Comments on Draft Law On Environmental Impact Assessment and Expert Examination

Firstly, I have to emphasize that at present the interested public /including me/ can’t see the whole complete package of Draft law On Environmental Impact Assessment and Expert Examination /hereinafter «the Draft»/ package, including the latest Armenian and English versions of the Draft text. In order to obtain the latters a lot of time, persistence and resourcefulness was needed.

This is a fact of a violation of RA current legislation, including the Aarhus Convention. Absolutely violated the principle of the Convention on access to information.

As specialists, as well as NGOs have the right to know how the last Armenian version correspond to the English version of the Draft sent to the Convention’s Compliance Committee, without wasting their time and without any other difficulties to overcome.

Due to preliminary comparison of both texts, I get the impression that Draft was firstly written in English, and then translated into Armenian. English text seems more smooth and more conceivable. Meanwhile, a law for Armenia should be prepared in Armenian language, then will be translated into other languages.

The lightest comparison of these 2 texts clearly shows that they are not identical, it is not clear which one is the latest and final text, which one is more reliable.

However,

my main observations concern the principles of elaboration of the draft legal act, particularly of this Draft.

1. According to the Article 27 of the RA Law “On Legal Acts” /"Elaboration of Drafts of Legal Acts"/, during of drafting of any law, for more significant and voluminous laws, as this Draft specially, firstly should be developed The Concept of an intended legal act, which would define the scope of the issues for regulation and substantiate that. "In the Concept are stated the purpose and goals of a future legal act, the main provisions, analyzed the expected effects of implementation of norms" and so on. This Concept itself, according to RA acting Legislation, should be as a subject of environmental impact examination, during of which, as well as during the public hearings, the interested public will be informed about the gaps and/or...
weaknesses of the current «Environmental Impact Expert Examination» law which is acting since 1995 to present, and about of high necessity and advantages of the new one.

For adopting of such important bill, according to the same Article 27 paragraph 4, "the law-making body is authorized to assign the preparation of alternative drafts to several institutions, legal or natural persons." Moreover, "the law-making body is authorized to declare a competition for drafting of the best." Probably, in this case, the law-making body doesn't consider as an important one, in a contrary to Aarhus Convention Compliance Committee and other institutions or the World Bank, which are so interested in importance of this Law that set a deadline for the adoption of it.

2. To my opinion, in draft elaboration works the law-making body doesn’t involve the relevant scientific organizations, experienced professionals and experts especially high-experienced in fields of environmental assessment and/or examination of impacts caused by implementation of the concept document or proposed activity on natural components and man-made objects (air, water, lands, sub-soil, relief, landscape, flora and fauna, including forests, special protected areas of nature, green zones of residential areas, structures, historical and cultural monuments).

Have not been analyzed and presented to the interested public the supposed consequences of the implementation of Drafts’ or Concepts’ norms and rules, as well as does not envisage alternative Development of the Draft.

3. As far there is no Concept in which it is assumed that there must have been analyzed the shortcomings and gaps in the Law “On Environmental Impact Expert Examination“ acting in Armenia since 1995 to present, due to of which must be justified the need to adoption of a new law, Draft has almost the same shortcomings, which initially make the Draft useless, and later disputably during it implementation.

For example, in Article 6 of the Draft are not separated the purpose and objectives for impact assessment(forecasting) and expert examination. Due to this the whole law-making process from the very start went through the not right direction.

They must be different, as different as, say, "environmental impact examination" and "assessment of the environmental impact", which in this case mean as an “impact forecasting”. In this Article they are unified. How the objectives of the evaluation and analysis could be the same?, - when the process, aims and sequences of them is different.

4. The entire drafting process from the outset, goes in the not-right direction because of the Draft is contrary not only to the RA Constitution and some laws
The RA Law "On international Treaties" /27.03.2007 HO -123 /, hereinafter the Law /, but also itself.

So,

In 3-rd part of the Article 3 of the Draft is written:

- "If the international treaties of the Republic of Armenia stipulate norms other than those stipulated in this law, the norms of the treaties shall prevail".

If this provision already exists in the Draft, that means the whole Article 14 should not be there, because since 2001 the Republic of Armenia has joined to the International environmental Treaty called “Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters”/hereafter the Aarhus Convention/, which contains the details of the Article 14-th of Draft.

According to Article 6 of the Constitution of RA the International treaties are an integral part of the legal system of RA, and according to 2-nd paragraph of the 1-st part of the Article 5 of the Law - "Norms in force of an international treaty of the Republic of Armenia in the Republic of Armenia shall apply directly", and according to the Article 50- "International treaty of the Republic of Armenia, which entered into force in accordance with this Law shall be subject to the unconditional implementation."

The Aarhus Convention has already entered into force in Armenia.

5. One of the principal deficiencies of the Draft is that as a Competent authority for Impact assessment and impact Expert Examination should be mandated by the RA Government the public administration body for nature protection, which means the body or structure, which will deal with issues only in the field of nature protection (point 16 of the Article 4).

But, the experience of the past 18 years, as well as the certain provisions and words of the Draft (e.g. the 1-st word of the 1-st point of the Article 5.1.1.) should force to designate by the Draft another institution or governmental body too, which will be eligible for human health care.

Personally by me it was sent a written inquiry to both Ministries of RA: Nature Protection and Health Care, on matter of negative impact on the health of people in the beginning of restructuring of the Dalma Gardens/Orchards/ of Yerevan City.

The answers were.-
a/ the Ministry of Health Care says that the Competent authority for impact assessment in our country is the Ministry of Nature Protection, and
b/ the Ministry of Nature Protection says, that they hadn’t authorities in human health care field. That’s all.

6. The Draft has a number of technical, editorial and other defects /especially in matters of interpretation of certain provisions/ and gaps also:
- (for example, among the natural elements doesn’t mention the relief, which is not the same as the landscape, and it shouldn’t be allowed to change one of them to another one, especially in the context of transboundary impacts, because, for example, according to RA legislation: “the state boundary at the land is defined a) by the characteristical points and lines or simple visible references of RELIEF.”
So, if the Law shouldn’t let to assess and examine the impact on the relief, in future maybe we will have some real legal difficulties);
- on which I wouldn’t focused, as long as these fundamental issues have not been resolved and discussed through the public hearings together with the Draft’s full package /including a number of references-information papers and drafts of relevant regulations, and schedule of adopting of that regulations/, which is required by the Article 28 of RA Law "On Legal Acts".

7. The interested public may say its opinion on the Draft and on usefulness feasibility of it only taking into consideration the full package of regulations mentioned in the Draft itself. Without of them the Draft will not be considered as a Complete Legal act.
It's worth to mention that for both the Competent Authority and the Developers the main reason for self-will acting during the assessment or preparation of Experts’ conclusion and public hearings was the lack of these rules and regulations /including rules on methodologies of impact assessment and/or impact expertizing, on preparation of documentation for the assessment of an environmental impact, on public hearings, etc./, mentioned in the RA Law “On environmental impact assessment” adopted by the National Assembly in 1995 and acting to this day.

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