Netherlands Commission for
Environmental Assessment

Comments on Draft Law of the Republic of Armenia on State Environmental Review

Memorandum by the NCEA

13 July 2007

Advice of the Secretariat

To	The Ministry of Nature Protection of Armenia
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From	Mr Arend Kolhoff (staff member of The Netherlands Commission for Environmental Assessment)
Date	13 July 2007
Subject	**Comments on Draft Law of the Republic of Armenia on State Environmental Review**
	By: Mr Arend Kolhoff
	Advice DGIS 0705

1. Introduction

Request for advice

The Ministry of Nature Protection of Armenia (Mrs Ruzana Davtyan - Head of the International Cooperation Department and Mrs Julieta Ghlichyanv- Head of normative – methodological department) requested the Netherlands Commission for Environmental Assessment (NCEA) to review the draft law on State Environmental Review.

Review framework

The NCEA has reviewed the completeness and consistency of the draft law.

Review of the draft law is based upon international good practice.

It has not been requested but the NCEA can also review the compliance of this draft law with EU EIA and SEA directives.

The secretariat of the UNECE - Espoo convention informed the NCEA that they were asked to review the compliance of the draft law with the Espoo convention. Therefore we will not review the compliance of the draft law with the Espoo convention on transboundary impacts.

Structure of the advice

In this review two levels of comments can be distinguished. A review on headlines focussing on the more strategic decisions that have been made and that have influenced the set up and the ambition level of EIA / SEA system as described in the draft law, see chapter 2. Secondly, a review of specific articles focussing on completeness and consistency, see chapter 3. With respect to this review it should be stated that the NCEA is not familiar with legislation in Armenia.

Based upon experience we know that it is more effective to discuss the review findings in a face to face meeting. We would really appreciate to have this meeting in Yerevan with Arend Kolhoff who will participate in the EIA Espoo workshop 17-19 September in Yerevan.

2. Main findings

1. The linkages of this law with other environmental legislation are not clear. It cannot be assessed for example how inspection and enforcement is arranged by law.

2a. One law for EIA and SEA is very rare and the way it has been elaborated in this law seems almost impossible to execute. According to our interpretation, it seems that in the review (main stage) two decisions are taken (i) a decision on the quality of the EIA and SEA report and (ii) the approval decision (permissibility of the activity). As far as we have been informed about Armenian legislation approval of a policy plan or programme cannot be done by an authorised body of the Ministry of Nature Protection. The approval decision, most likely, is the responsibility of the ministry/ department or agency who is the so-called "owner" of the policy, plan or programme. The NCEA assumes that no other legislation gives this responsibility towards the state authorized body.

Good practice is a review of the quality of the EIA / SEA report by experts. The main criteria applied are completeness and correctness of the

information. The decision on approval is a political decision which should be made by politicians and they use other criteria for their decision. It is considered as good practice when: (i) the ministries / authorities that are the owner of the policy, plan or programme are also responsible for the preparation of the SEA and (ii) the main aim of the EIA / SEA report is to objectify the existing information and when this reports meets the standards as agreed upon during the review it will be used as an input in the political decision-making process.

One framework for EIA as well as SEA containing basic principles is common practise. It is also common practise to have separate by-laws or regulations in place for EIA and SEA because the tools differ on some specific characteristics. It is suggested to reconsider the structure and set up of the law.

2b. Besides, a combined review and approval decision is not considered as good practice. The state authorised body is responsible for those decisions. As a consequence this body gets a lot of power and is therefore sensitive towards corruption. It is suggested to re-consider the rights of this body in order to be able to better control decision-making.

3. The role / rights of the public are not clearly stated. The public has to be informed according to the law but it is not clear if this is mandatory during the initial review stage and during the review main stage review. Furthermore, it is not clear whether the public can really participate in the decision-making process or will only be informed and provide there comments. Opportunity for appeal by the public is not foreseen in the law. It is suggested to provide clarity about:

- the rights for the public during initial and main review;

- the type of participation and;

- the opportunity for appeal to the decisions taken;

- the obligations of the proponent to inform the public.

4. Accountability by the government is well arranged and in line with good practice. All formal decisions that will be taken have to be justified. However, it is not stated how the justifications will be made publicly available; it is suggested to make this clear.

5. According to the draft law the start of SEA is the initial review. The initial review will be based upon the fundamental document. According to article 4 a

fundamental document is the draft of a document. I assume that in a draft document most of the strategic choices have been made already. As a consequence the opportunities for the public to influence or change the alternatives that will be studied and evaluated in the SEA report are limited. In box 1 good practice SEA steps are presented. Comparing the steps proposed in the draft law with the steps in box 1, I notice that step A-Establishing the context for SEA, especially step A-1 and A-3 are not secured in the draft EIA law. As a consequence the SEA will get more the character of an evaluative SEA than a design SEA. This means that there are fewer opportunities to change or influence the design / alternatives by the public. Conclusion, this approach is not in line with SEA good practice and the ambition level of SEA is rather low.

Box 1: Good practice SEA steps (according to OECD – SEA good practice, 2006)

SEA principles are similar for policies, plans and programmes. However, SEA processes and procedures may differ. The following SEA steps apply mainly at plan and programme level.

A. Establishing the context for SEA

1. Identify stakeholders in the planning process and prepare a communication plan;
2. Screen and decide on the need for SEA;
3. Set objectives; develop with all stakeholders a common vision on (environmental) problems, objectives and identification of alternatives;

B. Implementing SEA

1. Scope the content for the SEA;
2. Collect baseline data;
3. Assess alternatives;
4. Identify how to enhance opportunities and mitigation of impacts;
5. Assure quality through independent review and public involvement of draft reports;
6. Document results and make these available;

C. Informing and influencing decision-making

1. Organise a dialogue among stakeholders on the SEA results and make recommendations for decision making;
2. Justify in writing the (political) choices that have been made in the finally adopted policy or plan;

D. Monitoring and evaluation

1. Monitor decisions taken and the implementation of the adopted policy or plan;
2. Evaluate both SEA and policy or plan.

- Capacity and resources for SEA might be limited and than it is questionable what is the best investment.

7. Armenia is a signatory to the Convention on biodiversity. However, in the draft law I do not see reflected the CBD guidelines on EIA that have been endorsed by the COP of the CBD in April 2002 in the Hague and in March 2006 in Curituba for EIA and SEA. It is suggested to include the CBD guidelines for EIA and SEA.

3. Specific comments

3.1 Chapter 1

Article 5

In this article no reference is made towards compensation, whilst in article 15-1g and 15-2f compensation is mentioned as a requirement in respectively SEA report and EIA report. What is the meaning to include or exclude compensation?

Article 7

In this article no reference is made towards the change in ecosystem services. Armenia is a signatory to the Convention on biodiversity. At the Conference of Parties in 2004 and again in 2006 guidelines on EIA (and voluntary guidelines on SEA in 2006) have been endorsed. It is suggested to study these CBD guidelines and include at least ecosystem services as object of study in EIA and SEA.

In article 7-k: Is stated - Social and economic factors related to impacts. It is suggested to determine more precisely what is meant with social and economic factors.

In this article the preparation of an Environmental Management Plan as part of the EIA report is not mentioned, whilst this is considered as good practice. It is suggested to include the requirement for an Environmental Management plan as part of the EIA report. For SEA it is not common practice to require an EMP as part of the SEA report due to the difference between EIA and SEA.

3.2 Chapter 2

Article 8

In the law it is not stated which institution is the state authorized body for nature protection. It is suggested to make this clear. In case there is only one state authorised body for nature protection this comment is not relevant.

3.3 Chapter 3 – article 11

1. Article 11-1 states that "The review shall be conducted for the following: a. Fundamental document defined by this law". However, a list of fundamental documents is not listed in this law. It is suggested to include such a list.

2. Article 11-2. Classification of proposed activities in three categories.

In principle there are three systems to classify the categories:

(i) A system working with a positive list, with thresholds.

(ii) Project and location specific assessment.

(iii) A combination of those two types.

In this law it seems that system (i) has been chosen as starting point. The law identifies thresholds avoiding discussion about the category. But not for all categories thresholds are identified. For some categories thresholds are identified such as energy and underground resources whilst for other categories no thresholds are identified such as waste management. I have some questions:

- Why haven't you identified thresholds for most of the categories?

- What is the difference in procedure for category A, B or C? In article 16-3 I see the only distinction made between the three categories, namely the period for the main review, 60 days for Category A, 40 days for category B and 20 days for category C. Is this the only distinction?

- What is the reason to distinguish three categories?

3. The procedure to classify a proposed activity in one of the three categories is not clearly described. I have some questions:

- Will a formal decision be made and is it a political decision?

- Will this decision be justified and made publicly available?

- Is appeal to the decision by the public possible?

4. Internationally, it is common practice to lower the threshold of an activity in case it is located in or near a sensitive area. In the draft law no reference is made towards sensitive areas.

Suggestion: In case you are planning to consider the location of an activity in or a near a sensitive area as a criterion for classification in A, B or C it is suggested to identify and agree on the exact location of the sensitive areas. International experience shows that there are two conditions for effective use; (i) the sensitivity areas should be demarcated precisely on a map and (ii) this map should be approved together with the law.

It is suggested to include the list of activities in an Appendix to the law.

3.4 Chapter 4

Article 15-1

In this article requirements for the contents of the SEA report are listed. of SEA is listed. Under 15-1c. Detailed physical characteristics of activities requirements are asked to be described. In most SEAs it is not feasible to ask for this type of detailed information. Moreover, this type of information is not in line with decision-making on of more strategic decisions that SEA tries to should play. It is suggested to skip the requirement for this type of detailed information

Article 15-2

See under article, comments on Environmental Management Plan.

Article 15-3

This article is not clear to me and needs further explanation.

Article 16

In article 16-2 the criteria are mentioned that are used for evaluation during the review. It is remarkable that the approved Terms of Reference for EIA / SEA is not mentioned here as review framework to be used. Because it might

be assumed that the ToR provides specific guidelines for the EIA / SEA study and report.

Article 17

This article does not make clear whether the review conclusion:

- will be made publicly available;
- appeal towards the review conclusion is possible by the public.

3.5 Chapter 5

Article 19

In this article no reference is made towards the Espoo convention for transboundary environmental impacts and no use is made of the guidelines developed by this convention.

3.6 Chapter 6

See comments in chapter 2 Main findings.

3.7 Chapter 10

Article 24

It is good practise that the authorised body responsible for reviewing does not receive the payment / costs for the review.