmental commission established by Prime Minister's order N744-A in October 16, 2006 and form a new one with an extended membership of government entities and NGOs. The Ministry of Nature Protection allocated 5 places for NGOs, requesting participation of 3 representatives of the NGO community and including two own nominees. Members nominated by NGOs include organizations that have had communications to the Aarhus Compliance Committee – "Transparency International Anti-corruption Center", "A.D.Sakharov Center for Protection of Human Rights" and "Ecoera" NGOs, while the nominees by the Ministry of Nature Protection include "Association for Sustainable Human Development" and "Environmental Public Advocacy Center" (EPAC). We do not feel that the approach of the Ministry of Nature Protection of filling the NGO quotas with own candidates manifests the political will for changing its performance in regard with the Aarhus Convention. A particular concern is raised with the nomination of EPAC NGO given that the latter has never publicly expressed a critical position in respect with implementation of the Aarhus Convention in Armenia and is led by the Focal Point for the Aarhus Convention, already on the list of the former as well as of the newly convened intergovernmental commission.

There are other developments relevant to decision IV/9a of the Meeting of the Parties that question the genuineness of the Armenian government to promote implementation of the Aarhus Convention. In particular:

- ***Process of adoption of the environmental impact assessment legislation contradicts the philosophy of the Aarhus Convention.***

Since 2003, the Government of Armenia declared about its intention to change or amend the existing Law on Environmental Impact Assessment (Expertise). This initiative has been activated from time to time through interference of international organizations, but has not reached the goal so far. Recommendation on acceleration of the process of drafting has also been included in decision IV/9a of the Meeting of the Parties of the Aarhus Convention.

Following the Fourth Meeting of the Parties, in August 2011, the Ministry of Nature Protection posted a draft amendment to the Law on Environmental Impact Assessment (Expertise) on its website. It did not mention the deadline for submission of comments, hence only a few representatives of the interested public (including TIAC) made comments to the draft.

On November 1 2011, a different version of the draft law was submitted by the Armenian Government to the National Assembly without ensuring the publicity of the new draft. Such process was in breach of national regulation related to the adoption of laws. In particular, RA Law on Legal Acts, amended in 2008, requires that government agencies who initiate legal drafting of laws or government decisions organize public discussions after 15 days of notification and exposure of the draft legal acts on their respective websites. This regulation also requires recording, summarizing and taking into consideration comments submitted by the public and publicizing the outcome of those before approval of the draft by the Government and submission to National Assembly. Upon the concern expressed by TIAC on the mentioned breach of law, the Ministry of Nature Protection posted the new draft on its website and organized a public hearing of the draft law after 15 days - on November 23 2011. At the discussion, the participant NGOs expressed their concern in respect with the shortcomings of the draft law that may eventually affect its enforcement and result in negative consequences for the environment. NGOs suggested the Ministry of Nature Protection to withdraw the draft from the National Assembly to be able to properly discuss and incorporate public comments. However, though the First Deputy Minister of Nature Protection Mr. Simon Papyan and other representatives of the Ministry attending the discussion agreed with the concerns raised by NGOs, they seemed reluctant to withdraw the draft from the National Assembly. Deputy Minister assured that the Ministry has good collaboration with the Standing Committee on Agricultural and Environmental Issues and the NGO comments will be considered by National Assembly at the first hearing. Discussion was concluded with an agreement that NGOs will provide their comments by December 5 2011 and the Ministry will ensure consideration of those in cooperation with the respective Standing Committee. Nevertheless, two days later, the Government made a decision to include the draft amendment into the agenda of the extraordinary session of the National Assembly scheduled on November 27, 2011, skipping the discussion of the draft by the Standing Committee on Agricultural and Environmental Issues.

A group of NGOs and activists launched a campaign against the adoption of the law. On November 25 2011, 13 NGOs and civic groups made a statement highlighting their concerns and demanded withdrawal of the draft from the National Assembly. On November 27-28 2011 civic activists organized protest actions in front of the National Assembly building. Such activism eventually resulted in negotiations and agreement of the government to postpone the first reading for 15 days and hold a parliamentary hearing on December 2 2011.

In its present edition, the amendments to the Law on Environmental Impact Assessment fail to properly address the major part of recommendations set forth in decision IV/9a of the Meeting of the Parties of the Aarhus Convention. Suggested thresholds for activities subject to EIA are unreasonable within the Armenian context,¹ significant shortening of time-frames may affect the effectiveness of public participation, responsibilities of different actors are not clarified and prompt notification procedures are not secured at all. Other concerns raised by NGOs relate to clarification of definitions, liability for the breach of law, methodology for environmental impact assessment and respective state

¹ Some of thresholds are based on Annex 1 of the Aarhus Convention, however, according to experts, are too high for Armenia given the tiny territory of the country and vulnerability of its environment.

expertise, consideration of human health in accordance with UNECE Espoo Convention's Protocol of Strategic Assessment, etc.²

Being an NGO engaged in promotion of renewed environmental assessment legislation since 2003, TIAC is convinced that Law on Environmental Impact Assessment is a very sensitive piece of legislation and in spite of the urgency for improvements, the process of its drafting and adoption shall be organized in a democratic manner with adequate participation of all stakeholders in order to ensure smooth enforcement in future.

- ***The newly adopted mining legislation prevents early public participation in decision-making and restricts access to environmental information.***

In November 2011, the National Assembly of the Republic of Armenia adopted a new Mining Code, which was drafted by the Ministry of Energy and Natural Resources with assistance of the World Bank and aimed at the development of a more favorable climate for the mining business. Along with some other deficiencies that increase public concerns related to the potential boosting of negative environmental impacts, this legal act appears to be in contradiction with the requirements of the Aarhus Convention and decision IV/9a of the Meeting of the Parties. Though several NGOs have raised the mentioned and other concerns before the Government and National Assembly of Armenia long before adoption of the code, those remained largely unaddressed.

Specifically, the new Mining Code prevents fulfillment of the requirement “to inform the public as early as possible in the decision-making process when all options are open” given that the formalized decision-making process starts at the moment of providing the mining right (replacing the license), which implies that the main decision about the exploitation of this or that mine has already been made at some level at some point of time. It means that the decision-making practice of exploitation of Teghut mine described in communication ACCC/C/2009/43 will be continuously repeated in future.

Another problem created by the new Mining Code relates to the restriction of access to environmental information. The new code prescribed a condition whereas certain volume of information regarding the mining activity can be acquired only upon the consent of the operating company.

We believe that the above-mentioned practices do not contribute to the public trust in the willingness of the Armenian Government to promote the environmental democracy in the county. In present, there is no actual public participation in the decision-making process. Most of public engagement takes place in a form of protest campaigns against the decisions adopted by the Government. And though some of those campaigns have recorded success and managed to change the already adopted decisions, this practice does not, in our opinion, qualify for “public participation in decision-making.”

Sincerely,

Sona Ayvazyan
Chair

² Draft amendment includes procedures for transboundary EIA, development of which has been assisted by UNECE Espoo Convention Secretariat.