EIA AND PUBLIC PARTICIPATION IN DEVELOPMENT DECISIONS IN ARMENIA

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ABSTRACT

Environmental Impact Assessment Law was adopted in Armenia in 1995.The Law has a mission to control environmental decision-making in the country and comply with the international treaties and conventions ratified by Armenia. The recent rapid developments of environmental hazards in Armenia have raised a concern whether the existing Law is meeting the needs of the country and its citizens. The comparative doctrinal research has been conducted to question the legal provisions, implementation and compliance of the RA EIA Law with International Environmental Treaties, which Armenia is a Party. The comparison of the existing RA EIA Law with similar laws in European Union and the USA was necessary to assess the instrument's best practice to find out the errors and make possible recommendations for improvement of the environmental governance in the country. In the process of the research work, the RA EIA law was amended in 2014. Therefore, the research had a chance to compare both legal texts and assess their similarities, differences and positive development of the Law. The comparative analysis of all mentioned instruments revealed existing deficiencies of the RA EIA Law and provided further improvement and development recommendations as an outcome of this unique and unprecedented work.

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Table of Abbreviations

ADB	Asian Development Bank
CENN	Caucasus Environmental NGO Network
EIA	Environmental Impact Assessment
EIAA	Environmental Impact Assessment Act of Armenia
EC	European Commission
ES/EIS	Environmental Statement
EU	European Union
FAO	United Nations Food and Agricultural Organization
GEMS	Global Environmental Monitoring System
HPP	Hydro power plant
IAIA	International Association for Impact Assessment
NEPA	National Environmental Policy Act
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
RA	Republic of Armenia
SEA	Strategic Environmental Assessment
SPP	Small Hydro Power Plant
UN	United Nations
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environmental Program
US/USA	United States of America
NEPA	National Environmental Policy Act
UK	United Kingdom

Chapter 1: Environmental Justice as a Mission to Protect Future Generations

1.1. Introduction

The environmental law and environmental justice are considered to be recent notions in the world of legislative history. Its first steps and ideas were generated in the USA. The National Environmental Policy Act has been effective there since 1970 in the United States. Ever since the variety of national and international laws, regulations, conventions and agreements have been generating on nature conservation in the world including former Soviet Union. [1] Many scholars worldwide have been interested in environmental studies and environmental law since then. As a result, it became an appealing field for legal scholars. 'Environmental Law is an overtly attractive subject for study, appealing to those on the side of the angels who are concerned to preserve and protect wildlife, biodiversity and life quality.'[2]

There are EU directives and international regulatory instruments like; Environmental impact assessment (Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment with four amendments in 1997, 2003, 2009 and 2014) [3] , Habitats Directive, [4] Water Framework Directive, [5] Strategic

[1] Oleg Cherp and Norman Lee, 'Evolution of SER and OVOS in the Soviet Union and Russia (1985–1996)' (1997) 17 Environmental Impact Assessment Review 177.

[2] Joanne Scott, *EC Environmental Law* (Ad Wes Long Hi edition 1998).

[3] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

[4] Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora OJ L 206, 22.7.1992, p. 7–50 .

[5] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 Establishing a Framework for Community Action in the Field of Water Policy OJ L 327, 22.12.2000, p. 1–73.

environmental assessment (Directive2001/42/EC), [6] Aarhus Convention, [7] Espoo Convention/ Convention on Environmental Impact Assessment in a Transboundary Context, Espoo, 1991, [8] Waste framework directive (Directive 2008/98/EC), [9] Industrial Emissions Directive 2010/75/EU[10] of The European Parliament and of The Council of Europe 24 November 2010 on industrial emissions (integrated pollution prevention and control), United Nations initiations on environmental sustainability in face of Rio Declarations[11], Handbook on Environmental Compliance and Enforcement[12] and many more in the European part of the world. EU directives are binding for those European countries that are members of the European Union. The international treaties, conventions, declarations and other sources of international law establish the relationships between all the states in the world who take the challenge to develop in parallel with the international requirements. The International Law calls for the signatory and participant countries to apply requirements in their national legislations and

[6] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

[7] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999).

[8] Convention on Environmental Impact Assessment in Transboundary Context, United Nations 1991(Espoo Convention), C104, 24/04/1992, p. 7.

[9] Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3–30.

[10] Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control),OJ L 334, 17.12.2010, p. 17–119.

[11] United Nations Environment Programme, 'Rio Declaration on Environment and Development' (*United Nations Environment Programme,* 1992) <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163> accessed 05/03/2015.

[12] International Network for Environmental Compliance and Enforcement *Principles of Environmental Compliance and Enforcement Handbook* (Chapter 8: Enforcement, International Network for Environmental Compliance and Enforcement Global Network, 2009).

becomes *pacta sunt servanda*[13] for party states. The international law refers to all countries that are willing to access the agreements with other countries. 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'[14] This refers to all international treaties ratified by countries on 'free consent and for bona fide.'[15] The countries of the world strive to unite their efforts in the process of nature conservation and protection to combat the climate change and foster sustainable development in the world. For that purpose, they apply special principles in international environmental law one of which is the precautionary principle.[16] This is to ensure that states follow up all and every development to protect the surrounding ecology from being seriously damaged. The Rio Declaration declares this principle in 1992.

> In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.[17]

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[13] This Latin phrase, which may be roughly translated as "treaties shall be complied with," describes a significant general principle of international law—one that underlies the entire system of treaty-based relations between sovereign states. Andrew Solomon, 'General Principles of International Law: Pacta Sunt Servanda' American Society of International Law and the International Judicial Academy

<http://www.judicialmonitor.org/archive_0908/generalprinciples.html> accessed 13/02/2015 .

[14] United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Article 26.

[15] Anthony D'Amato, 'Good Faith' Encyclopedia of Public International Law Northwestern Univesrity <http://anthonydamato.law.northwestern.edu/encyclopedia/good-faith.pdf> accessed 03/03/2015.

[16] James Cameron and Juli Abouchar, 'The Precautionary Principle: A Fundamental Principle of Law and Policy for the Protetcion of the Global Environment' (1991) XIV Boston College International and Comparative Law Review 1.

[17] United Nations General Assembly, *Report of the United Nations Conference on Environment And Development** (A/CONF151/26 (Vol I), 1992), principle 15.

Later on, the international treaties embodied this and three other core principles in the bases of requirements from the states.[18] 'The precautionary principle is a *guiding* principle. Its purpose is to encourage-perhaps even oblige—decision makers to consider the likely harmful effects of their activities on the environment before they pursue development activities.'[19]

The global view of environmental concerns is complex and requires intervention of scholars from various disciplines. Natural sciences identify the existing problems in nature itself whereas humanities and social sciences deliver the revealed concerns and problems to the major part of the world population. The theoretical research is relevant to both branches of science to provide up to date information for practicing specialists. In law, in particular, it comes to help the lawyers in practice. Accordingly, international research of scholars helps to transfer the existing active legal instruments and best practices in the particular field from developed countries to developing ones. Thus, research and detailed studies of Environmental Law helps the Environmental Justice to grow strong in its arguments and establish norms on moderate usage of natural resources by human beings.

The countries' jurisdiction has its share of role in making regulations, controlling and monitoring environmental transactions. The Environmental Impact Assessment process is considered being one of the essential environmental management tools in nature and in environment protection role of a government.

> Environmental Assessment has become a constant refrain in the language of environmental law. The development and refining of this legal form reflects and has also shaped key developments in other areas

[18] The Maastricht Treaty Provisions Amending the Treaty Establishing the European Economic Community With a View to Establishingthe European Community, Article 130r (2), Consolidated Version of the Treaty on the Functioning of the European Union, Article 191.

[19] Cameron and Abouchar, 'The Precautionary Principle: A Fundamental Principle of Law and Policy for the Protetcion of the Global Environment'.

> of environmental law, particularly the move towards integration of legal controls. This gathering of environmental law around environmental assessment may be seen as an example of the convergent evolution of environmental law, with the maturing of environmental assessment regimes signifying the growing conceptual coherence of environmental law as a discipline, worthy of its own principles, regimes, and methodologies and distinct from related areas such as planning law.[20]

The developed part of the world with the efforts of practitioners and scholars identified the best ways of regulations available so far and are continuously working towards the sustainable management of the natural resources. Whereas there are countries in transition or countries with the collapsed social structures such as post-soviet countries that strive to catch up with the developed part of the world and make their own way towards the sustainable management and regulations of natural environment. The environmental justice[21] in the countries in transition is discussed in frames of this thesis as good governance, accountability to public, public involvement, access to courts for all parties and expression of strong political will to follow the requirements of international society from the holistic approach. Therefore, the research project proposal targeted comparative studies to find out the attitude of other jurisdictions towards the

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[20] Jane Holder, *Environmental Assessment : The Regulation of Decision Making* (Oxford:Oxford University Press 2004), 1.

[21] Committee on Environmental Justice, *Toward Environmental Justice: Research, Education, and Policy needs* (National Academy Press, Washington DC 1999) 'Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, ethnicity, income, national origin or educational level with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. Fair treatment means that no population, due to policy or economic disempowerment, is forced to bear a disproportionate burden of the negative human health or environmental impacts of pollution or other environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies (Environmental Protection Agency, 1998, p.2).'

components of environmental justice considered in this research work. The environmental governance [22] is discussed in this particular research as methods of carrying fair responsibilities towards achieving the goals of sustainable environmental justice in the world and in Armenia in particular.

1.2. Scope of the Study

There are uncountable issues related to the environmental conservation and management in Armenia. The environmental problems occur in all fields of nature protection. The time and word limit of this particular study imposes boundaries on the scope of the study. Therefore, this study attempts to disclose the ongoing environmental conservation situation in the Republic of Armenia; a post-soviet country, in the context of environmental impact assessment process and the legislation drafting and implementation in particular. It will discuss existing legislation in Armenia and the law on Environmental Impact Assessment as one of the legislative examples of the country; conduct detailed research in the EU, the USA and International environmental law comparing good practices in legal drafting, implementation and enforcement mechanisms. The comparative analysis between the legislations aim to propose best practices in the better environmental governance in Armenia. The reports of international organisations involved in the environmental governance development process in Armenia played a significant role in this research work as there is no contemporary literature in this field in Armenia as such. The information for this particular research work is derived from the governmental, NGO, newspaper published sources and relevant reports of international organisations generated in frames of their observations in Armenia and posted on their websites. Another PhD thesis has been published in Armenian which has slight similarity to this particular work as it touches

[22] James Gustave Speth and Peter M.Haas, *Global Environmental Governance* (Island Press, Washington DC 2006), 3. 'Governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interests.'

upon the RA EIA Law; however tackles the law in different context and is written in Armenian.[23] The research work undertaken by Gor Moviesyan is available only through hard copy at the Public Library in Yerevan, Armenia. G. Movsesyan has provided me only third chapter of his work which includes some relevant information for this particular dissertation. Accordingly, the dissertation written by Gor Movsisyan has different context within the same topic of discussion.[24]

This particular thesis argues that well drafted laws, strong enforcement mechanisms and legal implementation are key issues in good environmental governance. The laws can be considered well drafted if they embody key implementation steps: i.e. benchmarks,[25]enforcement mechanisms in face of the public engagement in the process firstly, and secondly, the utmost transparent environmental decision-making procedures. The scope of this research work highlights the comparative analyses of theory of environmental impact assessment process in the European Union, the United States and world treaties in comparison the RA EIA Law, its presentation, implementation and enforcement. How is the EIA process defined by the European Scholars? How the legislation works and what steps are taken in the relatively developed part of the world especially in the European Union and the United States? Is it a dynamic or static process and what should be done to achieve the best results in this field? These questions are asked in the context of the existing legislation in both parts of the world and supposed to find the answers through conducting the research and writing of this dissertation. In this context, this dissertation appears to be a unique academic work that undertakes the comparative analysis of the RA EIA Law considering legal and academic literature of western world and the relevant information and publications present in Armenia.

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[23]Gor Movsisian, 'Legal Regulation of State Governance of Natural Resources in the Republic of Armenia, PhD Thesis in Law, Yerevan, 2012.' (PhD, Yerevan State University 2012).

[24] Ibid, Gor Movsisian, '3.Շրջակա միջավայրի վրա ազդեցության պետական փորձաքննության իրավական հիմքերը (Chapter 3 The Legal Basis of the State Environmental Expertise). ' (PhD, Yerevan State University 2012).

[25]Chapter 5.

The start of discussion is preferable from the description of the scope of subject matter law. What is the Environmental Impact Assessment? '…the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of proposed development proposals prior to decisions being taken and commitments made'.[26]

The Environmental Impact Assessment itself is a support to fair and just decision-making process in civilized world, although it does not dictate the outcome of the decision-making process, but it sets out the correct implementation steps towards the fair decision-making at the end. Armenia strives to comply with the requirements of international law. It adopted the RA EIA Law in 1995 and signed the international environmental treaties as required. There were not many analyses of the Law on Environmental Impact Assessment of the Republic of Armenia since the law was adopted in 1995. However, the recent developments in decision-making context attracted the attention of local and international specialists who came together and combined efforts in building a good environmental governance system in Armenia.[27] In 2014, the RA EIA Law was changed; however, there is not any published work on the analysis of the law in details. The amendment of the law occurred in the process of this dissertation writing and the RA EIA Law of 1995 had been analyzed, therefore it is considered appropriate to discuss both laws aiming to show the progress in legislative comprehension and drafting process of contemporary legislative drafters in the country. The implementation of the RA EIA law is presented based on four development projects currently in progress in Armenia: the Teghut Depository Mine, Amulsar Gold Mining project, SPP[28] on the Martsiget

[26] John Glasson, Riki Therivel and Andrew Chadwick, *Introduction to Environemntal Impact Assessment* (4 edn, Routladge, Taylor and Francis Group, London and New York 2012).

[27] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia* (Netherlands Commission for Impact Assessment Arthur van Schendelstraat 800 PO Box 2345 3500 GH UTRECHT The Netherlands, 2004),Economic Commission For Europe Committee on Environmental Policy, *Environmental Performance Reviews Armenia* (United Nations Publication Sales No E01-II-E7 ISBN 92-1-116775-2 ISSN 1020-4563, 2000),Policy Forum Armenia, *The State of Armenia's Environment* (State of the Nations Series, 2010).

[28] Small Hydro Power Plants development project.

River and SPP project on the Pagh Jur River.[29] The central idea of the survey is public awareness and participation issue, which directly relates to the Aarhus Convention requirements. This field study is an example of proper decision-making process in Armenia.

In addition, the doctrinal research on Environmental Impact Assessment Law in Armenia[30] has been conducted to assess the existing RA EIA Law in compliance with EU EIA Directive 85/337/EEC on Environmental Impact Assessment and its amendments,[31] EU SEA Directive,[32] Aarhus and Espoo Conventions[33] with Kyiv Protocol[34] and US NEPA[35]. The purpose is to find out how much the existing legislation in Armenia, its enforcement and implementation complies with the current requirements in the developed part of the world and whether the country has the chance to take the path of democratic development and establish a good environmental governance. The attempts of compliance of the government in decision-making process displays their willingness to change the legislation, whereas the implementation is slow and only recently a little progress has been noticed in this field by changing the law based on the requirements of the RA Constitution and the International Environmental Law. [36]

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[29] Chapter 4.

[30] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995.

[31] 85/337/EEC Directive on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985, Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21,Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

[32] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

[33] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999) .

[34] Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context Kiev, 21 May 2003, ECE/MP.EIA/2003/2..

[35] National Environmental Policy Act of 1969.

[36] Նախագիծ Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին (Draft project on the Law of the Envrionmental Impact Assessment and Expertise of the Republic of Armenia).

1.2.1 Brief History of Post-Soviet Development in Armenia

It is appropriate to bring forward a brief history of Armenia since the collapse of Soviet Union. It is believed that the discussion of the development of post-soviet Armenia will give a background of understanding on current situation in the country and the social and economic impact of its development as a whole. It tends to explain the reasons of serious problems Armenia faces since then.

Armenia is a small mountainous country with 29743-km2 area. '… Country is situated in western part of Asia, occupies northeastern part of Armenian plateau – between Caucasus and Nearest Asia (the inter-river territory between the middle flows of the rivers Kur and Araks). Administrative and territorial units of the Republic of Armenia are marzes and communities. Marzes consist of rural and urban communities.'[37] The Republic of Armenia gained its independence on 21 September 1991. In 1995, Armenia adopted its Constitution. A national referendum had been held for the country's major Law and the rest of legislation was created or amended based on requirements of the RA Constitution.

> The Constitution of Armenia was adopted by a nationwide referendum on July 5, 1995. This constitution declared Armenia as a democratic, sovereign, social, and constitutional state. Yerevan is defined as the state's capital. Power is vested in its citizens, who exercise it directly through the election of government representatives… There are 117 articles in the 1995 constitution. On November 27, 2005, a nationwide constitutional referendum was held and an amended constitution was adopted.[38]

[37] The Office of the President of the Republic of Armenia, 'General information about Republic of Armenia' (*The office of the President of the Republic of Armenia,* 1999-2015) <http://www.president.am/en/general-information/> accessed 04/03/2015.

[38]The Government of the Republic of Armenia, 'General Information' (*The Government of the Republic of Armenia,* 2004-2015) <http://www.gov.am/en/official/> accessed 03/03/2015.

Right before the collapse of the Soviet Union a movement called 'Artsakh movement' started. [39] The Soviet Government forcibly enclosed the Armenian land with majority of Armenian population to Azerbaijan in 1920.[40] This supposed to stop the conflict between Armenia and Azerbaijan then; however, the frozen conflict erupted again in 1988.[41] This movement caused serious problems for already weakened Soviet Union and resulted a war between Armenia and Azerbaijan in February 1988. Later, on 07 December 1988, the country and its population experienced a terrible earthquake with epicenter in Spitak town and faced the mass deaths and damages in two regions of Armenia. The economic blockade of Armenia started in 1990 by its two neighboring countries Azerbaijan and Turkey. Once an industrially developed Soviet country became one of the poorest countries in the region.[42]

Gas and electricity shortage made the population to rely mainly on natural resources and forest cuts in severe winter days since then. The environment of major changes, conflicts, natural disasters and social transitions had their negative impacts on the further development of the country as an independent state. It gained the independence from Soviet regime in 1991, strived to live independently, but erred in many fields of economy and social life, suffered in creating its own independent state policies and legislation as well as in implementing or enforcing them.[43] In 2011, the OSCE office of Democratic Institution and Human Rights reported that

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[39] Artsakh (Karabakh) is an integral part of historic Armenia. During the Urartian era (9-6th cc. B.C.) Artsakh was known as Urtekhe-Urtekhini. As a part of Armenia Artsakh is mentioned in the works of Strabo, Pliny the Elder, Claudius Ptolemy, Plutarch, Dio Cassius, and other ancient authors. The evident testimony of it is the remained rich historic-cultural heritage.

[40] Ministry of Forign Affairs of the Republic of Armenia, 'Nagorno-Karabakh issue' (*Ministry of Forign Affairs of the Republic of Armenia,* 2011-2015) <http://www.mfa.am/en/artsakh/> accessed 07/05/2015.

[41] Ibid.

[42] BBC Monitoring, 'Armenia profile ' BBC News Europe <http://www.bbc.co.uk/news/world-europe-17398605> accessed 04/03/2015.

[43] OSCE Office for Democratic Institutions and Human Rights, *Assessment of the Legislative Process in the Republic of Armenia* (Ulica Miodowa 10 PL-00-251 Warsaw ph +48 22 520 06 00 fax +48 22 520 0605, 2014).

‘Armenia is in need of proper laws and regulations and in scheduling good infrastructures to regulate country’s normal life routine. The country faces poor judicial and legislative control and has lack of Rule of Law.[44] Judicial system is corrupt and is not free in decision- making. ‘Perhaps the greatest impediment to achieving effective rule of law in Armenia however, is the lack of a fully independent and effective judiciary.’[45]

Together with the independence there started the era of self-surviving in the life of Armenian people. The Armenians started to think over survival in the environment of hunger, collapsed utility, communication and transportation services, without any care or support from the government. Forests and parks in Armenia suffered the most in the process of survival through war and transitional period in the life of the country.[46] Almost all the population used trees as firewood in the post-soviet period of war and until now. However, as the study by the International Center for Agribusiness Research and Education shows the illegal logging was higher in 2004 than in 2010.[47] The scale of usage of the green areas is still high as they suffer due to other industrial purposes, such as mining and urbanization. [48] Recently, gas and electricity supply has been restored in big cities and in most villages as well. However, the ecology of the country is damaged greatly; people suffer from different types of illnesses in rural areas in particular. Threats on human healthy life generate from different hazardous sources in the country.[49]

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[44] Adam Hug (ed), *Spotlight on Armenia* (The Foreign Policy Centre, Suite 11, Second Floor, 23-28 Penn Street London N1 5DL 2011), 10.

[45] Ibid, 11.

[46] Vardan Urutyan and Tateviki Zohrabyan, *Assessment of the Economic and Social Impact of Unsustainable Forest Practices and Illegal Logging on Rural Population of Armenia* (International Center for Agribusiness and Research Education, 2011).

[47] Ibid, 17,United Nations Economic Commission for Europe, *Proposals to assist Armenia and Azerbaijan with implementation of the Convention* (Economic Commission for Europe Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment Working Group on Environmental Impact Assessment and Strategic Environmental Assessment Second meeting Geneva, 27–30 May 2013 Item 3 of the provisional agenda Compliance and implementation, 2013).

[48] Christina Stuhlberger, *Mining in Armenia* (Zoï Environment Network, 2012).

[49] Armenian Environmental Network, 'Public Health' (*Armenian Environmental Network,* 2015) <http://www.armenia-environment.org/public-health/> accessed 04/03/2015.

Armenia faces serious problems in proper environmental management and governance; there is no waste management practice; a) urban waste is being disposed in rivers or close to residential areas, b) production tails, especially chemical ones are buried in the areas not far from the capital city or urban centers of the country. Moreover, such areas are utilized by farmers as pasturelands for their cattle. In general, soil is polluted especially in the areas where major agrarian products grow in Armenia. Accordingly, not only the soil but also the water that is used for irrigation purposes is polluted by urban and production wastes in this area. [50] The international organizations are concerned with this situation in Armenia and try to assist the country in solving this issue although it still has a long way to go.[51]

Recently the state has declared mining as a public priority in the country, which is very small with only 29.74 thousand square km territory. On this small area of land, there are 670 big and small existing open mines and their number is growing day by day. The number of small hydropower plants grow as well.[52]

> Armenia's mining sector is a key contributor to the national economy. Ore concentrates and metals accounted for just over half of Armenia's exports during last 20 years, solidifying their status as the country's most important export products. More than 670 mines of solid minerals, including 30 metal mines, with confirmed resources are currently registered in the state

[50] Armenian Environmental Network, 'Waste Management in Armenia' (*Armenian Environmental Network,* 2015) <http://www.armenia-environment.org/waste-management/> accessed 04/03/2015

[51] European Bank for Reconstruction and Development, 'EBRD and EU help to improve solid waste management in Armenia' (*European Bank for Reconstruction and Development,* 2014) <http://www.ebrd.com/news/2014/ebrd-and-eu-help-to-improve-solid-waste-management-in-armenia.html> accessed 04/03/2015.

[52] Ministry of Energy and Natural Resources of the Republic of Armenia, 'Hydro Energy' (*Ministry of Energy and Natural Resources of the Republic of Armenia,* 2015) <http://www.minenergy.am/en/page/464> accessed 30/05/2015.

> inventory of mineral resources. Among these around 400 mines, including 22 metal mines are exploited.[53]

It is important to mention that old mining pits are present in Armenia as well. They have been inherited from the soviet period.[54] The impact of mining is the most significant one on the environment as it uses not only the minerals, but also chemical substances producing toxic waste in the form of mining tails. The tails are preserved in dumps or special areas and remain there without further care and responsibility.[55] The existence of rivers are jeopardized by the high number of small hydro power plants constructed on the rivers in Armenia.[56]

Taking into account that the environment must aim at the high level of protection as stated in the Directive 2008/99/EC on the protection of the environment, considering the United Nations Interregional Crime and Justice Institute's definition on environmental crime[57] and comparing Armenia's environmental governance: the uncontrolled conditions of old mining tails, illegal logging, and usage of natural resources carelessly in the process of constructing small hydro power stations on small rivers and developing mining industry without proper regulations, control and

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[53] Ministry of Energy and Natural Resources of the Republic of Armenia, 'Mining Resources' (*Ministry of Energy and Natural Resources of the Republic of Armenia,* 2015) <http://www.minenergy.am/en/page/472> accessed 04/03/2015.

[54] Simon Pow, 'How can Environmental Governance in Armenia's Mining Sector be Strengthened?' (*Ricardo-AEA,* 2015) <http://www.ricardo-aea.com/cms/how-can-environmental-governance-in-armenia-s-mining-sector-be-strengthened/#.VPrt20dFDcu> accessed 07/03/2015.

[55] Ibid.

[56] Svetlana Valieva, 'Armenia: An Unsustainable Road to Energy Security' Generation C Magazine creativity through cooperation sparks change <http://www.generation-c.org/armenia-an-unsustainable-road-to-energy-security/> accessed 15/05/2015.

[57] United Nations Interregional Crime and Justice Research Institute, 'Environmental Crime' (United Nations Interregional Crime and Justice Research Institute, 2015) <http://www.unicri.it/topics/environmental/> accessed 12/02/2015 Environmental crimes encompass a broad list of illicit activities, including illegal trade in wildlife; smuggling of ozone-depleting substances (ODS); illicit trade of hazardous waste; illegal, unregulated, and unreported fishing; and illegal logging and trade in timber. On one side, environmental crimes are increasingly affecting the quality of air, water and soil, threatening the survival of species and causing uncontrollable disasters. On the other, environmental crimes also impose a security and safety threat to a large number of people and have a significant negative impact on development and rule of law.

enforcement in the country, it is inferred that situation complies more with the international definitions on the environmental crime than with environmental protection.[58]

The RA Government strives to follow international legal regulations and almost all relevant international treaties and conventions are ratified by the state.[59] National legal instruments are harmonized with the international ones. One of those national legal instruments is a law on Environmental Impact Assessment adopted in 1995. The RA government made attempts to amend it several times since the Aarhus Convention has been signed. The law drafted in 2012 was rejected by the RA President and returned to the National Assembly for revision on 15 March 2012.[60]This was the result of public opinion and protests in Armenia seen as a slight democratic upheaval in the life of Armenian people.[61] This can be perceived as a spark of participatory democracy in Armenia; however, the reality is far away from being a democratic one and does not comply with demonstrated ideas in the RA Constitution. The international community interested in the environmental conservation in Armenia imposed a pressure on the government and finally in 2014 the government of the Republic of Armenia adopted the new law on Environmental Impact Assessment.[62] The discussion of both laws is presented in Chapter 2 of this study to

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[58] Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the Protection of the Environment Through Criminal Law, OJ L 328, 6.12.2008, p. 28–37, Council of the European Union and General Secretariat of the Council, Intelligence Project on Environmental Crime Preliminary Report on Environmental Crime in Europe (Brussels, 5 December 2014(OR en) 16438/14 LIMITE JAI 985 COSI 154 ENFOPOL 426, 2014).

[59] Ministry of Nature Protection in Armenia, 'Participation of the Republic of Armenia in the International Environmental Agreements ' (*Ministry of Nature Protection in Armenia,* 2015) <http://www.mnp.am/?p=201> accessed 03/03/2015.

[60] Karine Ionesyan, 'President Not Ratified Amendments in EIA Law' (Ecolur New Informational Policy in Ecology, 15/03/2012) <http://www.ecolur.org/en/news/officials/president-not-ratified-amendments-in-eia-law/3659/> accessed 04/03/2015.

[61] It is considered that the president of the Republic Serzh Sargsyan obeyed the public demand because of upcoming presidential elections in February 2013 in Armenia.

[62] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին ՀՕ-110-Ն, ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

demonstrate the progress in legislative drafting as well in the line with the differences between the documents and other environmental decision-making issues discussed in this subtitle.

1.2.2. Research Questions and Objectives of this Study

The analysis of RA EIA Law in this study will strive to find answers on the following questions in particular;

1. What are the main Laws and Regulations on Environmental Impact Assessment in Armenia?

2. What institutions are involved in Environmental Decision-making in Armenia?

3. Does the RA EIA Law give adequate definitions on key terms of the Law and accurate descriptions on the roles of interested parties?

4. What are the criteria or thresholds for EIA projects established by the Law? Are they sufficiently specific and adequate?

5. What is the required documentation to be submitted for EIA project?

6. Are EIA decision-making procedures transparent in Armenia?

7. What are the law enforcement mechanisms that make the developer to be accountable against public and government?

8. Do the public participate in environmental decision-making and to what extent the voice of the public considered?

9. Are there requirements for further auditing and monitoring of the approved project?

10. To what extent does the RA EIA Law comply with the standards established by the Aarhus Convention, Espoo Convention, USA NEPA and EU Directive 2011/92 in general?

The answers of the questions above will create a bigger picture of existing RA EIA Law and assist in addressing the key objectives of this study:

1. To consider whether there is a need for greater transparency in the operation of EIA Law in Armenia, and if so how to achieve this.

2. To consider whether the EIA Law is effective and whether enforcement of legal mechanisms for EIA in Armenia complies with rule of law standards of transparency and fairness.
3. What are the key elements of the best practice in EIA that are applied in other legal jurisdictions, especially within the EU and International Law?
4. To consider measures to facilitate wider public participation in EIA decision-making, and in particular to give standing to NGOs to participate effectively in the process. To ensure that the law implements the standards established by the Aarhus Convention provisions of which Armenia is a signatory.
5. To consider the need for new draft regulations for Environmental Justice and Legal Enforcement in Armenia.
6. Consider the need for new draft regulations for Environmental justice and Environmental Conservation in Armenia.

1.3. Literature Review on Environmental Impact Assessment

In the scope of research work, the existing literature comes to support the theory on Environmental Impact Assessment Law application and Environmental Justice in general. There have been reviewed mainly the primary sources of the EIA law in different jurisdictions, the exiting articles and books of western scholars, published reports of international organizations, as well as the articles published in electronic sources of Armenian internet network, information published by the environmental activists, official information posted on the web pages of relevant ministries and governmental institutions as the modern academic literature on this topic is almost underdeveloped in Armenia. Throughout the dissertation the references, citations and quotations are made based on the knowledge obtained through presented literature review. The objective of conducting this literature review is to be acquainted with the history of environmental law in western part of the world. There is an urge to find the best possible practice in Western countries that can probably be good examples in making a rapid change to the environmental justice and governance in Armenia. The purpose of this review is to accumulate thorough knowledge on the concept

of Environmental Law in general and on existing literature in particular. The literature review opened up a fact that subject itself is very complicated. To make it easier to understand and digest there is a need to separate the reading material into three categories; 1) Theoretical debates on Environmental Impact Assessment and Environmental Law in general, 2) The implementation of the environmental legislation in EU and non-EU countries in the existing literature, 3) the EIA common procedures for all countries in the world regardless of differences in jurisdictions. This literature review is a major contribution to the dissertation in terms of the understanding Environmental Impact Assessment scholarship and the role of public in the environmental decision-making process.

1.3.1. The Theoretical Debate on Environmental Impact Assessment and Environmental Law in General

The theoretical debate on Environmental Impact Assessment and Environmental Law in general relates to the earlier stage of the development of environmental law in Europe. Scholars discuss the level of implementation and enforcement and suggest the best ways of improvement. It is clear that through the development process the specialists have to face the challenges and errors before achieving the best results. John Alder claims that 'the English Law is inadequate to secure the aims of Directive and that the English Legal culture is hostile to regulation of this kind, and indeed unsympathetic to environmental values.' [63] This shows the development process in the UK and highlights that this country as well faced the difficulties in the earlier years of implementation of the environmental governance.

The EIA Directive has been implemented in the UK since 1988. Alder's work was written in 1993. He claims that the UK failed to implement the requirements as such. It is believed that only five years after the adoption of Directive's requirements UK was still in the process of inhabiting its innovations. Almost all scholars argue that EU directive has inconsistencies

[63] John Alder, 'EIA –the Inadequacies of English law' (1993) Journal of Environmental Law 203.

with the Member States' laws as it has many gaps related to procedural requirements and public participation matters. [64] However, the implementation continued and it resulted a major amendment of the Directive in 2014.[65]

The unique detailed analyse on EU Directive on the Environmental Impact Assessment, Strategic Environmental Assessment and Environmental Assessment process in general is done by Jane Holder in her book on "Environmental Assessment; The Regulation of Decision-making". This book has a significant impact in the development of environmental impact assessment process in the UK and EU due to its precise discussion of the EIA and SEA directives and their impact on the legislation of Member States. It presents the thorough analysis of the European law in EIA process and helps the starting environmental specialists to understand the core ideas of the process. Holder considers all aspects of recently emerged EU Directive on Environmental Assessment and comprehensively discusses all-important concepts in comparison with UK regulations of the field. Her work was published in 2004 almost 11 years after J. Alder's work. While continuing the idea referred above one can notice the progress over this period in the UK is planning and developing regulations. Holder witnesses that:

> Under the development control regimes of the United Kingdom, 363 environmental statements were prepared in 2002, divided between the main categories of project controlled by the town and country planning system. In the case of England and Wales, these Regulations prohibit the grant of planning permission without consideration of

[64] Holder, *Environmental Assessment : The Regulation of Decision Making* (n 20),Alder (n63),Hug (ed), *Spotlight on Armenia* (n44), Judith Petts (ed), *Handbook of Environmental Impact Assessment:Process, Methods and Potential* vol 1 (Blackwell Science Ltd 1999).

[65] European Comission, 'Amending Directive 2011/92/EU on the assessment of the effects of certain public and private provects on the environment' (*European Commission Environment Environmental Impact Assessment,* 2014) <http://ec.europa.eu/environment/eia/pdf/Revised%20EIA.pdf> accessed 24/02/2015.

> environmental information for projects defined as 'EIA development.[66]

This means the country stepped over the threshold of developed regulations on environmental decision-making procedures in development planning and moves towards gaining sustainability in decision-making; however, the environmental assessment is still an issue in Conservation of Biological Diversity although EC several instruments emerged on the requirement to conduct impact assessment investigations on a proposed project to find out its likely significant effect on surrounding environment. For example, the UN Convention on Biological Diversity (1993)[67] and EC Habitats Directive (1992)[68] require the assessment to be conducted on revealing hazardous threats on biodiversity. 'Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques'.[69]

Holder discusses that the UK Regulations on environmental impact assessment are being done mainly in favour of development planning consent and very little attention is paid to biodiversity assessment but it is considered more or less and it is the matter of time how the authorities will set the requirements on biodiversity as well.

According to the author, the environmental litigation is in the process of maturing in Europe and in the UK. Legal cases and court decisions in Western countries tend to fill in the gaps left by the legislative drafters in EU EIA directive as well as in other relevant legal instruments both in the UK and EU countries. On the contrary, Armenia is in need of establishing accurate procedure of environmental developments starting from the precise

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[66] Holder, *Environmental Assessment : The Regulation of Decision Making* , (n20) 66.

[67] Convention on Biological Diversity,1760 UNTS 79; 31 ILM 818 (1992).

[68] Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora OJ L 206, 22.7.1992, p. 7–50 .

[69]Convention on Biological Diversity,1760 UNTS 79; 31 ILM 818 (1992), Art 7c, Armenia is signatory to this Convention since 1993. However, the country is still in the process of theoretical understanding the requirements imposed on them by international agreements and treaties or they consider that the lands and natural resources of the country can be used mainly upon governing authority's full discretion.

and well-performed legislation and the applicable and transparent litigation process.

One of the not clear points so far is that Holder argues that 'overall the environmental assessment procedure is anticipatory. It allows predictions made about likely impacts and significance to enter decision-making process before a final decision has been made'[70] contradicts itself in her further analyses on the concept of accurate predictions.[71]

At first she tries to prove that the prediction of likely significant effects (both positive and negative) is anticipatory and then she tries to disagree with it by saying that '…environmental assessment' deals with 'events which have not yet occurred, may not occur and whose chance of occurrence may be changed by the very statement that may not occur…and therefore it is difficult to predict the likely significant effects of proposed project that is subject to environmental assessment.'[72] It is evident that writer also has uncertain ideas on her own presumptions. It is another fact on the maturing process of the environmental law science, which was emerged, only few decades ago based on international and national legal instruments generated by the USA and EU Law makers.

In further chapters of the book, Holder shows gaps and missing points in both EU Directive and the UK regulations in local and country levels. She touches upon the 'likelihood significance' of proposed projects and explains the ways it might be considered as there are factual and legal differences in the word "significant." There is no single definition of this word in law as Holder argues, and it is not defined in the EU EIA Directive either. She suggests the projects to be divided into two categories 1) those that require impact assessment as they will have significant effect on the environment and 2) those that are thought likely to have significant effects based on their nature, size and location. Hence it is relevant to process the assessment in

[70] Holder, *Environmental Assessment : The Regulation of Decision Making* , (n20) 105.
[71] Ibid, 105.
[72] Ibid.

two stages '…to determine whether to do an assessment in the first place and the second evaluate the actual assessment of significance'[73]

For this reason, certain thresholds have to be measured as the author states. The most difficult part of it is considered cumulative effects of projects and here comes the requirement of the environmental impact assessment to be conducted diversely. This means that different scientists should be involved in one project to assess all types of effects that a particular proposed project might have on the environment. This includes also the engagement of common people in public hearings. Every developer should consider the alternative ways of a particular project proposal as it might occur that the core one will not get consent because of its environmentally harmful nature.

It is proper to mention that almost all types of developments closely relate to the use of land and natural resources and in the major development projects where there might occur changes on surrounding environment and biodiversity the wider opinion of public participation should be sought. There is always need for ideas on a particular development generated by different specialists such as engineers, biologists, archeologists, geologists and many more, who can contribute on the right development of the project or suggest some other alternatives of it to the maximum benefit of the environment. J. Holder and Maria Lee support this idea in their book on "Environmental Protection law and Policy. [74] It is evident that legal instruments still have to be developed in the procedural and administrative part of environmental decision-making as all the regulations and provisions were directed to planning and environmental statement presenting. [75]

In the current study of theoretical ideas and works of several authors, a question about the planning law is raised. As it is shown in the UK and EU legislation, the planning law is directly linked with that of the environmental impact assessment. This is different and is not the way Armenia is implementing; however, current study is limited to discuss the planning law

[73] Ibid,107.

[74] Jane Holder and Maria Lee, *Environmental Protection, Law and Policy: Text and Materials* (2 edn, Cambridge University Press 2007)

[75] Ibid

in Armenia and compare it with the ones in the European Union. The most significant theory in planning law and environmental law remains a precautionary principle that decision makers have to prioritize.[76]

This literature review has revealed issues existing in western legislation as well. It has found out that Environmental Law is a complicated subject and needs more time and elaboration of all relevant resources such as literature, legislation and court cases. Scholars study the western legislations and gaps are revealed, ideas are presented for amendments in their books and articles. One of such gaps in EU EIA Directive is its implementation in different European countries from administrative point of view.

Scholars Karl Heinz Ladeur and Rebecca Prelle argue administrative implementation of EIA Directive has faced difficulties in Germany because of its administrative court procedures where the substantive questions are more prioritized than the procedural errors.[77] European law suggested German national legal structures to be adapted for the further successful application of EIA Directive. This issue occurred not only in Germany but in other European countries too, such as in France and the UK, where courts faced difficulties while trying to make applicable decisions for particular cases as EIA itself bears many 'errors and defects' related to procedural issues.[78]

There is a historical review on emerging Environmental movement and the source of it considered the book called "Silent Spring" written by Rachel Carson in 1962.[79] She was a marine biologist and launched a new view on environmental conservation by the publication of her book. This gave the ground for the development of major environmental laws in the USA in 1970s.

This is an evidence of generating, developing and innovative ideas in free societies, in societies where people are free to express their thoughts

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[76] Ibid

[77] Karl Heinz Ladeur and Rebecca Prelle, 'Environmental Assessment and Judicial Approaches to Procedural Errors-A European and Comparative Law Analysis' (2001) 13 Journal of Environmental Law 185.

[78] Ibid.

[79] Rachel Carson, *Silent Spring* (First Mariner books Edition 2002 edn, Houton Mifflin 2002)

independently and where they are sure that their ideas will reach up to appropriate authorities and become useful tools in benefit of the entire society.

In her book, R. Carson pointed out all possible threats to the nature and biodiversity by the actions of human being. She called the politicians and lawmakers to think over that, to find the ways to control the consumption of natural resources and show their best practice and experience to the world in protecting nature and balancing environmental decision-making process by appropriate legislation and enforcement mechanisms equal for each citizen in the country. This generates an idea of equal use of land and nature and taking equal responsibilities for all layers of the society, as nature and environment belongs to every human being and each of them has a responsibility to protect it by controlling their own footprints.

In the process of literature review, two main topics of debate had been encountered. The first one is proper legal enforcement mechanisms for environmental justice and the second is public participation issue that is strongly related to the democratic governance of states. These two topics overlap at some point as public participation is a means of enforcement in sense of democratic and transparent decision-making. 'Every nation has its own unique legal system, laws and culture. However, most democratic institutions have processes to balance the rights of individuals with the government's need to act, often quickly on behalf of the public.'[80] This issue is noticed in the last 24 years of environmental governance in Armenia. The government made the decisions on behalf of public in a hasty and non-accountable manner. As a result, the public was not aware of the development projects at all or it found out about it after the project had been implemented or started. The notifications have not been disseminated about the project, the decision has been made and only after that, the decision-making bodies started spreading the information on development projects,

[80] International Network for Environmental Compliance and Enforcement *Principles of Environmental Compliance and Enforcement Handbook*(n12).

which has been late for the public to be able to change anything in the made decision.[81]

The study of existing literature suggests that the following still has to be considered a) EIA Directive itself is a complicated instrument that strives to impose democratic decision-making procedure on participant countries. b) Many conventions have been signed and need to be followed by participant countries. c) Thorough studies are needed for EU legal instruments related to the environmental justice to be able to implement them on national level, d) EU member states still seek the best ways of implementing EU Law and balancing it with domestic requirements. e) In most cases court decisions amend and make changes in inconsistent provisions of domestic and EU Law. f) The last but an important one is the procedure of public hearings and participation mechanisms that are still in the process of development in the EU countries although democratic tendencies are more or less stable in these states. The above listed findings have to be comprehensively elaborated based on the further reviews on existing cases and legislation both in EU and Armenian level.

The studies of environmental issues and facts about Armenia are gathered based on published materials on the websites of governmental institutions and international organisations. The detailed documents on development process in Armenia as well as study materials on environmental law and impact assessment are missing either due to the non-transparent work of government bodies or non-existing detailed studies in the field.

1.3.2. The Implementation of the Environmental Legislation in EU and non-EU Countries in the Studied Literature

Present literature review reveals the notion on how Western countries could manage to overcome major parts of environmental problems by either making or borrowing laws. This reading unveiled the idea on how the accurate legislation could create a right and flexible judicial approach to the existing cases and how those cases can become good precedents for future

[81]Chapter 4.

complaints and improvement of laws in some jurisdictions in the world. "NEPA's enactment unleashed the flood of litigation."[82] The assumption of democracy lies in the core of activities, although some scholars as well as people argue on the existence of complete democracy in the world. The USA government creates the possibility of diverse ideas in decision-making by opening the ground for public debates and opinions, which will bring to the best possible solution in the end. Accordingly, the best possible regulations will be made to balance business and environmental interests of the country.

Holder and McGillivray argue that NEPA has played a huge role in creating environmental laws in the European countries and European Union, too. 'Horizontal and vertical' legal borrowings have become a positive source for Better Regulation initiative. "Better Regulation in Europe is a hybrid package of reforms attempting to respond to changing needs for regulatory management"[83]

There is a notion of localization of each borrowed legal system, law or technique in good governance trying to protect indigenous knowledge and not to harm the existing cultural and habitual differences. However, the Better Regulation EU-US prospective has an ability to play a dramatic role in the development of countries in transition as well as in developing ones.

Another interesting idea is expressed in the "Environmental Impact Assessment, Theory and Practice" edited by Peter Wathern.[84] He presents the EIA in the light of Art and Design, escapes of talking about it as a science and refers to the EIA as an Art trying to show its flexible nature. Wathern discusses the same topic of EIA as equally enforceable mechanism for not only the citizens, but also for administrative decision makers and he notices that it is not a simply mechanism of better analysis, but a better administrative reform. Wathern considers the Environmental Impact

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[82] Jane Holder and Donald McGillivray (eds), *Taking Stock of Environmental Assessment : Law,Policy and Practice* (Routledge-Cavendish 2008) (n**Error! Bookmark not defined.**),68.
[83] Ibid.
[84] Peter Wathern (ed), *Environmental Impact Assessment, Theory and Practice* (Biddles Ltd.,Guilford and King's Lynn 1990).

Assessment and Risk Assessment procedures to be similar with slightly differences in their implementation processes and advises to develop both forms of assessment by taking the best parts of one and implementing in another assessment.

A useful insight is gained from this book as editor compares capitalist and socialist system differences in legal management and describes how the EIA works in both systems. In the countries with socialist system he shows the way of implementing EIA as centrally planned process: 'In order to determine how environmental impact assessment (EIA) could fit within the overall planning process in socialist countries, it is important to consider three aspects. These are the constitutional and legal framework within which EIA would have to operate; current practice in development planning; and the scope of using EIA in centrally planned economies'[85]

The necessity of creating good mechanisms in legal provisions is number one issue to be solved. The suggested idea by Peter Wathern about the flexibility of EIA can be a good approach in dealing with different types of environmental problems effectively. It will be appropriate to borrow better provisions of laws from different countries together with their implementation mechanisms and utilize them in a flexible manner based on experiences and cases solved by different judicial regulations. In addition to this, there is a strong importance to act transparently in environmental decision-making process and use the power of public to enforce democratic decision-making in environmental development for the sake of gaining sustainability in this process.

In the process of accumulating the knowledge on the environmental law and its application in the world the book on comparative EIA analysis caught an attention. It is titled "EIA in Developing and Transitional countries" edited by Norman Lee and Clive George.[86]

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[85] Ibid.

[86] Norman Lee and Clive George (eds), *Environmental Assessment in Developing and Transitional Countries; Principles, Methods and Practices* (Chichester : Wiley 2000) (n **Error! Bookmark not defined.**).

The editors present the comparative piece of work among countries with different levels of development. These countries have been chosen based on their 'per capita national income'. One of the interesting facts in this book is that Armenia is in the list of countries with low-income economies and is in the last line among 49 countries of the same level. It had the lowest income economy in 1997 based on World Bank`s classification with 730 USD annual income per capita. Armenia is in the range of lower income economies, although the editors consider post-soviet countries to be in the level of lower middle income. It has been revealed based on national reports to the World Bank made by national authorities then.[87]

They have studied 133 countries in the levels of lower income, lower middle income, upper middle income and high-income economies. In 13 years, the economy in Armenia has been changed from lower income to lower middle income based on World Bank's development reports in 2014.[88]

In this piece of work, the idea that EIA overlaps with other forms of impact assessment is very appealing for this research work. There can be assessment process such as social impact assessment, health impact assessment, risk assessment, cost-benefit analysis and all these have close relationship with each other. This can be interpreted in a way that EIA process takes a holistic safeguarding role in environmental governance.

> …the projects, to which EIA is applied may be new developments or major modifications to existing facilities and can occur in a wide range of economic sectors. These include: agriculture, forestry and fishing; mining and other extractive industries; all parts of the energy sector, including fossil-fuel energy generation, hydropower, nuclear power and wind power; all major industries within the manufacturing and process industry sector; transport, tourism and leisure, developments; water supply; waste treatment and waste disposal

[87] Ibid.

[88] World Bank, 'Data Armenia Europe and Central Asia (Developing only)' (*World Bank,* 2015) <http://data.worldbank.org/country/armenia#cp_wdi> accessed 05/03/2015.

> facilities; and other infrastructure and urban development projects.[89]

The editors argue that environmental assessment process is a significant tool for 'the overall effectiveness of environmental regulatory system'[90] and bring forward the justifications for this argument. The accurate implementation of the EIA requirements makes it a 'major policy instrument'[91] that will assist to incorporate control in environmental decision-making process both in strategic environmental assessment and in impact assessment. It is a useful tool for all stages of the assessment process as calls for multidisciplinary approach and provides ground for all relevant parties to take part in making an objective decision with utmost gain in the field. Editors highlighted the role of public in decision-making process, which will contribute to the transparency of activities and operations. Eventually a good performance of environmental impact assessment process will bring the developing part of the world towards the same level with the developed part of the world.

Lee and George have noticed that for the implementation of above-mentioned steps towards the effective environmental assessment the low and middle-income countries have to eliminate inadequacies in the country regulatory systems.

> a) Inadequate co-ordination between environmental ministries and development ministries, which hampers the integration of environmental considerations, though SEA procedures, into the overall development process. b) Difficulties in integrating EIA procedures into the command-and-control system for development projects because that system is, itself, not working effectively. c) Implementation of privatization and deregulation policies with insufficient regards for their potentially damaging effects on the environmental planning and command-and –control systems to which SEA and EIA procedures are attached. d) Institutional resistance to

[89] Lee and George (eds), *Environmental Assessment in Developing and Transitional Countries; Principles, Methods and Practices* (n **Error! Bookmark not defined.**) 4.
[90] Ibid,30-31.
[91] Ibid.

> integrated (multi-media) forms of environmental planning and pollution control. e) Institutional resistance to greater public access to information, the transparency of environmental planning and pollution control process and of public participation within them f) Deficiencies in institutional capacities, shortages of adequately trained and staff and other resources, inadequate base –line data and environmental monitoring.[92]

In their book editors present an interesting table on EA legislation in Low and Middle Income Countries and encoded them. Armenia is among those of having detailed provision. It is proper to add that having legislation with detailed provisions is still comparative to its accurate implementation.

> In these countries procedure for State Environmental Review (SER, alternatively referred to as State Ecological Expertise) were introduced, placing the prime responsibility for assessing the potential impacts of a proposed development on state environmental authorities, and committees established by them. For their part, the developers (usually state enterprises or other state organizations) were often required to include an assessment of environmental impacts (OVOS) in the project documentation they submitted for SER.[93]

One of the findings in this book is that screening, scoping, public participation, decision-making are different from country to country, and in CIS countries, these three steps are not mandatorily required for every developing country. It depends on the competent authorities' discretion to decide whether to conduct detailed assessment of development or not. This is applicable in Armenia as well as the Ministry of Nature Protection and subordinate committee on environmental impact expertise are the bodies who decide whether there is a necessity on implementing EIA or not.

The editors consider screening and scoping to be important steps in the environmental impact assessment procedure. The first thing that has to be done in the process is the screening that might reveal the size, type and environmental significance of particular project. There is a need of

[92] Ibid, 31, these findings are considered important for this thesis therefore are cited fully.
[93] Ibid,211.

possessing approximate thresholds for environmental developments that will be of great help in further screening and scoping analysis. The thresholds in Armenian legislation were provided by the RA Government Order No. 193 dated March 30, 1999 on Limits of the scale of proposed activities subject to expertise of environmental impact defines limits of the scale of proposed activities subject to expertise of environmental impact by sectors, in accordance with the second paragraph of Article 4 of the Law on EIE.[94] However, in the latest adopted RA EIA Law the thresholds are embodied in the text of the law.

The scoping part of the process is also a weakly developed part, as it requires the analysis of range of issues related to particular site of the development and then be included in the assessment report. The expert views and ideas are highly required in this process as the scoping process uncovers the potential impacts on the environment and it needs to be as precise as possible. Previously made guidelines will be helpful in this case as it is suggested by the editors and they require the following guidelines to be used in the process of scoping; checklists, matrices, networks, although none of them is considered to bare complete picture of the planned project. In all countries studied by the authors of the book, the scoping process considered to have a significant role in EIA as it is related to the economic development as well.

In RA EIA Law, the scoping is not referred to and regulated as it is mentioned in the CENN research report: 'the executor of EIA does not make scoping, since there are no relevant regulations. In practice, scoping partially is implemented during the expertise with the assistance of experts. The majority of respondents consider that the procedure of scoping, order and responsibilities should be clearly defined in the legislation.[95]

Based on Lee and George reflections the thorough analysis on EIA in different countries with different economies gave an idea of creating an

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[94] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia* (n27), see Appendix 1.
[95] Ibid, 30.

approximate picture of EIA that could be applicable in all countries in general as they vary by their 'climate, ecology, population density, social structure and evaluation.' [96] The developing countries and countries in transition differ from high-income countries and the processes of impact prediction and evaluation are conducted in different ways and in different depth.

Reviewed literature makes the theoretical picture of EIA process complete and recommends good practices exercised by the advanced societies of the world. The idea of impact magnitude relates to likely significant effect and can be used in developing thesis ideas. Authors discuss techniques of prediction then, which is also a relevant approach to further EIA development in Armenia. Variety of techniques can be used to predict impacts taking into account the best practices of countries with different economies. In case if the combination of techniques being used, the weaknesses can be eliminated. The prediction techniques can be a) past experience, b) numerical calculations or models, experiments or tests, physical or visual simulations and maps, professional judgment, voice of concerned public according to Norman Lee and Clive George.

The ideas on flexible legal management, reforms in administrative governance, legal borrowing, cost-benefit analysis and innovative approach in Environmental Impact Assessment process are addressed in all the books reviewed presently. The literature review assisted in understanding the EIA process clearly providing an insight for further research ideas.

1.3.3. Common Procedures of EIA on the World despite the Differences in Jurisdictions Based on the Literature Review

In the book, "Introduction to Environmental Impact Assessment" 3rd edition by J. Glasson, R. Therivel and A. Chadwick a detailed description of each step of EIA process is given and the procedure is explained

[96] Lee and George (eds), *Environmental Assessment in Developing and Transitional Countries; Principles, Methods and Practices* (n41), 35.

systematically. Diagrams in the book make the ideas and thoughts more precise. The description of environmental Impact Assessment steps and their explanations are valuable findings for this research work. The definitions presented by the authors in the book make the picture of EIA process clear and accurate. These steps are required necessary steps for all jurisdictions dealing with environmental impact assessment process. 'Project *screening*- narrows the application of EIA to those projects that may have significant environmental impacts. Screening may be partly determined by the EIA regulations operating in the country at the time of assessment.'[97] The next step that follows the screening is scoping which '… seeks to identify at an early stage, from all of a project's possible impacts and from all the alternatives that could be addressed, those that are crucial, significant issues.'[98]

The current research on environmental impact assessment process in different jurisdictions made clear that presenting alternatives during a development project proposal is one of the most required steps. This step gives a chance to the developers and authorities to mitigate significance of the impact, find a best possible solution, demonstrate the ability of considering alternatives and controlling the process of decision-making and leaves a possibility for a developer to carry on the project in case the significance of the proposed project is established. The idea is to implement precautionary principle and thereby prevent significant harms on the environment. This is highlighted in the work of Glasson at al. too. 'The consideration of alternatives seeks to ensure that the proponent has considered other feasible approaches, including alternative project locations, scales, processes, operating conditions and the "no-action" option.' [99] Authors believe that environmental impact assessment is an aid to decision-making process despite the developers' assumption that EIA hinders the project's progress. It can be an effective negotiation between 'the developer,

[97]Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* (n26), 5.
[98] Ibid.
[99]Ibid.

public interest groups and the planning regulator.' [100] This means, the developer has to consider that due to the significance of the proposed project the extreme alternative might be even non-implementation of the development project; however, the possibility of alternatives sought in the process might support to follow up with the precautionary principle and not harming attitude. The well-developed mutual communication from the beginning saves time both for the developer and for the interested public as well.

Another argument that is relevant to the ideas of this research work is that the harmed and damaged natural environment is not so easy to regain. In some cases, developers think that if they'd cut 1000 acres of old forest it can be replaced with the same amount of new planted one, they are completely wrong as many trees and wild life that existed many years and are being harmed, would not be able to regenerate again in case the many species become extinct in the process of development. 'Environmental resources cannot always be replaced; once destroyed, some may be lost forever. The distinction between reversible and irreversible impacts is very important one, and the irreversible impacts, not susceptible to mitigation, can constitute particular significant impacts in EIA.' [101]

The legislative history of EIA and its implementation in the USA based on NEPA as well as in the EU Member States based on 85/337 EIA Directive and local national legislations are well presented in the book of Glasson at al. This shows the development path of the EIA legislation in western part of the world and is very much helpful for those countries who strive to comply with the requirements of contemporary international law requirements. They can easily check back this path and try not to repeat the errors that the developed part of the world faced in the process of EIA implementation.

Alike Lee and George, these authors discuss the participation procedures as well and consider that they vary from country to country; however, it is an important part of the decision-making process. From their perspective,

[100] Ibid,8

[101] Ibid,20

people from different social and economic structure may argue any development project that has insufficient or harmful effect on the environment.

The literature reviewed in this subtitle refer to the requirement of public participation as a procedure that is not favored by the developers who think that public involvement in the process brings delays, confrontations and blocks the development.[102] This happens because most of the time the developers interact with public in the stage of planning appeals and inquiries, so they think that public has a role to stop their project. Therefore, it might be wiser approach to organize public hearings in a good time and provide good notice before the start of a development project.[103] The good time and well spread information on public hearings will save more time for developers than they can conceive. The preliminary discussions on development projects will reveal all shortcomings and privileges of a project before the start, so a developer will gain more interesting ideas and suggestions on the project and cut the errors to escape further troubles and pauses in the process of project implementation.

The United Nations Environment Program lists five interrelated components of effective public participation as stated by Glasson:

1. Identification of the groups/individuals interested in or affected by the proposed development;
2. Provision of accurate, understandable, pertinent and timely information;
3. Dialogue between those responsible for the decisions and those affected by them;
4. Assimilation of what the public say in the decision; and

[102]Holder, *Environmental Assessment : The Regulation of Decision Making* (n20), p.193.

[103] Ebenezer Appah-Sampong 'Public hearing within the environmental impact assessment review process'(UNEP EIA Training Resource Manual ® Case studies from developing countries, 2003) <http://www.unep.org/publications/search/pub_details_s.asp?ID=83>, 91 accessed 10 March, 2016.

5. Feedback about actions taken and how the public influenced the decision.[104]

In general, public participation plays the role of exercising indigenous knowledge on indigenous people who are more aware of the chosen development location and can advise more than even experts can do sometimes. In the meantime, this step in development creates transparency and accountability of not only the developer but also the decision maker who will be challenged by the queries and requirements of public as well as experts of particular fields. This approach will balance the nature exploitation endeavors of governing authorities and create the atmosphere of equality in the country.[105] This system in environmental decision-making and management will generate the best practice for management and the governance in particular. Developers have to cope with the legal requirements in case they regulate all rights and responsibilities in reciprocal manner and never prioritize the role of one party to another. The participation results transparent and well-informed EIA process in favour of all interested parties.

Glasson presented a variety of forms of public participation. He gives the samples on how different ways of participation can be thought by the developers and authorities to conduct the comprehensive awareness raising and consulting activity. 'Explanatory meeting, slide/file presentation, presentation to small groups Public display, exhibit models press release, legal notice, written comment, poll, field office, site visit, advisory committee, task force, community representative, working groups of key actors, Citizen Review board ,public enquiry, litigation, Demonstration, Protest, riots.'[106] Public participation and awareness raising is required by

[104] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , 159.

[105] Tomas Dietz and Paul C. Stern (eds), *Public Participation in Environmental Assessment and Decision Making* (National Research Council 2008),3.

[106] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , 161.

the 2014/52/EU Directive[107] as well as by the UN Aarhus Convention[108], although it has to be elaborated and implemented in more details and effective methods in every country. However, all the scholars consider the public participation procedure not completely developed yet, and a procedure that requires more work to be improved by the time both in national and international environmental governance.[109]

The EIA pre and post-monitoring step seems to be present in all countries based on the literature review. However, the way it is presented in the literature is completely different from the monitoring implemented in Armenia. [110] Neither the discussed RA EIA Laws nor the Monitoring department at the Ministry of Nature Protection comply with this step described in the western EIA process. Although a progress is recorded in the requirements of the RA EIA Law of 2014.[111] It provides the explanation on monitoring program,[112] but still omits the requirement on auditing.[113]

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[107] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

[108]Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999).

[109] Holder, *Environmental Assessment : The Regulation of Decision Making* (n20),Lee and George (eds), *Environmental Assessment in Developing and Transitional Countries; Principles, Methods and Practices* (n**Error! Bookmark not defined.**),Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* (n26),Alder, 'EIA –the Inadequacies of English law' (n63), Wathern (ed), *Environmental Impact Assessment, Theory and Practice* (n85), Ladeur and Prelle, 'Environmental Assessment and Judicial Approaches to Procedural Errors-A European and Comparative Law Analysis' (n77), Holder and McGillivray (eds), *Taking Stock of Environmental Assessment : Law,Policy and Practice*, Holder and Lee, *Environmental Protection, Law and Policy: Text and Materials*(n74).

[110] Ministry of Nature Protection in Armenia, 'Structure' (*Ministry of Nature Protection in Armenia,* 2015) <http://www.mnp.am/?p=165> accessed 16/05/2015.

[111] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.18.

[112] Ibid, Art.4, self-monitoring, post-project monitoring.

[113] Monitoring is a project control during its implementation. The audit is the final monitoring and can be done by the external experts in most cases.

The literature review highlights the importance of monitoring and auditing of each development project required by the international and national regulations. Glasson at al suggest that gathering data during the planned project implementation by the time of each stage of development will provide possibility of better integration into the EIA process and the monitoring will be easier to implement for later similar projects. Besides this, the timely gathered and monitored data may provide opportunity to find out occurred difficulties, harms or effects in the process of developments, establish the exact points of responsibilities and help in future planning and development. It will be a useful tool for Armenian Environmental management as well and has to be considered during the amendment of the existing law. Interestingly, the monitoring is not a mandatory requirement in the UK EIA legislation. Glasson at al. consider that despite the non-mandatory nature of monitoring and auditing requirements, they are active during development procedures in the UK. Sometimes these steps reveal the real results of the implementation, which was hard to establish through theoretical measurements in Environmental Impact Statement preparation process. Glasson points out that '...Yet many projects have very long lives, and their impacts need to be monitored on a regular basis.... such monitoring can improve project management and contribute to the auditing of both impact predictions and mitigation measures.... monitoring and auditing need to be more integrated into EIA process on a mandatory basis.'[114]

However, Glasson at al bring the example of monitoring in the UK while discussing the Sizewell B PWR construction project case. It shows that the monitoring and auditing is under the discretion of the member state. '…although monitoring and auditing impacts are not mandatory in the UK, the physical and socio-economic effects of developments are not completely ignored.'[115] It is to show the political will of the country to track the impact, reveal the harmful aspects and combat them. The issue of state discretion and law compliance occurred in the case named shortly the

[114]Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26), 185.
[115]Ibid, 194.

Cairngorm Funicular Railway case.[116] The permission granted to the developer had been mostly under the discretion of the decision maker. The court review found out that the decision makers complied with the requirements of the directives and national laws, so the petition was dismissed.[117]Two decision-making bodies: the EIA decision-making body and the court, in this case performed in accordance their duties complying the requirements of laws. Lord Nimmo Smith states in that regard '... Judicial review is available, not to provide machinery for an appeal, but to ensure that the decision-maker to whom a jurisdiction, power or authority has been designated or entrusted by statute, agreement or any other instrument, does not exceed or abuse his powers or fail to perform the duty which has been delegated or entrusted to him.'[118]

Glasson at al. gives an understanding of the scope and format of environmental statement that appears to be a guideline of a proposed project and has to contain a non-technical summary as well, which is an important part of EIS.[119] This is again a new concept for the environmental governance in Armenia, although there is a requirement of the application and the technical characteristics for the development project; however the non-technical explanation or any similar document is neither required nor presented so far.

Another issue that is common for all the countries based on the literature review is the rise in environmental crimes on the world. Recent studies on this show the weakness of environmental enforcement mechanisms on the world nationally and internationally.

> The EIA stresses the need to encourage the application of existing national criminal laws, proceeds of crime and seizure of assets, legislation against environmental criminals in addition to

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[116] *WWF-UK Ltd and Another v Secretary of State for Scotland* 632 WWF-UK Ltd and Another v Secretary of State for Scotland Court of Session (Outer House) 27 October 1998 [1999] Env LR 632 (Court of Session).

[117] Ibid.

[118] Ibid.

[119]Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26),170.

> "environmental specific" legislation (EIA, 2008). Administrative reform, particularly through the introduction of technology to remove direct human contact involved in areas such as trade in natural resources, would be another way to combat corruption (EIA, 2008)[120]

The sub-title revealed the common procedures in environmental governance based on the literature review however, it encountered differences that exist in implementation of environmental protection between western part of the world and in Armenia. The western part of the world developed the EIA process up to a level where it almost reached to the sustainable development, whereas Armenia still needs to accommodate many concepts both in theoretical and practical context to establish a good governance in environmental decision-making process.

1.4. The Research Strategy

The research approaches and strategy suggested and taught in the western system of education embodies innovations and new knowledge for a researcher from the eastern part of the world. The terms and concepts taught at the Newcastle University lead to the new way of thinking about the theory of the research topic and its further design as a dissertation work. Therefore, it became necessary to discuss research strategy based on the obtained new knowledge and describe the strategy that this particular research aims to follow. In this research work both the research topic and the methodology are new in the context of academic research conducted in relevance to the existing reality in a post-soviet country like Armenia. The research strategy presents its design and methods used for achieving the pursued result of the research proposal.

1.4.1. Doctrinal Research

This is a mixed method doctrinal research. It studies legal documents, literature and judicial review to clarify the problem and seek possible

[120] United Nations Environment Programme and Global Resource Information Database - Sioux Falls, *Transnational Environmental Crime - a common crime in need of better enforcement*, 2013).

solutions for the proposed research topic. Doctrinal research is believed to be important in the process of improvement governance in every field of the government and provides a comprehensive background for the development of norms in society. This particular research aims to discuss the doctrine of environmental impact assessment law in societies that have different approach in this context. The discussion of similarities and differences of the EIA law in various jurisdictions has been initiated and the shortcomings and gaps that hinder the good environmental governance and sustainable development process in emerging markets had been highlighted. It also aims to show examples of good practices both in legal drafting and in implementation of the EIA process in those countries that took the commitment towards sustainable development many years ago and received significant results already by following up the legal requirements and implementation in practice. Thus, this research looks forward to link the process of law implementation with the process of legislative amendments and changes. It strives to present that only the accurate implementation of the legal requirements can reveal the deficiencies in legal provisions that can be changed through legal amendments. This includes the litigation process when the implementation and drafting of the law is questioned in the court and judicial reviews are sought. For that reason, the examples of western countries are believed to be very important and instructive. However, case discussions are not presented in this research, as there is a lack of court reviews in Armenia in decision- making process that hinders the comparative discussion of case law in this particular research study. It is also important to present the effect of the legal doctrine in environmental impact assessment law and encourage the present and future lawyers that international best practices are the progressive step forward for the emerging societies like Armenia.[121]

The study showed that similar research works are widely accepted and used in the western part of the world.[122] It is believed that there is a need of

[121] Enrico Pattaro (ed), *A Treatise of Legal Philosophy and General Jurisprudence*, vol 4 Legal Doctrine and Legal Theory (Springer 2005), 6.

[122] Rob Van Gestel and Hans-W.Micklitz, 'Revitalizing Doctrinal Legal Research in Europe: What About Methodology?' European University Institutue, Florence, Department of Law

academic research and legal drafting knowledge and skills to be taught at the universities for the future lawyers to be able to implement them in practice in Armenia. It is supposed that the accumulated information from this doctrinal research could be converted into a knowledge and implementation in the environmental conservation education in Armenia later on.

Consequently, the obtained knowledge on EIA process through the doctrinal research will enhance the possibility of implementing further detailed research in the field. In addition, it is assumed that this doctrinal research can play a ground role for future development of the academic research in environmental law, governance, justice and crime in Armenia.

1.4.2. Research Paradigm and Epistemology

The research paradigm of current study tends to be critical, constructive and interpretive. It criticizes the existing legal drafting and law implementation models in environmental governance in Armenia, presents the examples from western part of the world and interprets the EIA laws for clear understanding of the newly emerged environmental law scholarship. This is a complex law that touches upon various natural and social sciences in the process of drafting and implementation. The comparative doctrinal research is believed to assist in understanding the differences of approaches in environmental legislation drafting, implementation and enforcement. Paradigm means 'a philosophical and theoretical framework of a scientific school or discipline within which theories, laws, and generalizations and the experiments performed in support of them are formulated; *broadly* **:** a philosophical or theoretical framework of any kind'[123]As it is explained by Thomas Kuhn the paradigm is the world view in particular theme that unites scientists around it. '[Paradigm]…like an accepted judicial decision in the common law, it is an object for further articulation and specification under

<http://cadmus.eui.eu/bitstream/handle/1814/16825/LAW_2011_05.pdf?sequence=1> accessed 04/06/2015, 4.

[123] Encyclopaedia Britannica Company, 'Merriemi Webster Dictionary' (*Encyclopaedia Britannica Company,* 2015) <http://www.merriam-webster.com/dictionary/paradigm> accessed 04/06/2015.

new or more stringent conditions.'[124] Therefore, it is alleged that the findings and recommendations will result the constructive paradigm of the research. In this search of practical answers, this research also corresponds to the pragmatic worldview. So, the logical type of the research is considered pragmatic in its sense as C. Tedllie and A. Tashakori explain it.[125]The research believes that there can be some other truth in this field of research in Armenia. This belief is generated due to the lack of electronic libraries and research materials in academic libraries in general, the transparency in government and academic reports, and the openness of relevant gate keepers for the public.

The constructive paradigm is based on the constructive epistemology or knowledge of this research. The epistemology means 'the study or a theory of the nature and grounds of knowledge especially with reference to its limits and validity.'[126] The research project has sought to identify the issues and finding the basic knowledge in the environmental law and environmental impact assessment process. A comparative methodology has been used to identify good practice in EIA and decision-making in other jurisdictions, especially those that also seek to implement the Aarhus and Espoo Conventions, like Armenia. The detailed analysis of the legal basis for Environmental Impact Assessment in Armenia and the comparator jurisdictions (for example the EU) was conducted to draw out a comprehensive explanation of the key academic and legal concepts that are fundamental to the success of EIA as a tool for promoting greater transparency in decision-making, and also to improve the culture of administrative decision-making in the jurisdictions studied.

The mixed methods research work as well as doctrinal analysis on the data obtained from different literature sources are considered important during

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[124] Thomas S. Kuhn, 'The Structure of Scientific Revolutions,' (1970) 2 International Encyclopedia of Unified Science 1, 23.

[125] Charles Teddlie and Abbas Tashakkori, *Foundations of Mixed Methods Research: Integrating Quantitative and Qualitative Research in Social and Behavioral Sciences* (Sage Publications, United States of America 2009), 74.

[126] Encyclopaedia Britannica Company, 'Merriam-Webster Dictionary: Definition of Epistemology' (*Encyclopaedia Britannica Company,* 2015) <http://www.merriam-webster.com/dictionary/epistemology> accessed 04/06/2015.

this process as the beginning of understanding the Environmental law scholarship, environmental governance and justice. Books, articles, legislations, court cases and other relevant sources on the Internet media are the core study resources for this doctrinal research. In fact, the Environmental Law and assessment process as it is presented in western part of the world is different from Armenia,[127] whereas the country is a signatory of multiple international environmental conventions and agreements and needs to comply with them. Accordingly, the research work was initiated based on the existing environmental legislation and implementation problems in Armenia. The Mixed Methods research work assumed to be appropriate and necessary to produce a complete dissertation work. Accordingly, the literature review and further analysis of EIA laws in different jurisdictions, the fieldwork enquiries and a few case studies produce the final mixed method doctrinal research that is considered to be the preliminary stage of the current path in Environmental Law scholarship for environmental governance in Armenia.

The research methodology has been designed and accomplished in the scope of the research ethics requirements at the Newcastle University and the University's Research Ethics Toolkit is highly considered. The Ethics Approval for this research was granted in May 2012.

1.4.3. Research Approach

Mixed Methods Research is believed to be more comprehensive alternative for this research work. It combines the doctrinal research with quantitative and qualitative research methods to produce the most possibly accurate and objective discussion on the proposed topic. The mixed method research is widely encouraged by the scholars[128] though it is considered to be a new approach in the research design.

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[127] Differences of jurisdictions require different methods of application of the EIA process.

[128] John W. Creswell, *Research Design: Qualitative, Quanitative and Mixed Methods Approaches* (4 edn, SAGE United States of America 2014), Teddlie and Tashakkori, *Foundations of Mixed Methods Research: Integrating Quantitative and Qualitative Research in Social and Behavioral Sciences*(n124).

> Mixed methods research is an approach to inquiry involving collecting both quantitative and qualitative data. Integrating the two forms of data and using distinct design that may involve philosophical assumptions and theoretical frameworks. The core assumption of this form of inquiry is that the combination of qualitative and quantitative approaches provides a more complete understanding of a research problem than either approach alone.[129]

The mixed method research approach implicates quantitative and qualitative research data based on the fieldwork conducted in Armenia. The question why the quantitative and qualitative approaches are considered together in this particular work is explained in the context of the research idea being not well explored before and not existing in the contemporary academic literature. The studies of this research work revealed that there is very little or no academic works are present in the context of the EIA process in Armenia. It is inferred that the academic works are more directed to the practical legal work than to the theoretical discussion of laws and regulations in the field of legal education and especially environmental law education in the country.[130] To contribute better understanding of the existing problem raised in this research work it is considered necessary to do doctrinal mixed methods research combining the library research with the qualitative and quantitative fieldwork in Armenia. J. Creswell gives the explanation of the complementary nature of quantitative and qualitative research approaches in the process of dissertation writing. Creswell explains that on one hand the qualitative research is an approach in understanding the 'meaning' of problem 'ascribed' by the 'individuals and groups' which can be comprehensively explained by the researcher on their own terms in 'inductive' method.[131]On the other hand, the quantitative approach 'tests' the research 'objective theories' by examining the problem through

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[129] Creswell, *Research Design: Qualitative, Quanitative and Mixed Methods Approaches*, (n125) 4.

[130] American Bar Association, *Rule of Law Initiative: Legal Education Reform Index for Armenia* (978-1-60442-119-4 (PDF),Printed in the United States of America, 2007).

[131] Creswell, *Research Design: Qualitative, Quanitative and Mixed Methods Approaches*, (n128) 30.

variables though utilization of statistical procedures in 'deductive' method.[132] Thus, the inductive and deductive methods of the research study are able to generate the better understanding of the problem in the most possible accurate discussion of objective theory.

The learned methods and approaches assisted in finding the research design for this dissertation and the fieldwork based on the previously chosen development projects was planned in the process of doctrinal research. Fieldwork is anchored on the current development projects that have been chosen for this dissertation.[133] The locations of the field research were chosen according to the areas of development projects and the parties that are interested and participate in the decision-making process. All development projects are located in remote regions of Armenia where the rural population is not well aware of the legislations and regulations on the EIA process in the country (villages Teghut, Shnogh, Marts, Getahovit, and Gndevaz). The major work for awareness raising is done by the environmental activists, the NGOs and Lawyers assist them in filing complains, letters and suits to the court against the government decision-making process. Therefore, the sampling for the fieldwork was divided among four groups of interested parties. The first group are people in rural areas: the impacted community members. Second group are environmental activists who are aware of the ongoing development projects, try to get involved in the process and see the violations in the process of implementation, the third group are NGOs and Lawyers who are concerned with the implementation issues and are willing to cooperate with me in the process of mu PhD research. Group four are government authorities; especially lawyers and legislative drafters who are engaged in environmental law making process in Armenia.

The interviews with key role players construct basic part of the work; however, their identities are kept confidential. The research uses answers and feedback obtained during the fieldwork in the study based on

[132] Ibid.

[133] See Chapter 4.

participants' preliminary consent. The data collection has been conducted based on questionnaires with semi-structured interview questions. They have helped to determine the level of awareness on development projects of all groups of participants, the process of notification conducted by the developer and decision maker, the transparency in EIA process implementation and recommendations of participants for future improvements in EIA process implementation. Prior to the completion of questionnaires, the participants have been introduced the notification on their rights on privacy and access to information. The operations of the fieldwork started with preparing four versions of semi-structured questionnaires for each group of participants, participant information sheet and consent form both in English original version and the copy in Armenian the translated version for non-English speakers.[134]

The collected qualitative data is stored in the questionnaires. Those questionnaires that were answered in Armenian were translated into English, and the data was converted into SPSS analytical program file later on. As the SPSS is a strong statistical data entry program, it has no function of analysing the qualitative texts of the participants' answers, therefore the detailed texts of research participants' answers are converted into the ethnographic narrative reports for this research work. The semi-structured questionnaires contain open ended questions that require some details of participants' opinions which help the research work to provide more information on the present situation in the field. A special software package such as NVIVO has not been used for collecting and recording the narrative reports. The texts reported by the research participants have been hand written on questionnaires by them. Later on the texts have been translated and presented in Chapter 4 of this dissertation as they occur on the questionnaires. There occurred a difficulty in approaching the gatekeepers in governmental institutions due to procedural procedures in the Ministry of Nature Protection in Armenia in period of the fieldwork in August 2013. Therefore, the second attempt was made to find people who were willing to participate in the survey. Accordingly, the field research was conducted

[134] The samples are provided in appendices part of this thesis. See appendices 3-7

twice respectively with rural communities, activists, NGO members and private lawyers in 2013 and with governmental lawyers in August 2014. All interviewees are encoded based on their role and living place and their identity is kept confidential. The HaSS Ethics Approval Committee approved the research project on 29th May 2012.

Step by step implementation of the fieldwork was as follows;

1	Identification of major projects that have been subjected to EIA prior to authorization by Ministry of Nature Protection. These will be the project case studies. (Four cases are shortlisted among many existing ones in Armenia). [135]
2	Identification of research samples of local residents living in proximity of approved schemes: Teghut and Snogh villages, Marts Village, Getahovit Village, Gndevaz Village and Yerevan
3	Application for Research Ethics Approval to the University Ethics Approval Committed for the review of the research ethics compliance
4	Preparation of simple questionnaires for use in qualitative data generation with research samples.
5	Providing them to participants by e-mail or in person prior to interview (where appropriate)
6	Interviews conducted in Armenia
7	Analysing fieldwork data using quantitative and qualitative methods
8	Presentation of fieldwork data in thesis to address the research questions
9	Feedback to research sample participants (written report and participant meetings)

Tab.1.1.

[135] See Chapter 4.

1.5. Findings of Chapter 1

The discussions in Chapter 1 lead to the following findings on this part of the dissertation. Firstly, the literature review and discussions of the research methodologies based on the works of western scholars opened up the existing theoretical approach to the academic research which helps the practical lawyers in the process of implementation laws and regulations and shows the improvement steps in environmental decision-making process as a whole. The critical approach combined with the scrutiny of laws results better ideas in the process of implementation.

Secondly, this Chapter revealed that Environmental Conservations problems are unattainable in Armenia, which is a newly independent country after 70 years of existence in the hegemony of ex-Soviet Union. It paves its way towards the new social system and needs more efforts in complying with the requirements of international conventions and agreements that were signed by the RA government since the day of independence. The environmental issues, their governance, justice and improvement in the country are looked through the perspective of legislative drafting, implementation and enforcement process of one of the important laws which is the central topic of this research work. The Environmental Impact Assessment Law in Armenia and in European Union will be discussed consecutively in further chapters of this thesis. Although the Environmental Law is considered not yet a 'mature' 'sub-discipline of the law'[136] in Europe, still it achieved more sustainability in western part of the world in comparison with the emerging countries like Armenia.

Thirdly, the problem discussion unveiled the originality of this research work in its type, as there are not any similar research works on Environmental Impact Assessment Law in Armenia in comparison with the international analogues. It is unique in the academic research context especially as doctrinal research works are not common within the university disciplines in the country.

[136]Ole W. Pedersen, 'Modest Pragmatic Lessons for a Diverse and Incoherent Environmental Law' (2012) 33 Oxford Journal of Legal Studies 103.

Finally, the chapter explains why it is important to compare the existing RA EIA Law not only with the International Treaties signed by Armenia but also with the NEPA and EU EIA/SEA Directive that were used by the legislative drafters in Armenia as examples of legal documents in the process of creating national law. The United States National Environmental Policy Act is considered in terms of policy making in environmental decision-making process and was a prototype in drafting the RA EIA Law of 1995. This study highlights the importance of the western scholar and academic works in this context as well, as there is lack of academic works in this field in Armenia. Regarding the RA EIA Law of 2014, the drafters explained the endeavour of making the RA EIA law similar to the EU Directives.[137] Accordingly, in this particular study, the level of maturity of the Environmental Law and EIA process in the EU and USA is highly valued and good practices of these countries are sought in favour of their further presentation in Armenia for localization purposes. Hence, the definitions of scholars, academicians and practitioners on the environmental law, the role of environmental impact assessment process in this law and the steps in environmental impact assessment process are scrutinised. The basic knowledge and notions of the EIA process needs to be more comprehensive for its further implementation in legislative drafting of environmental legislation in practice in Armenia. ***The Logical Construction or the Map of the thesis has the following design:***

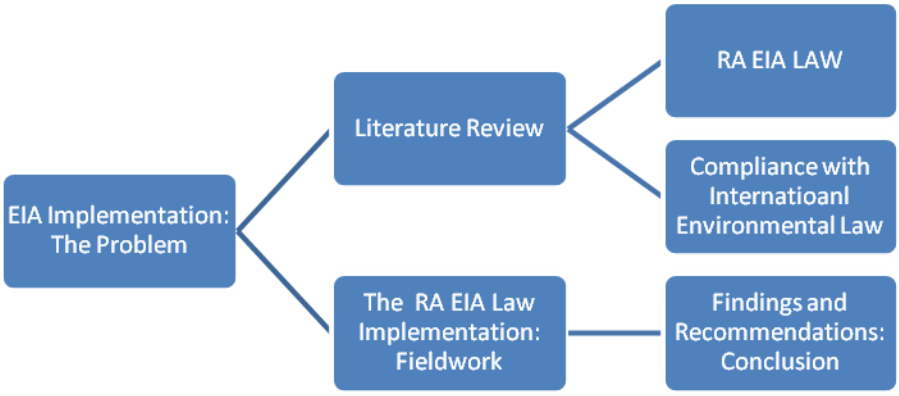

Fig.1.1.

[137] Նախագիծ Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին (Draft project on the Law of the Envrionmental Impact Assessment and Expertise of the Republic of Armenia).

The following Chapter presents the RA Law on EIA adopted in 1995 as the first step of EIA law in Armenia. It presents the new EIA law adopted in 2014 together to demonstrate the similarities and differences of laws generated by the government of the independent Armenia and finds out whether there is any legislative drafting improvement during the years of independence in the country. In addition, the cases that are discussed in this thesis are generated under the requirements of the RA EIA Law of 1995 and are currently in process. Accordingly, the discussion of both laws becomes important in the context of this thesis.

Chapter 2: The Law on Environmental Impact Assessment in Armenia

2.1. Introduction

The urge in drafting contemporary legislation in Armenia started together with the declaration of independence from the Soviet Union in 1990.[138] Shortly after that, the RA Constitution was adopted through national referendum in 1995.[139] In parallel with building a sovereign independent state, the RA government was engaged in active international relations through signing and ratifying International Agreements and Conventions. The RA government was one of first signatories of Aarhus Convention[140] and Espoo Convention with its Kyiv Protocol [141] in line with many other agreements generated by the United Nations Organization.[142] The of the RA Constitution provides

> …International treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail…Normative legal acts shall be adopted on the basis of the Constitution and the laws and for the purpose of the ensuring their implementation.[143]

Therefore, the analysis of laws become necessary to question their level of compliance with the RA Constitution and International Treaties and

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[138] The Government of the Republic of Armenia, 'Armenian Declaration of Independence' (*The Government of the Republic of Armenia,* 23/08/1990) <http://www.gov.am/en/independence/> accessed 05/06/2015

[139] Constitutional Court of Armenia, 'The Constitution of the Republic of Armenia' (*Cosntitutional Court of Armenia,* 1995) <http://concourt.am/english/constitutions/index.htm> accessed 05/06/2015.

[140] Ministry of Nature Protection in Armenia, 'Participation of the Republic of Armenia in the International Environmental Agreements ', 2015.

[141] Ibid.

[142] United Nations Organization, 'Treaty Collection' (*United Nations,* 2015) <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvii-13&chapter=27&lang=en> accessed 05/06/2015.

[143] The Constitution of the Republic of Armenia (With Amendments) Adopted by the Referendum of 27 November, 2005.

consider their appropriate implementation in the field. This Chapter provides the interpretation of the RA EIA Law of 1995 and 2014 highlighting the articles of the Law of 1995 as the development projects discussed in this dissertation have been granted the approval under the cover of this law. It is believed that the interpretation of the RA EIA Law in this chapter will give a better understanding of legislative drafting mechanisms in Armenia and highlight the implementation and compliance issues in the further chapters of this dissertation.

2.2. The Summary of the History of the Environmental Impact Assessment Law of the Republic of Armenia

This Chapter presents the interpretation of the RA EIA Law both the old and the new one. It compares their similarities and differences to show the legal drafting development in the process of the environmental governance and decision-making in Armenia. The definitions of the terms are used in the chapter as they are presented in the non-official translations made by legislative drafters of the discussed documents and are analyzed the way they are presented in the existing documents.[144]

The interpretation of the RA EIA Law is needed to open the scope of provisions and discuss the way they are constructed. It will be helpful for addressing the gaps in the text of laws and providing recommendations for change. However, this particular chapter does not attempt to provide any analysis on the law. It discusses the legal provisions in wider context. It is believed that this approach will help in better understanding the compliance of the RA EIA Law to the signed International Treaties especially in the context of recent changes in the RA EIA Law.

During Soviet Governance Armenia was regulated by the Soviet legislation. There were laws such as Land Code, Water Code, Wild life Protection and Forest Code that regulated environmental affairs in the country. These codes

[144] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995,Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

were taken from the central legislation of Soviet government and there was not a particular body implementing the environmental management in the country then. The changes in Armenian environmental protection and management began in 1988: [145]

> There was no administrative body responsible for nature protection, and no law regulating the issues in this field. In 1992, the Ministry of Nature Protection and Environment of the Republic of Armenia (RA) was established, and among other laws and legislative acts, RA adopted "Principles of legislation of Republic of Armenia on Nature Protection", which set the frames of future laws and policies in this field. It was the Law where the necessity of the state ecological expertise was mentioned for the first time.[146]

The Constitution of the Republic of Armenia affirms that the state provides the environment with protection as well as controls the reasonable utilization of natural resources.[147]According to Paragraph 10 of Article 48 of the RA Constitution, one of the basic tasks of the state is to implement an environmental security policy to protect environmental rights of current and future generations in economic, social and cultural fields.[148]

On 20 November 1995 a Law on Environmental Impact Expertise, later renamed as the Law on Environmental Impact Assessment, was adopted.[149] ' For the first time in the legal system of Armenia, this document contains the notion of concerned communities as well as public hearing processes,

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[145] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia*,(n27)11.

[146] Ibid.

[147]The Constitution of the Republic of Armenia (With Amendments) Adopted by the Referendum of 27 November, 2005 Art. 10.

[148]Ibid, Art. 48.

[149] The literary translation from Armenian into English the title of the RA EIA Law of 1995 is Environmental Impact Expertise which considered being equivalent to the European and American understanding of the Environmental impact Assessment. Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia*, 12 (n27).

which motivate the involvement of public in decision-making on environmental issues.'[150]

One of the few significant documents on EIA Law making process is the report of the Advisor to the Minster Ms. Victoria Ter-Nikoghosyan during Fourth International Conference on Environmental Compliance and Enforcement held in Thailand in 1996.[151] She briefly explained the process of drafting the environmental protection laws and the Law on Environmental Impact Expertise, too in post-independence period in Armenia. She emphasized in particular the international legal instruments role in the process of legislative drafting in Armenia. This means the government in Armenia strives to make contemporary legislation in compliance with the similar laws in developed part of the world. In the process of drafting the RA EIE Law in 1995, the USA National Environmental Policy Act was taken into consideration by the legislative drafters and a similar act was created for Armenia as well: the Environmental Impact Assessment Act of Armenia.[152] This Act covered the environmental protection legislation in Armenia and was a unique instrument of its kind. 'The logic of the Armenian environmental legislation will work in the following order: separate acts will regulate the current status-quo, whereas EIAA will ensure sustainable development and reform.'[153] This report demonstrates the right approach of the legislators and drafters in the law-making process. However, later on the environmental governance and management in Armenia demonstrated completely other picture that was drawn in the speech of the former adviser. The transitional and developing period for Armenia brought forward the necessity of investments from foreign investors.

The investments were directed mostly to the natural resources mining industry and energy sectors. These types of development became highly

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[150] Ibid.

[151] Viktoria Ter-Nikoghosyan, 'Development and Enforcement of New Armenian Environmental Protection Legislation: Problems and Solutions' (Fourth International Conference on Environmental Complience and Enforcement 1996).

[152] Ibid 2.

[153] Ibid.

risky for the country as the rate of human health issues; soil, and water and air pollution, underdeveloped communities emerged in the country. The rise of complaints from population and non-governmental organizations related to non-compliance of law and poor implementation of the requirements of international treaties urged the government to review the environmental protection legislation. [154] The new Law on Environmental Impact Assessment and Expertise has been drafted several times, presented to the adoption twice unsuccessfully in 2011 and 2012. Finally, in August 2014 the new Law on Environmental Impact Assessment and Expertise was adopted by the RA Parliament and ratified by President. The international agencies are highly interested in promoting this new development in Armenia. The World Bank in particular is concerned.[155]

The poor implementation of environmental governance and raising issues in the field became the reason of this particular research work that intends to find out the existing gaps in the legislation and to identify where the issue in the environmental governance is in Armenia either in legislative drafting or in the implementation of the drafted laws.

2.3. The Interpretation of the RA EIA Law of 1995 and Presentation of the Law of 2014[156]

The RA EIA Law of 1995 consists of four chapters with 22 Articles and defines regulations in the field of Nature Protection and Conservation in Armenia. 'The law regulates the legal, economic and institutional basis for

[154] Gohar Abrahamyan, 'Hydro Concerns: Environmentalists, villagers oppose construction of plant on Marts river' ArmeniaNowcom <http://armenianow.com/society/environment/50228/armenia_hydropower_plant_protest_marts_village_river> accessed 30/05/2015,Armine Ishkanian and others, *Civil Society, Development And Environmental Activism in Armenia* (Department of Social Policy, London School of Economics and Political Science (LSE) with Socioscope Societal Research and Consultancy Center NGO, 2013).

[155] World Bank, 'Discussing the Draft Law on Environmental Impact Assessment in Armenia' (*World Bank News,* 08/06/2013) <http://www.worldbank.org/en/news/feature/2013/06/08/discussing-the-draft-law-on-environmental-impact-assessment-in-armenia> accessed 10/03/2015.

[156] The RA EIA Law of 1995 has a published non-official translation on the web site of the National Assembly of Armenia; however, the Law of 2014 is published only in Armenian.

the environmental impact assessment of intended activities and concepts.'[157] The Final version of the RA EIA Law of 2014 consists of 12 chapters and 34 articles.[158] Here some more expanded information is elaborated.

Article 1 Chapter 1, titled as General Provisions, reveals basic notions in the Law. The Article lists intended activities as "envisaged economic, social and other activities (civil construction, reconstruction, expansion, technical refurbishment and disseverment)"[159]. It goes on to list Concepts on 'ideas, programs, complex schemes and master plans' [160] but does not give definitions of these ideas. Then the Article gives 'basic notions' of an *authorized body*: 'authorized state body implementing the assessment on impact of the environment by intended activities and concepts/procedures'[161]. Next, 'basic notions' of a presenter, admissible concentration level, initiator, documents, authorized person, affected community, public hearings, expert conclusion follow. In Article 1 of the RA EIA Law of 2014, the change is evident. It presents the subject of the Law and defines the field of the law saying that this law regulates the social relations in the field of environmental impact assessment including transboundary and state expertise in the Republic of Armenia.[162]

Article 2 of Chapter 1 reveals the goals and principles of Environmental Impact Assessment (EIA), Law of 1995. It states that the 'EIA is mandatory activity conducted by the state, its main goal is to predict, prevent, or reduce to the minimum the hazardous impact of an intended activity or procedure on human health, environment, regular economic growth and social

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[157] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art. 1. Basic Notions

[158] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԽՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[159] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995.

[160] Ibid.

[161] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.1.

[162] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԽՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.1.

development.'[163] This Article gives definition on particular concepts of the law. It defines terms that are used in the Law such as intended activity, presenter, affected community, authorized body, authorized person, expert conclusion, assessment conclusion, admissible concentration level (equivalent to threshold), and initiator. The term authorized body is defined in the RA EIA Law as follows 'authorized body means authorized state body implementing the assessment of the impact on the environment by intended activities and concepts/procedures.' [164] There is a Government Order number 345, issued on December 20, 1996. The Ministry of Nature protection of Armenia is declared as the Authorized Body who is in charge of the environmental impact expertise (assessment) based on this order.[165] All relevant definitions in this Article are relatively clear; however, the term '*authorized body*' is not explained to the same extent, hence, another document of secondary legislation was issued to define the term. The law simply states that this is the 'state body' that implements assessment of the impact on environment. It is acknowledged that major projects are verified and signed by the Prime Minister of the Republic of Armenia, while small and local projects are verified and signed by the local governing bodies, such as municipalities or regional administration. There is a state agency operating under the authority of RA Ministry of Nature Protection, which provides expert conclusions for the final decision, as well as carries out the expertise for the proposed development projects. The initiator therefore must present its development proposal to this body, called 'Environmental Expertise' State Non-Commercial Organization (SNCO).[166]

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[163] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.1.

[164] Ibid.

[165] Հայաստանի Հանրապետության Կառավարություն Ո ր ո շ ու մ 30 Հոկտեմբերի 1996 Թ. N 345 Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննություն Իրականացնող Լիազորված Պետական Մարմնի Մասին (#345 Order on the Body Authorised to Implement the Envrionmental Impact Expertise of 30/10/1996) this decision was annulled in 2014 due to issuance of the RA EIA Law of 2014, see Appendix 2.

[166] Ministry of Nature Protection of the Republic of Armenia, 'Nature Protection: Expertise' (*Ministry of Nature Protection of the Republic of Armenia,* 2015) <http://www.mnp.am/?p=315> accessed 22/01/2015

Authorized persons are 'institutions, groups, scientists, individual highly qualified specialists who received professional authorization from the authorized body to work out an expert conclusion.'[167] The *initiator* is a 'legal entity or physical person as well as an enterprise without status of legal entity which intends to implement certain intended activity.'[168]

Article 2 refers to important principles of EIA such as scientific justification, legitimacy and transparency of decision-making. Its goal is to make the environmental assessment based on 'the right of human beings to have favorable environment for health, life and creative activity, the requirement of efficient, complex and reasonable use of natural resources, the necessity of maintaining the equilibrium of ecological systems, preserving all systems of flora, fauna, taking into account the interests of current and future generations.'[169] Paragraph three of this Article states that the scientific justifications, legality and transparent and publicized decision-making approaches have to be taken into account during the EIA procedure. In general, this article presents the Goal and Principles of Environmental Impact Assessment. The assessment considers being a 'mandatory activity.'[170] Its main goal is 'to predict, prevent or reduce to the minimum the hazardous impact of an intended activity or procedure on human health, the environment, regular economic and social development.'[171] This article emphasizes the importance of 'human health' and refers to human rights by stating that the Environmental Impact Assessment is conducted to protect human rights to live in a healthy environment, which is affordable owing to reasonable use of natural resources. Article 2 of the Law of 2014 provides the activity of the Law. It covers those subjects that are involved in making baseline documents, adopting and implementing the activities directed to the possible impact on the environment and human health.[172]

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[167] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.2.

[168] Ibid.

[169] Ibid.

[170] Ibid.

[171] Ibid.

[172] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊՏ

Article 3 of chapter 1 provides relevant objectives on environmental impact assessment: “analysis of intended activities, concepts and the possibility of their alternatives and expediency, taking into account all ecological restrictions, appraisal of the possible effect and the degree of the danger of the intended activity, concept and alternatives; inspection of the degree of the possible ecological effects of intended activities, concepts and the possibility of their activities; the integrity of consequence analysis and accuracy; the adequacy of measures for monitoring, prevention, elimination or minimization of consequences during operation and implementation process as well as in emergency situations; to provide efficient and reasonable use of natural resources; to prohibit an intended activity which can have an irreversible hazardous effect on the environment, unless otherwise stipulated in Armenian legislation; to provide participation and involvement of public in all phases of assessment.’ [173] The objective of the RA EIA Law clearly states its democratic approach on being transparent and citizen oriented in this Article. It requires the public participation in all phases of assessment. Below is the table specially designed based on the public participation requirements of the RA EA Law 1995, to make the picture more clear and to help the reader understand the 'phases' of public hearing required by the RA EIA Law more clearly.[174]

2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[173] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.3.

[174] Ibid.

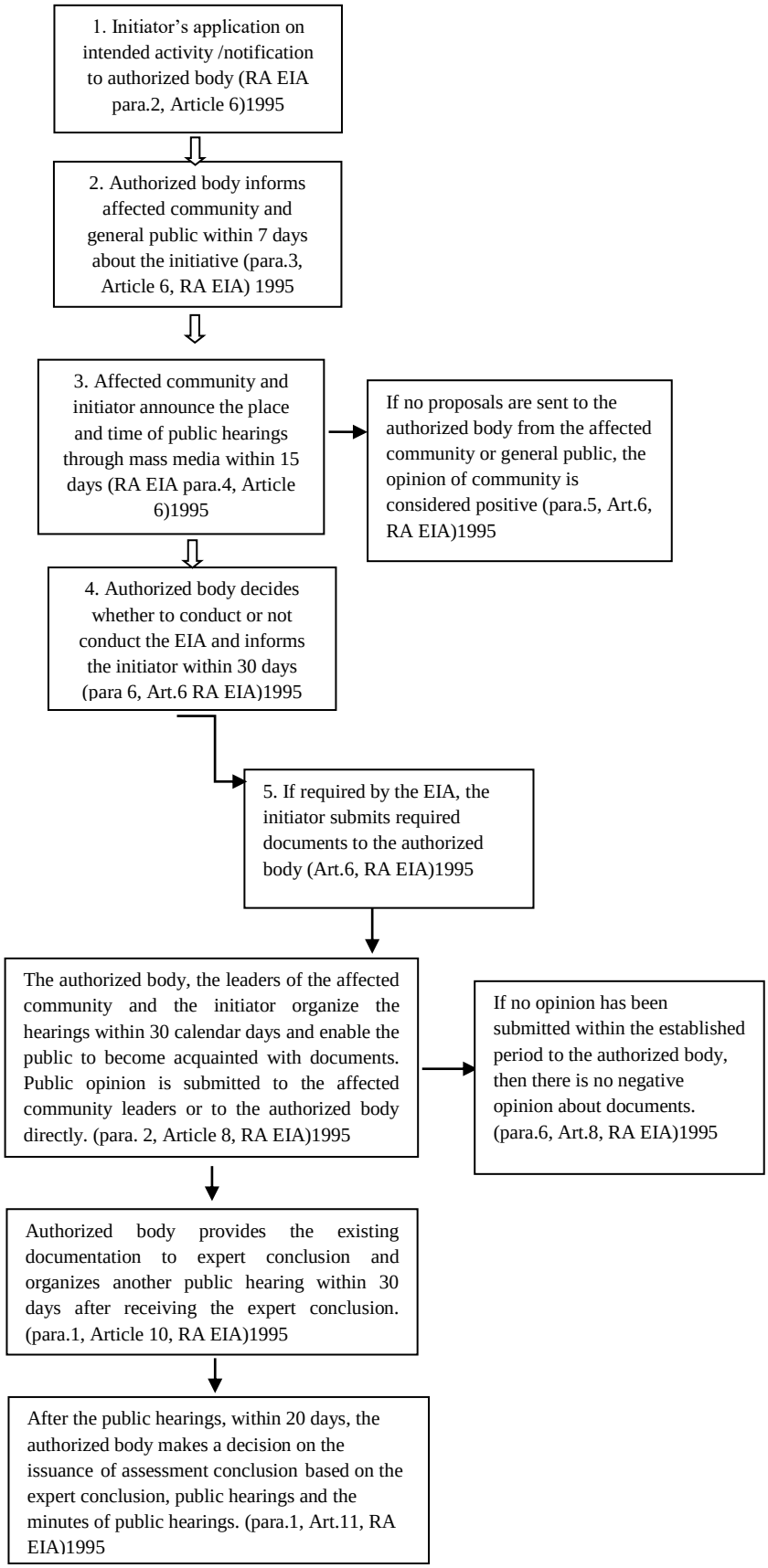

Fig.2.1[175]

[175] Ibid. Summary prepared by the candidate from the relevant sections of the RA EIA Law of 1995.

Article 3 of the Law of 2014 provides the information about the legislation on assessment and expertise in Armenia. Particularly it states that the assessment legislation is composed of the RA Constitution, International Conventions signed by the Republic of Armenia, this particular law and other legal documents. [176]

Article 4 Chapter 2 of the RA EIA Law 1995 follows with listing the intended activities that are subject to environmental impact assessment. It lists all relevant sectors of economy such as energy, mining, chemical industry, production of construction materials, metallurgy sector, in the electric and radio technical sector, light industry, food-processing industry and fish farming, urban constructions and utilities sectors, environmental protection, agro sector, forestry sector, water sector, infrastructures and services.[177]

'The admissible thresholds (concentration limits) for intended activities are determined by the government of the Republic of Armenia.'[178] There is a separate list of established thresholds for various developments in chemical industry, metallurgy, electrical and radio electronic industry, wood and paper manufacturing, light industry, food manufacturing and fish farming, urbanization and infrastructures, as well as services provided in Armenia. It is listed in a separate document but not as an annex or a guideline to the Law. It occurs in the form of decree ratified by the president of the Republic of Armenia in 1999. [179] This order has been created in line with the requirements of Para. 2 Article 4 of the RA EIA Law[180]. The government of the Republic of Armenia establishes these thresholds. It demonstrates the incomplete nature of the RA EIA Law from the outset as it lacks strict

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[176] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին ՀՕ-110-Ն, ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[177] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995.

[178] Ibid, Art.4.

[179] Հայաստանի Հանրապետության Կառավարության Որոշում Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննության Ենթակա Նախատեսվող Գործունեության Շեմային Չափերի Մասին (The Decree of the Government of the Republic of Armenia on Thresholds of Development Projects Subject to the Environmental Impact Expertise/Assessment).

[180] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995.

requirements for development projects, although it selects the areas of projects that have to undergo environmental impact assessment. The decree lists the names and areas of possible development projects without explaining why these particular projects need to be assessed, what might be their level of significant or likely significant impact, are there projects that are exempt or possibly can be exempt of the assessment process. It does not speak about alternatives and gives no direction on the implementation, and these requirements were developed after four years of adopting the Law. The question is raising here how the law could operate four years and how the decisions were made without proper identification of thresholds and level of significance of the development projects? From this fact, it is inferred that the law was adopted incomplete at the beginning and lacked concrete requirements from the developers. The former advisor of the RA Ministry of Nature Protection Mrs. Victoria Ter-Nikoghosyan explained it during the Fourth International Conference on Environmental Compliance and Enforcement in 1996.[181]

> The Armenian legislation [newly adopted at that time] continues to be more declarative and detailed procedures on enforcement and implementation are developed by various ministries in administrative rules and regulations. These shortcomings were overcome with this Act (RA EIA Law). …Another shortcoming we could not yet overcome is very little experience with laws containing precise numerical values. To avoid ambiguity in the law's application, a list of planned activities that require environmental impact assessment should be incorporated in the law. It should also specify criteria (threshold values) for the majority of activities, according to degree of impact. The legislative structure in Armenia does not allow appendixes to the Act with such a list. At the same time, scientifically developed and adopted threshold figures for different kinds of activities are also not developed for Armenian circumstances. The solution was to include in the Act a list of activities

[181] Ter-Nikoghosyan, 'Development and Enforcement of New Armenian Environmental Protection Legislation: Problems and Solutions' (n151).This is one of very few reports on the history of RA EIA Law.

> without threshold values as transitional provisions.In other words, solution was: without destroying the structure of the entire legislation, include the contents of annexes into the Act. The Act is still enforceable for those listed activities which need full EIA without any threshold values.[182]

The attempts to change the presentation of thresholds in the Law were made as it was reported by Victoria Ter-Nikoghosyan. Prior to adopting of the new law on EIA in 2014 the legislators made several attempts to amend the law. Amendments have been suggested for Article 4 accordingly in 2011. In the amended version of the RA EIA Law, the legislative drafters added thresholds next to some of the statements of intended activity; particularly, they added statements on forests cut by 5 acres and more, which does not exist in the law of 1995.[183] The legal drafters have made this provision more detailed, adding specific threshold requirements and in the meantime, they tried to liaise it with the current mining project requirements. One more step of change is evident in the classification of the impacts in three different categories; however, this time also the drafters missed to explain the differences between the categories of development projects. Although the changes in the RA EIA Law of 2014 are welcomed by the international experts who are in charge of consulting specialists in Armenia in the process of improving the environmental governance and mining project requirements in Armenia. [184]

All fields of developments are listed in the Law of 1995 in paragraph 1 of Article 4. Paragraph 2 of Article 4 provides that 'admissible concentration limits for the intended activities are determined by the government of the

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[182]Ibid.

[183] Հայաստանի Հանրապետության Օրենքը «Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննության Մասին» Հայաստանի Հանրապետության Օրենքում Փոփոխություններ Եվ Լրացումներ Կատարելու Մասին(On Ammedning the Law of Environmental Impact Expertise of the Republic of Armenia) 2011.

[184] Simon Pow, 'How can Environmental Governance in Armenia's Mining Sector be Strengthened?' (n 49),Mining-Technology.com, 'Lydian secures approval for Amulsar gold project in Armenia' industry updates <http://www.mining-technology.com/news/newslydian-secures-approval-for-amulsar-gold-project-in-armenia-4455722> accessed 03/12/2017.

Republic of Armenia'[185]. Paragraph 3 provides that those intended activities that are not exceeding limits of required thresholds but are intended to be developed in specific areas determined by the RA Government are subject to assessment as well. Paragraph 4 of Article 4 provides activities intended by governmental authorities, by NGOs or by authorized body are also subject to environmental impact assessment. The new Law of 2014 provides key terms of the law by Article 4. In general, the terms remain the same as in Article 1 of the Law 1995.[186]

Article 5 of the Law of 1995 reveals the scope of assessment in the process of environmental decision-making in Armenia. It requires a prediction of the intended activities as well as an assessment of possible significant direct and indirect impact on climate change, flora and fauna, individual elements of eco-systems, their inter-relations and stability, specially protected areas, landscapes, geomorphologic structures, air, surface and ground waters, soils, as well as health and wellbeing of the population, the urban and city environments, use of natural resources, monuments of history and culture. These are listed in Paragraph 1 of Article 5.[187]

Paragraph 2, Article 5 provides that possible environmental impact should be assessed during construction operations and in emergencies.[188] Paragraph 3, Article 5 points out that 'during the assessment of the intended activity, the social and economic, ecological and historical and cultural peculiarities of the area in question are taken into consideration.'[189] This Article provides legal background of intended activities in case if developments interfere with social, economic, ecological, historical and cultural distinctiveness of the area in question. It is inferred that the mitigation measures are required in this case, which are not clearly stated due to the lack of proper legal terminology in the law.

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[185]The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.4.

[186] Several new terms emerged in the RA EIA Law of 2014.

[187] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.5.

[188] Ibid.

[189] Ibid.

Article 5 in the RA EIA Law of 2014 provides baselines and principles of the assessment and expertise.[190]

The procedure of intended activities is listed in Article 6, Chapter 2 of the EIA Law of 1995. The development initiator (developer) has to notify the authorized body about the initiated project. The notification includes the following documentation:

> …basic information on the intended activities, in particular: title, location, the aim of the intended activity, description (specific features), starting and finishing dates; the size of land plot, power, water and raw materials, brief description of technical and technological solutions; basic data on the impact of intended activity with the development plans of the given administrative and territorial unit; the decision of affected community on land allotment, the opinion of relevant state body, and if necessary, a license[191]

The authorized body informs the head of affected community and the general public about the developer's initiative within seven days of receiving the notification. The heads of affected community organize public hearings about the intended activity within 15 days of receiving the information of authorized body. 'If no proposals are sent to the authorized body from the affected community or the general public, the opinion of affected community is considered positive.'[192] The assumption made by this Law on considering the opinion to be positive when the affected community or public does not submit a proposal generates a confronting argument on its implementation. It leaves the gap in the legal text and makes possible for the decision-making authorities to give the consent to the developer without presenting the public opinion in the application documents of the development project. This gap in the law can assist the decision maker in

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[190] Հայաստանի Հանրապետության Օրենքը Շրջակա միջավայրի Փորձաքննության Գնահատման եվ Փորձաքննության Մասին ՀՕ-110-Ն, ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[191] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.6.

[192] Ibid.

manipulating with the public opinion in case if they want to grant the permission to the developer by any means. Which means that they could ignore the existing opinion by alleging that there was no opinion presented by the public. On the other hand, this gap gives a ground to challenge the *authorized body's* decision at any stage of the decision-making procedure as at any stage of the development process the public can allege that there was an opinion which was not considered by the decision makers. Article 6 of the RA EIA Law of 2014 provides grounds on the objectives and tasks of the assessment and expertise.[193]

The requirement of relevant documents is provided by the paragraphs 1 and 2 Article 7 of Chapter 2 in RA EIA Law, it states the following: '1. The initiator submits the documents on the intended activities subject to environmental impact assessment to the authorized body by established procedure. 2. The documents and the list of data and its amount contained in them are established by proposal of the authorized body to the government of the Republic of Armenia.'[194] Then the Authorized body decides whether to conduct an environmental impact assessment and informs the developer and the applicants about the decision within 30 days of receiving the notification of an initiator (developer). There are further documents to be submitted to the Authorized body by the developer in case this is necessary for an environmental impact assessment required by Article 7. This Article leaves a vast gap in the EIA process, as it has no list of possible extra documentation requested for the EIA. Moreover, there is no requirement of non-technical summary of the development for general public awareness on intended and initiated activities, in none of the articles including Article

[193] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԶՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.6.

[194] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art. 7.

7.[195] Article 7 of the Law of 2014 provides the objects observed in the process of EIA and their characteristics.[196]

Article 8, Chapter 2 of RA EIA Law of 1995 addresses publicizing and discussion procedure of documents if an environmental impact assessment is required for a particular development.[197] Paragraph 2 of Article 8 states that the affected community leaders and the developer have to organize public hearings and raise their awareness on proposed documents. Then they have to send public opinion to the affected community leaders or authorized body. There is no detailed explanation of this step how and what form the affected community leaders have to present the required information. There are no guidelines either that explain the required steps of procedures to the parties.

Paragraph 3 establishes the period of the submission of public opinion to the authorized body. Then paragraph 4 of this Article gives discretion to the authorized body to decide whether the community is considered a stakeholder or the impacted one. By this discretion, the authorized body decides if the development project proposed in any particular area can be harmful for communities located nearby. A very good example of this discretion is the Amulsar Gold Mine development project assessment process. During this process, the decision makers missed to identify the communities who might be impacted by the project. This issue is discussed in Chapter 4 of this dissertation in more detail.

Paragraph 5 establishes a 30-day period for submission of the opinions to the high level authorized body. Based on this, paragraph 6 of the Article assumes that if there is no opinion submitted by that time during the particular EIA procedure, it will be considered that no negative opinion is expressed about the presented documentation. After receiving the extra

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[195] Ibid.

[196] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-Ն/ հիմնական աղբյուրը՝ ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.7.

[197] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.8.

documentation for EIA, the authorized body sends their copies to the relevant state body and affected community provided by the Article 8. The leaders of the affected community have to publicize the material through mass media within 5 days of receipt of the data.[198]

They also have 30 days to organize public hearings. Within this period, they have to submit public opinion to the leaders of the affected community or the Authorized body itself. Based on the provisions in Article 8, the authorized body has discretion to decide whether a particular community is the 'affected' one or not. This creates another gap in the law, providing freedom to the authorized body in choosing the impacted community at its discretion. In such cases, if the community lives close to the area of the development project or has concerns on inappropriate *development* of the intended activity, the *authorized body*, being the sole decision-maker, can declare that a particular group appears not to be the 'affected community' of the development. One of the development project cases discussed in this thesis experiences similar approach, as the directly impacted communities were not considered as such at the beginning of the project.[199] Article 8 of the Law of 2014 provides the management of the assessment and expertise process and state bodies who are in charge of the process.[200]

Article 9 with eight paragraphs provides information on expert conclusions on document assessment. The authorized person or an organization, who has received professional competence certificates by the authorized body, can make the expert conclusion.[201] The authorized body has discretion of providing public participation at all stages of the process on selection of an

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[198] Ibid.

[199] Geoteam Company insists that Jermuk is not within Amulsar project impact area. However, Jermuk, if concretely, Kechout village, which is the administrative area of Jermuk resort, was included into the project in 2009 as approved by Nature Protection Ministry of Armenia. Thus, the project affected zone included Jermuk. However, in the expanded project for 2012 Kechout disappeared from the list.

[200] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.8.

[201] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.9.

authorized person or organization (paragraphs 1 and 2). Expert conclusion is made by authorized person (organization) assigned by the authorized body. The latter provides documents received from the initiator (developer) to this person (organization) for review. The authorized person (organization) has to prepare the authorized conclusion considering relevant documents from the public, the affected community and other opinions. This procedure can be extended by no longer than 180 days after the receipt of documents. This authorized person (organization) has to be different from the authorized person (organization) that had prepared the documentation for the assessment as provided by the same Article of the Law. This is considered to be a non-technical expertise of proposed documentation for any particular development. Paragraph 7 in Article 9 lists the documentation that will be exercised by the authorized person (organization):

> a) validity of the documents, b) the opinions of the general public, c)the whole complex of all positive and negative impacts of the intended activity on the environment, as well as their inter-relations, d) the applied assessment methods and the completeness of data, e) adequacy of the proposed technical solutions for the elimination or reduction of hazardous impact to the modern level of science and technology, f) alternative solutions to the intended activity, g) proposals concerning the elimination or reduction of dangerous impact of the intended activity on the environment, as well as implementation, operation measures and necessary conditions.[202]

The experts (authorized person) have to give their conclusion with the negative or positive feedback of the specialists based on the analyzed documentation.[203]

The article provides criteria, which can be considered as complete measures of the EIA process and make available almost all possible enforcement steps at the stage of the document assessment. Article 9 of the Law of 2014 lists

[202] Ibid .

[203] Strategic Environmental Assessment (n6).

the duties and responsibilities of the RA Government in the process of assessment and expertise.[204]

Article 10 of the RA EIA Law of 1995 covers the procedure of public hearings on expertise of proposed documentation.[205] The authorized body organizes public hearings on the expert conclusion of the existing documents within 30 days after receipt of the particular conclusion. This aims to introduce the existing documentation on intended activity and get public, affected community, relevant state body's opinions on the subject matter. Generally, seven days are required for making an announcement and organizing public hearings by the authorized body. Other experts and specialists are invited to this hearing. The form and agenda of public hearings are declared to the public through the announcement. After completion of public hearings, the authorized body provides the participants with minutes recorded during the meeting.[206] Article 10 of the Law of 2014 lists the duties and responsibilities of the authorized state body.[207]

As soon as the implementation of the aforementioned steps is concluded, the authorized body makes a decision to issue the assessment conclusion within 20 days. It takes into account expert conclusion, public discussions, and the minutes from the public hearings. This is stated in Article 11 of the RA EIA Law of 1995.[208] Paragraph 2 states that the conclusion from the assessment will be submitted to the initiator within a maximum of 120 days. If the authorized body does not submit it during the stated period, the conclusion could be considered positive. The latter is valid from the moment of its

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[204] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԶՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.9.

[205] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.10.

[206] Ibid.

[207] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԶՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636) Art.10.

[208] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.11.

issuance.[209] This is also a gap in the discussed law as it gives the chance to manipulate with the timing in law and gain a positive conclusion of authorities.

If the intended activity will not start within a year after getting the consent of authorized body, the consent is nullified and a new procedure of environmental impact assessment is required. In addition, the conclusion is considered invalid if*:* '1) a new environmental protection legislation is being adopted, 2) new ecological factors have emerged after the issuance of assessment conclusion. The RA government establishes and regulates other reasons to consider the decision invalid.'**[210]** Art.11 of the RA EIA Law of 2014 lists responsibilities of the EIA expertise center.[211]

An interesting controversy is observed between articles 11 and 12 on the RA EIA Law of 1995.Contrary to the statement of the Article 11 about the conclusion being considered positive after not getting a feedback in 120 days, Article 12 provides 'without positive assessment conclusion, the implementation of the intended activity liable to environmental impact assessment is prohibited.' [212] These two provisions present controversial arguments in the law as in Par.2 Article 11 bears the possibility for the developer to start the project in case if the consent is delayed and by the next Article the Law prohibits implementation of the intended activity. Article 12 states the mandatory nature of the assessment conclusion. Article 12 of the RA EIA Law of 2014 provides the regional community leaders with responsibilities in the process of the assessment and expertise.[213]

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[209] Ibid.

[210] Ibid.

[211] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԺՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636)Art.11.

[212] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995 Art. 12.

[213] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԺՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.12.

Article 13 provides payment requirements for intended activities stating that all expenses are to be covered by the developer.[214] Article 14 of the RA EIA Law of 1995 refers to the assessment of the intended activities in transboundary context. It is a three-sentence provision that requires the government of the Republic of Armenia to approve the assessment if the intended activity spreads beyond the state borders. The conclusion will be made based on the international agreement ratified by the Republic of Armenia. The statement on ratification of the international agreement (Espoo Convention 1991) requires D. Skrylnikov states a separate Law on Transboundary Impact Assessment with which the government of the Republic of Armenia has never complied.[215] Article 14 of the Law of 2014 provides the requirements on the baseline documents of assessment and expertise and lists the types of intended activities. In this list of intended activities, the thresholds of the development projects are provided.[216] The next chapter of this study refers to the Espoo Convention in detail.

Chapter 3 Article 15 of the RA Law on Environmental Impact Assessment covers the assessment of *concepts* (the word 'concept' in English is translated from the Armenian word 'hayetsakarg'; it is considered to be the environmental information required by the Aarhus Convention)[217] and it is

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[214] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.13.

[215] In 2010 D. Skrylnikov (attorney, head of Environmental Investigation Bureau, Ukraine) conducted research on Environmental legislation in Armenia and on RA EIA Law in particular to assess its compliance on Transboundary context (Espoo Convention1991). He argues that "with regard to the transboundary EIA procedure, the existing law refer to the applicable international instruments… the Government of Armenia adopts a procedure of review in accordance with international agreements of the Republic of Armenia and this Law. Current legislation do not appear to address at all the situation in which Armenia is the affected Party, or to provide for cooperation with the Party of origin in notifying the Armenian public and in allowing the public to submit comments, but only refers to applicable international instrument, Dmytro Skrylnikov, *Results of project "Strengthening Implementation in Armenia of the Espoo Convention"* (Seminar on legislation and procedures for implementation of the Espoo Convention Geneva, 17 May 2010,Bureau of Environmental Investigation (BEI), 2010).(n8)

[216] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին ՀՕ-110-Ն, ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636)Art.14.

[217] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995.

relevant to the Strategic Environmental Assessment required by the EC Directive 2001/42/EC (known as the SEA Directive).[218] Based on its detailed interpretation it is the same with policies required by relevant international environmental laws. This provision generates the same question as in Article 14 regarding making a separate Law on Strategic Environmental Assessment (SEA). Only one chapter with one Article strives to provide regulations on policies and projects and refers to those understandings as 'concepts'.[219]

The study will refer to this article in detail in further analysis on Strategic Environmental Assessment issues and regulations in a comparative form. Article 15 of the RA EIA Law of 2014 provides requirements on impact assessment and expertise on human health.

Chapter 4 Article 16 gives details on the body that is in charge of assessment and competence and lists it rights. Para.1 Article 16 provides that 'the status of authorized body performing the environmental impact assessment is determined by the government of the Republic of Armenia', accordingly there is an Order of the Government that assigns the ministry of Nature Protection of Armenia as the 'state body authorized for conducting environmental Impact assessment.'[220]The following are the responsibilities of the Authorized Body required by the RA EIA Law of 1995:

> a) to implement activities specified in Article 4 of this Law and perform environmental impact assessment of concepts listed in Article 15 and issue

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[218] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

[219] D. Skrylnikov argues that it is appropriate to make to separate laws on Environmental Impact expertise and Strategic Environmental assessment (SEA) "…One law proposing equal the procedure for EIA and SEA seems to be quite ambitious (especially with respect to SEA) but the way it has been elaborated in this law appears to be almost impossible to execute "Dmytro Skrylnikov, *Strengthening Implementation in Armenia of the Espoo Convention*, 2010),Skrylnikov, *Results of project "Strengthening Implementation in Armenia of the Espoo Convention"*.

[220] Հայաստանի Հանրապետության Կառավարություն Ո ր ո շ ու մ 30 Հոկտեմբերի 1996 Թ. N 345 Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննություն Իրականացնող Լիազորված Պետական Մարմնի Մասին (#345 Order on the Body Authorised to Implement the Envrionmental Impact Expertise of 30/10/1996).

> assessment conclusions, b)to perform requirements pursuant to Articles 7 and 8, c)to invite experts; d)to form and maintain a bank for materials and data of environmental impact assessment; e)to supervise the observation of requirements to assessment conclusions; to work out methodological documents for the implementation of environmental impact assessment.[221]

This is provided by the para.2 of Article 16 of RA EIA Law of 1995. Para 3 of the same Article provides 'the authorized body within its competence, has the right to implement measures not contradicting to the acting legislation which are necessary for the implementation of environmental impact assessment.' [222] Article 16 of the RA EIA Law provides the preliminary stage of the Expertise.[223]

Article 17 speaks about the responsibilities of the authorized body.[224] 'The validity of the conclusion, the observation of principles, procedures, norms and deadlines; - providing of necessary documents and materials, providing of necessary working conditions;-publicity.'[225]Article 17 of the RA EIA law of 2014 gives more details on the main activities of the environmental impact assessment for the environment and human health.[226]

Then the Law goes on to introduce the responsibilities of Authorized persons who are assigned by the *Authorized Body* to check the

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[221] Ibid.

[222] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.16.

[223] Ibid.

[224] Ter-Nikoghosyan, 'Development and Enforcement of New Armenian Environmental Protection Legislation: Problems and Solutions' (n 151). Based on the definition of Victoria Ter-Nikoghosyan(adviser to minister, The Ministry of Nature Protection of the Republic of Armenia,2003) the authorized body is; 'the body of the state administration which is responsible for managing the entire process. It issues the final approval or disapproval to start realization of an activity and submits a recommendation to the Approving body for decision on implementation of a concept.'

[225] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.17.

[226] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.17.

documentation and expert conclusions before making a decision based on the requirements of para.5, Article 9 of the RA EIA Law. Article 18 of Chapter 4 states that Authorized Persons are responsible for: 'Validity of conclusions, suggestions and comments, unbiased appraisal of documents; submitting the expert opinion to the authorized body on time.'[227]Article 18 of the RA EIA Law of 2014 draws a detailed list of the report context on the impact assessment on environment and the human health.[228] It is assumed to be the list of Environmental Impact Statement documents required from the developer.

Accordingly, the RA EIA Law of 1995 provides responsibilities of the Initiator, Applicant and Document Processor by Article 19. They are responsible for: 'comprehensiveness, scientific validity, quality, accuracy of materials submitted to environmental impact assessment; ecological consequences of project solutions; integrity of materials and necessary additional documents submitted for assessment; meeting the requirements of assessment conclusions; presenting the intended activity or concept to general public.[229] Article 19 of the RA EIA Law of 2014 provides the activities of the main stage of the assessment.[230]

Among all these requirements, the words *monitoring* and *auditing* were missing in the RA EIA Law of 1995. All parties engaged in the EIA process are responsible mainly for impact assessment process and neither of the parties is responsible to carry on any follow up activities, audit and monitor the intended activities. The Environmental Expertise SNCO has to supervise the observation of requirements to assessment conclusion, to create the bank

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[227] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.18.

[228] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԺՕ-110-Ն ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art. 18.

[229] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.19.

[230] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԺՕ-110-Ն ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636)At.19.

for the materials and data of environmental impact assessment, to work out the methodology of EIA.

Article 18 provides responsibilities of authorized persons. They are considered to be responsible for: the validity of conclusions, suggestions and comments; for unbiased appraisal of documents; submitting the expert opinion to the authorized body on time. Article 19 gives few details on the responsibilities of the initiator, the applicant and the document processor.

The last Articles are 20, 21 and 22 that provide regulations on breaching provisions of the Law, on disputable issues that might arise during assessment procedures and the validity of the Law itself.[231]

The breach of provisions of the RA EIA Law of 1995 was regulated by the specified legislation of Republic of Armenia. Article 20 refers to breaches of provisions. However, it does not generate any penalty or punishment to enforce legal obligations; it does not refer to the possibility of making errors in expert conclusions and lacks a provision of possible solutions in the event of a significant impact or likely significant impact on the environment by implementing certain developments. 'In case of violation of the provisions specified in the documentation that were subject to EIE, or the recommendations provided by EIE, the State Environmental Inspection directs an official notification to the head of the organization or applies administrative measures in accordance with the Administrative Violation Code[232]

In general, the information included in the text of the law are very broad and do not provide specific instructions or requirements. The legislative bodies make government orders to fill in the gap existing in law as we saw in the sub-title 2.3 of this chapter.[233]Also, the non-transparent work of government and authorities makes it difficult to find out the breaches or violations on time and prevent the harmful or wrong decision-making process. The

[231] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Arts.20, 21, 22. Starting from these Articles the RA EIA Law of 2014 is discussed separately in this subtitle.

[232] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia*(n22).

[233] n179,182.

information about violations are doomed to be unknown in most cases.[234] As it is clearly described in the book on 'Environmental Assessment in Developing and Transitional countries' by N. Lee and C. George:

> …in low and middle income countries, less existing environmental data may have been accumulated than in high income countries. Some of it may be hard to access because it is not in public domain, and sources of available data may be poorly referenced. However, such sources usually exist, and a large part of the assessor's skill lies in knowing or finding out who has what data.[235]

Authors refer to the confidentiality issue in the development sector of developing and transitional countries. Hence, most of the details of a particular development might be kept in a secret from public and assessors as well. This makes the process of obtaining required information and data difficult in Armenia. In addition, majority of initiated projects are kept in a secret and difficulties arise in finding any relevant information on most of the questions related to particular development projects.[236]

Article 21 Chapter 4 provides possibility of appeal between the state authorities and the developer; all disputable issues can be appealed in the court specified by the legislation of the Republic of Armenia. Article 22 states the validity of this Law since the moment of its publication.[237] The RA EIA Law of 1995 was ratified and signed by the first president of independent Republic of Armenia Levon Ter-Petrosian on 12 December 1995.

The RA EIA Law of 2014 provides the regulations on expertise conclusion by Article 20. Article 21 of the same Law regulates the repeal steps of the expertise conclusion. Article 22 regulates general requirements on baselines documents of the environmental impact assessment in transboundary

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[234] The explanation of non-transparent work of the authorities in Armenia see in Chapter 4.

[235] Lee and George (eds), *Environmental Assessment in Developing and Transitional Countries; Principles, Methods and Practices* (n**Error! Bookmark not defined.**).

[236] Chapter 4.

[237] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.21.

context. Article 23 provides requirements of the assessment of the documents on proposed development project transboundary environmental impact assessment.[238] Article 24 assesses the documents of the foreign state's development project environmental impact assessment documents. Article 25 provides steps on international co-operation in transboundary context. Article 26 regulates the public awareness and discussion procedure during the EIA process. Article 27 of the RA EIA Law of 2014 provides the rights and responsibilities of the developer. The engagement of the experts in the decision-making process is provided by Article 28. Article 29 provides the rights and responsibilities of experts. Article 30 gives the general funding information for the process of expertise. Article 31 regulates the breach of the law. Article 32 provides the role control over the implementation of the law to the authorized body and the public as it stated by the RA legislation. Article 33 and 34 are declared transitional and regulate the process of this law entering into force. The laws and the regulations that existed at the beginning of the particular project will regulate the development projects that have been granted the approval before the activation of the RA EIA Law of 2014. The law has signed by President Serzh Sargsyan and entered into force on 22nd of June 2014.[239]

2.4. Findings of Chapter 2

The study revealed that the first RA EIA Law of 1995 was adopted with high interest and confidence to regulate field in compliance with western legislation and International Law. The interpretation of the Law demonstrates that the instrument contains main requirements of the EIA process; however, the gaps existing in the law resulted recent amendment of

[238] The legislative drafters refer to EIA, SEA and Transboundary regulations in the RA EIA Law of 2014. Both instruments the old law and new one combine three different conventions in one legal document.

[239] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին/ՀՕ-110-Ն, ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

the law.[240] According to the above analysis of the RA EIA Law of 1995, it is clear that it embodies almost all general requirements for the environmental impact assessment. For example, public participation is required almost in all steps of a development proposal. In some cases, the initiative can be presented to public and in some cases to public experts. It is assumed that the development process was transparent, flexible and open to wider public. The new text of the Law also has a detailed requirement of public hearings. However, the RA EIA Law of 2014 still has to be strengthened by the elaboration of governmental decrees and other legal acts to become a complete instrument of regulation.[241] For that reason, the RA government prepares new decisions and suspends the old decisions and regulations designed for the EIA process.

The Law of 1995 such as screening, thresholds, transboundary impact assessment and strategic environmental assessment regulates the important steps of EIA process. Moreover, the new law expands the requirements and gives more details on implementation measures. Almost all steps of the EIA process are presented in the text of the RA EIA Law of 2014. However, still the missing points are found in the legal requirements. One of the primary and core concerns of this Law is that it does not indicate which activities might be considered to be violations of law, what are the proper implementation the parties concerned, it makes no reference to penalties and legal enforcement principles or mechanisms.[242] The only enforcement in

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[240] Նախագիծ Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին (Draft project on the Law of the Envrionmental Impact Assessment and Expertise of the Republic of Armenia).

[241] Aramayis Grigoryan, *Հայ աստանի Հանրապետու թյ ան Վարչ ապետի Որոշու մ 02/24.11/11381-14 2014 թվականի N -Ա «Շրջակա միջավայ րի վրա ազդեցու թյ ան գնահատման և փորձաքննու թյ ան մասին» Հայ աստանի Հանրապետու թյ ան օրենքի կիրարկու մն ապահովող միջոցառու մների ցանկը հաստատել ու մասին» ՀՀ վարչ ապետի որոշման նախագիծը: (The Project on the decision # 02/24.11/11381-14 of the Premier Minsiter of the Republic of Armenia Confirming the List of Measures on Ensuring the Implementation of the RA EIA Law of 2014)* (Ministry of Nature Protection 2014).

[242] To the attempt to amend this Law, the Parliament of the Republic of Armenia gave its consent on amendments after first reading (December 2011). Then the Law had been submitted to the President of the Republic for his signature. The latter has sent it back to the parliament for further corrections and amendments taking into account the objections

both texts are the assigned timing and dates for the implementation of the EIA process. The secondary legislation will still play a great role even after amending the law and the environmental governance will be carried on based on different decrees made by different authorities in the process of decision-making. The preliminary approach of law making by the RA government intended to create an environmental protection policy as it is in the National Environmental Policy Act in the USA; however, the attempt resulted neither policymaking nor a well drafted law making in the field. 'Currently, the law-making process appears to be focused more on preparing and adopting legislation, than on open-ended policy and strategy discussions that would also contemplate alternative, non-legislative solutions to problems. Distinct policy development stages in the legislative process could be more clearly defined.'[243]

The RA Laws on EIA do not provide the strict enforcement and compliance requirements. As it is clear from Ms. Victoria Ter-Nikoghosyan, from the beginning of legislative drafting, a separate law scheduled the enforcement procedure of the implementation of the Law and a special body of enforcement.[244]

> The Ministry on Environmental Protection and Mineral Resources now oversees almost all pertaining environmental fields. Assembling all institutions under one umbrella this a taking step toward institution integrated pollution prevention and control. This structure will facilitate integration pollution control across environmental media and fields. But reforms at the legislative and administrative levels without parallel capacity building are not enough to ensure proper functioning of institutions in changed circumstances.[245]

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of the public. A small step towards public voice consideration had been done but there is a need to do a lot still.

[243] OSCE Office for Democratic Institutions and Human Rights, *Assessment of the Legislative Process in the Republic of Armenia*, (n43)6.

[244] Ter-Nikoghosyan, 'Development and Enforcement of New Armenian Environmental Protection Legislation: Problems and Solutions'(n151).

[245] Ibid, 11.

The law discussed above gives no instructions on judicial reviews, legal standing and disputes related to the conflicts that could be generated in the process of decision-making. The disputes between authorized state body and the developer are referred in the instrument, but provision is vague as no other details relevant to the disputes are referred to.[246] It is clear that in the process of legislation making the government was planning to establish courts dealing with environmental disputes as it is explained in the speech of Ter-Nikoghosyan during the Fourth International Conference on Environmental Compliance and Enforcement.[247]

Since then the lack of professional approach both the environmental governance and law-making process is an issue in the country.[248] Existing multiple legal acts in environmental protection area are simply drafted and adopted without any guidelines enclosed to either of them. The RA EIA Law of 2014 differs slightly from the other laws adopted previously as the concerned public, NGOs, active environmentalists, independent legislative drafters, representatives of international agencies and other specialists were involved in the law making process.

The following chapter analysis the laws in comparison with the Aarhus Convention which Armenia has been a Party since 2001.

[246] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.21.

[247] Ter-Nikoghosyan, 'Development and Enforcement of New Armenian Environmental Protection Legislation: Problems and Solutions'(n).

[248] OSCE Office for Democratic Institutions and Human Rights, *Assessment of the Legislative Process in the Republic of Armenia*(n43).

Chapter 3: Critical Analysis on Environmental Impact Assessment Law of the Republic of Armenia

3.1. Introduction: The Importance of the Environmental Impact Assessment Law in the Process of Environmental Governance

Now, after being acquainted with the Environmental Impact Assessment Law of the Republic of Armenia in previous chapter, it is necessary to clarify why we should have law and what role does it have in the process of the environmental governance? What benchmarks are designed for this law in the developed part of the world? Whether the existing legislation in Armenia complies with the requirements of international law and has chances to become a strong enforcement mechanism in the reasonable consumption of natural resources in the country?

The pedestals of critical analysis in this thesis and in this chapter in particular is the evidence of approximately 25 years of existing law in Armenia and the current situation of country's ecological and environmental problems.[249] Deforestation is major threat to the country which is caused by the irresponsible consumption of natural resources. 'Armenia is facing the worst ecological threat in its history. Over 750,000 cubic meters of forest coverage are being cut annually. At the current rate of deforestation, Armenia faces the probability of turning into a barren desert within 50 years.'[250]

One of the important steps to be taken towards eliminating the threat is the strong legislation with flexible implementation and enforcement mechanisms. As we could see in the previous chapter, the current and previous governments of Armenia strive to find common ground between law making, enforcing and implementation of business projects. It took the

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[249] Diana Piloyan Boudjikanian, 'Armenian Independence and Deforestation' <http://www1.american.edu/ted/ice/armenia-forest.htm>Armenia Tree Project, 'The Problem' (*Armenia Tree Project,* 2015) <http://www.armeniatree.org/thethreat/problem.htm> accessed 11/03/2015.

[250] Armenia Tree Project, 'The Problem'(n246).

RA governments a long time to accomplish the legislative process on environmental protection field. The first independent approach to make the environmental protection legislation started in early 1990s; the Administrative Court was founded in 2008. The results of the World Health Organization on cancer rates in the country are very distressing. Armenia ranks fifth or sixth in the world with pancreas cancer, lung cancer and others forms of cancer[251]

The health and environmental problems occur in Armenia not only because of unreasonable mining and tailing issues but also because of underdeveloped health care as well as the low-income economy. The WHO calculates the environmental burden of disease in Armenia as 17%.[252] The agricultural activities,[253] farming, hydro power plant operations, waste management issues, industrial tails, damages of green areas, increase in the number of cars and other industrial and urban pollutions cause serious harm to the human health and environment in Armenia.[254] Having too many threats on healthy life in the country the governance is supposed to be on the high level of control with a profound management. It is believed that the economy can be improved by making well drafted laws and regulations that have strong enforcement mechanisms and sustainable implementation. Especially if the mining is considered one of the long-term goals by the RA government: 'Armenia's Strategic Plan for Long-Term Development 2012–2025 sets the country's development priorities. Mining is identified as a key priority for Armenia, and the plan details the need for economic policies for the sector more specifically'[255] there is a need to produce proper regulations in this field.

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[251] World Life Expectancy, 'World Health Rankings ' (*World Life Expectancy,* 2011) <http://www.worldlifeexpectancy.com/armenia-pancreas-cancer> accessed 17/03/2015.

[252] World Health Organisation, *Country profiles of Environmental Burden of Disease* (Public Health and the Environment, Geneva, 2009).

[253] EcoLur, 'Most Women in Armenian Villages Harmed with Pests' (*Ecolur New Inofmrational Policy in Ecology,* 06/03/2015) <http://ecolur.org/en/news/sos/most-women-in-armenian-villages-harmed-with-pests/7092/> accessed 11/03/2015.

[254] Armenia Tree Project, 'The Problem'(n246).

[255] World Bank, *Armenia.First Thematic Paper: Sustainable and Strategic Decision Making in Mining* (The World Bank, 1818 H St NW, Washington, DC 20433, USA; fax: (202) 522-2422; e-mail: pubrights@worldbankorg, 2014).

There has been adopted a law on Environmental Oversight in Armenia since 2005[256] that regulates the control and enforcement of the field; however, the results in reality are not satisfying yet. In reality, the enforcement process in Armenia relies mainly on the existing legislation and the implementing bodies,[257] but the concerned parties rarely take the disputes to the court. The role of the court and the issue of standing have to be improved in the country accordingly. It is believed that the enforcement mechanisms could be strongly enforced if they are clearly addressed to the Environmental Impact Assessment Law, which plays a significant role in implementing, controlling and managing all types of development projects in all fields of economy. The law needs not only to be well draft and polished, but also well implemented and enforced. The EIA process is beneficial for all parties; the developer, the government and the public. It provides the firm ground of sustainable development and keeps the circle of process implementation always active upon engaging variety of participants and stakeholders in decision-making process. Its proper implementation saves time and money for the developer, the authorities and public by preventing the environment from significant harm and the development project from court disputes and development of challenging activities, becomes an example for further similar development projects and saves time in decision-making process for engaged parties.[258] What are the benchmarks for a good EIA? What criteria should an EIA law meet to be applicable in the field and carry on the good governance for the country? Next subtitle of this Chapter answers these questions.

3.2. Benchmarks for an Effective EIA in the Western Jurisdictions

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[256] Հայաստանի Հանրապետության Օրենքը Բնապահպանական Վերահսկողության Մասին (The Law on Envrionmental Oversight of the Republic of Armenia).

[257] Ministry of Nature Protection of the Republic of Armenia, 'State Environmental Inspectorate' (*Ministry of the Nature Protection of the Republic of Armenia,* 2015) <http://www.mnp.am/?p=271> accessed 12/03/2015.

[258] United States Environmental Protection Agency (ed), *Principles of Envrionmental Impact Assessment: An International Training Course* (1998 edn, United States Environmental Protection Agency 1998).

This study revealed that there are well drafted legal instruments in the developed part of the world that have been composed based on the national policy requirements, long term experience, errors and sustainable continuous practice. The examples can be EU EIA Directive[259] and the USA NEPA.[260] In the long term process of implementation these documents have produced firm approach towards the effective environmental impact assessment process and become basis for international law respectively. The EU EIA Directive has been harmonized with the requirements of Aarhus and Espoo Conventions and seeks the proper implementation of requirements among member countries. [261] To address the tested and experienced benchmarks for the effective EIA process these documents are considered appropriate ones for this particular research work. The detailed comparative discussion on these instruments is presented in Chapter 5 of this thesis.

Both the EU EIA Directive and USA NEPA have common benchmarks established for the EIA process: screening, scoping, strategic environmental assessment, mitigation measures, transboundary assessment, monitoring, auditing, transparency (public awareness and participation), clearly and accurately identified thresholds, defining the significant and non-significant impacts and a very important tool of the process is the Environmental Impact Statement. International law has also generated benchmarks and provides directions in the treaties and conventions to non-EU countries striving to improve their legislations and implementation compliance. Aarhus Convention, for example, has three pillars which are designed to impose the principle of transparency on the participant countries and governments: 'Principle of access to information, principle of public awareness and the third one access to justice.'[262] The European Union has

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[259] European Comission, 'Amending Directive 2011/92/EU on the assessment of the effects of certain public and private provects on the environment'(n61).

[260] National Environmental Policy Act of 1969.

[261] European Comission: Environment, *Environmental Impact Assessment - EIA*, 27/04/2015).

[262] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999).

become the party of the Aarhus Convention since May 2005 and made amendments in the environmental directives accordingly to comply with the transparency requirements of the Convention.[263] Prior to that, in 2003, EC adopted two directives based on two pillars of Aarhus Convention and made a requirement for EU member states to apply them in their national legislation at the beginning of 2005[264]. Hence, EC considers the Aarhus Convention as a 'part of EU Legal Order.'[265] In 2001, the EC prepared guidelines for the member and non-member states on three procedural principles in EC EIA Directive[266]. In addition to all these, EC provides case law analysis and makes the whole EIA procedure relatively transparent.[267]

Another important international law instrument affirming the role of the EIA in decision-making process is the Espoo Convention designed to prevent the environmental harm in transboundary context. [268] The Convention considers the same benchmarks for an effective EIA process and imposes the obligations on participatory states to comply with the requirements.

Based on the declared benchmarks the professionals of the field explained the meanings of benchmarks trying to simplify the implementation of the EIA process. International Association of Impact Assessment (IAIA) has developed two tiers of best EIA principles which are called 'basic and operating'. [269] Based on basic principles of IAIA the EIA has to be:

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[263] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC ,OJ L 41/ 26.

[264] Ibid.

[265]European Commission, *Environmental Impact Assessment of Projects:Rulings of the Court of Justice* (2013), 12.

[266] Environmental Resources Management, *Guidance on EIA Screening* (European Commission, 2001),Environmental Resources Management, *Guidance on EIA Scoping* (European Commission, 2001),European Comission, *Guidance on EIA EIS Review* (Environmental Resources Management, 2001).

[267] European Commission, *Environmental Impact Assessment of Projects:Rulings of the Court of Justice*

[268]Convention on Environmental Impact Assessment in Transboundary Context, United Nations 1991(Espoo Convention), C104, 24/04/1992, p. 7.

[269]Pierre Senécal and others, *Principles of Environmental Impact Assessment Best Practice* (International Association for Impact Assessment 1999) .

'purposive, rigorous, practical, relevant, cost-effective, efficient, focused, and adaptive, participative, interdisciplinary, credible, integrated, transparent, and systematic.'[270]

Operating principles are 'screening, scoping, examination alternatives, impact analysis, mitigation and impact management, evaluation of significance, preparation of impact statement (EIS) or report, review of EIS, decision-making, follow up.'[271]

These principles identify the effective EIA and present the criteria on evaluating the existing national and international legislations against it. The EU and International legal instruments also draw attention of participating states towards special terms that benchmark the effective EIA.[272] The Operating Principles of IAIA are most relevant to the discussion of this study as they are more applicable to the legal background of impact assessment. In addition, they go in parallel with the main principles of EC EIA Directive that are grounded on three main procedural concepts; Screening, Scoping and EIS.[273] It also indicates the importance to reveal significant effects of public and private projects on the environment prior to their implementation. Therefore, the RA EIA Law has to be assessed critically against benchmarks widely recognized in the international law. As the Aarhus and Espoo Conventions play significant role in environmental governance in Armenia, it is considered appropriate to analyze the compliance of the RA EIA Law against the required benchmarks of the Conventions. Following subtitle of this chapter refers to more details on Aarhus Convention transparent environmental governance requirements and on Armenia's responsibilities after signing the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).[274] Also, the Espoo

[270]Ibid .

[271] Ibid.

[272] Chapter 5.

[273] Environmental Resources Management, *Guidance on EIA Scoping*Environmental Resources Management, *Guidance on EIA Screening* (n263).

[274] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999).

Convention will be discussed in the process of analyzing the relevant articles of the RA EIA laws on transboundary impact assessment.

3.3. The International Law Requirements: How the RA EIA Law Strives to comply with these requirements?

Humanity in different parts of the Earth strives to establish sustainability both in operative and legislative activities of existing states locally and internationally. It is believed that sustainability in decision-making processes of governments will secure the reasonable consumption of natural resources, which in its turn will prevent the ecological disasters, human health and prolong the existence of the planet Earth. Those societies that implement the reasonable environmental decision-making and good governance can achieve the desired goals more or less, accordingly they strive to share their experiences with less developed and less sustainable societies in the world. Armenia as a state of transitional economic system was one of first countries that willingly ratified many conventions related to the environmental protection and co-operation from the beginning of its independence from the Soviet Union in 1991. In 2000, the Committee of Environmental Policy of the Economic Commission for Europe of the United Nations reported; 'Between 1993 and 1999 Armenia ratified nine environmental conventions. It is unclear how these were introduced into national legislation after their ratification.'[275] This chapter refers only two of the Conventions signed by Armenia so far. One of them is Aarhus Convention and the other one is the Espoo Convention together with Kyiv Protocol, considering that both of Conventions relate to the environmental impact assessment process performance of the country.

In 2001, Armenia signed the Aarhus Convention taking the obligation to harmonize its domestic legislation and make it more responsible, transparent and democratic. The United Nations Aarhus Convention has been signed by

[275] Economic Commission For Europe Committee on Environmental Policy, *Environmental Performance Reviews Armenia*,1.

many participating states.[276] It highlights the importance of transparency in environmental decision-making process and the states agreed with its requirements while ratifying it willingly.

> The subject of the Aarhus Convention goes to the heart of the relationship between people and governments. The Convention is not only an environmental agreement; it is also a Convention about government accountability, transparency, and responsiveness.[277]

The Aarhus Convention with its three pillars signifies the value of public participation in environmental decision-making and transparency of environmental governance. It is referred as a 'new kind of environmental convention[278] in the UN implementation guidelines. Indeed, this is a unique instrument of its kind as it strives to involve wider public to the decision-making process and directly protects the environmental rights of populations in states. It entitles the people to control the environmental decision-making process. Guidelines provide information on the list of international legal instruments that have their impact on creating Aarhus Convention and have present a 'long road'[279] towards creation of a democratic legal instrument in the world. Different international legal instruments for environmental conservation purposes have been created since 1996. Among them are Charters, Conventions, and EU directives.[280] For non-EU member states, these legal instruments are not binding. The non-EU member states should demonstrate well-developed legal will in implementing the requirements by the international law in national jurisdictions.

The Aarhus Convention clearly addresses human rights protection in environmental decision-making besides introducing of three main pillars for the party states. It calls on implementing possible level of transparency by

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[276] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999).

[277] United Nations Economic Commission for Europe, *The Aarhus Convention: An Implimentation Guide* (United Nations Economic Commission for Europe, 2000) , 1.

[278] Ibid.

[279] Ibid.

[280] Ibid 2-3.

the governments for the sake of populations to enjoy healthy life.[281] The preamble of the Aarhus Convention lists all possible expectations from the states in environmental decision-making process and in the meantime it recognises the difficulties and challenges that party states might face in the implementation of democratic requirements of the Convention. 'In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.'*[282]*

After presenting the objectives of the convention in Article 1, the instrument provides detailed definitions on the terms used in it.[283] Article 3 of the Convention is general provisions on responsibilities of party states:

> …The general provisions make it clear that the Convention is a floor, not a ceiling. Parties may introduce measures for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by the Convention. The Convention also makes it clear that existing rights and protection beyond those of the Convention may be preserved. Finally, the general provisions call for the promotion of the Aarhus principles in international decision-making, processes and organizations.[284]

Articles 4 to Article 9 the Convention refers to '…access to information, public participation in decision-making, and access to justice in environmental matters' [285] main principles of the instrument which are implicitly addressed in the objectives of the document. Final provisions of

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[281] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999).

[282] Ibid, Art.1.

[283] Ibid, Art. 2, this is discussed in this chapter comparing with the terms of the RA EIA law.

[284] United Nations Economic Commission for Europe, *The Aarhus Convention: An Implimentation Guide*, (n277) 17.

[285] n282.

the Convention provide administration part of it such as meetings of the parties, review of compliance, withdrawal.[286] By ratifying the Aarhus Convention on 1st of August 2001 Armenia became a party to it. It took the responsibility to comply with the requirements of the Convention and harmonize existing national legislation to meet the international standards.[287]

> 'The ratification of the Convention places serious responsibility on the Armenian Government and stipulates public access to the control of the environment", said Shavarsh Kocharian, the Head of the Parliamentary Standing Commission for Science, Education, Culture, Youth Affairs and Sport. 'From now on, any Armenian citizen has the right to prove by law that certain legislative acts are environmentally adverse.'[288]

Aarhus Convention is based on three main pillars as it is stated above; access to information, public participation and access to justice[289]. Armenia was one of the first 16 states that signed the Convention.[290] The Aarhus centres were launched in all regions of Armenia aiming to promulgate environmental awareness on these three pillars among the population in Armenia.[291] The public participation factor in environmental decision-making is theoretically well designed in the body of RA EIA Law of 1995 and its steps are shown in Figure 2, chapter 2 of this thesis.[292] Evidently, Armenia had to comply with the requirements of the Convention gradually

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[286] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999)Articles 10-22.United Nations Economic Commission for Europe, *The Aarhus Convention: An Implimentation Guide* 18.

[287] Organization for Security and Cooperation in Europe, 'OSCE Welcomes Entry into force of Aarhus Convention in Armenia' (*Organization for Security and Cooperation in Europe,* 2001) <http://www.osce.org/yerevan/53952> accessed 12/05/2015.

[288] Ibid.

[289] United Nations Economic Commission for Europe, *The Aarhus Convention: An Implimentation Guide*, (n277) 18-19.

[290] Ministry of Nature Protection in Armenia, 'Participation of the Republic of Armenia in the International Environmental Agreements '

[291] Armenian Aarhus Centers, 'Armenian Aarhus Centers' (*The www.aarhus.am website has been created and currently is maintained with the financial support of the OSCE Office in Yerevan* 2015) <http://aarhus.am/?page_id=752&lang=en> accessed 23/04/2013.

[292] Chapter 2.

and took responsibilities to develop regulations and enforcement mechanisms in access to information, public participation and access to justice to meet the requirements as a party state of the Convention.

Since 2001, there have been many changes and developments in Armenia in terms of three pillars provided by the Aarhus Convention. However access to information,[293] public participation and access to justice[294] the three pillars of the Convention have still a long way to go to achieve sustainability in the country. The second pillar; public participation develops rapidly as young generations are more flexible in understanding and recognizing their role in Armenian developing society. They witness current trends in environmental management and justice in Armenia and are more aware of environmental conservation issues in the country.[295] The compliance means reflection of the requirements in the domestic law as well. How is it reflected in the RA EIA Law of 1995?

The RA EIA Law contains vague and imprecise terminology, which is different than the terminology used in international law. It is believed that the problem of clear understanding of terms used in International Environmental Law creates issues in precise utilisation of the international requirements, which influences the proper implementation, and enforcement of the law. The environmental activists and NGOs in Armenia firmly believe that Armenian environmental authorities violate the requirements of Aarhus Convention in most cases of decision-making.[296] They continue to allege against decisions made by the RA government in giving consent to environmental development projects without conduction proper public hearings. Without prior notification on upcoming developments, the access to information is mostly prohibited as almost all letters requesting information on development projects are rejected by the authorities and the

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[293]United Nations Development Project, *Environmental Governance Sourcebook* (UNDP Regional Bureau for Europe and Commenwealth of Independent States 2003)102 .

[294] Gor Movsisian, 'Is a Closed System of Legal Standing Always Safe for the Environment? The Case of Armenia' (2013) 3 RCDA 1.

[295] Ishkanian and others, *Civil Society, Development And Environmental Activism in Armenia*(n154).

[296] Transparency International Anti-Corruption Center and others, *Communication to the Aarhus Convention Compliance Committee* (Teghut Communication AC, 2009).

procedure on access to justice is not implemented appropriately. A group of representatives from different NGOs in Armenia prepared a Communication to the Aarhus Convention Compliance Committee in 2009 presenting the reality in Armenia.[297] This concern was raised based on Teghut mining project in Armenia.[298] Because of filing a lawsuit against illegal decision-making, the environmental activists have alleged that there were violations of principles of Aarhus Convention. Principle of public participation in early stages (Art. 6(2)); principle of ensuring effective public participation (Art. 6(4)); principle, according to which decisions have to reflect and consider results of public participation (Art. 6(8)); principle, according to which the public has to be immediately notified about decisions made (Art. 6(9)); principle, according to which in case of update of operating conditions the provisions of 2-9 of Art. 6 of the Convention have been applied (Art. 6(10)); principle of access to justice in environmental matters (Art. 9(2)). This development project has been granted a consent by violating not only the Aarhus Convention, but also the RA EIA Law and Constitution. The decisions made in RA courts are vague.[299] The Courts in Armenia ruled that the NGOs have no right for standing in the case of Teghut Issue. The activists presented Court decision to the Aarhus Compliance Committee that confirmed the breach of the requirement of the Convention by the RA Courts.

> *Endorses* the finding of the Committee with regard to communication ACCC/C/2011/62 that, while the wording of the legislation of the Party concerned does not run counter to article 9, paragraph 2, of the Convention, the decision of the Court of Cassation of 1 April 2011, by declaring that the environmental NGO did not have standing, **ECE/MP. PP/2014/L.103** failed to meet the standards set by the Convention. Thus, the Party concerned fails to

[297] Ibid.

[298] Armenian Environmental Network, 'Teghut Mine in Armenia – An Ecological and Human Rights Disaster' <http://www.armenia-environment.org/> accessed 21/02/2013. This is one of discussed cases in this thesis.

[299] *Judgment of the Administrative Court of the Republic of Armenia Administrative case VD/3275/05/09 of 2011* (The Civil and Administrative Chamber of the Cassation Court of the Republic of Armenia).

> comply with article 9, paragraph 2, of the Convention.[300]

The Teghut Mining development project obtained the consent of the RA government under the RA EIA Law of 1995 in 2007. The public (NGOs in this case) alleged that the consent was granted with violations of the RA EIA Law; however, their complaints in court received the feedback of NGOs not being eligible for standing in the court. The concern of NGOs was related not only to the local environmental and ecological issues, but also to the transboundary issues that this particular development project could have significant impact on. It is believed that the critical analysis of the RA EIA Law of 1995 against the requirements of Aarhus and Espoo Conventions will reveal the compliance and shortcomings of the existing RA EIA Law in this subtitle. The examination of the law including the cases that require the implementation and enforcement of legal provisions is a way to provide the real picture of the legal enforcement mechanisms and implementation in Arm

3.3.1. The RA EIA Law Compliance with Aarhus Convention requirements

The integration with the international community has become a priority in Armenia since the first days of independence in 1990s. As stated earlier in Chapter 2[301] of this dissertation the RA Constitution provides privileges to the international legislation ratified by Armenia since 1995. Article 21 of the RA Law on Legal Acts affirms the role of international treaties in the RA legislation. Point 2 of article highlights in particular:

> Generally, recognized principles and norms of international law, as well as international treaties of the Republic of Armenia are a constituent part of the

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[300] United Nations Economic and Social Council, *Draft decision V/9a concerning compliance by Armenia with its obligations under the Convention* (Economic Commission for Europe Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental MattersFifth session Maastricht, the Netherlands, 30 June and 1 July 2014 Item 5 (b) of the provisional agenda Procedures and mechanisms facilitating the implementation, 2014).

[301] Chapter 2 (n143).

> legal system of the Republic of Armenia. Laws and other legal acts of the Republic of Armenia must comply with the general norms and principles of international law.[302]

Prior to the application of the international law, the domestic law has to comply with the requirements of the Constitution. 'Everyone shall have the right to live in an environment favourable to his/her health and well-being and shall be obliged to protect and improve it in person or jointly with others. The public officials shall be held responsible for hiding information on environmental issues and denying access to it.'[303] However, the detailed research of the RA EIA Law in comparison to the International Treaties ratified by Armenia revealed failures of legal drafters and government officials to comply with the national and international requirements. The text of the law never refers to the international obligations and responsibilities of the country. No reference is made to either the Arhus Convention or Espoo Convention, though the text of the RA EIA Law refers EIA, SEA and Transboundary EIA processes in the same text under the different articles. The three pillars of Aarhus Convention in particular are missing in the text of the RA EIA Law and no reference to the Convention is made. The Transboundary issues are highlighted in provisions without any reference to the Espoo Convention.[304] The SEA is required without referencing the Kyiv protocol. [305]

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[302] Law of the Republic of Armenia on Legal Acts Adopted on 3 April 2002 ,ՀՕ320, Art.21 (2)

[303] The Constitution of the Republic of Armenia (With Amendments) Adopted by the Referendum of 27 November, 2005,Art.33.2

[304] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.14, (n215),Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Arts.22-25(n238).

[305] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.15,Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊՏ

This research revealed that development projects have been conducted by the authorities without a good notification time to public and prior consultation with public before the start of projects. This fact is discovered based on development projects announcements and few projects' environmental impact assessment conclusions published on the web site of the Ministry of Nature Protection in Armenia[306] as well as based on the fieldwork results where participants confirm that they had been informed after the start of the project. Moreover, the behavior of developers, such as Lidian International (via Geoteam as their representative) in Amulsar project mining proves this as the research found out that investments at the site were made before the presentation of their development project to the public.[307] They started their social improvement programs in impacted communities before the development project has been announced and approved by the RA government.[308] It is inferred, that the developer could know the outcome of the mining project beforehand and assumed that the permission would be granted for sure. Therefore, the developer started social projects on site to gain the favour of impacted community. In terms of social wellness, it is much beneficial for the community to get for example kindergartens, community club and other places of social gathering constructed for them as the local community lacks of financial means to do it on their own means. The difference between implementing a social project and conducting usual public hearing is evident as people living in socially poor conditions are more interested in social developments than in presented projects, which are new and unknown in their living area. They would prefer to get something useful for the community; however, never

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2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636),Art.14.

[306] Ministry of Nature Protection in Armenia, 'Expertise' (*Ministry of Nature Protection in Armenia,* 2015) <http://www.mnp.am/?p=200> accessed 24/03/2015. The English version of the web site contains mainly the titles of development projects. The details on EIA assessment and documentation are in Armenian.

[307] Geoteam, 'Social Development Programmes in 2012' Lydian International <http://www.geoteam.am/images/amulsar/Social_development_English.pdf> accessed 23/02/2015

[308] The fieldwork conducted in the frames of this research discussed in Chapter 4 of this thesis gives more details on these issues.

checking or controlling the 'strings attached' aids. People, living in poverty are mostly interested in material wealth, which plays an important role in manipulating and implementing required business projects on sites by project developers.

Analysis of the law in previous chapter presents the requirement of public participation at several stages in the decision-making process in Armenia. In particular, Articles 6, 8, 10 and 11 in the RA EIA Law of 1995[309] and Article 26 of the RA EIA Law of 2014[310] require public participation. The main difference in the amended law is that Article 26 of the Law gives some details on the methods of disseminating the information about development projects to the public. In particular, the point 3 of the Article gives what information has to be provided to the public in the text of the announcement of public hearings. 'The notification should include information about the developer, the summary of the baseline documents or the development project, the location of the development project, the location of the public hearings and where the information can be obtained, the conditions, timing of presenting remarks and suggestions and other information.'[311] This gives a small ground on access to information for public. Whereas, Chapter 4 of the Convention provides grounds on requesting information by the public and explains the responsibilities of party states.[312]

As in previous instrument, the new one has similar requirements on informing public and conducting the public discussions; however, there is no requirement on providing the information to public *upon request* and regulating or directing the public representatives in the process of raised disputes. The law in this context remains ambiguous.

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[309] Chapter 2, Fig 2.1,50.

[310] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԺՕ-110-Ն/ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636) Art.26.

[311] Ibid Point 3, Art.26. Translated by Gayane Atoyan

[312] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999)Art.4

Article 2 of RA EIA Law 1995 declares goals and principles of the Law among which there are points such as effective, reasonable and complex usage of natural resources, decision-making procedures based on protecting human rights in living in a healthy and favorable environment, and most of all assuring transparency in decision-making[313]. However, the development projects are still implemented in Armenia without prior publication of the intention or upcoming initiation.[314] The announcement on development projects in the web site of the Ministry gives only the date, place and the name of the project without any additional information of the proposed project.[315]

The several articles of the RA EIA Law of 1995 strive to present the decision-making procedure as transparent in Armenia by linking the whole assessment procedure with public participation and awareness activities.[316] However, some other researchers have found that: '…At the same time, several negative aspects should be mentioned. The Law on EIA does not provide the possibility for a public expertise, detailed procedure for public hearing, and the results of a public hearing are not binding.[317]

> …We have a law from 1995 that has not been working properly for various reasons but mainly

[313] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art. 2

[314] Hetq Investigative Journalists, 'Armenia's History Continues to be Destroyed' Hetq Investigative Journalists <http://hetq.am/eng/news/14972/armenias-history-continues-to-be-destroyed.html> accessed 17/03/2015 Gabriel Armas-Cardona, 'Out with the Old, in with the New' (*Human Rights Work in Yerevan,wordpress.com,* 19/06/2012) <http://humanrightsinyerevan.wordpress.com/2012/06/19/out-with-the-old-in-with-the-new/> accessed 17/03/2015

[315] Ministry of Nature Protection in Armenia, 'Participation of the Republic of Armenia in the International Environmental Agreements 'The announcements can be found in any page of the web site, at the bottom line together with other notifications in on very small area, written in a small font. www.mnp.am

[316] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Articles 6, 8,10,11.

[317] The Regional Environmental Center for Central and Eastern Europe, 'Doors to Democracy A Pan-European Assessment of Current Trends and Practices in Public Participation in Environmental Matters' The Regional Environmental Center for Central and Eastern Europe Ady Endre ut 9-11, 2000 Szentendre, Hungary <http://archive.rec.org/REC/Publications/PPDoors/EUROPE/PPDoorsEUROPE.pdf> accessed 14/03/2015.

> because of deficiencies in the law itself. Democratic principles like public participation, for example, have not been enforced. The project aims to address that failure, to improve the legal framework for environmental assessment and to also facilitate Armenia's compliance with its international obligations.[318]

There is no transparency in the process of constructing buildings or making decisions in environmental conservation field, in particular, through applying the provisions of this Law into practice.[319]The emerging cases in the country become useful tool in making critical analysis of the existing RA EIA Law of 1995 and other relevant law regulating environmental decision-making process of Armenian government.[320]

The RA Ministry of Nature Protection relies on the RA EIA Law upon environmental decision-making procedures since 1995. Since then, the governing body acknowledges the deficiency of the existing laws and regulations and strives to make changes or adopt new laws and regulations of the field. They presented a policy in Second National Environmental Action Program (NEAP) in drafting and presenting new legal acts that will amend the existing environmental laws as the RA government strives to 'ensure the process of approximating environmental legislation of the Republic of Armenia with the European Union Legislation.' [321] The amendment of existing law and adopting it by 2010 was one of the requirements of the Aarhus Compliance Committee. The Ministry of Nature Protection of the Republic of Armenia considers the RA EIA Law of 1995

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[318] Onnik Krikorian, 'An Interview with Sona Ayvazyan' <http://oneworld.am/journalism/interviews/sona_avayzyan_0002.html> accessed 26/03/2013.

[319] Transparency International Anti-Corruption Center, *Opinion on Manifestations of Corruption During Construction of Yerevan City Center* (Hetq Investigative Journalists, 2012) The Transparency International challenges governmental decisions and publicizes illegal conduct of governing authorities in Armenia. The manifestation refers to the construction in the center of the capital city of Armenia that had been decided 'behind the closed doors by few officials.

[320] Transparency International, 'Deposit Base in Armenia' (*Transparency International,* 2013) <http://transparency.am/assets/mines> accessed 23/04/2013.

[321] Ministry of Nature Protection of the Republic of Armenia, *The Second National Environmental Action Programme of the Republic of Armenia* (Lusabats Publidhing House, 2008) 17.

vague and addresses to its defective points by referring to Environmental Policy and Legal Regulations in Armenia, it says in particular;

> …Article 6, the entrepreneur, who is a legal or physical entity, is required to present documents necessary for expertise, which description and contained information is defined by the RA Government, whereas the Law should have envisaged the descriptions of the required documents and the criteria for the contained information…. the RA Law on the Expertise of Environmental Impact [the same RA EIA Law matter of translation] contains several similar problems. [322]

They also refer to the 'Contradictions, imperfections or absence of enforcement mechanisms for certain provisions envisaged under legal acts regulating environmental sphere.'[323]

Among numerous actions in Action Plan 2008 the first place is allocated to the RA EIA Law of 1995 that was supposed to be changed by the year 2010. The amendment proposal was presented by the end of 2011 and was accepted by the RA Parliament in two readings. [324] However it wasn't ratified by the RA President Serzh Sargsyan.[325] The president considered that last amendment of the RA EIA Law does not provide solution on problems existing in environmental, social and individual spheres of country and there is no feedback on demands of society envisaged in new amendment of the RA EIA Law.[326]

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[322] Ibid 16.

[323] Ibid.

[324] Հայաստանի Հանրապետության Օրենքը «Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննության Մասին» Հայաստանի Հանրապետության Օրենքում Փոփոխություններ Եվ Լրացումներ Կատարելու Մասին(On Ammedning the Law of Environmental Impact Expertise of the Republic of Armenia) 2011 , 'Armenian Parliament amends Law "On environmental impact assessment"' ArmInfo Independent News Agency <http://www.arminfo.info/english/eco/article/06-02-2012/04-27-00> accessed 10/04/2013.

[325] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995.

[326] Aida Iskoyan, *Progress report*, 2013) translation form Armenian into English done by me.

Recently the annual report made by the Ombudsman of the Republic of Armenia about the progress in the operations of the Ministry of Nature Protection in Armenia has been announced and one of the points of concern was the RA EIA Law of 1995 that lacked of appropriate assessment and enforcement mechanisms. [327] As the research proposal of this thesis considered the public participation to be one of the enforcement mechanisms in environmental decision-making process, the comparison of requirements of the RA EIA Law with Aarhus Convention becomes necessary.

Article 6 of the RA EIA Law of 1995 requires the procedure of notification of public for the development project. The Law presents requirements for participating parties and their obligations as a whole, but it lacks exact and accurate requirements on implementation of the procedure in practice and links the Law with other governmental regulations (Governmental Orders/ secondary legislation). These secondary laws are issued based on generated demands in the field. For example, the Governmental Order #345 October 30, 1996 provides the definition 'state authorized body' entitled to conduct environmental impact assessment.[328] Order #386 issued on December 20, 1996 "Regulations for issuing certificates authorizing specialized expertise of environmental impact" as stated in 'Assessment of Effectiveness of Environmental Impact Assessment (EIA) System in Armenia.'[329]

The 'Assessment of Effectiveness of Environmental Impact Assessment' research made by Caucasus Environmental NGO networks finds that the

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[327] Human Rights Defender of the Republic of Armenia, ' Human Rights Protetcion in the Field of Environmental Conservation ' The Report of Ombudsman 2012 <http://www.ombuds.am/article/943> accessed 10/04/2013

[328] Chapter 2 of this research work provides details on this Government Order, (n220)220

[329] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia*, (n27) pp.13-14,Government of the Republic of Armenia, 'Հայաստանի Հանրապետության Կառավարություն Ո ր ո շ ու մ 20 Դեկտեմբերի 1996 Թ. N 386 Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննության Մասնագիտական Իրավասության Հավաստագիր Տալու Կարգը Հաստատելու Մասին (Order #386 issued on December 20, 1996 "Regulations for issuing certificates authorizing specialized expertise of environmental impact" as stated in 'Assessment of Effectiveness of Environmental Impact Assessment (EIA) System in Armenia)' (*www.arlis.am* 20/12/1996) <http://www.arlis.am/DocumentView.aspx?DocID=5974> accessed 28/05/2015

Order of the Government # 193; March 30, 1999 on 'Limits of the scale of proposed activities subject to expertise of environment impact' defines limits of the scale of proposed activities subject to environmental impact by sectors, in accordance with the second paragraph of Article 4 of the Law on EIA. Article 4 stipulates the list of activities, falling into the group of activities for which Environmental Expertise is mandatory, but it lacks in elaborating their limit scales. A Governmental Order defines the latter.[330] This order contains a short list of intended activities listing the fields of development projects without addressing the reasons why should these particular limits apply. Neither the RA EIA Law of 1995 nor the government decision refer to the significant or likely significant impact of development projects. However, the law is considered complete only in case a specific governmental order or decree is issued to regulate any of its requirements or provisions. This example demonstrates that the government orders not always fill in the gap in the law. The other examples show that the institutions (authorized body) regulating the process of environmental decision-making are defined by the Governmental Order that is the Ministry of Nature Protection of the Republic of Armenia. The authorized body assigns another executive body that implements the environmental impact assessment/expertise in practice and acts under its regulation. It is called 'Environmental Expertise' State Non Commercial Organization (SNCO).[331] The CENN has researched that the RA EIA Law of 1995 does not provide accurate instructions on conducting the EIA and in most cases, the 'Environmental Expertise' SNCO operate in accordance with the Order of Minister of Nature Protection, which actually substitutes the Law.[332]

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[330] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia*,14, Government of the Republic of Armenia, *Հայաստանի Հանրապետության Կառավարություն Ո ր ո շ ու մ 30 Մարտի 1999 Թվականի N 193 Քաղ. Երևան Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննության Ենթակա Նախատեսվող Գործունեությունների Սահմանային Չափերի Մասին (#193 Government Order on Limits of the Scale of Proposed Activities Subject to Expertise of Environmental Impact of 30/03/1999)* (www.arlis.am 1999), see Appendix 1.

[331] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia* (n22) 22.

[332] Ibid 30.

There are more recent Governmental Orders issued to complete the RA EIA Law of 1995, which contradict the requirements of the Law at some points. The 'Assessment of Effectiveness of Environmental Impact Assessment (EIA) System in Armenia' the Government Orders # 96 dated 2002 [333] and # 608 dated 2003 [334] require mandatory comprehensive environmental expertise by the party that places the project order (development project). These orders contradict the RA EIA Law of 1995 in assigning the developer to conduct the environmental impact expertise and obtain a license. Order #96 was suspended in 2010 and is no more active, it has been replaced by the new order #711 in 2010.[335]

All other Laws (Land Code, Water Code, Law on Energy, Law on Lake Sevan, The Law on Safe use of Nuclear Energy for Peaceful Purposes, Law on Aviation, Law on Urban Development, etc.) in Armenia include provisions on environmental protection and operate based on the separate massive amount of Governmental Orders which change rapidly based on the requirements of governing bodies.

> ...during the implementation of expertise and formulation of the conclusion, the conclusion of ecological expertise should be taken into account as defined by the law. Very often, however, urban development officials and specialists do not give adequate consideration to this requirement assuming

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[333] Government of the Republic of Armenia, *Հայաստանի Հանրապետության Կառավարություն Ո ր ո շ ու մ 2 փետրվարի 2002 թվականի N 96 քաղ. Երևան Քաղաքաշինական Փաստաթղթերի Փորձաքննության Կարգը Հաստատելու Մասին (#96 Government Order on Establishing Regulations of Urban Contsruction Document Assessment on 02/02/2002* (www.arlis.am 2002).

[334] Government of the Republic of Armenia, *Հայաստանի Հանրապետության Կառավարություն Ո ր ո շ ու մ 2 Մայիսի 2003 Թվականի N 608-Ն Կառուցապատման Նախագծի Մշակման, Փորձաքննության, Համաձայնեցման, Հաստատման Եվ Փոփոխման Կարգը Հաստատելու Մասին (# 608 Government Order on Establishing the Contsruction Development, Expertise, Agreement, Verification and Amendment Regulations of 02/05/2003)* (www.arlis.am 2003).

[335] Government of the Republic of Armenia, *Հայաստանի Հանրապետության Կառավարություն Ո ր ո շ ու Մ 6 Մայիսի 2010 Թվականի N 711-Ն Քաղաքաշինական Փաստաթղթերի Փորձաքննության Իրականացման Կարգը Հաստատելու Մասին (# 711 Order on Approval of the Planning Documents Examination Procedure of 06/05/2010)* (www.arlis.am 2010).

> that the ecological expertise conclusion should be issued during comprehensive expertise, which principally contradicts the Law and makes room for unnecessary disputes and causes difference in the ways the processes are conducted.[336]

In particular, Article 7 of the RA EIA Law of 1995 refers to the documentation that a developer has to submit as an application for the intended activity to the authorized body. This article speaks about the procedure of submission of documentation and its timing, but misses a point on listing which documents have to be submitted in particular. In addition, it says that the authorized body is entitled to require extra documentation on intended activity and still no accurate identification of them. As this step is considered the beginning of the EIA procedure where the authorized body makes screening and decides whether the EIA is needed or not, it is implicitly [337] clear that the initial application is made of technical documentation. Accordingly, the Law is silent about non-technical summary that a developer has to provide together with technical documentation.[338] There is no other law in the field of environmental governance in Armenia that requires non-technical summary together with the development project application whereas in the EU the non-technical summary is a mandatory requirement.[339] Article 8 of the Law contains provisions on publicizing the documentation and then Article 9 provides requirements expert conclusion regarding provided documentations.

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[336] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia*Page 18, in their research the Caucasus Environmental NGO Network refers to different types of Governmental Orders that regulate urban development sector in Armenia in particular and make contradictory decisions against RA EIA Law. The Orders can be Governmental, Ministerial and Parliamentary.

[337] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art. 7.

[338]Ibid .

[339] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 , Art.5.

Public hearings are referred in RA EIA Law; however, the practice shows that the voice of public is not always taken into consideration[340]. Almost all developments in the country are implemented without proper public hearings.[341] The web site of the RA Ministry of Nature Protection contains special division for announcements of upcoming public hearings every day but it is clear that an ordinary citizen will not be able to notice them easily upon visiting it.[342] The announcement text is written in a very lower part of the web site with small letters and is difficult to differentiate among many other announcements that are on the web site.[343]

Article 5 of the Aarhus Convention explains in details how the dissemination of environmental decision-making process has to be implemented. It provides point-by-point alternatives of making the public be aware of on the planned projects through 'practical arrangements'.[344] It requires making all explanatory materials available to the public regarding the announced project. '…Establishing and maintaining practical arrangements, such as: (i) Publicly accessible lists, registers or files; (ii) Requiring officials to support the public in seeking access to information under this Convention; and (iii) The identification of points of contact; …'[345]

For example, in England the law requires the developer to prepare a non-technical environmental statement 'make copies available free of charge as to facilitate wider public consultation,'[346] disseminate them and encourage

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[340] See Chapter 4 of this thesis

[341] Transparency International Anti-Corruption Center, *Opinion on Manifestations of Corruption During Construction of Yerevan City Center* "Citizens were only notified of the alienation of their properties, but they took no part in decision-making process regarding the given areas"

[342] The announcements division lists the names of projects and the venue of hearings, there is no other information on the development project and importance of it for the concerned public. www.mnp.am

[343] Ministry of Nature Protection of the Republic of Armenia, 'Nature Protection: Expertise'

[344] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999), Art.5.

[345] Ibid, Art.5.

[346] Cicular 02/99 on EIA 105.

the wider public discussion for the development project.[347]Accordingly, the RA EIA Law lacks detailed provisions seeking to implement the Aarhus Convention requirements and has no single reference to the Convention itself.

Article 10 requires public hearings on expert conclusions of the documents. Article 11 provides the procedure on expert conclusion of the documents and duration for this procedure. Article 12 should be considered one of the major requirements as it alleges that: '…without positive assessment conclusion, the implementation of intended activity liable to environmental impact assessment is prohibited.'[348] Hower, the opinion of Transparency International an anti-corruption center in Armenia witnesses a violation of this provision in particular;

> There was a violation of the RA Law on "Environmental Impact Assessment" Article 12, which stipulates the prohibition of implementation of intended activities without a positive environmental assessment conclusion. In line with the RA Government Decision #193 of March 1999 [349] …the construction conducted in an area exceeding 1000 sq. should have been subject to an environmental impact assessment and respective public hearings. The construction program of the center of Yerevan, started with 72000 sq. of Northern Avenue and expanded to 345000 sq. and yet failed to undergo any environmental impact assessment.'[350]

In the process of comparing the RA domestic law with the Aarhus Convention, an incompliance of the provision of the RA EIA Law of 1995 with the Convention is noticed. Article 5 of the Convention requires the party state make sure that public is informed on the possible decisions or

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[347] Ibid

[348]The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Article 12

[349] Chapter 2 (n220)

[350] Transparency International Anti-Corruption Center, *Opinion on Manifestations of Corruption During Construction of Yerevan City Center*(n315)

draft decisions.[351] There is no similar requirement in the RA EIA Law of 2014 either. It indicates that state government still preserves the final decision-making on its own discretion.

The access to justice pillar; i.e. third pillar of the Convention is reflected in Article 9 of the Aarhus Convention.[352]

This requirement is absent not only in the RA EIA Law of 1995 but also in the new Law of 2014 whereas the RA government as well as the representatives of the country (focal point) for the Aarhus Convention implementation are fully aware of the Article and requirements of the Convention. As it is referred above, the amendment of the Law was done in part in compliance with the Aarhus Compliance Committee requirements.[353] In the process of improving the environmental governance in Armenia the Administrative Court of Armenia has been created in 2008; however the case law is not developed yet.[354] One of few environmental cases presented to the judicial review is the 'Administrative case number VD/3275/05/09' brought to the court by the non-governmental organisations against the RA Government, the RA Ministry of Energy and Natural resources and the developer of Teghut Mining project the "Armenia Copper Program" Closed Joint-Stock Company.[355] The plaintiffs 'Transparency International Anti-Corruption Centre' non-governmental organization, the 'Helsinki Citizens' Assembly Vanadzor Office' non-governmental organization, and the environmental non-governmental organization "Ekodar" brought the case to

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[351] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999),Art.5

[352] Ibid, Art.9 (2)

[353] United Nations Economic Commission for Europe, *Assessment of the draft Law of the Republic of Armenia "On the environmental impact assessment and expertise", Opinion Paper*, 2014)

[354] Aida Iskoyan and others, 'Country Report: Armenia Risk-Based Environmental Control and Locus Standi Jurisprudence.Risk-Based Environmental Control System to be Enacted in 2013' 4 IUCNAEL EJournal <http://www.iucnael.org/en/documents/1049-4-iucnael-cr-armenia/file> accessed 29/05/2015

[355] *Environmental Non-Governmental Organization "EKODAR" vs. Government of the Republic of Armenia,the Energy and Natural Resources Ministry of the Republic of Armenia and "Armenia Copper Program" Closed Joint-Stock Company* Administrative case number VD/3275/05/09 (The Administrative Court of the Republic of Armenia),2

the first instance Administrative court in 2009. The admission of the claim was denied by the court on 9th July 2008. On 28th July 2008 the Court of Cassation of the Republic of Armenia rejected the appeal, whereas the 'the Civil and Administrative Chamber of the Cassation Court of the Republic of Armenia rendered a decision on 30 October 2009 on the following: "1. To partially grant the cassation appeal.' By this decision, the 'Ekodar' non-governmental organization got the chance to seek the judicial review at the RA Administrative Court. In March 2010 the Court held that neither the RA Laws nor the Aarhus Convention give non-governmental organizations a right to legal standing. [356]

The document of this decision consists of several pages containing the description of claim and a short explanation of national law, in particular the Administrative Procedure Code stating that based on paragraph 1 Article 3 of this Code the NGO's cannot be considered directly impacted citizens to apply to the court. Although the Court refers to the requirements of Article 9 paragraph 3 of Aarhus Convention in the same context and the RA Constitution as well; however it does not interpret Article 9 and moves on making the decision based on the Administrative Procedure Code of the Republic of Armenia.[357]

The Compliance Committee reviewed the environmental performance and compliance of Armenia with the requirements of the Convention many times since its membership based on the reports received both from the Aarhus state focal point in Armenia and the NGOs who monitor the implementation of the Convention in Armenia.[358] The Committee issued reports and provided recommendation during each session after assessing the progress of parties. '(a) Review and clarify its legislation, including the law on NGOs and administrative procedures, so as to standing;(b) Take the measures necessary to raise awareness among the judiciary to promote

[356] Ibid, 14-15

[357] Ibid.

[358] United Nations Economic Commission for Europe, 'ACCC/C/2009/43 Armenia' (*United Nations Economic Commission for Europe,* 2009-2011) <http://www.unece.org/env/pp/compliance/Compliancecommittee/43TableArmenia.html> accessed 29/05/2015.

implementation of domestic legislation in accordance with the Convention'[359]

Armenia has made legal amendments in few months after receiving these recommendations yet the compliance with the Aarhus Conventions requirements is under question. The Aarhus Compliance Committee was established in 2002 to be in charge of the compliance activities of party states. It gives recommendations to the governments and acts transparently in managing correspondence and documentations among the states; however, its powers are limited and the decisions carry mainly advisory character. [360]

The RA EIA law accommodates provisions in compliance with not only Aarhus Convention requirements but also the Espoo Convention that regulates the raised disputes on the borders of the neighboring countries and the Strategic Environmental Assessment process. However, there are no provisions confirming that the requirements addressing the issues raised by the International Environmental law are presented in conformity with the Conventions signed by the RA Government respectively.

3.3.2. The RA EIA Law Compliance with Espoo Convention and Kyiv Protocol requirements

The RA EIA Law refers to the environmental impact assessment process to the transboundary context and regulates the assessment of programs and plans in the context of strategic environmental assessment process. Article 14 of the Law of 1995 speaks about assessment of the intended activity with transboundary impact on the environment. This article entitles the

[359] United Nations Economic and Social Council, *Excerpt from the addendum to the report of the fifth session of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1)* Decision V/9a on compliance by Armenia with its obligations under the Convention Adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its fifth session* (Economic Commission for Europe Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Fifth session Maastricht, the Netherlands, 30 June and 1 July 2014, 2014).

[360] Veit Koester, 'The Complience Committee of the Aarhus Convention -An Overview of Procedures and Jurisprudence' (2007) 37 Environmental Policy and Law 83.

authorized body to apply to the international agreement ratified by the country which is the Espoo Convention ratified by Armenia in 1996[361] and signed its Protocol on Strategic Environmental Assessment (hereinafter the Protocol) on May 21, 2003.'[362] As the research shows, there is no other relevant law made to regulate this field in the Armenia. It was referred to the Espoo Convention only in one article in the RA EIA Law of 1995.[363] Later on, the RA EIA Law of 2014 presented a Chapter with four articles regulating the transboundary relations and strategic assessment.[364] The strategic environmental assessment is addressed in provisions of the RA EIA Law of 1995 as well. Article 15 provides Environmental Impact Assessment of 'Concepts'[365] which speaks about the strategic environmental assessment in fact. It requires the assessment of papers, schemes, programs and master plans that are the same as policies required by Aarhus Convention[366]. Accordingly, the requirement of the SEA transboundary assessment process refers to the Aarhus Convention as well.[367] There is an EU Directive on Strategic Environmental Assessment, too.[368] The SEA Directive accepts the regulations of the Espoo Convention and refers to it in its legal text. The European Commission explains the scope of the SEA.

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[361] Convention on Environmental Impact Assessment in Transboundary Context, United Nations 1991(Espoo Convention), C104, 24/04/1992, p. 7

[362] United Nations Developmen Program, *National strategy for implementation of the UNECE Protocol on strategic environmental assessment for Armenia* (2006) 5

[363] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Art.14

[364] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԺՕ-110-,ՀՀՊԾ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊԾ 2014.07.30/41(1054) Art.636)Arts.22,23,24,25 Chpt.5

[365] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995 Art. 15

[366] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999)Art.7

[367] Ibid 2e Art.6, Art.7

[368] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

> The SEA procedure can be summarized as follows: an environmental report is prepared in which the likely significant effects on the environment and the reasonable alternatives of the proposed plan or program are identified. The public and the environmental authorities are informed and consulted on the draft plan or program and the environmental report prepared. As regards plans and programs which are likely to have significant effects on the environment in another Member State, the Member State in whose territory the plan or program is being prepared must consult the other Member State(s). On this issue the SEA Directive follows the general approach taken by the SEA Protocol to the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context.[369]

As it is clear from the status of Armenia in the world,[370] the Espoo and Aarhus Conventions have more authoritative role for Armenian legislation than SEA Directive as the latter is binding only for EU member states. However, the conventions play the advisory role and do not have strong enforcement mechanisms for countries like Armenia. 'Article 7 covers public participation with respect to plans, programs and policies. The obligations of authorities and the rights of the public are somewhat less clearly defined…Article 7 allows Parties more flexibility in finding appropriate solutions for public participation in this category of decision-making. Article 7 distinguishes between plans and programs on the one hand and policies on the other.'[371]

The international law subject to discussion in this chapter has become a part of Armenian legislation since 1996; however, a concern regarding Armenia's full compliance of the requirements exists up to date. The Aarhus Convention requires full procedure of the strategic assessment:

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[369] European Comission, 'Strategic Environmental Assessment - SEA' (*European Commission,* 27/04/2015) <http://ec.europa.eu/environment/eia/sea-legalcontext.htm> accessed 29/05/2015.

[370] European Freinds of Armenia, *EU-Armenia relations: future developments and prospects* (European Freinds of Armenia, 2014).

[371] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999)113.

> SEA provides public authorities with a process for integrating the consideration of environmental impacts into the development of plans, programs and policies. It is, therefore, one possible implementation method that would apply to both parts of article 7—the provisions covering public participation in plans and programs, and the provision covering public participation in policies.[372]

The EIA on transboundary context with more details is drafted in the RA Law on EIA of 2014. This law refers to the study of baseline documents as well which corresponds to the strategic environmental assessment requirements; however, there are more requirements that this law lacks and new recommendations are prepared by international organizations such as UN Economic Commission for Europe for further amendments of the law. It is evident that requirements from the international organisations made an impact in the process, so that the legislative drafters and finally the relevant authorities in Armenia paid attention to this issue. Yet, the strategic environmental assessment has not been referred by the legislative drafters at this point. The United Nations Economic Commission for Europe still assists the government in Armenia on amending the EIA Law of 2014 and adding the requirements for the SEA in it.[373] The international expert appointed by the UNECE has prepared a report on the shortcomings of the new RA EIA Law of 2014 in context of the Espoo Convention and SEA Protocol which is presented in terms of making new amendments in the Law.[374]

In this thesis it will be argued that it is appropriate to draft separate law on transboundary EIA and the Strategic Impact Assessment process. A well

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[372] Ibid,114.

[373] United Nations Economic Commission for Europe, 'Planning meeting for preparation of the amendments to the law of the Republic of Armenia on "Environmental impact assessment and expertize"' (*United Nations Economic Commission for Europe,* 2015) <http://www.unece.org/index.php?id=39007#/> accessed 24/03/2015.

[374] Elena Laeyvskaya, *The Concept of The Amendments to the Legislation of the Republic of Armenia Based on the Findings and Recommendation of the Report "On the Assessment of the Draft Law on Environmental Impact Assessment and Expertise"and "Overview Of The Legislation Of The Republic Of Armenia To Implement Unece Protool Of Strategic Environmental Assessment"* (United Nations Economic Comission for Europe, 2015).

drafted law would be more beneficial for the country and international community having addressed the detailed requirements of two conventions and a protocol.

The Implementation of the international law in Armenia is in the centre of discussion of the international organisations. [375] In its report made for environmental governance in Armenia the UNDP addresses shortcomings of the law and highlights the errors of the RA EIA Law of 1995 on strategic environmental assessment such as:

> 1. Mandatory requirement for conducting strategic environmental assessment (hereinafter SEA) and presenting in the form of an environmental report;
>
> 2. Requirements for preparation of the SEA report and its content (scope);
>
> 3. Straightforward and clear procedures for the submission of the SEA report, including deadlines and responsibilities;
>
> 4. Processes and deadlines for public discussion of the SEA report;
>
> 5. Economic mechanisms, including financial aspects related to the SEA and other requirements to be regulated by law.[376]

Accordingly, the international organizations strive to assist Armenia in improving legislative drafting and implementation fields of environmental governance in the country. The documents and reports prepared by the donor organizations are extra support for the government and people in Armenia to reach the target and make the field more developed and

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[375] Organization of Economic Co-operation and Development, *Promoting Compliance with Environmental Requirements in Armenia: Recommendations from an International View* (Organization of Economic Co-operation and Development, 2005)United Nations Development Project, *Environmental Governance Sourcebook*Asian Development Bank, *Improving the Implementation of Environmental Safeguards in Central and West Asia:Country Assessment of Environmental Safegourd Capacity Republic of Armenia* (Asian Development Bank Final Draft Report Republic of Armenia December 2014, 2014)World Bank, *Armenia.First Thematic Paper: Sustainable and Strategic Decision Making in Mining*.

[376] United Nations Developmen Program, *National strategy for implementation of the UNECE Protocol on strategic environmental assessment for Armenia*, (n362) 6.

harmonized with the countries that apply the better regulations in the process of environmental governance.

This is to say that if Armenia accepts and ratifies the international laws and strives to comply with their requirements it has to review the existing legislation in the country and make more adequate national instruments to implement and meet the international requirements. At this point it is impossible to consider the RA EIA Law in comparison with the Espoo Convention and its SEA Protocol as the law is vague and needs to be either amended in this context or a new law on the international requirements has to be drafted in Armenia.

3.4. What are the RA EIA Law Enforcement Mechanism?

The process of a transparent, responsive and accountable environmental governance requires well implemented and enforced laws in Armenia. This in its turn tends to ensure sustainable management and development in the field of environmental protection. How the RA EIA Law of 1995 solved the enforcement issues and what was changed in the Law in 2014? The hierarchy of the legal system in Armenia already makes the International Law a binding obligation for Armenia, so the government has to localize the international law requirements and follow the implementation accordingly. Besides this, the RA national law possesses procedures payments and penalties for the development projects and controls the process through inspectorate functions. However, the 'polluter pays' principle,[377] the EIA 'cost and benefit analysis,'[378] and 'green economy modelling,'[379] are still underdeveloped in process of environmental governance in the country.

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[377] The polluter-pays principle is the principle according to which the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution.The Organisation for Economic Co-operation and Development, 'Glossary of Statistical Terms: Envrionmental Statistics' (*Glossary of Environment Statistics, Studies in Methods, Series F, No. 67, United Nations, New York, 1997,* 25/09/2001) <https://stats.oecd.org/glossary/detail.asp?ID=2074> accessed 30/05/2015.

[378] Cost/Benefit Analysis is a technique for deciding whether to make a change. As its name suggests, it compares the values of all benefits from the action under consideration and the costs associated with it. The cost-benefit ratio is determined by dividing the projected benefits of the program by the projected costs. A program having a high

In the discussed RA EIA Law of 1995, Article 13 provides fee payment procedure for assessment conclusion. It provides only that the initiator pays the fees, but the Law omits information on accurate amount of fee payment and periods. It provides that the payment be 'established in the legislative procedure of the Republic of Armenia.'[380] This article is referred by the CENN report which noticed that: 'the initiator of proposed activity hires the EIA developer at his own expense…Consequently, the volume of financing considered for development of EIA documents depends on the complexity and scale. SNCO "Environmental expertise" enters into agreement with the initiator on conduction of EIE, after the initiator pays for EIE. SNCO 'Environmental expertise' defines the price of EIE on the basis of main indices developed by the Ministry of Nature Protection.'[381] The payment is to be done before commencement of EIE and does not depend on the results of EIE.[382] The payments for the development projects were regulated by the law 'On Environmental and Natural Resource Payments (Law No. 270)

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benefit-cost ratio will take priority over others with lower ratios. The Organisation for Economic Co-operation and Development, 'Glossary of Statistical Terms: Envrionmental Statistics' (*United Nations, European Commission, International Monetary Fund, Organisation for Economic Co-operation and Development, World Bank , 2005, Handbook of National Accounting: Integrated Environmental and Economic Accounting 2003, Studies in Methods, Series F, No.61, Rev.1, Glossary, United Nations, New York, para. 1.87,* 29/11/2005) <https://stats.oecd.org/glossary/detail.asp?ID=6377> accessed 30/05/2015.

[379] A technique that attempts to answer the question: What level of GDP could be achieved if producers and consumers faced a different set of relative prices in the economy due to the existence of actual prices for environmental functions? The Organisation for Economic Co-operation and Development, *Glossary of Statistical Terms: Envrionmental Statistics* (United Nations, European Commission, International Monetary Fund, Organisation for Economic Co-operation and Development, World Bank, 2005, Handbook of National Accounting: Integrated Environmental and Economic Accounting 2003, Studies in Methods, Series F, No.61, Rev.1, Glossary, United Nations, New York, para. 2.178. 05/07/2005).

[380] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995,Article 13

[381] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia* 38.

[382] Ibid.

which entered into force on 1 January 1999.'[383] The OECD reports 'The Law was complemented by two government decrees on rates of the environmental charges, also effective as of 01.01.1999. Article 4 of Law No. 270 stipulates that environmental payments include: a) payments for discharges of pollutants into the environment (air and water);b) payments for placement of production and consumption waste in the environment; and c) payments for environmentally harmful products.'[384] The developers are charged by the rates set in force in 2000 by the Law on Nature Protection Payment Rates.[385]

Article 13 in the Law of 1995 provides a necessity for establishment of required payment amount for the EIA procedure. However, the charges for development projects and the payment for natural resources still remain very low in Armenia. 'Under the 2012 Mining Code, the environmental exploitation fee has been altogether eliminated. Instead, companies are currently only responsible for paying royalties, which are calculated according to the formula R = 4 + [P/ (Ix8)] x 100. Where R=Royalty percentage, P-pre-tax profit in AMD, I-the income in AMD received from the realization of the product excluding VAT.'[386]

Based on the fact that the governmental officials and other responsible members who deal with the charges and payments on environmental matters get low salary and the payments of taxes and royalties are miserable for the project developers, it is assumed that the laws without proper regulation of payments creates grounds for corruption.[387] In this sense, the damage cost to the environment is higher than the paid taxes by the developers. This is

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[383] Simone Schucht and Eugene Mazur, *Environmental Pollution and Product Charges in Armenia:Assessment of Reform Progress and Directions for Further Improvement OECD* (Organisation for Economic Co-Operation and Development, 2004)9.

[384] Ibid,Law of the Republic of Armenia Adopted by the National Assembly on December 28, 1998 on Nature Protection And Nature Utilization Payments.

[385] The Law of the Republic of Armenia on Nature Protection Payment Rates of 19.04.2000.

[386] Ishkanian and others, *Civil Society, Development And Environmental Activism in Armenia* (n154) 39, Law of the Republic of Armenia Adopted by the National Assembly on December 28, 1998 on Nature Protection And Nature Utilization Payments.

[387] Ishkanian and others, *Civil Society, Development And Environmental Activism in Armenia*(n154).

one of the attractive points for the international developers who invest in the mining sector in Armenia. Moreover, the waste management also lacks control and charges in the country which gives a chance to the developers to gain more and spend less.[388] In the new Law of EA Article 30 regulates the funding and charges of the environmental impact assessment and expertise process. It requires the developer to pay the state duty and provides the possibility that in some cases the payments might be made from the state budget.[389] This is also an incomplete requirement of charges and payments as it is considered that the different types of development projects have to be subject to different amount of payments and the impact assessment and expertise could be made more accountable if the differences of activities were addressed and the charges were assigned in accordance with the law. For example, UK Circular on EIA in particular addresses this approach and regulates the differences of development projects and significances by the EIA law.[390] It also acts in favor of developers and requires the charges to be reasonable both for the development project costs and the developer.[391]

Following articles of the RA EIA Law of 1995 provide responsibilities of the authorized body, authorized persons, the initiator, applicant and document processor.[392] The enforcement of both old and new laws on EIA of Armenia is drafted through imposed duration and timing of decision-making process. The Law of 1995 provides 120 days for the whole process of the decision-making from the application day of the developer.[393] The RA EIA Law of 2014 has changed the requirements of the duration of the decision-making process and provides different timing for different categories of development projects. 'For the study of baseline documents

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[388] Ibid 41.

[389] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636)Chpt.10, Art.30.

[390] Gov.UK, *Environmental impact assessment: circular 02/1999* (Gov.UK 12 March 1999)159.

[391] Ibid158.

[392] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Arts. 16-19.

[393] Ibid p.2, Art.11.

duration of the process can be no more than 60 work days, for the Category A projects not more than 60 work days and for B category projects not more than 40 work days.'[394] If development projects applications lacks any of required documents and will not be provided during 10 days allocated by the experts the project can be subject to negative conclusion.[395]

Articles 20 and 21 of the Law of 1995 refer to the responsibilities of parties for breach of provisions of this Law and the Appeal procedure.[396] The breach of provisions and appeal procedure are regulated by separate laws or orders as it is common for all other fields of regulation of law enforcement in Armenian legislation. Separate governmental decrees or Orders are issued to implement any enforcement procedure and the RA Civil Code, Administrative Code contains penalties as well.[397] Article 22 of the Law of 1995 concludes the Law and regulates the validity of the Law which has to act up to the drafting and accepting a new law of the field. This law has been suspended since August 2014 and the new RA EIA Law of 2014 is in force.

The RA EIA Law of 2014 is different from the previous one. It has more details elaborated in its text relevant to the requirements of the international laws; however currently it still undergoes changes as from the holistic view point it repeats the previous law despite few new chapters such as thresholds and the categorized development projects, the impact assessment on human health, the detailed description of preliminary and initial expertise and the assessment of transboundary context.[398] As far as this law has not practiced

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[394] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԺՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636)Art.19.

[395] Ibid.

[396] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995Articles 20-21.

[397] Վարչական Իրավախախտումների Վերաբերյալ Հայաստանի Հանրապետության Օրենսգիրք (The Code of the Republic of Armenia on Administrative Offences) ՀԱՍՀՈՍ 1985/23.

[398] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԺՕ-110-Ն,ՀՀՊՏ

yet it also creates difficulty to discuss whether this law will be more effectively implemented and enforced than the previous one. The both RA EIA Laws lack any strong enforcement mechanisms as they link the enforcement to the other laws, regulations and institutions in Armenia and mostly leave the penalties and sanctions on the government discretion. Hence, the RA EIA Law lacks proper provisions on enforcing the law either by timing and payments or by litigation measures. Although, it is believed that in the process of continuous reforms in environmental governance, the strong follow up and implementation of existing law will result the least enforcement for further better implementation of the law and environmental governance.

3.5. Findings of Chapter 3

The research process of this thesis revealed almost all relevant details on environmental legislation. The requirement of the screening and scoping stages in the EIA process are the most important steps for the environmental decision-making in development projects. In the RA EIA Law, the screening procedure is provided by Article 4 of the RA EIA Law of 1995. Article 4 makes the assessment into a stagnant procedure with a standard list of development procedures that do not provide flexibility to the EIA process and do not differentiate the degree of significance of proposed development projects.[399] It had been changed by the RA EA Law of 2014 through classifying the impacts; however the definition of classification of impacts is missing. Also the RA EIA Law of 2014 provides stages of preliminary expertise and initial expertise which are supposed to be the same as screening and scoping in the EU and International law.[400] Contrary to the

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2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[399] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995 Article 4,Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia* ,30.

[400] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636)Art.16.

previous law the new law provides details of the Environmental Impact Assessment application which is called the Environmental Impact Statement in the EU and International Law.[401] Still the RA EIA Law fails to define the name of the application documentation required from the developer.

In contrast with existing screening requirement in both legal texts the scoping is missing at all. There is no scoping procedure included in EIA process as it is not required by the RA EIA Law of 1995. This is one of major gaps of the Law. The EIA process mostly refers to the documentation assessment than on field assessment of the development project. The Requirement of monitoring stages of the EIA process and is silent about auditing. The Law of 2014 refers to the monitoring and self-monitoring The previous reviews, analysis and discussions of the RA EIA Law of 1995 during all the period of its existence most of which are cited in this thesis prove the deficiency of the law and resulted the change of the text as a whole. Besides this, the institutions are not fully developed to implement the laws and to impose the enforcement on the developers who act in favor of their businesses.

As an example the report of CENN says: 'It shall be noted, that conceptual programs are practically out of control. A number of violations took place while implementing the program on development of the Sevan national park, however, usually these violations are not officially recognized and the relevant information can be obtained only through the media and public organizations.'[402]The OECD (Organization of Economic Co-operation and Development) has conducted many reviews on the environmental governance in Armenia. One of them was the 'Environmental Pollution and Product Charges in Armenia: Assessment of Reform Progress and Directions for Further Improvement' in 2004 [403] and a peer review on

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[401] Ibid.

[402] Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia* (n27), 34.

[403] Schucht and Mazur, *Environmental Pollution and Product Charges in Armenia:Assessment of Reform Progress and Directions for Further Improvement OECD* (n383).

environmental legislation in Armenia in 2005.[404] It was conducted to check the enforcement and compliance of level of good governance in former USSR countries.[405]The international experts refer to the enforcement and environmental development project charges process in Armenia in the frames of the OECD study. Experts witness the fact that there is a conflict of interests in the process of charging the developers due to the lack of professional staff members at the Ministry of Nature Protection in Armenia.[406] They have poor representation at courts even if the cases are disputed in courts and the state suffers losses due to poor performance of the environmental governance.[407]

Although the State Environmental Inspectorate was established to control and enforce the laws and regulations in the field; however, they still lack the well prepared consultants and lawyers to ensure that the charges and penalties can be enforced in sustainable manner.

> The unresolved problems requiring urgent attention from the Ministry and the Inspectorate include:
>
> •The environmental regulatory framework is still incoherent; environmental quality standards and permit requirements tend to be unfeasible and difficult to enforce. This undermines the rule of law and public confidence in the government's capacity to regulate, and erodes staff morale and integrity;
>
> • Incentives for regulations to comply and improve environmental performance are low;
>
> • The Inspectorate uses only a small number of the legally available tools to ensure compliance
>
> •The institutional capacity of the Inspectorate, particularly of its regional agencies, is low due to

[404] Organization of Economic Co-operation and Development, *Promoting Compliance with Environmental Requirements in Armenia: Recommendations from an International View*(n375).

[405] Ibid 29.

[406] Schucht and Mazur, *Environmental Pollution and Product Charges in Armenia:Assessment of Reform Progress and Directions for Further Improvement OECD*, (n383) 30.

[407] Ibid.

> lack of training, imperfect staff selection approaches, and prolonged and heavy shortage of resources;
>
> • Cooperation with other stakeholders, both domestically and internationally, is limited and sporadic thus having a marginal role in strengthening compliance with environmental law.[408]

Regarding the compliance of above mentioned IAIA Benchmarks, Espoo Convention with SEA Protocol and Aarhus Convention three pillars it is evident that Armenian government and legislative drafters have to work more on accurate elaborations of requirements to envisage the requirements of existing international law into the domestic legislation: 'According to the Armenian Constitution, as well as the Principles of Legislation on Nature Protection, Armenia's international obligations become national law once they are ratified.'[409]

As it had been reported by the OECD in 2007 'from June 2002 to December 2004 ….there was carried out a regional project to foster implementation of the Aarhus Convention….while the project outcomes are still relatively limited compared to the overall scale that is needed for the full implementation of the Convention….'[410] OECD has noticed the barriers that hinder the full compliance of the Armenian national legislation and implementation activities to the Aarhus Convention. It reported that the 'reasons of non-compliance with existing legal provisions include lack of

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[408] Organization of Economic Co-operation and Development, *Promoting Compliance with Environmental Requirements in Armenia: Recommendations from an International View*, (n375) 9.

[409] Nune Darbinyan and Hrach Ashikyan, *The Role of Envrionmental Enforcement in the Republic of Armenia- Steps Towards Sustainable Development* (Sixth International Conference on Environmental Compliance and Enforcement, 2002)131.

[410]Organisation for Economic Co-Operation and Development, *Policies for a Better Environment Progress in Eastern Europe, Caucasus and Central Asia: Progress in Eastern Europe, Caucasus and Central Asia* (OECD Publishing 2007),68.

political will (at both national and regional level), low awareness among officials and absence of consequence for non-compliance.'[411]

Thus the operating principles of IAIA "screening, scoping, examination alternatives, impact analysis, mitigation and impact management, evaluation of significance, preparation of impact statement (EIS) or report, review of EIS, decision-making, follow up"[412] also are in doubt of this study as one of benchmarks that could be deterred in the RA EIA law is screening procedure so far that is provided by Article 2 of the Law of 1995. Scoping is not foreseen by the Law, examination alternatives are mentioned in the Law in Article 6 but are not defined or explained; impact analysis, mitigation and impact management are not referred in the Law as it speaks mainly about procedure of the environmental impact assessment and gives step by step procedural instructions. There is no word on evaluation of significance or significant environmental impact during the development project proposal. The RA EIA Law provides timings and duration of decision-making procedure, no application to the preparation of impact statement report or follow up of the development project was made in the studied legislation. The formulation of the names of required documentation does not exist in the Law either.[413]

Despite non-compliance of the law, regulation, implementation and enforcement it will be unfair not to notice the slow development of the environmental governance in Armenia. The efforts contribute to the development of contemporary regulations and its co-operation with the international and European organizations in improving the environmental management in the country worth recognizing at this point. The RA EIA Law of 2014 is in the continuous process of changes and amendments in compliance with the International Law requirements.

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[411] Ibid.

[412] n269.

[413] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995.

Chapter 4: Fieldwork in Armenia

Fig4.1[414]

4.1. Introduction

This chapter discusses the fieldwork conducted in selected villages in Armenia and in capital city Yerevan. It addresses the research questions of this dissertation.[415] Particularly, four of ten main questions will find answers here in this chapter and will present the current situation of environmental decision-making in Armenia as much as it is possible in the scope of research work. The questions that seek the answer in this chapter are as follows:

5. What is the required documentation to be submitted for EIA project?

6. Whether the EIA decision-making procedure is transparent in Armenia?

[414] Transparency International, 'Հայ աստղի հանքավայրերի շտեմարան (Armenia mines repository)' (*Transparency International anti-corruption center,* 2015) <http://transparency.am/en/assets/mines> accessed 30/03/2015.

[415] Chapter 1, sub section 1.2.2.

7. What are the law enforcement mechanisms that make the developer to be accountable against public and government?

8. Do the public participate in environmental decision-making and to what extent the voice of the public considered?

To be able to answer the main questions of the thesis there are many sub questions seeking the answers regarding the EIA process in Armenia. These sub-questions composed the questionnaires which were provided to the research participants in the process of fieldwork.[416]

The environmental conservation and decision-making process in Armenia have many unsolved issues so far, which play a role in developing this research work. Almost every day an environmental issue emerges on the territory of Armenia. These issues relate to illegal logging, mining, power station constructions and utilization, overconsumption of water in manufacturing purposes (the major share of water consumption belongs to the field of fishery and irrigation), [417] urban planning, and poor management of waste and mining tails, as well as air, water and soil pollution problems in urban areas. 'Mining is important to the Armenian economy, but there is increasing recognition of the negative effects of mining on human and environmental health, and awareness that existing environmental regulations are not currently well enforced.'[418]The people who understand the seriousness of these issues are highly concerned. They challenge the government decisions and try to question the legality of the operations of the government and developers. [419]

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[416] See appendices 3-7.

[417] Winston Yu, Rita E. Cestti and Ju Young Lee, *Toward Integrated Water Resources Management in Armenia* (2015 International Bank for Reconstruction and Development / The World Bank 2014),26.

[418] Sara Mishamandani, 'Superfund Program Director Discusses Mining Waste Solutions In Armenia' (2013) Environmental Factor 47.

[419] Map of mines in Armenia. Yellow spots are metallic mines, black spots are non-metallic ones. This map reflects mainly mining areas in the country. It is made by the Transparency International anti-corruption centre in Armenia, Transparency International, 'Reservoir of

> There are already many well-written and superficially satisfactory environmental laws in Armenia. However, enforcement of these laws has proven extremely difficult. In this way, the environmental movement in Armenia shares in the larger fight for overall reform in the Armenian legal system. The Republic of Armenia has also signed many international conventions on issues relating to the environment and other aspects of democratic development. As with domestic legal enforcement problems, it is the implementation of the agreements to which Armenia is a party that has proven most difficult.[420]

Two main issues prevent the legislation from being enforced in Armenia: firstly, peoples' unawareness on environmental harms and lack of knowledge of their rights; secondly, the governing bodies violate legal requirements in decision-making by eliding the existing legal requirements and the opinions of indigenous people living in those areas. To understand whether the RA EIA Law is being followed and implemented by all parties respectively, the fieldwork has been conducted. It is believed that the obtained qualitative and quantitative data will help to understand the situation properly. Also, this data will help in the process of filling the gap in this research due to lack of transparent information provided by the government especially in the field of environmental governance.

In the context of the information mining for this research work, the major part of existing facts and data are in the Armenian language and the reference links provide the research evidence mainly in Armenian sources. Based on those sources the development projects and the issues related to them are countless in Armenia; however due to limitations of dissertation writing process only the referred cases were considered as the most relevant ones to be discussed in this study. It is very difficult to choose cases among the issues of nature conservation and decision-making disputes in Armenia.

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mines in Armenia' (*Transparency International: anticorruption center,* 2014) <http://transparency.am/en/assets/mines> accessed 24/04/2014, see fig 4.1.

[420] Armenian Environmental Network, 'Issues' (*Armenian Environmental Network,* <http://www.armenia-environment.org/issues/> accessed 23/04/2014.

Those that have been shortlisted for this dissertation work are examples to show how the environmental decision-making process operates in Armenia.

4.2. Research Methodology [421]

The task of this title is to discuss development projects in Armenia which have their unique significance in the context of environmental decision-making process in the country. These development projects are considered as case studies in the frames of this work to show the relatively current condition of the environmental decision-making process in Armenia. The empirical mixed method doctoral research supposes to find out the way the process is implemented, based on comparative legal analysis and fieldwork. The research methodology includes the following steps:

- Library research
- Literature review
- Identification and shortlisting of environmental issues in Armenia
- Application for Research Ethics Approval
- Identification of stakeholders of the research (four groups of people: villagers, lawyers, NGO members and environmental activists)
- Preparation of invitation letter for participants, participant consent forms, questionnaires'
- Implementation of the fieldwork
- Research qualitative data transformation into a quantitative data using SPSS statistical program and basic analysis
- Data Analysis and discussion both in qualitative and quantitative methods.

[421] See 1.6 in Chapter 1.

In the long list of mining projects[422] in Armenia two were selected for the discussion in this dissertation. One of the prominent projects currently operating in Armenia is Teghut (depository) forest mining project. This is one of the disputed cases brought to the Administrative court in Armenia. Teghut is the name of the forest that was preserved for many years. Even during Soviet government this forest was considered as a special preserved area. Its mining resources were found out during soviet times in 1972; however, there was a state restriction on exploiting this land area for mining purposes. Next to Teghut forest two big villages Shnogh and Teghut are located. Population is approximately 3600 people combined. The state approved the project in 2007.The second development project of this type is Amulsar Gold Mining. The development of this project was approved by the Environmental Impact Expertise state non trade organisation on 1st December 2014.[423]

Also two examples of hydro power plants were selected among many operating ones in Armenia. These development projects relate to the construction of small hydropower stations on the rivers that have already few operating plants constructed on them. The rivers are Martsiget and Pagh Jur.

The field research was conducted based on questionnaires prepared for each sample group. There were four samples: people who live in sites and are members of the affected communities, lawyers and NGO members and active environmentalists. The aim of this fieldwork was; firstly, to find out the opinions of people on the existing and the growing number of development projects in general, to find out the level of their awareness in environmental decision-making process, their interest in being participants in decision-making process and protecting their environmental rights in the country. Secondly, to find out whether the existing RA EIA Law meets public requirements and finally whether the participation procedures are implemented by the authorities based on the legal provisions of the RA EIA Law. The impact of the development projects on the quality of peoples'

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423 See EIE SNTO in subtitles 2.2. and 2.3. in Chapter 2.

lives in general will be discussed. It is supposed that the feedbacks of these questions will give final answers to the five research questions referred in 4.1 subtitle of this chapter.

4.2.1. Research Samples

The development projects playing central role in this thesis are as follows:

- Teghut and Shnogh that relate to Teghut (depository) mining issue,
- Marts river
- Pagh Jur River[424]
- Amulsar Gold Mine

Amulsar mining project[425] will be presented based on the publicly available data as there was an issue regarding the identification of the affected communities by the government in the period the fieldwork had been conducting in Armenia. Accordingly, it became impossible to proceed the fieldwork with questionnaires in 2013. In 2014 the affected communities had been identified; however, there were four locations selected as affected communities which was no more possible to conduct due to the time limitations of this research work. This project is also a very complicated one, similar to Teghut Mining project. Besides the on-site research work in villages, the fieldwork in Yerevan had been conducted among environmental activists, NGO members and lawyers.

The relevant pictures, measurements and maps will be provided in the chapter together with the SPSS analysis on the collected fieldwork data.

4.3. Case Studies

This subtitle presents three out of the four cases chosen in advance. The fieldwork that was implemented in summer 2013 gave a chance to gather information in four villages which relate to these three cases. The survey

[424] These two rivers face the same issue having few SPPs constructed on them.

[425] I participated in one of public hearings organised by developers for this project in village Gndevaz, Armenia on 25th August, 2014.

was made among the villagers and 38 responses were gathered as a result. These three villages were recognised as impacted communities officially both by the RA government and the developers of the proposed projects.

The descriptions of the sites discussed in the cases are cited directly from the information sources to give the accurate picture of the area.

4.3.1. Case Number One: The Teghut Issue in Lori region, Armenia: Mining in preserved forest area

Fig.4.2[426]

Teghut Copper Mine issue is considered to be the very core of this research. Teghut is the name of a forest located in Lori region in north-eastern part of Armenia. There are large number of species inhabiting in this forest.[427] It is considered to be the best preserved forest in the country as the number of forests in Armenia is diminishing throughout decades and there is a real threat of deforestation in the country.[428]

> Teghut features a complicated geography and picturesque nature full of forests and river canyons. The region is prone to earthquakes and landslides.

[426] This photo is taken before the mining started in Teghut forest.

[427] Jeremy Hance, 'Forest copper mine triggers controversy in Armenia' Environmental News < http://news.mongabay.com/2008/0129-hance_armenia.html#8gMDBt55PT509IfP.99> accessed 08/01/2015

[428] Policy Forum Armenia, *The State of Armenia's Environment*, (n27) 15, Hance, 'Forest copper mine triggers controversy in Armenia' (n423).

> The Shnogh River, with its Krunk, Kharatadzor (renamed Pakasajur) and Dukanadzor tributaries are the main drinking water and irrigation sources of the nearby Teghut and Shnogh villages. The Shnogh River, in turn, flows to the Debed River, which flows to neighbouring Georgia. Teghut region is also rich with cultural and historical landmarks, which date back to the middle ages and antiquity. Teghut forest is one of the best-preserved forest areas in the country with a rich biodiversity, including about 200 species of plants, 55 species of mammals, 86 species of birds, 10 species of vermigrades and 4 species of amphibians. Many of these species are rare and endangered and are included in Armenia's and International Red Lists of Threatened Species.[429]

The copper molybdenum resources in this area were discovered in 1972.[430] Teghut is the public property and wealth of the Armenian people [431] according to the government decisions No. 714[432] and 2249[433] the lands were donated to the communities for their free possession. The decisions No. 714 and 2249 [434] drafts the borders of lands for Shnogh village community which included Teghut forest as a preserved area too in 2005.

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[429] Organize -Now, 'Analysis: Save Teghut Civic Initiavtive' (*Institute for Democracy and Human Rights* 2014) <http://organize-now.am/en/2013/03/06/859/> accessed 06/01/2015.

[430] Ibid.

[431] Հայաստանի Հանրապետության Լոռու Մարզի Շնողի Գյուղական Համայնքի Վարչական Սահմաններում Գտնվող՝ Պետական Սեփականություն Հանդիսացող Հողամասերն Անհատույց Սեփականության Իրավունքով Համայնքին Փոխանցելու Մասին (For the Trasnfer of the State Possession Lands Located in the Borders of Shnogh Community Administration, in Lori Region to the Community as Free Property) 2005.

[432] Հայաստանի Հանրապետության Լոռու Մարզի Թեղուտի Գյուղական Համայնքի Վարչական Սահմաններում Գտնվող՝ Պետական Սեփականություն Հանդիսացող
Հողամասերն Անհատույց Սեփականության Իրավունքով Համայնքին Փոխանցելու Մասին (For the Trasnfer of the State Possession Lands Located in the Borders of Teghut Community Administration, in Lori Region to the Community as Free Property) 2004.

[433] N 2249 For the Trasnfer of the State Possession Lands Located in the Borders of Shnogh Community Administration, in Lori Region to the Community as Free Property ,2005.

[434] N 477 For the Trasnfer of the State Possession Lands Located in the Borders of Teghut Community Administration, in Lori Region to the Community as Free Property 2004,N 2249 For the Trasnfer of the State Possession Lands Located in the Borders of Shnogh Community Administration, in Lori Region to the Community as Free Property ,2005.

However, the decision No. 1279 announced on 1st November 2007 recognised the lands of Teghut and Shnogh communities as Eminent Domain.[435] Before that, in 2006 the RA government gave its consent for the Teghut mine development project.[436] Public hearings of the project were held on 12th October, 2006 in Teghut Village, Lori Region, and the Republic of Armenia.[437]

The government gave its consent for this project for eight years term only for the first stage by approving the project on 07/11/2006[438], although the developer presented it for twenty five years.[439]

Since then the issue has emerged in the life of citizens both in these two villages and in other parts of Armenia as most people understand the seriousness of this development project. This is one of the biggest mining projects in |Armenia. Two groups appeared in the field: one group defends the government's approach of implementing this project and believes that

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[435] Հայաստանի Հանրապետության Լոռու Մարզի Շնողի Եվ Թեղուտի Գյուղական Համայնքների Վարչական Սահմաններում Որոշ Տարածքներում Բացառիկ՝ Գերակա Հանրային Շահ Ճանաչելու Եվ Հողերի Նպատակային Նշանակությունը Փոփոխելու Մասին(About the Change of the Purpose of the Lands Located in Teghut and Shnogh Community Administration Area and the Recognition of those Lands as Eminent Domain) 2007.

[436] The Commission of Issuing Professional Certificates on Environmental Impact Assessment and Confirming the Environmental Impact Assessment Reports, *Շրջակա միջավայրի վրա ազդեցության փորձաքննական եզրակացություն թիվ 135 «Արմենիա Քափր Փրոգրամ»ՓԲԸ կողմից ներկայացված Թեղուտի լեռնահարստացման կոմբինատի եվ պղնձամոլիբդենային հանքավայրի առաջին հերթի ութ տարի շահագործման աշխատանքային նախագծի վերաբերյալ Environmental impact assessment report no.135 for "Armenian Copper Program" LLC for the projects of enrichment combine and copper mine in the first eight years of operation phase of the project.* (Ministry of Nature Protection of the Republic of Armenia,, 2006).

[437] , *Report of Public Hearings regarding Execution Plan of Constructing and Operating Teghut Copper-Molybdenum Plant* (The Public Hearings Have Been Held in the Office of Tet Geological Exploration Center Located in Teghut Village, Armenia Announcements of a Place, Terms and a Manner of Holding the Hearings Have Been Published In Hayastani Hanrapetutyun, Daily Newspaper, № 175 (4031) of September 28, 2006, and Iravunk, Weekly Newspaper, № 73 (1333) of September 29, 2006, 2006).

[438] The Commission of Issuing Professional Certificates on Environmental Impact Assessment and Confirming the Environmental Impact Assessment Reports, *Շրջակա միջավայրի վրա ազդեցության փորձաքննական եզրակացություն թիվ 135 «Արմենիա Քափր Փրոգրամ» ՓԲԸ կողմից ներկայացված Թեղուտի լեռնահարստացման կոմբինատի եվ պղնձամոլիբդենային հանքավայրի առաջին հերթի ութ տարի շահագործման աշխատանքային նախագծի վերաբերյալ Environmental impact assessment report no.135 for "Armenian Copper Program" LLC for the projects of enrichment combine and copper mine in the first eight years of operation phase of the project..*

[439] Ibid.

the benefits will be significant for the economy of the country; the other group of opposition believes that the loss and damages will be higher than the gains from this project. The first group consists of mostly government officials and the members of the project developer company (ACP). [440]

The experts and specialists who share the opinion of the government consider the project as a good one for the country that will raise the state budget and allocate job places for citizens.[441] On the contrary the opposite party points out the list of damages it will cause to the country. Moreover, they consider that the project is carried on through multiple law and agreements violations and that the cost and benefit analysis have not been made for this project. [442] The Head of the Greens' Union in Armenia reported

> Unfortunately, the RA Government, on the basis of this positive conclusion which has no legal foundation, has changed the status of 1572.284 hectares of land and has allocated it for 50 years to ACP which is a member of "Vallex Group", allowing the falling of around 357 hectares of forest coverage and the exploitation of the Teghut mine (decision N1278-Ն, 01.11.2007). The decision N1278-Ն has recognised 81.483 hectares of agriculture land belonging to physical and legal entities as exceptional, eminent domain…[443]

People in these two villages earned their living mainly based on natural resources by cultivating, selling berries gathered in the forest and husbandry. [444] In the process of forest logging and mining industry construction only 1700 working places will be operating, according to the developer, [445]many of the employees will be residents from other parts of

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[440] Hance, 'Forest copper mine triggers controversy in Armenia' (n427),Vallex Group, 'Armenia Copper Program' (*Vallex Group* 2014) <http://acp.vallexgroup.am/en/about-us> accessed 08/01/2015.
[441] Hance, 'Forest copper mine triggers controversy in Armenia' (n427).
[442]Hakob Sanasaryan, 'Greens' Union of Armenia to Represent Teghut Project Alternative Analysis' (*Ecolur, New Informational Policy in Ecology,* 19/03/2012) <http://www.ecolur.org/en/news/mining/greens-union-of-armenia-to-represent-teghut-project-alternative-analysis/3713/> accessed 10/01/2015.
[443] Ibid.
[444] Policy Forum Armenia, *The State of Armenia's Environment*(n27).
[445] Hance, 'Forest copper mine triggers controversy in Armenia'(n427).

Armenia. It is impossible to strengthen the economic security of the country by causing the loss of over 3000 stable agricultural jobs, ruining, destroying, contaminating the environment, making fertile territories uninhabitable, by creating temporary new jobs and hastily consuming the natural resources, on the contrary such practice will inevitably bring about the collapse of the economy.[446]

This project is a threat to the water of Shnogh River about which the experts are presenting their concern.[447] The river is the only source of water for two villages. 'Under the data by "Environmental Impact Monitoring Centre" of Nature Protection Minister, the pollution of the Shnogh River, Lori region, is classified under category 5, which means that the river is in the disastrous situation.' [448] The issue of this developing project is very complicated; however, the current research studies this case under two provisions of EIA Law in Armenia: the standing issue (public participation in decision-making) and Trasnboundary issue. As it is mentioned above the interviews have been held in two villages; Teghut and Shnogh. The fieldwork aims to present that people in these two villages were strongly linked with the forest, breeding and land cultivation. By taking away their lands and forest the government creates not only natural disaster, but also jeopardizes the life of the population. The forest has already been cut and land is ready for mining purposes.[449] It is planned to operate an open pit mining in the site, which is considered highly dangerous both for the surrounding nature and people's health. 'Compared with underground mining, open pit mining is often more profitable, but creates greater environmental problems through

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[446] Sanasaryan, 'Greens' Union of Armenia to Represent Teghut Project Alternative Analysis' (n442).

[447] Teghut Forest Protection Civic Initiative, 'Shnogh River is in a Disastrous Condition Though Teghut Mine Was Not Exploited Yet' (*EcoLur,* 11/ 2014) <http://teghut.am/2014/11/shnogh-river-in-danger/> accessed 05/12/2014. They speak about the high level of molybdenum in the water at this stage when the exploitation of the mine is not started yet. Ecolur, 'Teghut Mine Still Not Developed But Shnogh River in Disastrous Situation' (*Ecolur, New Information Policy in Ecology* 09/2014) <http://www.ecolur.org/en/news/water/teghut-mine-still-not-developed-but-shnogh-river-in-disastrous-situation/6597/> accessed 05/12/2014.

[448] Ecolur, 'Teghut Mine Still Not Developed But Shnogh River in Disastrous Situation'(n447).

[449] See figure 4.3.

its impact on landscapes and ecosystems. Toxic chemicals flow from mines and mine wastes have a large potential to pollute rivers and lakes.'[450]

People are faced with similar problems when many hydropower stations are being constructed on small rivers throughout the country. Those who make their living by land cultivation and agriculture need water for their work and life in general. If the governing authorities construct several hydropower stations on a small river, they will alienate the right of people to live in those areas which are destined to become desserts in a short period of time

Below is a discussion about two villages which face water problems due to development projects and decisions made by the RA governmental and community leaders.

Fig. 4.3[451]

Fig.4.4[452]

[450] Stuhlberger, *Mining in Armenia*, (n48)26

[451] The picture is taken in Teghut Forest after the development project is started.

4.3.2. Case Number Two: The Martsiget River; construction of Hydropower Stations in Lori Region, Armenia

Fig.4.5[453]

Martsiget River flows in Lori region of Armenia. Some small hydropower stations have already been operating on this river. [454] The residents are concerned of this development project as they worry about the river which is the main source of water in their village. People started their protests as soon as they saw the construction works going on in the area of the river.[455] Environmentalist Levon Galstyan said that 90 percent of HPPs on all rivers in Armenia are small HPPs, and the rivers are very shallow, during dry weather they all parch.[456]

The people who know in depth the environmental issues in Armenia and the way they are regulated by the government are concerned as well. They follow up the development projects that are ongoing in Armenia and witness the rivers that disappear forever because of similar development projects.

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[452] These photos are provided by Save Teghut group members who provided the candidate a verbal allowance to use this photos from their page in Facebook https://www.facebook.com/save.teghut/photos_stream and web site www.teghut.am.

[453] Martsiget river photo is taken by Gayane Atoyan during fieldwork.

[454] Environmentalists, 'Small hydropower plants threaten rivers in Armenia' Tertam <http://www.tert.am/en/news/2013/05/14/hek/> accessed 14/05/2013.

[455] Bid Ocean Asia Pte Ltd, 'Residents Protest Against Hydropower Plant In Marts River' (*Bid Ocean Network,* 2001-2014) <http://www.bidocean.asia/Asia-tender-business-news/97821-AM--Residents-Protest-Against-Hydropower-Plant-In-Marts-River.html> accessed 24/04/2013, Kristine Aghalaryan, 'Marts Villagers and Activists Block Highway to Protest 3rd Hydro-Plant' <http://hetq.am/eng/news/30815/marts-villagers-and-activists-block-highway-to-protest-3rd-hydro-plant.html> accessed 24/04/2014 see fig.4 on page 27.

[456] Abrahamyan, 'Hydro Concerns: Environmentalists, villagers oppose construction of plant on Marts river'(n154).

They speak up to warn the population, the government and developers that such irresponsible approach to the nature will have disastrous results for people and the nature. They predict that in 20 or 30 years Armenia will suffer because of the lack of water resources.[457] 'We have already recorded six such dried-up rivers and submitted this information to the Ministry of Nature Protection,' said Galstyan, adding that the HPP is designed to employ seven people with monthly wages of 30,000-40,000 drams (about $75-100), while the entire river will become a water conduit.[458]

This will cause damage to the whole village and surrounding environment. People are dependent on water and soil as they earn for their living by cultivation and horticulture. The RA government has given its consent to the construction of this power station. Not every project is transparent and not all relevant documents can be found in the web site of the Ministry of Nature Protection of Armenia. One of non-published development projects is Martziget SHPP development project.

4.3.3. Case Number Three: Pagh Djur River in Tavush region Armenia[459]

Fig.4.6[460]

[457] Ibid.
[458] Ibid.
[459] Ecolur, 'Small HPP Khachaghbyur-2: Complete Documental Mess' EcoLur Network" web-site has been created by

CEPF / WWF support Ecolur Network < http://www.ecolur.org/en/news/water/small-hpp-khachaghbyur2-complete-documental-mess/4170/> accessed 24/04/2014.

[460] The process of construction of the SHPP on Pagh Jur river from Ecolur website.

This development project is initiated in Ijevan preserve, Tavush region, Armenia. It has strategic importance for the area it flows. The environmental activists who fight for the ecological conservation in Armenia encounter threat to the surrounding ecology of this river if it is exploited for manufacturing. 'Paghjur River is the left tributary of the Aghstev River and flows from a distance of 41 km from its mouth. Paghjur River is 31 km, its total drainage basin is 207 sq. km. The river rises from one of the southern tops of the Gugarats mountain range at height of 2119 meters, from the slope of Khan-Bulagh Mountain.'[461] The small hydropower plant development project is named Khachaghbyur-2. Khachaghbyur-1 has already been constructed by the 'Qarevard' LLC and has been operating on the same river.[462] The environmental assessment documents had been presented by the developer to the Ministry of Nature protection in Armenia twice. The first one was declared invalid by the Minister of nature protection in Armenia in October 2012 and a new project development proposal was requested from the developer: 'Megaenergy' LLC.[463] 'The amended version of "Khachaghbyur-2" SHPP has been presented to Environmental Expertise SNCO of Nature Protection Ministry, the public hearings of which were held on 17 February 2014. Under project, the length of the pipeline is 3400 meters.'[464]

> "The river separates two villages – Yenoqavan and Getahovit. One small HPS "Khachaghbyur-1" has already been operating on the river. Yenoqavan villagers do not know much about the first HPS, as it does not touch upon their interests. But Getahovit

[461] Ecolur, 'Construction of "Khachaghbyur-2" SHPP on Paghjur River Will Make It Disastrous' Analysis of Ecological risks, EcoLur: New informational Policy in Ecology <http://www.ecolur.org/en/news/analysis-of-ecological-risks/construction-of-vkhachaghbyur2v-shpp-on-paghjur-river-will-make-it-disastrous/6046/> accessed 21/01/2015.

[462] Ibid.

[463] Ecolur, 'Khachaghbyur- 2 SHPP Construction New Project Submitted for Environmental Expertise' News, Ecolur: New Informational Policy in Ecology <http://www.ecolur.org/en/news/dialog-with-officials/khachaghbyur-2-shpp-construction-new-project-submitted-for-environmental-expertise/5809/> accessed 21/01/2015.

[464] Ecolur, 'Construction of "Khachaghbyur-2" SHPP on Paghjur River Will Make It Disastrous'

> residents have already felt the negative impact: the water is almost completely taken not via one, but two huge pipes. Along the road where pipes are laid, there are intense landslip processes, "Those who are familiar with this area, know the grounds – landslips and falling stones…The benign layer has been formed here for thousands of years. This is protective layer from landslips, but now it has been taken out and even protective barriers have not been put, we cannot understand whether or not geologists have worked here at all…how was all this possible?!!!..." the residents say. [465]

Yenoqavan residents are less informed, although the public hearings for this development project were held in this village. The villagers argue that the hearings were not announced properly for all villagers to be able to know about that and participate. 'Its public hearings were held in Yenoqavan, but not in Geghahovit…In Yenoqavan a very narrow range of people gathered, but the village learnt, they started opposing to it…The Ministry posted the statement about hearings several hours before its beginning and we do not know anything about the risks, geological organizations can write whatever they want for the sake of money,' Yenoqavan residents say.[466]The experts claim that the river is completely dry by now, however the consent for constructing the hydropower station was given by the government. [467] The second consent document for the Khachaghbyur-2 development project initiated by Megaenergy LLC is on the web site of the Ministry of Nature protection in Armenia. [468] The RA Government approach to the small hydropower plants is positive and it looks forward to constructing more and

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[465] Ecolur, 'Small HPP Khachaghbyur-2: Complete Documental Mess'(n459)

[466] Ecolur, 'Construction of "Khachaghbyur-2" SHPP on Paghjur River Will Make It Disastrous'

[467]Ecolour, '"Khachaghbyur 1" and "Khachaghbyur-2" SHPPs Destroying Paghjur River Ecosystem' (*Ecolur; New Informational Policy in Ecology* 14/11/2014) <http://www.ecolur.org/en/news/sos/quotkhachaghbyur-1quot-and-quotkhachaghbyur2quot-shpps-destroying-paghjur-river-ecosystem/6778/> accessed 05/12/2014. During my visit to this village, I met many residents. All of them were against the construction of the station, however were hopeless that their voice will be heard. https://www.youtube.com/watch?v=OaKfl3kyv0M.

[468] Ministry of Nature Protection in Armenia, *Environmental Impact Assessment Expert Conclusion* (Report on EIA Consent for Megaenergy LLC development project named ''Khachaghbyur-2'', 2013).

more plants on the rivers of Armenia. The Ministry of Energy and Natural Resources of Armenia reports: 'Construction of small HPPs (SHPP) in Armenia is a leading course of action towards development of renewable energy sector and securing of energy independence in Armenia. As of the 1st of January 2015, and according to the provided licenses, 56 additional SHPPs are under the construction, with about total projected 114 MW capacity and 396 million kWh electricity annual supply.'[469]

Although the Ministry of Nature Protection has given its consents for development projects selected as case studies for this research work; however, there are still a number of unanswered questions. Many of them are raised by the Pan-Armenian Environmental Front to the Ministry. They list errors and shortcomings of the projects. In case of small hydropower station, they address the inconsistency of laws, absence of scientific contemporary means of control on reasonable consumption of natural resources, methodology of checking and controlling the usage of water, cost benefit analysis, lack of public awareness and participation. They suggest the government should undertake the following measures:

> Immediately start monitoring works in this direction and give some professional arguments and conclusions, if it's permitted to take up all river into the pipe or to build several SHPPs on one river. Finally, it should be understood and evaluated what kind of adverse ecological effects may bring more than 300 small hydropower plants construction and operation in a small country like Armenia. In our opinion this is one of the most important issues, which concern not only the civil society, but also the environmental experts.[470]

Pan-Armenian Environmental Front is one of few serious environmental groups that deals with environmental issues and challenges the work of the government and developers in decision-making process in Armenia. For the

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[469] Ministry of Energy and Natural Resources of the Republic of Armenia, 'Hydro Energy'

[470] Pan-Armenian Environmental Front, 'Suggestions on the issues brought up by the Small Hydropower Plants' (*Համահայկական բնապահպանական ճակատ(ՀԲՃ)/Pan-Armenian Environmental Front,* 2014) <http://www.armecofront.net/lrahos/suggestions-on-the-issues-brought-up-by-the-small-hydropower-plants/> accessed 08/12/2014.

most part, it is impossible to find more details on development projects on the web site of the Ministry of Nature protection besides the consents given by the Ministry. The transparency in environmental governance is necessary as non-transparent governance harms not only the residents, but also the business investors and government's effective work.[471]

4.4. Fieldwork Data Analysis for Cases 1-3

As it is explained above four villages were visited during a month of fieldwork, different meetings with NGO members, lawyers and environmental activists were held. There was a plan to meet lawyers at the Ministry of Nature Protection in Armenia; however, the organisational procedure at the Ministry caused lot of time which was cancelled due to the time limit in August 2013. Only in August 2014 it became possible to arrange a meeting at the Ministry of Nature Protection in Armenia. I was allowed to meet lawyers at the Legal Drafting Department at the Ministry. Two lawyers at this Department agreed to allocate an hour for the meeting and answered the questionnaires. One of them was the head of the division Mr. Ashot Simony an. Both participants were questioned based on the questionnaires prepared for this fieldwork in advance for all the participants.

The obtained information was transformed into the quantitative data in SPSS analytical program and the responses of villagers and other stakeholders of the research were measured against the existing environmental situation in Armenia. The qualitative texts written by the respondents will be used in form of the citations in further discussion of the topic.

In total 38 villagers participated in the survey from four villages and the number of lawyers, activists and NGO members is 15 altogether. In total 52 research samples were collected. The objective of the field research is to show the level of awareness of people in Armenia during the process of environmental decision-making, their participation and the impact of their

[471] International Business Publications USA, *Armenia Mineral & Mining Sector Investment and Business Guide* (Global Investment Center 2013).

voice on the proposed projects of development. The same relates both the village residents as impacted community and people who are aware of developing projects and are somehow involved in environmental governance process. It is assumed that descriptive and regression analysis of the obtained data will give an approximate answer to the questions this research has generated. Therefore, the cases are discussed and presented separately, while the statistical analysis draw a general picture of the existing situation.

By answering to the questions below, the fieldwork aims to give the answer to the three research topic questions (# 6, 7, 8) referred in Chapter I[472] of this study which will result the fulfilment of the objective number Four in the same Chapter.[473] Other environmental issues will be presented in details in this chapter based on the data obtained from the Pan-Armenian Environmental Network and 'Save Teghut' Environmental Group following the analysis of the fieldwork data.

4.4.1. Discussion on analysis of general questions addressed to villagers based on SPSS data analysis program[474]

The following hypothesis raised based on the field research data by the help of preliminarily made questionnaires and will be answered based on the data analysis:

The general information we have got from the respondents has this outcome; majority of the respondents were middle aged ones. These people were in their age of work and cared for themselves and their families. Fig.1S shows the results below.

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[472] 6. Whether the EIA decision-making procedure is transparent in Armenia? 7. What are the law enforcement mechanisms that make the developer to be accountable against public and government? 8. Whether the public participates in environmental decision-making and in what extent the voice of public is considered?

[473] To consider measures to facilitate wider public participation in EIA decision-making, and in particular to give standing to NGOs to participate effectively in the process. To ensure that the law implements the standards established by the Aarhus Convention provisions of which Armenia is a signatory.

[474] Appendix 5.

39.5% -40-50 years old

31.6% -30-40 years old

And 28.9% -50-60 years old

The valid percent 100 shows that there were no missed answers in this survey and all participants answered to this question. In all charts below this has the same meaning unless the result shows number than 100. [475]

Age fig. 1S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	30-40	12	31.6	31.6	31.6
	40-50	15	39.5	39.5	71.1
	50-60	11	28.9	28.9	100.0
	Total	38	100.0	100.0	

Fig. 2S shows that in the process of survey there were 57.9% male and 42.1% female respondents in all villages together. In terms of environmental rights and gender equality it is interesting to check which gender prevails proportionally in this study. The male population prevails as we see based on the analysis. In Armenia men are the main bread earners in families. Armenia is a patriarchal country and women are hardly allowed to participate in decision-making process. [476] Though in recent years we witness the tendency of growing equality between genders in the country. [477]

[475] fig. 1S.

[476] Social Institution and Gender Index, 'Armenia' (*OECD Social Institution and Gender Index,* 2015) <http://genderindex.org/country/Armenia> accessed 30/30/2015.

[477] Ibid, fig.2S.

Gender fig 2S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	male	22	57.9	57.9	57.9
	female	16	42.1	42.1	100.0
	Total	38	100.0	100.0	

The chart of data analysis shows the employment rate of respondents. 73.7% of all respondents are employed and 26.3% are unemployed in Fig.3S. Based on my own observations I need to inform that the heads of village communities insisted on involving the community centre staff members as participants, so they can answer to the questions of my survey. That is why the percentage of employed participants is more than unemployed ones. The number of unemployed participants was generated based on the random choice of people in villages. The surveyed data presents the fact.[478]

Employed fig.3S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	28	73.7	73.7	73.7
	no	10	26.3	26.3	100.0
	Total	38	100.0	100.0	

Fig. 4S shows that majority of respondents are married 76.3%. Singles are 15.8 % and 7.9% are widowed, which means most of them bear the responsibility for their family and children.[479] People live in villages by means of cultivation and husbandry. This has a strong relation to nature, particularly soil and water which became a matter of dispute in terms of business development between rich oligarchs and common people in

[478] Fig.3S.
[479] Fig.4S.

Armenia. The RA government claims that they open work places for people and provide the opportunity of earning their living by taking the lands as Eminent Domain;[480] however the rate of poverty increases which causes work emigration of the population. 'Driving through the countryside en route to Teghut, one can see stark difference between relative urban affluence and the continuing level of poverty that still make Armenia eligible for multilateral development assistance from the World Bank and the UNDP.'[481]The heads of the village communities believe that the mining opportunities bring possible job places for people. The study looks forward to finding out some results on how the life of the communities have changed after the development projects were implemented. Whether the people got jobs and could entertain a normal life in their communities?

Status fig.4S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	single	6	15.8	15.8	15.8
	married	29	76.3	76.3	92.1
	widowed	3	7.9	7.9	100.0
	Total	38	100.0	100.0	

In the list of questions, the study considered age, marital status and gender prevalence of respondents to consider the level of vulnerability in groups and the level of their ability to stand up for their rights in the environmental decisions making process. The importance of the role of public participation in an environmental decision-making process urges to study what age of people are involved in the environmental decision-making process and how

[480] N 1279 About the Change of the Purpose of the Lands Located in Teghut and Shnogh Community Administration Area and the Recognition of those Lands as Eminent Domain.
[481] Saleem Ali, 'Armenia's Mining Quandary ; Developing a Diaspora Linked Economy' National Geographic <http://voices.nationalgeographic.com/2012/12/21/armenia-mining/> accessed 30/03/2015.

much they are aware of ongoing projects. It is important to address the interest and awareness of people to be involved in the decision-making process too. Their vulnerability can be identified based on their social status, like being a community centre employee who depends on the opinion of the authorities or people who think that their voice has no power for the authorities.[482] In general, the people are in vulnerable situation as they see the problem but do not see the solution in terms of the lost forest. Also they have lack of information as could notice the problems only after the project was launched and they faced the harmful results, such as staying without lands and living means or lack of water resources to cultivate their lands.

4.4.2. The most important questions addressed to villagers[483]

In this survey they are listed below together with the participants' feedback analysis

1. What are the means of living of villagers? What part of them will be impacted in case of alienation of their lands or consuming the water during the development projects? So the respondents were asked to answer the question whether they possess land?

The analysis in Fig. 5 shows that the majority of villagers possesses lands and their means of living is cultivation. 73.3% of respondents answered yes to the question, 21.1% answered no to the question and 5.3% considered the question not applicable. The government of Armenia was changing decisions on lands frequently as the study revealed. Regarding the villages Tegut and Shnogh several decisions about the land ownership and possession have been made. The RA government allocated lands to Shnogh and Teghut communities in 2004 and 2005 by making respective

[482] In the village Teghut most people who were approached and asked to participate in the survey, refused to do so as they were afraid of authorities. Eventually I have to apply to the head of the village to inform him about my research and ask for his permission to talk to people. I was allowed to continue my survey; however the community staff members also took part in it. In Shnogh village the authorities were not in place as I was there after the work hours. People were discontent about the development projects here, but they were reluctant to speak or fill in the questionary up as they were not sure that speaking up could help to save their forest.

[483] Appendix 5.

decisions. [484] The village community became the owner of lands based on these decisions. Later on in 2007, another decision announced the lands of communities as Eminent Domain.[485] Most people in the villages received notifications about this and their lands were taken for the development purposes.[486]

Status fig. 5S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	28	73.7	73.7	73.7
	no	8	21.1	21.1	94.7
	not applicable	2	5.3	5.3	100.0
	Total	38	100.0	100.0	

2. Whether they were aware of the development projects planned for their living area?

Although the majority 70.3% of respondents answered that they have been informed about the project development in their area in Fig.6. However, in the sub question when they were asked who informed them about the development they answered that they had found out about that from their neighbours, relatives and community centre employees informally. Almost every participant in the villages told me that they had been informed about the development projects in frames of every day conversations with their neighbours and/or colleagues.[487] None of participants was aware of the requirements of public hearings and environmental impact statement or any

[484] N 477 For the Trasnfer of the State Possession Lands Located in the Borders of Teghut Community Administration, in Lori Region to the Community as Free Property 2004 ,N 2249 For the Trasnfer of the State Possession Lands Located in the Borders of Shnogh Community Administration, in Lori Region to the Community as Free Property ,2005.
[485] N 1279 About the Change of the Purpose of the Lands Located in Teghut and Shnogh Community Administration Area and the Recognition of those Lands as Eminent Domain.
[486] Few villagers, who received the notification, told me about this. They were among survey participants. See fig. 5S.
[487] Qualitative information in the Questionnaires.

project presentation regarding the developments in their villages. However, in the village Marts the residents initiated a petition against the development of hydropower station as soon as they noticed huge tubes on the river. They prepared a letter expressing their opinion and a demand to stop the constructions. [488] The majority of the village rebelled against the construction. They wanted the developers and the state to inform them about the details of the project environmental impact assessment. Village residents are sure that second hydropower station on the Marts River will dry it and cause water shortage in the village.

Information about the development project Fig. 6S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	26	68.4	70.3	70.3
	no	11	28.9	29.7	100.0
	Total	37	97.4	100.0	
Missing	System	1	2.6		
Total		38	100.0		

3. Whether they have participated in public hearings [489] of the environmental impact assessment process and /or had been given chance to express their opinion?

The answer of this question is revealed based on frequency analysis of the survey feedback. Participants' responses on the question whether they have given a chance to express their opinion is reflected in the chart of SPSS data.[490]

The descriptive frequency analysis shows that 57.9% of respondents answered no to the question whether they have been given a chance to

[488] Anush Bulghadaryan, 'Լոռու Մարզի Մարց գյուղի բնակիչներն ըմբոստացել են (the residents of Marts village in Lori reqion rebelled)' *Aravot* (Yerevan 06/04/2013) <http://www.aravot.am/2013/05/06/240538/> accessed 18/11/2014. See Fig.6S

[489] In the reality, the public in villages in Armenia is not aware what does the participation mean, so the first part of the question was not elaborated in the questionnaire.

[490] See fig.7S. The missing percent (29.7 in Cumulative column) here shows that 100% of participants answered to this question.

express their opinion on development projects, 39.5% of them said yes in Fig.7. However, in the sub question they explain they have talked about the issue to their neighbours, relatives and community service employees. 2.6% of participants consider the question not applicable to their situation. During the conversations, none of them has mentioned that they have been required by the developer or community authorities to participate in general meetings that have been held in frames of environmental impact assessment process for the subject matter development projects. The question in the questionnaire that justifies this argument is whether villagers have been informed about the details of development projects, which assumed again to find out whether the villagers had gathered in some place to be introduced with the ongoing developments in their villages.

A chance to express the opinion on development projects fig.7S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	15	39.5	39.5	39.5
	no	22	57.9	57.9	97.4
	not applicable	1	2.6	2.6	100.0
	Total	38	100.0	100.0	

The statistics in Fig.8S show that 57.9% of respondents were not aware of details of the project. 34.2% of them were informed; however, the answers on sub questions show that they have been informed through informal communications with their neighbours, relatives and community service employees. The participants have not been informed about public hearings and never participated in any meetings organised by the developers or authorities.[491]

[491] Fig.8S, Participants dared to talk to me about issues they encountered and spoke up about this secretly. They were against any type of recording in frames of the research.

Whether the developers presented details of development projects? Fig.8S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	13	34.2	34.2	34.2
	no	22	57.9	57.9	92.1
	not applicable	3	7.9	7.9	100.0
	Total	38	100.0	100.0	

4. Whether they think that their opinion is important for the authorities and can affect the decision-making?

   The respondents think that their opinion has no significance for the authorities, as 68.4% of replies were negative as it shows Fig.9S. Only 26.3% believed that their opinion is important and will influence decision-making.[492]

Do participants consider that their opinion can have an impact in the decision-making process? Fig.9S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	10	26.3	26.3	26.3
	no	26	68.4	68.4	94.7
	not applicable	2	5.3	5.3	100.0
	Total	38	100.0	100.0	

[492] Fig. 9S

5. Whether their voice is being heard and their viewpoints were considered in the process of decision-making?

This question was generated in frames of activities that villagers performed. They protested against the decisions made by the authorities and expressed opinions on the mining and hydropower station development projects. They considered that projects are undertaken without proper communication with residents. However, they strive to speak up about it and inform the state authorities and developers on their viewpoints. The chart in Fig 10 reveals that majority of participants do not feel that their opinion is considered during decision-making process. [493] 5.3% of respondents believe that their voice is being heard in the process of decision-making.

Do participants feel that their opinion was considered in decision-making process

Fig.10S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	2	5.3	5.4	5.4
	no	32	84.2	86.5	91.9
	not applicable	3	7.9	8.1	100.0
	Total	37	97.4	100.0	
Missing	System	1	2.6		
Total		38	100.0		

Descriptive frequency assists in this study to see the picture in statistical level and understand how many residents of the selected villages are involved in the environmental decision-making process and have their say

[493] Fig.10S

in public hearings of environmental impact assessment process. The legal requirements of the RA EIA law provide a ground for public hearings, however, the state authorities, developers and impacted communities still have difficulties in implementing those requirements based on the statistical analysis presented in this study.

4.5. Case Number Four: Amulsar Gold Mining Project in Vayots Dzor region, Armenia [494]

Mining development projects in Armenia are considered as one of the main business fields in the country. It is declared as state priority and all applicable resources are directed to find more and more locations of minerals in order to attract investments for the state budget. The world well-known companies such as World Bank [495], OECD, [496] EBRD, [497] are interested in developing this business in Armenia. For regulating the field properly Environmental Impact Assessment Law was amended in a fast mode[498] in May 2014. The new Law[499] emphasizes the role of business in environmental decision-making and still has many inconsistencies based on the assessment made by Aarhus Compliance Committee. [500] One of the foreseen development projects is Amulsar Gold Mining Project which raises

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[494] EcoLur, 'Amulsar Project: Many Risks and Unknown Benefits' EcoLur Network <http://www.ecolur.org/en/news/mining/amulsar-project-many-risks-and-unknown-benefits/5988/> accessed 01/05/2014.

[495] The World Bank Group, *Armenia Country Program Snapshot* (The World bank Group-Armenia Partnership, 2014), 14.

[496] Teghut Forest Protection Civic Initiative, 'Danish Private Interest and Irresponsible Officials Against Teghut' (*Teghut Forest Protection Civic Initiative,* 2014) <http://teghut.am/en/2014/10/danish-private-interest-and-irresponsible-officials-against-teghut-2/> accessed 20/11/2014.

[497] Geoteam, 'Amulsar:responsible mining, sustainable development' (*Geoteam,* 2014) <http://www.geoteam.am/en/news/view/ifc-ebrd-visit-amulsar.html> accessed 20/11/2014.

[498] According to the head of legal drafting department at the Ministry of Nature Protection in Armenia Ashot Simonyan. The officially amended law was verified by the RA president in May 2014, however continuous amendments are being made so far.

[499] Հայաստանի Հանրապետության Օ ր ե ն ք ը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[500] United Nations Economic Commission for Europe, *Assessment of the draft Law of the Republic of Armenia "On the environmental impact assessment and expertise" Summary, ECE/MP.EIA/2014/L.3.* (Draft decision on the review of compliance with the Convention, 2014),9.

the interests not only of Armenian business investors, but also international ones, among them is the IFC-International Finance Cooperation, one of major investors in Lydian International Mining Company.[501]The latter is the key developer in Amulsar Gold Mining Project.

> Amulsar gold mine is located 170km south of the capital city Yerevan in Armenia. The mine was discovered in 2006 by Lydian International in the south of Armenia, on the border between the provinces of Vayots Dzor and Syunik.
>
> The project falls under two special prospecting licences (SPL), numbers 41 and 42, and a small mining licence (14/588). These licences cover an area of 113 square kilometres and are 100% owned by Lydian's fully owned subsidiary Geoteam CJSC[502] (closed joint stock company). The SPLs, granted in 2009, are valid for five years, while the mining licence is valid for 25 years.[503]

Amulsar gold mine development raised concern of almost all specialists who understand the risks attached to this project. The specialists of the governmental bodies alarm the dangers of this project that threatens to the 'strategic reserves of water resources, resort zones, biodiversity, historical and cultural heritage of Armenia. These risks are presented in the opinions and expert assessments by competent governmental bodies such as Scientific-expert Committee on Lake Sevan of National Academy of Sciences of Armenia (NAS RA) and Nature Protection Ministry of Armenia.' [504] The concerned public started campaigners against this initiation and raised voice during the conferences that were held in Armenia since the announcement of this development project. They spoke up about '

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[501] Lydian International Limited, 'Lydian International Limited' 2014) <http://www.lydianinternational.co.uk/> accessed 20/11/2014.

[502] Geoteam Company the representative of Lidian International in Armenia.

[503] Mining Technology, 'Amulsar Gold Mine Project, Vayots Dzor Province, Armenia' (*Mining Technology,* 2014) <http://www.mining-technology.com/projects/amulsar-gold-project-armenia/> accessed 01/05/2014.

[504] Inga Zarafyan, 'Amulsar: Risks Left, EBRD Influence Increasing' Ecolur: New Informational Policy in Ecology <http://www.ecolur.org/en/news/mining/amulsar-risks-left-ebrd-influence-increasing/4880/> accessed 07/03/2015.

1) impact on Jermuk resort, and 2) impact on water resources, 3) impact on biodiversity.'[505]

Interestingly, at the beginning of the project environmental assessment process the developer avoided to present all impacted communities one of which was the resort city Jermuk. It is only 12 km away from the mountain where the project is planned. 'The Municipal Council of Jermuk resort town gave its negative assessment to Amulsar project. "Geoteam Company neglected Jermuk resort which has important significance with its healing water and exclusive climatic conditions... Under the government decision "On Declaring Jermuk Town as a Tourism Centre" № 1064-N dated on 18.09.2008, Jermuk determined its way to develop and such a mining spot cannot help leaving negative impact on Jermuk's brand'[506]

> Geoteam Company insists that Jermuk is not within Amulsar project impact area. But Jermuk, if concretely, Kechout village, which is the administrative area of Jermuk resort, was included into the project in 2009 as approved by Nature Protection Ministry of Armenia. Thus, the project affected zone included Jermuk. However, in the expanded project for 2012 Kechout disappeared from the list. [507]
>
> The town of Jermuk and its community are 12 km far from Amulsar mining and are considered to be a non-affected community. Here comes an issue of definition for affected community referred in the RA EIA Law.[508]

The residents of Jermuk town were not considered as impacted community at the beginning of the development project as it is evident from the above-

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[505] Ibid.

[506] Ibid.

[507] ArmInfo, 'Mayor of Jermuk - Geoteam: Jermuk residents prefer tourism to mining industry' ArmInfo Independent News Agency <http://www.arminfo.info/index.cfm?objectid=7B2BD810-B569-11E1-9223F6327207157C> accessed 01/05/201416.

[508] Zarafyan, 'Amulsar: Risks Left, EBRD Influence Increasing' (n504).

referred sources. Later on Lidian International had reported about two affected communities which are Jermuk town and Gndevaz town; however, there are four communities in this region that are considered as impacted under the conditions presented by the Amulsar Gold Mine development project. The Lidian International had held only two public hearings in two communities.[509]

The Gndevaz community members were against the project and prepared a letter to World Bank and EBRD expressing their concern and discontent regarding the project.[510]Environmental specialists and activists know that Amulsar project will definitely be harmful for Armenia's ecosystem. The previous quote speaks about the start of the project in 2012, however, it has been finally approved in 2014.The developer considers they will create 'exemplary' mining conditions and environment for Amulsar mining.[511] However, the specialists consider the impact of the project on the ecosystem of Armenia significant.

> The land areas surrounding Amulsar are exposed to pollution – pastures, meadows and protected territories. Thus, the Water Code of Armenia is violated (Article 98 "Protection of Interconnected Ecosystems and Landscapes" and Article 99 "Primary Requirements towards the Protection of Water Resources". Nevertheless, the company keeps silence about the presence of toxic admixtures and their impact on health and environment. The EIA project of Amulsar open pit mining submitted for environmental expertise also does not say anything about the risks. Thus, the requirements of Article 5 of RA Law on 'Environmental Impact Expert Assessment' are violated in all three points.[512]

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[509] Lidian International, *Site Visit: Amulsar Gold Project* (Lidian International, 2014), 78.

[510] People of Gndevaz Village in Vayots Dzor region of Armenia, *Letter to the Compliance Advisor Ombudsman responsible for World Bank activities and EBDR* (2014).

[511] CivilNet, 'We aim to build an exemplary gold mine at Amulsar' (*CivilNet,* 12/04/2013) <http://civilnet.am/2013/04/12/we-aim-to-build-an-exemplary-gold-mine-at-amulsar/> accessed 01/05/2014

[512] EcoLur, 'Amulsar Project: Many Risks and Unknown Benefits'(n491).

Interestingly, the developer has changed its project details many times since they started it. World Bank refers that the project has been scheduled since 2007.[513] However, in August 2014 the developer still was presenting the project to the impacted communities. As it is explained above in this subtitle, at the beginning, the number of identified impacted communities were incomplete, the environmental activists raised their voice against the fraudulent activities of authorities and developers. After the public hearings held in Gndevaz village on 25th August 2014, this projects was approved by the RA Minister of Nature Protection Aramayis Grigoryan.[514] Moreover, many questions regarding the effectiveness of the project remained unanswered. The process of public hearings had a formal feature as none of the questions and the project developers and authorities answered concerns. The public hearing was organised in Gndevaz village; however, the village residents were not present they boycotted the hearings and left the room where the hearings continued without their presence.[515]

4.5.1. Opinions of lawyers, environmental activists and NGO members based on the fieldwork results[516]

This subtitle presents the opinions of people who are more aware of the benefits and harms of the environmental decision-making in Armenia. Some of these participants are involved in non-governmental projects; two of the respondent lawyers are from the Nature Protection Ministry. The survey strives to approach the issue from all sides, reveal the accurate information

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[513] n495.

[514]Save Teghut Civic Initiative, 'The Permit for Exploitation of Amoulsar Mine is Illegal' (*Save Teghut Civic Initiative* 08/12/2014) <http://teghut.am/en/2014/12/the-permit-for-exploitation-of-amoulsar-mine-is-illegal/> accessed 07/01/2015,Lydian International Limited, 'Lydian Receives Comprehensive Mining Right Approval For Amulsar Gold Project Toronto' (*Lydian International Limited,* 27/11/2014) <http://www.lydianinternational.co.uk/news/2014-news/185-lydian-receives-comprehensive-mining-right-approval-for-amulsar-gold-project-toronto> accessed 10/10/2015.

[515] Lidian International, *Site Visit: Amulsar Gold Project*(n509).

[516] SPSS Data analysis as a quantitative method and comments of participants as qualitative method.

on current environmental decision-making tendencies in Armenia as much as it is possible in the context of this study.

All together 15 NGO members, activists and lawyers participated in the survey. Our goal is to find out the number of participants and their age range. Fig.11[517] shows that 15 members participated in this survey from 40-70 years age range. So the missing number shown in the table is not an important figure in this task and can be ignored.[518] Five of these respondents are from different activist groups,[519] five of them are NGO members, three independent lawyers and two government employed lawyers. The questionnaires are constructed based on the area of respondents; however, some questions are the same for everybody. The idea is to find out their approach towards the existing legislation in Armenia and its implementation in terms of public participation and raising the awareness on environmental decision-making process among population in Armenia. Their responses are presented in two groups: group one are the members of active groups, group two are lawyers and NGO members as the lawyers and NGO members answered to the same questions. This subtitle in Chapter 4 discusses the general questions at first and the area specific questions follow accordingly in the following sub-title.

Age of participants Fig.11S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	40-50	6	15.8	40.0	40.0

[517] Fig. 11S.

[518] Please always ignore the system missing number shown by the SPSS analysis in all tables as it is the system feature and does not relate to the tasks we follow in this survey.

[519] Environmental activists are people who are highly concerned of decision-making process in Armenia, they raise their voice against unjust approvals of development projects and are different from the NGO members as they act voluntarily and independent without any payment. People come together and create independent civic initiatives for to pursue their cause. Ishkanian and others, *Civil Society, Development And Environmental Activism in Armenia* (n154), 17, Fig.12.

	50-60	7	18.4	46.7	86.7
	60-70	2	5.3	13.3	100.0
	Total	15	39.5	100.0	
Missing	System	23	60.5		
Total		38	100.0		

4.5.2. General questions that are considered to be common for all 15 respondents

All 15 respondents of this survey were asked similar questions in their questionnaires, so the feedbacks are analyzed based on the responses of all the participants.

On the question whether the public hearings are being held adequately in Armenia in frames of the EIA process the answers were gathered from the participants. The frequency analysis of their replies were negative as Fig 12 and Fig.13. Fig 12 show the environmental activists' feedback. All five activist respondents consider that the public hearings are being held inadequately. Fig. 13 shows the answer received from the NGO members and lawyers. Five of ten respondents from the second group[520] answered the same way as activists, four of them considered the question irrelevant to their experience and only one answered 'yes'. In these particular tables it is necessary to pay attention to the numbers 5 and 10 leaving the missing number calculated by the system aside.[521]

Whether public hearing procedures in environmental decision-making process in Armenia are being held appropriately? Fig.12S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	5	13.2	100.0	100.0
Missing	System	33	86.8		
Total		38	100.0		

[520] Lawyers and NGO members, Fig.12S and 13S.

[521] n518.

Whether the public participation arrangements for EIA process in Armenia are adequate? Fig.13S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	1	2.6	10.0	10.0
	no	5	13.2	50.0	60.0
	not applicable	4	10.5	40.0	100.0
	Total	10	26.3	100.0	
Missing	System	28	73.7		
Total		38	100.0		

The respondents were asked to leave comments in case if they replied 'NO' to this question.

Lawyer number one comments: 'The provided information is incomplete. Public hearings have mainly technical feature in Armenia.' Lawyer number two comments: 'First of all there is a need to elaborate regulations on public hearings and how to involve the public including appropriate well qualified specialists, experts, scientists, etc.' Lawyer number three comments : 'There is a need to create effective legal mechanisms for public participation, also provide fair judicial procedures'.[522]

Environmental activists left their comments as well. Activist number one writes: '1. If there is no active public participation, the hearings are very formal. 2.There is a requirement of three public hearings per project by the EIA RA Law, only two hearings are being held most of the time or none of them is done at all'. Activist number two comments 'There is not established regulation on public hearings, opinions are being ignored'.

[522] All these replies are written in Armenian on the questionnaires' and were translated into English by me for the purpose to elaborate them in this chapter.

Activist number three writes: ‘The information on public hearings is not being announced in a reasonable time. The expressed opinions are neglected and not registered in protocols’. Activist number four: ‘The decision-making body hears opinions and then makes the decision based on his or her own presumptions or based on the amount of corrupted money’. Activist number five: ‘The held public hearings are very formal. Those are like performances. The public hearing organizing group is not interested in listening to opinions and comments.’

The next common question for the groups referred to their participation in public hearings. Fig. 14S presents the answers of 5 participant activists on the question whether they participated in public hearings. All of them answered ‘yes’ to the question. The same question was answered by the NGO members and lawyers as well. The Fig 15S shows the result of their answers.

Have you ever participated in public hearings of environmental Impact assessment? Fig.14S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	5	13.2	100.0	100.0
Missing	System	33	86.8		
Total		38	100.0		

Have you ever participated in public hearings on EIA process? Fig.15S

		Frequency	Percent	Valid Percent	Cumulative Percent
	yes	4	10.5	40.0	40.0
Valid	no	6	15.8	60.0	100.0
	Total	10	86.2	100.0	
Missing	System	28	13.2		

Total	38	100.0		

Not all lawyers have the experience as the result shows. The answers are coded 1=yes, and 2=no. Fig 15S shows 4 results 'yes' and 6 results 'no.' Among these four people there were both lawyers and NGO members. Those lawyers who have experience in public participation left their comments on the questionnaire. Lawyer number two writes the following comment on the questionnaire: 'I have participated in many hearings. Most of them have just been very formal. The last hearing I was present at was heading on new EIA Law project which became a spectacular show by Minister's initiative. Even some specialists were not allowed to participate in this hearing.'

The following question is about the impact of participation during public hearings: if their opinion and voice was heard?[523] Fig. 16 presents the results. Five members of the environmental activists' group consider that their participation has no impact in the environmental decision-making process.[524]The activist number one left the comment on this matter: 'The public hearings carry imitative features mainly. In case if there are no other participants besides the affected community members the hearings are not being held at all. But if there are opposing people their written or oral objections, opinions are not being considered. Even if the whole community is against the project and presents its justifications on objections by the help of PAEF[525] there is no guarantee that the project will not be approved or the project will get the negative feedback.' The activist number three wrote 'Our opinions were never considered'. The activist number four comments: '[Opinion] Never was considered, was

[523] Fig.15S.

[524] Fig.16S.

[525] Pan-Armenian Environmental Front(n466).

ignored and falsified. The evidence is Marts village.' The activist number five writes: 'The Opinions are being heard but the decisions are being made based on the interests of oligarchs.'

Do you consider that your participation makes an impact on environmental decision-making? Fig.16S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	5	13.2	100.0	100.0
Missing	System	33	86.8		
Total		38	100.0		

The lawyers have different approaches to this question. Fig. 17S shows the results obtained based on the answers of NGO members and lawyers. In addition, some of them left their comments on this question. Lawyer number one who participated in public hearings left the comment: 'Adequate economic assessment on cost and benefit should be conducted. Often the information does not fit the real matters of the project'. Lawyer number two writes: 'First of all there is a need to elaborate regulations on public hearings and how to involve the public including appropriate well-qualified specialists, experts, scientists, etc.' Lawyer number four who is a government official writes a comment as well 'There happened cases when the suggestions of the public representatives were considered useful for the legal drafting and the ideas were used accordingly'. Although this respondent has not ever participated in hearing he is engaged in drafting of laws at the Ministry of Nature Protection of the Republic of Armenia.

Do you think your voice was heard? Fig.17S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	1	2.6	10.0	10.0
	no	3	7.9	30.0	40.0

	not applicable	6	15.8	60.0	100.0
	Total	10	26.3	100.0	
Missing	System	28	73.7		
Total		38	100.0		

The specific questions addressed to 15 participants is discussed below. The lawyers and NGO members got the same questionnaires while questions addressed to the environmental activists were different. The first part of the subtitle presents specific questions for lawyers and NGO members, the second refers to the specific questions of environmental activists.

4.5.3. Area Specific Questions:

The Lawyers and NGO Members Answered the Following Area Specific Questions:

a) Do you think that existing legislation on Environmental Conservation in Armenia adequately regulates the field?[526] The frequency analysis show that majority of the respondents consider that the existing legislation does not regulate the field adequately. Two of the respondents answered 'yes', six of them answered 'no', one respondent answered 'Not applicable', one of them answered 'other.' Fig. 18 shows the results.

Whether the existing legislation on Environmental Conservation in Armenia adequately regulates the field? Fig. 18S[527]

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	2	5.3	20.0	20.0

[526] Fig.18S.
[527] Fig. 18S.

	no	6	15.8	60.0	80.0
	not applicable	1	2.6	10.0	90.0
	other	1	2.6	10.0	100.0
	Total	10	26.3	100.0	
Missing	System	28	73.7		
Total		38	100.0		

Lawyer number one left the comment, 'Laws on EIA, NGOs and the Administrative Procedure Code do not guarantee public participation in decision-making'. Lawyer number two, who replied 'Other' to the question writes the comment: 'The legislation in Armenia is in a satisfactory condition. There are all necessary laws. The existing laws are entitled to solve problems if they will be implemented. The laws in Armenia are not implemented. They are not implemented by legislators themselves. Even the National Assembly of Armenia violates laws. The courts and judges are not independent. This is proved in the reports given by the President of the country, Human Rights Defender and others.' Number 3 comments 'The main laws and regulations on EIA and EIE are absent.' Some of the NGO members have their comments on this question as well. NGO member number three writes 'The law [EIA] is not comprehensive, does not include all fields, procedures.' Number 4 respondent writes 'Because deep and diverse hearings are not being held moreover, the public hearings are very formal'. Number 5 member comments: 'Law does not have notions on recycling, public education, environmental impact of waste reducing, plastic waste, etc.'

b) Do you consider the RA EIA Law adequately implements the environmental commitments of Armenia under international environmental law?[528]

The frequency analysis shows the 7 of ten respondents answered negatively to the question, considering that the existing legislation does not adequately

[528] Fig.19S.

implement the international environmental commitments of the country. Two of the respondents answered 'yes', one answered 'not applicable'.

Whether RA EIA Law adequately implements the International environmental commitments Fig.19S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	2	5.3	20.0	20.0
	no	7	18.4	70.0	90.0
	not applicable	1	2.6	10.0	100.0
	Total	10	26.3	100.0	
Missing	System	28	73.7		
Total		38	100.0		

c) Do you consider that secondary regulation (for example Governmental decisions) should be used to regulate development with potentially significance of environmental effects?[529]

The major part of the respondents consider that secondary regulations are important in environmental decision-making process. 9 of ten respondents answered 'yes' to this question and only one answered 'no'. Some of them justified their answers by comments. Lawyer number two writes 'However it's more than 5 years the secondary regulations are not being implemented'. NGO member number three writes 'I think the Law should be so comprehensive that no need of additional decisions exist. Practice shows that decisions very often contradict the laws.' NGO Member number four comments: 'Because the law itself is not clear.'

Do you consider that secondary regulation important for environmental decision-making in RA? Fig.20S

[529] Fig.20S.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	9	23.7	90.0	90.0
	no	1	2.6	10.0	100.0
	Total	10	26.3	100.0	
Missing	System	28	73.7		
Total		38	100.0		

d) Are you aware of State Environmental Inspection? What enforcement mechanisms do they [state Environmental Inspection] use to protect natural features?[530]

Nine respondents answered to this question eight of which confirmed that they know about this inspection, one was not aware. The second part of the question required comments, so participants left their opinions on this. Lawyer number one says 'They use only administrative penalties but the law grants them with more eligibilities', lawyer number two: 'They impose penalties based on existing several laws', number three: 'There is a Law on Environmental Control that provides the mechanisms for this body', lawyer number five commented 'The inspection acts in the frames of its duties and controls the field.' NGO member number three writes: 'no idea', number five writes: 'small penalties.'

Are you aware on the operations of State Environmental Inspection? Fig.21S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	8	21.1	88.9	88.9
	no	1	2.6	11.1	100.0
	Total	9	23.7	100.0	
Missing	System	29	76.3		

[530] Fig.21S.

Total	38	100.0		

e) Are you familiar with a new draft law on Environmental Impact Assessment and Expert Examination of the Republic of Armenia?[531]

Five of out of ten respondents are familiar with the new draft law as it shows the frequency analysis, four of them do not know and one respondent considered the question not applicable.

Are you familiar with the new draft law on EIA? Fig.22S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	5	13.2	50.0	50.0
	no	4	10.5	40.0	90.0
	not applicable	1	2.6	10.0	100.0
	Total	10	26.3	100.0	
Missing	System	28	73.7		
Total		38	100.0		

Thus the participatory decision-making process during the public hearings even with the participation of specialists remain unclear in the context of environmental impact assessment process.

Environmental Activists' Area Specific Questions and Feedbacks

a) Have you ever asked for any documentation/information from the authorities in relevance to any particular environmental development?[532]

All five respondents answered yes to this question.

[531] Fig. 22S.

[532] Fig.23S.

Whether sought for documentation/information from the authorities in relevance to any particular environmental development? Fig.23S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	5	13.2	100.0	100.0
Missing	System	33	86.8		
Total		38	100.0		

b) Have you been refused information on proposed development, which in your opinion could have significant environmental impacts? If YES please give details of the project and the reasons given for refusal.[533]

Have you been refused information on proposed development which in your opinion could have significant environmental impacts? Fig.24S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	sometimes	3	7.9	60.0	60.0
	never	1	2.6	20.0	80.0
	very often	1	2.6	20.0	100.0
	Total	5	13.2	100.0	
Missing	System	33	86.8		
Total		38	100.0		

Four of the five respondents of environmental activists' group replied that they have been refused to get project documents regarding development projects which were considered to have significant impact on the environment. Activist number one left the following comment on the questionnaire: 'they provide the information mainly, but the information and docs are mostly irrelevant to the requirement. Information was requested regarding Dino Gold Mining Company mining project in Kapan. The

[533] Fig.24S.

request was refused due to secret information in the content of required docs.' Activist number three commented 'I was refused to get documents related to Teghut Mining Project'. Activist number five left the following comment on the questionnaire 'I was refused to get docs on 3rd tailing dump opening project of Tukhmanuk mine, in Melik village, Aragatsotn region. The illegalities of the operations would be revealed if I would get the required docs.' One of them replies that it often happens. Only one respondent answered 'no' to this question.

c) Do you think Armenia needs to make legislative amendments to decision-making procedures for EIA?[534]

All five respondents answered 'yes' to this question.

Whether Armenia needs to make legislative amendments to decision-making procedures for EIA? Fig.25S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	5	13.2	100.0	100.0
Missing	System	33	86.8		
Total		38	100.0		

d) Do you think that having a well-drafted legislation with strict enforcement mechanisms on regulating developments will be helpful in Environmental Protection?[535]

The Frequency statistical analysis shows five respondents answered yes to this question. There is a comment left by the activist number one: 'however, in our country there is no political will. The environmental policy failed completely.'

[534] Fig.25S.

[535] Fig.26S.

Will a well drafted legislation with strict enforcement mechanisms help? Fig.26S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	5	13.2	100.0	100.0
Missing	System	33	86.8		
Total		38	100.0		

e) Do you agree with the way the documents are presented during hearing procedures?[536]

The analysis show that four of the respondents do not agree with the way documents are presented during the public hearings as they answered 'no' to this question. One of them answered 'yes'.

Do you agree with the way documents are presented during hearing procedures? Fig.27S

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	1	2.6	20.0	20.0
	no	4	10.5	80.0	100.0
	Total	5	13.2	100.0	
Missing	System	33	86.8		
Total		38	100.0		

f) What are your recommendations for a change in the present environmental legislation in Armenia?

This question required quantitative answer mainly. Activist's number one recommends the following: '1. To institute transparent

[536] Fig.27S.

public participation. 2. Elaborate evaluation mechanisms. 3. Solve the issue of standing, who is responsible for what'. The activist number two skipped the answer. Activist number three recommends: '1. To maintain strict environmental standards during providing licenses for forest and mining exploitation purposes. 2. Provide with full public participation procedures for environmental decision-making'. Activist number four: 'The protocols made during public hearings are necessary to regulate. There is a need to register public opinion clearly and express it accurately in protocols by showing whether public opinion is saying yes or no.' Activist number five writes: 'It is important to implement all the regulations provided by the RA EIA Law 1995 that are not implemented or applied so far.'[537]

4.6. Findings of Chapter 4

This subtitle aims to sum up the findings of this chapter and provide evidence on the arguments drawn up in the dissertation. To be able to demonstrate the required outcomes of the fieldwork it is necessary to present the answers of the chosen thesis questions derived from the research data analysis. More detailed discussion of these findings will follow in the last chapter of the dissertation.

4. What is the required documentation to be submitted for EIA project?

There were questions about the documentation of the development projects directed to all the participants referred in the field research. The questions are listed together with the data analysis in tables of SPSS analysis.[538] The analysis of the feedback gives approximate results of course, however, we see that the documents were not provided in case of villagers at all, as they had heard about the development from each other orally and had never seen

[537] This information is written by hand on the questionnaires and translated into English for further usage in this thesis.

[538] Sub-title 4.6, page 134.

any development project document presenting the upcoming operations in the context of the particular development project. Similar information had been received from the well informed participants of the survey. The lawyers, NGO members and environmental activists also confirm that they have lack of information for each development project that has been announced and presented in the context of the environmental impact assessment. The developers present their project on the board and explain it in technical point of view as it was implemented in the case of Geoteam LLC, the representative of Lidian International for Amulsar Gold Mining development project. The only document provided was a summary of the topic without detailed discussion of the project.[539]

5. Whether the EIA decision-making procedure is transparent in Armenia?

According to the answers gathered in the process of the fieldwork, it is evident that the decision-making process is not transparent. In particular, it is clear from the responses of environmental activists who asked for the information about development projects and received the answer that the information regarding developments is confidential. [540]The transparency has been an issue in Armenia since its independence. The Pan-Armenian Environmental Front provided two examples of information request letters sent to the RA Ministries and the feedback received. These letters with answers are presented in chapter 6 of this thesis.[541]

Only recently, the Ministry of Nature Protection in Armenia has started uploading the files of development project proposals in the context of environmental impact assessment process into their official web site.[542] The issue of transparency revealed during the whole process of this research work as it was difficult to obtain information from the state authorities of

[539] Geoteam, 'Amulsar:responsible mining, sustainable development' (n502).

[540] Question b) page 32 chapter 4.

[541] n885

[542] Ministry of Nature Protection of the Republic of Armenia, 'Nature Protection: Expertise'

Armenia in frames of this research work to be able to create the objective picture of ongoing environmental decision-making process in Armenia. [543]

6. What are the law enforcement mechanisms that make the developer to be accountable against public and government?

In the Law on Environmental Impact Assessment of the Republic of Armenia the provisions present the order of the assessment process that the developer has to follow. It presents the duration and obligations both for the developer and authorities; however there is not a provision that allocates any penalties and punishments in case either developer or the authorities violate the requirements. [544] Both the old EIA law and the new one lack the requirements for the enforcement of the law.[545]

This question was implicitly referred in the questionnaires in the context of public awareness and the impact of the opinions in the decision-making process. In the scope of this research there is an interest to find out whether the public participation can be seen as one of the enforcement mechanisms of the law. As the results of analysis show, the public participation has not been held properly in most cases and many times public has complained against the violations of the regulations. However, the development projects have been approved by the authorities and been carried on despite the opposing views of public.[546]

The State Environmental Inspectorate is a state body acting under the authority of the Ministry of Nature protection. It is entitled to control the ongoing environmental development projects and sanction the violations. 'The State Environmental Inspectorate carries out supervisory

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[543] The information has been sought from web sites of ministries and government.

[544] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԶՕ-110-Ն,ՀՀՊԵ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊԵ 2014.07.30/41(1054) Art.636).

[545] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995,Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԶՕ-110-Ն,ՀՀՊԵ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊԵ 2014.07.30/41(1054) Art.636).

[546] General questions pages 28-30 of this chapter.

responsibilities for functions and application of environmental protection and natural resource use in reproduction.' [547] The question about the Inspectorate has been addressed mainly to the participating lawyers and NGO members of this research.[548]

7. Whether the public participates in environmental decision-making and in what extent the voice of public is considered?

Both the case studies and field research questions refer to the issue of public participation, which is viewed as one of enforcement mechanisms of the law in this dissertation. Majority of respondents had never participated in public hearings as the field research results show. Those who participated have their own approach to this issue and think that participation is not considered seriously and out of the frames of the RA EIA Law. Even if in some cases the participation procedures were followed by the developers and authorities, the impacted communities were not involved. Instead more interested individuals were participating who shared the ideas of developers and do not oppose the decision makers. Those opinions that opposed or presented arguments on errors of the development projects were not considered in general. Although the Head of Legal Drafting Department at the Ministry of Nature Protection in Armenia says that sometimes, the regulations are being impacted by the opinions of experts and specialists who notice the errors in legislation or in implementation.[549] Environmental activists believe that the public hearings are formal and the developers never take them seriously, as it is in the rule of law systems.

In the process of this doctrinal research, it is revealed that there have not been issued any governmental orders or decisions which regulate the process of identification of the impacted communities in the decision-making process. During the operation of the RA EIA Law of 1995, there were no particular orders or decisions made by the government in this regard. It is inferred that the impacted communities were identified based on

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[547] The Government of the Republic of Armenia, 'Structure' (*The Government of the republic of Armenia,* 2015) <http://www.gov.am/en/structure/5/> accessed 22/01/2015.

[548] Fig.21S.

[549] See subtitle 4.6, sub-sections 4.6.1 and 4.6.2 of this chapter.

the location of the proposed development projects before. However, the RA EIA Law of 2014 is supported with new governmental decisions, which provide instructions on the EIA process.[550] The point 14 of the Decision # 399 of the Ministry of Nature Protection issued on 9 of April 2015, provides the approximate implementation of the public participation and names the authority in charge of announcing and organising the public hearing procedure. It says in particular:

> the EIE centre posts the information about the development project on its web site 7 days after receiving the application and informs about that to the head of the region or head of the Yerevan city and to the impacted community leader in the process of assessing the baseline documents. In the process of impact assessment the EIE centre informs the impacted community leader about the project, who is in charge of organising further information spreading and public hearings in the community.[551]

Evidently, the requirements are changed and improved in the RA EIA law of 2014; however, it is not to say that the implementation of the new law will vary from the implementation of the old law dramatically. Chapter 5 discusses the International Environmental Law common procedures for further recommendations on improvements in the RA EIA Law.

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[550] These decisions are published in Armenian only. They can be found in www.arlis.am web site. One of them is the Decision #399 referred below. Gayane Atoyan translaten the relevant paragraph.

[551] Հայաստանի Հանրապետության Կառավարություն Ո Ր Ո Շ Ու Մ 9 Ապրիլի 2015 Թվականի N 399-Ն Հիմնադրութային Փաստաթղթի Եվ Նախատեսվող Գործունեության Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննության Իրականացման Կարգը Հաստատելու Մասին (The #399 Decision of the Government of The Republic of Armenia on 9 April, 2015 on Establishing the Regulations on the Implementation of Concept Documents and Proposed Activity Environmental Impact Assessment procedure).

Chapter 5: Environmental Impact Assessment – Comparative Benchmarks

5.1. Introduction

Environmental Impact Assessment process is one of the best tools in environmental decision-making and environmental management in the world. The existing practice in western part of the world is a good example of that process. 'EIA can offer much more than a simple common-sense approach to development: it can be a policy instrument, a planning tool, a means of public involvement and part of a framework crucial to environmental management and the drive for sustainable development.' [552] However, EIA still is not a guarantee of the positive outcome of a development project as this is just a tool to measure and control the possible errors and significant impacts in the process of implementing projects.

This Chapter focuses on Environmental Law in European Union in the face of EU EIA[553] and SEA Directives[554] and discusses them in parallel with USA NEPA.[555]The instruments generated by the EU and USA regulators are considered to be the models of good practice of environmental impact assessment process for western countries. They brought forward the notion of control and valuation of the impacts that are caused by human intervention in natural life during any form of consumption of natural resources. These main instruments create applicable legal provisions for the member states in their communities and strive to preserve the sustainable development for all participant countries and states. They present role model

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[552] J. Barrow, *Environmental Management:Principles and Practice* (Routlegde 1999),95. This definition of EIA is the most relevant one for this thesis as it attempts to address to the crucial role of EIA in decision-making process.

[553] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

[554] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37

[555] National Environmental Policy Act of 1969.

schedule of legislation to Member Countries and States as an 'aid'[556] in creating local regulations and guidance for the sustainable development of their lands and areas. These instruments are constantly developing year by year. The vivid examples of the development are the amendments of the EU EIA Directive that brought forward significant changes in the Directive since 1985.[557]

> The EIA Directive of 1985 has been amended three times [previously], in 1997, in 2003 and in 2009:
>
> • Directive 97/11/EC brought the Directive in line with the Espoo Convention on EIA in a Transboundary Context. The Directive of 1997 widened the scope of the EIA Directive by increasing the types of projects covered, and the number of projects requiring mandatory environmental impact assessment (Annex I). It also provided for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and established minimum information requirements.
>
> • Directive 2003/35/EC was seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.[558]

The most recent revised version of the Directive came into force on 24 May 2014. It is proper to consider this instrument as a 'living' document that always experiences changes and amendments during 25 years of existence. The Commission declared that the 'EIA Directive has not significantly changed [since then], while the policy, legal and technical context has evolved considerably.'[559]In the process of implementation, Member States

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[556] This word is used to demonstrate the role of directives and NEPA in development of local legislation in member states.

[557] European Comission: Environment, *Environmental Impact Assessment - EIA*(n261).

[558]Ibid.

[559]European Comission, *Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment /* COM/2012/0628 final - 2012/0297 (COD*/* (Brussels, 2012) , 2.

revealed the gaps in its provisions. Court cases unveiled errors and the rulings and decisions filled in the gaps of the Directive. They suggested new ways of interpretation and further better implementation of provisions, which played significant role in the improvement of this instrument for the 'Better Regulation'[560] in the EU and Member states. 'It is necessary to amend Directive 2011/92/EU in order to strengthen the quality of the environmental impact assessment procedure, align that procedure with the principles of smart regulation and enhance coherence and synergies with other Union legislation and policies, as well as strategies and policies developed by Member States in areas of national competence.'[561] The revised Directive explains the importance of changes in the instruments and looks forward to the future for 'Europe 2020-A strategy for smart, sustainable and inclusive growth.'[562]

Contrary to EU EIA Directive, the changes in the text of the National Environmental Policy Act (NEPA)[563] never occurred in 40 years since its adoption in the USA. The executive body: Council on Environmental Quality manages the activity of the instrument through issuing improved guidance on NEPA's implementation. 'In an effort to help Federal Agencies ensure the integrity of their environmental reviews and promote sound governmental decision-making, the Council on Environmental Quality (CEQ) has issued final guidance….This guidance was developed as part of CEQ's effort to modernize and reinvigorate Federal agency implementation of NEPA.'[564]

The European Commission[565] gives the revised title of the EIA Directive and summarizes the lengthy process of EIA in its web page stating that the 'Directive of 1985 and its three amendments have been codified by

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[560] Ibid.
[561] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 ,(3).
[562] Ibid,17.
[563] National Environmental Policy Act of 1969.
[564] NEPA.GOV, 'CEQ Issues New Guidance on Mitigation and Monitoring' (*Energy Office of Health, Safety and Security* 19/June/2014) <http://ceq.hss.doe.gov/current_developments/new_ceq_nepa_guidance.html> accessed 19/06/2014.
[565] EC hereafter in this chapter.

Directive 2011/92/EU of 13 December 2011. [566] Later on this Directive was named as Directive 2014/52 EU as it referred in the beginning of this chapter.[567]

This Directive as well as the Strategic Environmental Assessment Directive[568] and many others are produced by European Commission to lead EU Member States towards creating and harmonizing local legislations for further sustainable development of each state within the Union. 'The legal basis of the EIA system, a European directive, is clear. It is left to member states to implement the requirements of the EIA Directive in whatever legislation they consider to be appropriate. The Directive…provides a skeletal framework and leaves a great deal of detail to be determined by member states.'[569]Moreover, the changes this instrument faced pursue the goal of harmonizing the EU Member state regulations with the requirements of international law in particular with Aarhus and Espoo Conventions and Kyiv Protocol.

This chapter attempts to find out similarities and differences of EIA process between EU Directives and NEPA during the implementation and reveal the best practices used in different countries so far.[570] Subsequently, the urge to examine the findings of those jurisdictions, upon implementation of EIA in their countries to achieve sustainable development in environmental conservation and in environmental rights protection by engaging public opinion in decision-making process, brings forward the necessity to analyze methods of EIA implementation step by step. The step-by-step analysis will help to identify criteria that are used to measure the effectiveness of

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[566] European Comission, *Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment /* COM/2012/0628 final - 2012/0297 (COD*/*.*

[567] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

[568] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

[569] Christopher Wood, *Environmental Impact Assessnment A Comparative Review* (Longman Group limited 1996),37.

[570] It will take more time to refer to the local legislation of EU member States separately due to excess of information and linguistic barriers in some cases; however, the UK domestic regulations will play a role as an example of the Member State.

EIA in developed world. In the meantime the detailed discussion of western EIA instruments in comparison with RA EIA Law will be of help in finding aspects of Armenian EIA law that go beyond the requirements of the EU EIA and SEA directives.[571]

For making a detailed analysis of EU Directives and NEPA, the chapter is divided into four sub-headings. First and second subheadings discuss the main requirements and key stages of EIA process in the EU EIA and SEA Directives and NEPA. Third and fourth sub-headings will address public participation process and conclude the findings of this chapter for better understanding of the EIA/SEA process in both jurisdictions. The impact of case law in the development of the regulations will be presented in the process of discussions and analysis, the important role of judicial interpretations of the Law will be underlined; however, the case law is not discussed in this particular research work in details.

The chapter discusses European drafted legal instruments, implementation of legal requirements, and the follow up of the implementation through litigations, improvement of regulations based on court decisions and precedential approach as well as transparent and accountable environmental governance. It aims to demonstrate that public oriented policy in environmental decision-making process ensures a relatively sustainable life cycle for countries and nations as a result. The aforementioned legal instruments and opinions of different scholars will be examined and referred to achieve the aim of the chapter.[572] 'EIA has traditionally been considered effective when it supports well-informed decision-making leading to environmental protection, but also when it delivers outcomes efficiently and cheaply.[573]

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[571] See subtitle 6.2.10 in Chapter 6.

[572] The legal instruments are previously analysed and discussed in various products of practitioners and scholars studied during this research. Their role, mission and gaps are completely revealed by western specialists through detailed analysis and explanations. These analysis and interpretations of legislation (secondary sources) and their implementation (case this particular study in terms of finding better performance of EIA regulations.

[573] Petts (ed), *Handbook of Environmental Impact Assessment:Process, Methods and Potential* ,(n64) 10.

5.2. Key Stages of EIA Process Based on NEPA and EU/EIA Directive: Their Importance and Characteristics

The National Environmental Policy Act was presented to regulate nature conservation in the United States of America in 1969 (NEPA). [574] 'It is a procedural instrument that implements the prevention principle by requiring an assessment of the environmental effects of certain decision in advance.'[575]

In the European Union the concept was presented in forms of directives: Environmental Impact Assessment Directive was adopted in June 1985.[576] As it is explained in 'European Environmental law After Lisbon' this directive is for certain projects and plans. For plans and programs the EU has created the Strategic Environmental Assessment Directive which will be discussed in this chapter under the separate sub-title. [577] The Directive 85/337/EEC has been amended three times after its adoption.[578]

The International Association for Impact Assessment defines the EIA as: '[T]he process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made'[579]

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[574] National Environmental Policy Act of 1969.

[575]Prof.Jan H.Jans and Prof. H.B.Vedder, *European Envrionmental Law After Lisbon* (4 edn, Europa Law Publishing 2012), (n 6) 346,National Environmental Policy Act of 1969.

[576]n575 H.Jans and H.B.Vedder, *European Envrionmental Law After Lisbon*, 346.

[577] Ibid,Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37, Directive 2001/42/EC on the assessment of the effects of certain plans andprograms on the environment ('Strategic Environmental Assessment' –hereinafter the 'SEA – Directive') requires certain public plans and programs(P&P) to undergo an environmental assessment before they are adopted. Second subheading of this chapter discusses it in broader concept.

[578] n557,n559.

[579] Senécal and others, *Principles of Environmental Impact Assessment Best Practice* (n269).

Vast majority of studies[580] on EIA legislation in different jurisdictions reveal that, regardless of jurisdiction, the ideal environmental impact assessment process has to comply with the following requirements that are key steps of the EIA process:

- Screening
- Scoping
- Baseline Study
- Impact prediction,
- Impact assessment
- Mitigation
- Produce Environmental Statement ("ES")[581]
- Review of ES
- Monitoring
- Post Development Audit [582]

There is a need of true solidarity in implementing these steps properly for achieving positive and effective results in decision-making process. Christopher Wood brings an example of the EIA effective criteria used by Canadian Environmental Assessment Research Council:

- Information gathered in the EIA contributed to decision-making
- Predictions of the effectiveness of impact management measures where accurate, and

[580]Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21,National Environmental Policy Act of 1969, Wathern (ed), *Environmental Impact Assessment, Theory and Practice* (n85),Wood (n753), Larry(n706), Lee and George (eds), *Environmental Assessment in Developing and Transitional Countries; Principles, Methods and Practices* (n41), Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* (n26),Caucasus Environmental NGO Network, *The Assessment of Effectiveness of Environmental Impact Assessment System (EIA) in Armenia* (n27),Bank, Group (n372).

[581] ES or EIS refer to the same form of report in the EIA process.

[582] The listed benchmarks are considered the EIA process implementation mechanism, whereas public participation is seen as an enforcement mechanism in this dissertation, which is why a separate sub-title discusses the participation procedure in more details in chapter 5 of this thesis.

- Proposed mitigatory and compensatory measures achieved approved management objectives. [583]

However, he states that there is still necessity to implement these criteria in 'satisfactory' and 'fair' manner. It can be satisfactory if the reasonable time is used to make decision and save economic and other factors. Fairness will be measured based on consideration of opinions of all concerned and interested parties, also 'people should have equal access to compensation'.[584]

Among the referred steps, the Screening and Scoping are main stages of EIA and the rest are the methods that are used to implement screening and scoping and make the EIA process as a whole. The discussion will carry on explaining the meaning and function of each concept in the list to make sure they can be applied to the jurisdictions of less developed countries later on.

The International Association of Impact Assessment (IAIA) considers the EIA process steps as 'Operating Principles' of EIA.[585]Both the NEPA and EU EIA Directive provide these key steps for the successful environmental impact assessment process. Both instruments play a central role in founding the environmental policy in their countries. These instruments provide detailed provisions on environmental impact assessment implementation. Special guidance is made available for better interpretation and implementation of their requirements. The guidance documents are considered very important in explaining the legal requirements for all parties of decision-making process.

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[583]Wood, *Environmental Impact Assessnment A Comparative Review*, 9 (n565),Canadian Environmental Assessment Agency, 'Basics of Environmental Assessment' (*Government of Canada,* 24/07/2013) <https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=B053F859-1#agency01> accessed 04/02/2014.

[584] Wood, *Environmental Impact Assessnment A Comparative Review*,(n565) this and previous footnote refer to the same theme addressed by Christopher Wood; however the Council's name mentioned by the author is changed currently. Its archives date back to 1999.(n11)

[585] Senécal and others, *Principles of Environmental Impact Assessment Best Practice* (n 269).

5.2.1. Screening[586]

The EIA Directive establishes general requirements which provide opportunity to EU member states to elaborate their own regulations on implementation of a reasonable decision-making procedure in their countries. To make the discussion more precise in this work, there is a need to refer to the definition of each key step and compare the stages of EIA implementation in two major jurisdictions. Screening is the determination of whether or not an EIA is needed and is a formal requirement under the EIA Regulations[587]

The Directive provides lists of plans and projects which are the subject of implementation of all key steps during the EIA process. These lists are used in the screening stage[588] of the EIA to identify the significant impacts of the project. This is a stage of the assessment which identifies 'significant impact' of the proposed development project and suggests whether there is a need of an EIA. At this stage the local planning authority in an EU Member State must address two questions whether a project falls within one of two categories of development either in Annex I or II of the EU EIA Directive. If it falls within Annex II there is a necessity to decide whether the project is 'likely to have significant effects on the environment by virtue of its nature, size and location'[589]Screening is required by Article 4 of the EU EIA Directive:

> 1. Subject to Article 2 (3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.
>
> 2. Subject to Article 2 (3), for projects listed in Annex II, the Member States shall determine through:

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[586] RA EIA Law provisions corresponding to this step are Article 4 of the RA EIA of 1995 (n178) and Article 14 of the RA EIA Law of 2014.

[587] Environmental Resources Management, *Guidance on EIA Screening* (n263).

[588] Jane Holder, *Environmental Assessment; the Regulation of Decision Making* (Oxford 2004), fig.2.1,36, prior assessment.

[589]85/337/EEC Directive on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985 , Art.2.1.

(a) a case-by-case examination, or

(b) Thresholds or criteria set by the Member State whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States may decide to apply both procedures referred to in (a) and (b).[590]

As it is referred above, Annex I provides the list of projects that have significant effect on the environment and need to undergo an EIA process by default. These projects are always subject to assessment. There are also Annex II projects which can be regulated by EU Member States on case-by-case basis as it is explained in 'European Environmental Law.'[591] So, the Annexes of the Directive list all possible projects in two groups; first group are the projects that have significant impact on the environment,[592] and these have already been established by the local laws, the second group are the projects that have likely significant effect and should be under the state discretion to decide whether the impact is significant or not.[593] The Directive gives also the 'characteristics of projects and potential impacts, and location of projects' which are considered to be as screening criteria in Annex III:[594]

The potential significant effects of projects must be considered in relation to criteria set out in points 1 and 2, and having regard in particular to:

(a) the extent of the impact (geographical area and size of the affected population);

(b) the trans frontier nature of the impact;

(c) the magnitude and complexity of the impact;

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[590] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

[591] H.Jans and H.B.Vedder, *European Envrionmental Law After Lisbon*, 349.

[592] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 , Annex I.

[593] Ibid, Annex II.

[594] Ibid, Annex III,Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment OJ L 073, 14/03/1997 pp. 0005 - 0015 ,Petts (ed), *Handbook of Environmental Impact Assessment:Process, Methods and Potential* , 206

(d) the probability of the impact;

(e) the duration, frequency and reversibility of the impact[595]

The modifications are continuously made in Annex II in particular based on the Court decisions during environmental litigations. Court cases assist in reviewing the implementation of the Directives, interpreting the Directives and filling in the gaps in its requirements.[596]

The text of NEPA is constructed in a different way and it allocates only two procedural Articles with the requirements on EIA process.[597] Article 102 in particular speaks about the impact assessment process and lists the steps that are required to undertake upon implementation of the EIA:

> …. include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.[598]

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[595] Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21, Annex III,Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment OJ L 073, 14/03/1997 pp. 0005 - 0015 ,Petts (ed), *Handbook of Environmental Impact Assessment:Process, Methods and Potential* , (n64)206.

[596] European Commission, *Environmental Impact Assessment of Projects:Rulings of the Court of Justice* (n267).

[597] National Environmental Policy Act of 1969.

[598] ibid Sec.102(c).

The problem with screening step can be seen by developers as a time consuming process. As O. Harrop and A. Nixon argue: 'The screening needs to be quick to avoid delays in case of the projects that do not require an EIA… the most effective screening procedure include both the project and environment criteria/thresholds.'[599] This argument refers to the EIA in general and in all jurisdictions. On the contrary Judith Petts argues that without screening no other further assessment can be implemented. [600]

The start of EIA process in the USA is the scoping step based on NEPA requirements and it does not have the list of projects requiring EIA: 'There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.'[601]NEPA has also a procedure of determining whether the proposed project requires EIA or not.[602]Also, Council on Environmental Quality prepared '10 general criteria to be applied within the context of both society and environment in which the action varies inevitably, but the practical implementation of the process is similar to the EU EIA Directive.

As the results show, both instruments have demonstrated high level of EIA implementation since the adoption of these legislations by their communities (EU Member States and US States). 'The trend is for a decline

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[599] Owen Harrop and Ashley Nixon, *Environmental Assessment in Practice* (Taylor and Francis 2013), 10, Thresholds are considered as important criteria in the process of screening. They can establish limits of sites, quantities or other measurements of resources for developer and assist during decision-making process.

[600] Petts (ed), *Handbook of Environmental Impact Assessment:Process, Methods and Potential* , (n64) 202.

[601] Cornell Universtity Legal Information Institute ' CFR 1501.7 Scoping' (*Cornell University Law School,* 2012) <http://www.law.cornell.edu/cfr/text/40/1501.7> accessed 18/01/2014,Council on Environmental Quality, *Memorandum for Heads of Federal Departments and Agencies*

(Executive Office of the President,, 2012).

[602] Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that require preparation of an EIS; those that require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b))Environmental Impact and Related Procedures, Final Rule.

in numbers of EIS due, *inter alia*, to better scoping and use of mitigated FONSIs; the ratio of EA to EIS being approximately 90:1'[603]Though the screening step requires a hard work in the process of law making, it saves time and financial expenses for professionals in some sense as it is inferred during this study. Yet the EIA process can be started from the Scoping as it is left at the law makers' discretion of every particular country or state.

5.2.2. Scoping[604]

The scoping is the second stage required by the EIA Directive after the screening.[605] The scoping procedure is required by Article 5(2) of the Directive which says in particular:

> Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6 (1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information. Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.[606]

Based on this requirement the developer has to provide detailed study of proposed project which will include size, design, site and possible significant or likely effect on the environment. The authorities are required to help the developer upon collecting the relevant information on proposed

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[603] Petts (ed), *Handbook of Environmental Impact Assessment:Process, Methods and Potential* , 208, J.Petts speaks about the results of scoping in the USA based on NEPA.

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[605] Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21.

[606] Ibid.

project from other relevant authorities. These requirements are provided by Article 5 (3) and (4). It also requires from the developer to provide non-technical summary of the project:[607] Scoping is an early stage in the process and is designed to ensure that the environmental studies provide all the relevant information on:

> • The impacts of the project, in particular focusing on the most important impacts;
>
> • The alternatives to the project;
>
> • Any other matters to be included.
>
> The findings of scoping define the "scope" of the environmental information to be submitted to the competent authority and the terms of reference for the environmental studies to be undertaken to compile that information.[608]

Usually in the process of scoping (in this stage of the EIA) the main specialists of the field get involved in the process to identify the possible influence of the proposed project to the surrounding environment. This is considered to be the most important stage in the EIA as it gives the opportunity for all stakeholders to be informed at the beginning of the project and more time and resources will be saved by this as it was revealed from primary and secondary sources in current research. P. Wathern in his "Environmental Impact Assessment; Theory and Practice" book,[609] Harrop and Nixon in their book "Environmental Assessment in Practice" argue that scoping is considered the first stage of identifying manageable amount of main issues related to the particular development project.[610] The authors also link the importance of the idea of scoping with time, financial and other resource limitations of EIA.[611]

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[607] Ibid.

[608] Environmental Resources Management, *Guidance on EIA Scoping*.

[609] Wathern (ed), *Environmental Impact Assessment, Theory and Practice* (n85).

[610] Harrop and Nixon, *Environmental Assessment in Practice* (n599)11, Wathern (ed), *Environmental Impact Assessment, Theory and Practice* , (n85) 35.

[611] Harrop and Nixon, *Environmental Assessment in Practice*,(n599)11,Wathern (ed), *Environmental Impact Assessment, Theory and Practice* (n84) 35.

Although USA NEPA is recognized as the initial legal instrument on EIA it has no specific requirements on scoping either. The NEPA Guidance which is titled as "Memorandum for Heads of Federal Departments and Agencies" on implementation of NEPA requires: 'The scoping process can be used before an agency issues a notice of intent to seek useful information on a proposal from agencies and public.' [612]In the frames of scoping, Council of Environmental Quality (CEQ) lists the current requirements for scoping in 40 CFR 1501.7.[613] However, there is no detailed provision on scoping in the instrument. The Council of Environmental Quality that is the executive body for NEPA issued a special guidance on scoping in 1981 as well. 'Scoping is often the first contact between proponents of a proposal and the public. This fact is the source of the power of scoping and of the trepidation that it sometimes evokes. If a scoping meeting is held, people on both sides of an issue will be in the same room and, if all goes well, will speak to each other.'[614]

There is not any designed procedure for scoping based on NEPA. It is left to agency or authority discretion to conduct the scoping and gather the information from the public concerned according to the Scoping Guidance.[615]

Scoping in both jurisdictions has to deal with the affected communities, to introduce them development project as well as reveal the impacts that a particular project might have on that particular area.

> A major activity of scoping is to identify key interest groups, both governmental and non-governmental, and to establish good lines of communication. People who are affected by the project need to hear about it as soon as possible. Their knowledge and

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[612] Council on Environmental Quality, *Memorandum for General Councels, NEPA Liaisons and Participants in Scoping* (Executive Office Of The President Council On Environmental Quality 722 Jackson Place, N W Washington, D C, 1981), 3.

[613] Cornell Universtity Legal Information Institute ' CFR 1501.7 Scoping'(n 596).

[614] Council on Environmental Quality, *Memorandum for General Councels, NEPA Liaisons and Participants in Scoping*,5.

[615] Ibid.

> perspectives may have a major bearing on the focus of the EIA. Rapid rural appraisal techniques provide a means of assessing the needs and views of the affected population.[616]

Public involvement procedure in the EIA process brings forward an important tradition of reporting, sharing and making project development process more transparent by the time. People involved in this process can make enormous input in terms of indigenous knowledge on the subject matter site and can have an impact in further baseline studies of the development project.

5.2.3. Baseline Study[617]

The next stage in the EIA process is baseline study which overlaps with scoping at some points. Effective and thorough fieldwork and assessment in sites is done with scoping most of the time, whereas the baseline study is being done based on existing preliminarily collected information in the frames of development project.[618] Baseline studies should be undertaken by the applicant/developer/ that aims to find out all possible existing information about the particular site of development. It provides the information about the existing ecological situation in that particular area; consider all possible impacts and alternative sites. Baseline studies give a chance to interested or participating parties to revisit this documentation during the project implementation. It requires a detailed and through registration of all scoping results to exclude confusion or errors during

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[616] T.C. Dougherty, A.W. Hall and HR Wallingford, *Environmental impact assessment of irrigation and drainage projects* (United Nationas Food and Agricultural Organization Corporate Document Repository, Natural Resources Management and Environment Department

1995).

[617] Baseline Study term is not used by the legislative drafters in Armenia. The RA EIA Law of 1995 lack of this requirement on detailed study of; however the RA EIA Law of 2014 requires not only ecological impact study, but also health impact study RA EIA Law of 2014 Art.15.

[618] Peter Morris and Riki Therivel (eds), *Methods of Environmental Impact Assessment* (3 edn, Routledge 2009), 7.

implementation process[619] as well as to preserve this information for future similar developments.

Article 5 of the EC EIA Directive[620] and NEPA[621] contain the requirements on providing detailed information and data for further decision-making process.

This is also the continuation of impact prediction process. Harrop and Nixon explain the essence of impact very clearly: 'the impact is the difference between the with-project and without-project condition, which may be possible to quantify (for example a predicted change in an environmental parameter such as a noise level). Alternatively, the impact prediction may be made more subjectively through literature review and value judgment.'[622]

Impacts on the environment can occur in different stages of project implementation. Some of them can be predicted preliminary to the start of a particular project and preventive measures can be undertaken beforehand. However, impacts might erupt during the project implementation and even after that. 'Impact's significance should be distinguished from impact magnitude, which can be determined by means of some observation or experiment[623].

P. Wathern discusses the stage, the concept and definition of baseline studies. He considers baseline studies are 'most commonly recognised but less understood element' in the EIA process[624] and the definition of baseline studies is vague and argues that it is closely linked with the monitoring stage

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[619] Barbara Carroll and Trevor Turpin, *Environmental Impact Assessment handbook: A Practical Guide for Planners, Developers and Communities* (Thomas Telford Ltd 2003), page 23.

[620] 85/337/EEC Directive on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985,Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment

OJ L 73, 14.3.1997

[621] National Environmental Policy Act of 1969.

[622] Harrop and Nixon, *Environmental Assessment in Practice* (n599),16.

[623] Ibid, 17.

[624] Wathern (ed), *Environmental Impact Assessment, Theory and Practice* , (n85)39.

although it is implemented in 'pre-project' stage[625]. As it is done at early stage of the EIA there is a risk to omit the major concerns on particular development during the project implementation. 'Specific information and data are required by the decision makers at various stages in the project cycle which should be accommodated within the concept and practice of baseline studies.'[626]

Glasson at al points out that 'establishing the baseline is not a 'one-off' activity' [627]. This is the process that starts from the wider context of development and narrows down to its particular aspects in the process of implementation as considered by the authors of "Introduction to Environmental Impact Assessment". [628] Peter Morris and Riki Therviel refer to baseline studies and explain the meaning of baseline studies. It brings forward the 'description and evaluation of baseline conditions' as well that have to include 'A clear presentation of methods and results, indications of limitations and uncertainties, e.g. in relation to data accuracy and completeness; an assessment of the value of key receptors and their sensitivity to impacts.'[629]

To sum up the definition on baseline studies it is worth referring to the approach of David Lawrence. He links the role of baseline studies with the other steps of EIA process and finalizes the concept of this activity: 'Baseline analysis is commonly divided into two stages: an initial environmental overview for screening and scoping purposes and a more detailed environmental evaluation to provide a basis for impact prediction and interpretation…Baseline analysis, therefore, also occurs in alternatives

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[625] Ibid.

[626] Ibid.

[627] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* ,(n26)102.

[628] Ibid.

[629] Morris and Therivel (eds), *Methods of Environmental Impact Assessment* , (n618)7.

evaluation, in the determination of mitigation measures, and in conjunction with monitoring and auditing.'[630]

Peter Morris and Riki Therivel as well as Harrop and Nixon recommend the using of checklists in this stage of EIA "for identifying key impacts and ensuring that they are not overlooked"[631] Harrop and Nixon talk about matrixes and diagrams which can be produced based on the development project type.[632] They assume that this is one of the best methods to conduct EIA. As it was reflected from the beginning of explanation of baselines studies the EIA scholars prove that baseline studies need to be included during the whole process of the EIA.[633] These studies will make the impact prediction and assessment process more feasible that will follow or will be conducted as a next step in the EIA process.

5.2.4. Impact Prediction and Assessment [634]

Impact prediction and assessment follow the baseline studies step as required by the EIA Directive and NEPA. Impact prediction and assessment is required by both instruments. Sec 102(C (i)-(ii) of NEPA requires: 'Include in every recommendation or report on proposals for legislation …. (i)the environmental impact of proposed action, (ii)any adverse environmental effects which cannot be avoided should the proposal be implemented.'[635]The EIA Directive requires the impact prediction by its Article 3 where it refers to the types of effects[636] of development projects. It

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[630] David Lawrence, *Environmental Impact Assessment:Practical Solutions to Recurrent Problems* (Wiley-Interscience 2003), 55.

[631]Morris and Therivel (eds), *Methods of Environmental Impact Assessment* (n618) , 6, Harrop and Nixon, *Environmental Assessment in Practice*, (n591)18-20.

[632] Harrop and Nixon, *Environmental Assessment in Practice*, 18-20.

[633] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* (n26),Lawrence (n630) , Morris and Therivel (eds), *Methods of Environmental Impact Assessment* ,(n613) Wathern (ed), *Environmental Impact Assessment, Theory and Practice* (n85).

[634] The RA EIA Law of 1995 provides mainly the requirements of document assessment; the RA EIA Law of 2014 requires impact prediction on health and ecology by the Art.15.

[635]National Environmental Policy Act of 1969, Sec.102, C(I)-(ii).

[636] Effects are the same with impacts.

requires Member States to assess the direct and indirect effects.[637]Based on this requirement the types of impacts were identified and the scholars made attempts to explain its meaning and functions. Morris and Therivel give short definition of each type of impact in their book:

- Direct/Primary impacts-that are direct result of development
- Indirect/secondary impacts-that may be 'knock on' effects of (and in the same location) direct impacts, but are often produced in other locations and/or as a result of a complex pathway
- Cumulative impacts-that accrue over time and space from a number of developments or activities, and to which a new project may contribute.[638]

The human intervention in nature can cause impacts on air, water soil, and on human health caused by polluters. These are direct impacts which can cause secondary or indirect impacts as well. Betty Bowers Marriott lists the 'disciplinary areas of possible effects': Ecological, aesthetic, historic, cultural, economic, social and health.[639]

There are many features of impact that should be highly considered by decision makers and developers. Glasson at al argue, that besides being direct and indirect the impacts can be beneficial and adverse, their duration and geographical extent are also important to establish. The authors advise the analysts to be alert at the rate of change of impacts, take into account the reversible and cumulative nature of impacts which according to the authors

[637] Article 3, 85/337/EEC Directive on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985,Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21.

[638] Morris and Therivel (eds), *Methods of Environmental Impact Assessment* , (n613) 8.

[639] Betty Bowers Marriott, *Practical Guide to Environmental Impact Assessment* (McGraw-Hill 1997), page 10 the list limited, it continues in different discussion of this author.

is the most difficult one to predict.[640] Betty Bowers Marriott explains that: 'Cumulative impacts occur in those situations where individual projects or actions may not have significant effect, but when combined with other projects or actions, the individual project's incremental contribution of adversity may cause an overall adverse cumulative effect.'[641]

These predictions are the most important steps in the EIA process. Based on them the agencies prepare the Environmental Impact Statements (EIS). Morris and Therivel argue that in order to get good results of impact prediction there is a need of good understanding the nature of proposed project, knowledge of the outcome of similar projects, knowledge of past, existing or approved projects, adequate information about the relevant receptors and knowledge how this may respond to environmental changes/disturbances.[642]

Long time research, analysis and control of ongoing developments generate some idea on the efficiency of predictions: According to Aud Tenneya at al: 'Empirical evidence found in the study, where 42% of the predictions were deemed accurate, 29% nearly accurate and 29% inaccurate indicate that the prediction performance of EIA is not satisfactory…' [643] Caldwell et al (1982) (referred to in Andrews 1988) did a study of the scientific quality of 75 EISs produced in the USA. They found that more than 22% of these never acknowledged uncertainty and that none did so systematically. It is concluded that 'EIA predictions are uncertain.'[644]

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[640] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* ,(n26) 128-129.

[641] Marriott, *Practical Guide to Environmental Impact Assessment* (n639), 11.

[642] Morris and Therivel (eds), *Methods of Environmental Impact Assessment* (n613).

[643] Aud Tenneya, Jens Kværnerb and Karl Idar Gjerstadc, 'Uncertainty in Environmental Impact Assessment Predictions: The Need for Better Communication and More Transparency' (2006) 24 Impact Assessment and Project Appraisal 45.

[644] Ibid,52.

The uncertainty of predictions is addressed by Morris and Therivel as well.[645] They consider that impact prediction is the most difficult stage in EIA process.[646] Glasson at al argue that estimating the probability of impact creates the issue of uncertainty.[647] However, the uncertainty does not create barriers to carry out this step as it is also the most important step of an EIA process. The impact prediction is an interdisciplinary step and requires involvement of different specialists to identify and predict the likely significant and significant magnitude of impacts of development projects. The significant impact is the mostly referred type of impact as this impact identifies the necessity of the EIA for proposed development projects. However, the legal meanings of significance were not developed by the legal instruments, such as EU EIA Directive or other environmental conservation directives and conventions.[648] The word 'significant' appears in the EIA Directive 1985[649] and most of the EIA legislation in different states and countries.[650] Annex three of the EU EIA Directive provides criteria, types and characteristics of 'potential impact'[651], but still the definition of the word significant is missing and the concept of "significance" remains complicated.

Jane Holder explains that the significance is strongly related to the 'contextual aspect of environmental assessment' and in the future it would

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[645] Morris and Therivel (eds), *Methods of Environmental Impact Assessment* , (n613) 9.

[646] Ibid.

[647] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26) 129.

[648] Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora OJ L 206, 22.7.1992, p. 7–50 ,Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999),Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

[649] Article 2, 85/337/EEC Directive on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985.

[650] Alan Gilpin, *Envrionmental Impact Assessment: Cutting Edge for the twenty-first century* (Cambridge University Press 1995), 6.

[651] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

be possible to explain more clearly and accurately while linking the environmental assessment process both with human health and surrounding environment. By the time the impacts of proposed projects will be revealed and the exact definition of significance will be given.[652] Holder suggests uncovering the best definition of the word 'significance' in the process of environmental assessment.

The USA Council on Environmental Quality provides guidance to the word significance.[653] 'The significance of an action must be analyzed within the context of society as a whole; the affected region; the affected interest; and the locality as appropriate. Both long-term and short- term effects are relevant.' [654] Accordingly, this concept is equally important for both legislations so far.

There are different methods of predicting and assessing significant impacts. Glasson describes it in the "Introduction to Impact Assessment" at al: 'The nature and choice of prediction methods do vary according to the impacts under consideration, and Rodriguez-Bachiller with Glasson have identified… hard modelled impacts and mixed modelled impacts.'[655]

Authors suggest that it always takes less time consuming to implement simple methods of prediction.[656] However, they need to be appropriate and not be based on single expert opinion or not being critically explained.[657]Glasson at al list and describe the methods that can be used during impact prediction:

- Mathematical and Computer based methods
- Physical/architectural models and experimental methods
- Expert judgment and analogue model

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[652] Holder, *Environmental Assessment : The Regulation of Decision Making* , (n20) 104.
[653] Gilpin, *Envrionmental Impact Assessment: Cutting Edge for the twenty-first century*, (n650)7.
[654] Ibid.
[655] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* (n26) 133.
[656] Ibid.
[657] Ibid, 134.

- Choice of prediction method[658]

The decision-making body is required to find the best method to be used in impact prediction stage that will be the most relevant to the proposed project. By predicting the impacts and assessing their significance the decision makers implement two main steps of the EIA process listed above in this chapter.[659]

Analyses of Glasson at al. reveal various types of assessments that include the evaluation of all resources in the scope of the project. [660]The impacts on water, soil, air can be assessed, checked local and national planning regulations, international agreements, environmental priorities and preferences which include government policies for environmental protection and participation of affected people in decision-making process.[661]

There are qualitative and quantitative impact assessment procedures. One of the important aspects of this analysis is the cost-benefit analysis that can define and prevent the losses of participating parties, which is an example of quantitative assessment. Another important step in the EIA process is mitigation that measures the impacts on environment throughout the development process, prevents loses of natural species or rehabilitates the lost ones.

5.2.5. Mitigation Measures [662]

Mitigation is the continuation of assessment process by providing assessors with a ground to think over the possible means and methods of diminishing the caused harm to the surrounding environment during the project implementation. ‘During one or more stage of the life of a project, certain environmental components may be temporarily lost or damaged. It may be

[658] Ibid, 132.
[659] Screening (n266) and Scoping (n273).
[660] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* ,(n26), 140.
[661] Ibid.
[662] There is no direct and clear reference on mitigation measures in either of the RA EIA Law

possible to repair, rehabilitate or restore the affected component to varying degrees.'[663]

This step is considered to be one of core steps of the EIA process based on scholars and practitioners.[664] The EIA Directive requires:

> The information to be provided by the developer in accordance with paragraph 1 shall include at least:
>
> …— a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects, — the data required to identify and assess the main effects which the project is likely to have on the environment, — an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects…[665]

NEPA requires:

> …include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> (i) The environmental impact of the proposed action,
>
> (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) Alternatives to the proposed action….[666]

As soon as the scoping step identifies the impacts and predicts their possible effects the mitigating measures are being introduced. The United Nations

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[663] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* ,(n26), 150.

[664] Wood, *Environmental Impact Assessnment A Comparative Review*, (n565), 212,Dougherty, Hall and Wallingford, *Environmental impact assessment of irrigation and drainage projects* (n611).

[665]Article 5(3) 85/337/EEC Directive on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985.

[666]National Environmental Policy Act of 1969 Sec. 102(C).

Food and Agricultural Organization (FAO)[667] states 'recommendations this stage requires the involvement of specialists as there is a need for through attention on prediction methods; interpretation of predictions, with and without mitigating measures; assessment of comparisons'.[668]

Decision-making bodies or governments use this step to perform the sustainable development. This step involves the public opinion and requires knowledge and input of specialists to prepare relevantly accurate information for the preparation of Environmental Impact statement (EIS).According to C. Wood: 'Consultees and the public can provide invaluable assistance not only in suggesting mitigation measures, but in determining which residual impacts are tolerable and which cannot be countenanced.'[669]

Glasson at al argue that there can be different types of mitigation measures. They consider that some impacts can be avoided and will not be provided mitigation measures at all. Some impacts can be less easy to avoid and might need mitigation measures and finally 'significant unavoidable impacts' could be combated with mitigation measures. The authors believe that 'measures are of little or no value unless they are implemented'.[670] Morris and Therivel argue that 'best practice dictates that the precautionary principle should be applied, i.e. that mitigation should be based on the possibility of a significant impact ... .'[671] The authors think that mitigation measures have to be taken into consideration during the implementation of development project as in this stage the impacts are more likely to erupt.

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[667] Dougherty, Hall and Wallingford, *Environmental Impact Assessment of Irrigation and Drainage Projects* (Natural Resources Management and Environment Department, United Kingdom 53 FAO Irrigation and Drainage Paper 1995).

[668] Ibid.

[669] Wood, *Environmental Impact Assessnment A Comparative Review*, (n565), 213.

[670] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26) 149-153.

[671] Morris and Therivel (eds), *Methods of Environmental Impact Assessment* , (n 613) 10, this principle is advocated in EU and the UK.

[672]They argue that mitigation measures need to be different in relation to specific impacts on different environmental components and receptors.[673]

At this stage the application of precautionary principle is highly acceptable as mitigation measures will take the control and prevent the hazards that might occur later either during the project development process or after its completion. For this and many other reasons the Environmental Impact Statement brings the schedule or picture of the project development to the stage and presents the details of a particular development to the assessment and decision-making process. It embodies all measures and evaluations done preliminarily by the specialists engaged in the process.

5.2.6. Environmental Impact Statement[674]

The Environmental Impact Statement is the final product prepared by the developers on proposed project. It contains all measurements and assessments of the projects such as impact predictions and assessments as well as mitigating measures and alternatives. The EIS is required both by the EIA Directive[675] and the NEPA. [676]

> An EIS is a detailed analysis that serves to insure that the policies and goals defined in NEPA are

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[672] Ibid 9.

[673] Ibid.

[674] This document is referred in two ways as Environmental Impact Statement (EIS) or Environmental Statement (ES) in this study. Both have the same meaning and refer to the same document; however different scholars and practitioners call it in different ways. In the RA EIA Law this document has no name, the RA EIA Law of 1995 Article 7 provides that the list of documents are established by the government upon getting the development project proposal. In RA EIA Law of 2014 the required documents are very complicated as the developer needs to present not only the list of development project documents not clearly stated in Article 16 of the Law.

[675] 85/337/EEC Directive on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985,Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21 Article 5(3).

[676] National Environmental Policy Act of 1969 Sec 102(2)(C).

> infused into the ongoing programs and actions of the federal agency. EISs are generally prepared for projects that the proposing agency views as having significant prospective environmental impacts. The EIS should provide a discussion of significant environmental impacts and reasonable alternatives (including a No Action alternative) which would avoid or minimize adverse impacts or enhance the quality.[677]

The nature of EIS is explained in the literature as the clear, detailed document that includes transparent description of all required data on proposed project and demonstrates the impact assessment process based on qualitative and quantitative documents including graphs/charts, tables, maps and photographs.[678] The EIA Directive requires non-technical summary[679] as well in the scope of Environmental Impact Statement which means that the EIS has to be technical for specialists and understandable by non-specialists through non-technical summary of the project. The details of environmental impact statement are provided in the Annex 4 of the EC EIA Directive.[680] It lists the necessary information that should be included in the statement prepared by the developer with the help of planning authorities as it is referred in Schedule 4 of the UK EIA Regulations 2011. The developer requires from the planning authority to assist in making a 'scoping opinion' and provides the following information

> (2) A request under paragraph (1) shall include—

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[677] United States Environmental Protection Agency, 'Mid-Atlantic National Envrionmental Policy Act' (*United States Environmental Protection Agency,* 28/01/2014) <http://www.epa.gov/reg3esd1/nepa/eis.htm> accessed 03/02/2014.

[678] Morris and Therivel (eds), *Methods of Environmental Impact Assessment* , (n613)10, Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26)168.

[679] 85/337/EEC Directive on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985, Art. 5 (3).

[680] Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21, Annex 4.

(a) in relation to an application for planning permission—

(i) a plan sufficient to identify the land;

(ii) a brief description of the nature and purpose of the development and of its possible effects on the environment; and

(iii) such other information or representations as the person making the request may wish to provide or make;

(b) in relation to a subsequent application—

(i) a plan sufficient to identify the land;

(ii) sufficient information to enable the relevant planning authority to identify any planning permission granted for the development in respect of which a subsequent application has been made;

(iii) an explanation of the possible effects on the environment which were not identified at the time planning permission was granted; and

(iv) such other information or representations as the person making the request may wish to provide or make[681]

This list is relevant to the one required by the Annex 4 of EU EIA Directive, which in its turn requires non-technical summary of the same information that will be provided in technical terms.[682]

Glasson at al give a comprehensive description on EIS and the role of non-technical summary in it. They consider that 'non-technical summary is particularly important … as this often the only part of the document that the public and decision makers will read.'[683] The authors explain that the ideal EIS should be 'unified document…be as brief as possible while still

[681] The Town and Country Planning (Environmental Impact Assessment) Regulations 2011sec.13(2 A)

[682],Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21 Annex 4(7).

[683] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26)169.

presenting the necessary information.'[684] It should be 'well written…shun technical jargon', state assumptions on which impact predictions are based, should be specific, quantified, honest and unbiased, should give an indication of probability that an impact should occur.'[685] Wood noticed the EIS was viewed as an 'action-forcing' mechanism to ensure the implementation of the policy in the USA.[686] 'Section 102(2)(C) requires the detailed statement by federal agencies evaluating the effect of their proposal on the state of environment.[687]There is a long list of steps in preparing the EIS in the USA based on NEPA requirements:

- A "Notice of Intent" (NOI) to prepare an EIS is published in the Federal Register. The NOI includes a description of the project and alternatives, the lead agency's proposed "scoping" process and any related meetings, and a contact person within the agency.
- "Scoping" of the project occurs; whereby other agencies are given the opportunity to bring to the attention of the lead agency significant issues which should be included in the EIS. This enables the lead agency to focus the EIS on a particular range of actions, alternatives, and impacts.
- A Draft EIS is prepared by the agency.
- Upon completion of the draft, a public "Notice of Availability" (NOA) of the Draft EIS is filed with the Environmental Protection Agency's (EPA's) Washington D.C. and regional offices for publication in the Federal Register.
- The Draft EIS is made available for public review.

[684] Ibid.

[685] Ibid, 170-171.

[686] Wood, *Environmental Impact Assessnment A Comparative Review*,(n565) 17.

[687] Ibid, 18.

- A Final EIS is prepared, including responses to the comments received during the review period.
- The Final EIS is circulated for public review; a second NOA, this time for the Final EIS, is sent to the EPA.
- The Final EIS is adopted and the agency renders its decision on the project.
- The "Record of Decision" (ROD) is prepared. The ROD includes a comparative discussion of the project alternatives, a discussion of the factors considered in making the decision, a description of those mitigation measures which were adopted and an explanation of why mitigation measures were not adopted, as well as a monitoring and enforcement program for adopted mitigation measures.[688]

The EIS in general is being prepared in two stages; a draft stage and final stage. The difference between the draft EIS and the final one is the existence of public opinions enclosed to the final version of EIS.[689] Therefore the public opinion in the decision-making process has also the role of EIA enforcement.[690] Moreover, the existence of relevant independent body such as Council on Environmental Quality embodies the accurate process of the EIA and controls its appropriate implementation in the USA. It plays a role of enforcing body and presents special mechanisms to fulfill the requirements of NEPA despite its 'short, simple and comprehensive'[691] nature. C. Wood refers that in the USA there is also a practice of presentation of FONSI (finding of no significant impact) document when no significant impacts are being revealed in the process of environmental impact assessment.[692] This makes a developer and a decision maker to be

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[688] Governor's Office of Planning and Research, 'CEQA, NEPA: Comparison and Contrast' 1994) <http://ceres.ca.gov/ceqa/more/tas/ceqa_nepa/section2.html> accessed 01/12/2013.

[689] Ibid.

[690] See Chapter 4.

[691] Wood, *Environmental Impact Assessnment A Comparative Review*, (n565)19.

[692] Ibid, 20.

responsible for the project anyway and carry out precautionary approach even in case of a harmless development project.

5.2.7. Environmental Impact Statement Review[693]

In the European Union, the European Commission is in charge of EIA implementation by the member states and the enforcing body is European Court of Justice[694] that settles the disputes or challenges raised by the decisions made in the frames of the EIA process in Member States. It makes binding decisions for further implementations of the EIA Directive's requirements and plays significant role in finding of gaps in laws of Member states through remarkable interpretation of provisions and/or terms.[695] 'The practice of the ECJ in the period between 2003 and 2008 provides further understanding of the EIA Directive in new directions'[696]. However, this is not to say that ECJ judgments are completely accurate as sometimes different judgments of the same term makes more confusion in terms of interpreting the EIA concepts clearly.

The 'accuracy and comprehensiveness' of Environmental Impact Statements are 'matters of concern' as it is stated by Glasson at al.[697] There is a need to review the prepared EIS for all project proposals. The European Commission prepared special guidance for the EIS review process where the criteria of the review are listed:[698]

- Description of the project
- Alternatives

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[693] The development project application is reviewed by the environmental impact assessment experts based on the RA EIA Law of 1995 Article 9 and the RA EIA Law of 2014 do not explicitly refer to the review of the application but provides the requirement of the review to the authorised body by the Article 16(7) of the Law.

[694] European Court of Justice, *Environmental Impact Assessment of Projects: Rulings of the Court of Justice* (European Union, 2013, 2013).

[695] European Commission, *Study concerning the report on the application and effectiveness of the EIA Directive*, 2009).

[696] Ibid,188.

[697] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26)172.

[698]European Comission, *Guidance on EIA EIS Review*,2001.

- Description of the environment likely to be affected by the project
- Description of the likely significant effects of the project
- Description of Mitigating Measures
- Non-Technical Summary
- Quality of presentation[699]

Alan Gilpin noticed that 'EIS as a basic document is only one input to the EIA process; and there is really no escape from the necessity of good work…EISs of good quality are an advantage of all parties: public, the relevant government agencies, and the proponent.'[700]

That is why the review of the EIS step is necessary to check the quality of it and make sure that the prepared document meets all requirements of an EIA process. As mentioned earlier the International Association for Impact Assessment (IAIA) [701] in cooperation with Institute of Environmental Assessment, UK, has established principles of an EIA by separating them into two groups; basic principles and operating principles.[702] The EIA steps discussed in the first title of this chapter are operating principles as IAIA formulated them. The EIS Review has been described by IAIA in the following way: 'Review of the EIS: Determine whether or not the document

[699] Ibid.

[700] Gilpin, *Envrionmental Impact Assessment: Cutting Edge for the twenty-first century*,(n650) 23.

[701] International Association for Impact Assessment, 'Principles of Environmental Impact Assessment Best Practice' (*IAIA International Headquarters, 1330 23rd Street South, Suite C. Fargo, ND 58103 USA,* 18/01/2014) <http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA_web.pdf> accessed 15/07/2015.

[702] Ibid.

provides a satisfactory analysis of the proposal(s) and contains the information required for decision-making.'[703]

This is the final stage of pre-project decision-making in the EIA process and the definition of the term is: '***Decision-making*** - to approve or reject the proposal and to establish the terms and conditions for its implementation.'[704] However, this is not the end of the EIA process. It still continues for a particular project to control by further monitoring and auditing and prevent the impacts that might occur in the implementation of the proposed project, to make sure that the implementation of the project is in the scope of made decision and complies with the legal requirements.

5.2.8. Monitoring[705]

The Monitoring and post-development stages are designed to observe the 'life cycle' of a development project in particular if it is a 'major project; i.e. a plant, a road, mineral development, a power station' as mentioned by Glasson at al.[706] 'Monitoring involves the measuring and recording of physical, social and economic variables associated with development impacts.'[707] This stage can be helpful for creating precedents of future plans and projects. It is inferred from the study of materials that monitoring and audit of a particular project could have an input in conducting EIA for other similar projects. As Glasson at al. noticed 'the monitoring and auditing process assists in escaping the 'built and forget' practice in environmental management.'[708] In this phase of any EIA the environmental management issues occur. The decision makers are mostly reluctant to conduct the monitoring. It takes more time and financial resources to conduct

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[703] Senécal and others, *Principles of Environmental Impact Assessment Best Practice*,Charles Eccleston, *Envrionmental Impact Statement: A compehensive guide to project and strategic planning* (John Wiley & Sons, Inc. 2000), 19.

[704] Senécal and others, *Principles of Environmental Impact Assessment Best Practice*(n 269).

[705] The RA EIA Law of 2014 Article 17(4) requires monitoring. The RA EIA Law of 1995 has no requirement for monitoring.

[706] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26),185.

[707] Ibid.

[708] Ibid, (n26) 185.

monitoring. The amended EU EIA Directive requires monitoring.[709] Barrow states that 'monitoring is the process of keeping the health of the environment …If sustainable development is a goal, monitoring is vital.'[710]

Monitoring can be a great help in the process of EIA especially in cutting costs and time while implemented properly and the developments and impacts recorded as required. All parties engaged in the process of the EIA should be involved in monitoring as well to gain the requirements of good environmental management. Morris and Therivel discuss features of a continuous monitoring:

> Baseline monitoring –may be carried out over seasons or years to qualify ranges of natural variations and/or directions and rates of change, that are relevant to impact prediction and mitigation.
>
> Compliance monitoring- aims to check specific conditions and standards are met, e.g. In relation to emissions of pollutants.
>
> Impact and mitigation monitoring- aims to compare predicted and actual (residual) impacts, and hence to determine the effectiveness of mitigation measures.[711]

In the USA, the monitoring is not among the requirements by NEPA. Although 'the CEQ regulations (1987) enunciate the principle of post-EIS environmental monitoring in sections 1505.3 and 1505.2 (c). The CEQ regulations focus on monitoring in conjunction with implementing mitigation measures. Monitoring can also be used to determine the effectiveness of each of the types of mitigation measures.'[712]Larry Canter supports the arguments that monitoring has an important role in environmental management. He separates three features of it into two stages as pre-EIS and post-EIS monitoring. He relates the baseline studies as pre

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[709] 8a(1)(b) 8a (4)Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

[710] Barrow, *Environmental Management:Principles and Practice* (n552), 62.

[711] Morris and Therivel (eds), *Methods of Environmental Impact Assessment* , (n618) 10-11.

[712]Larry W. Canter, *Environmental Impact Assessment* (1999), 33.

EIS monitoring, and compliance, impact and mitigation monitoring as a post-EIS monitoring.[713]

> Monitoring is an important part of project implementation. Monitoring serves three purposes: (1) ensuring that required mitigation measures are being implemented; (2) evaluating whether mitigation measures are working effectively; and (3) validating the accuracy of models or projections that were used during the impact assessment process.[714]

The climate change issue raised a concern in the world and the tendency of impact monitoring is considered necessary for the world community too. J. Barrow refers to the fact that 'the UNEP (United Nations Environmental Program) has established the Global Environmental Monitoring System (GEMS) which is a coordinated program for gathering data for use in environmental management and for early warning disasters.'[715] Constant monitoring of the EIA process of a project relieves the stakeholders from further difficulties, however this step needs to go in parallel with auditing of previously presented EIS and go through another form of control on correlating the actual project development with the proposed one.

5.2.9. Auditing[716]

Auditing is a completing stage of the EIA process for a particular development project. It is necessary in the context of controlling the accurate implementation of the development project. The explanation of this step has been found in the analyses of western scholars. For the EU and its Member states the explanation of Glasson at al was considered who make an attempt to provide type and detailed descriptions of environmental auditing.

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[713] Ibid.
[714] , *Guidebook for Evaluating Mining Project EIAs* (Environmental Law Alliance Worldwide (ELAW) 2010)23.
[715] Barrow, *Environmental Management:Principles and Practice* (n552) 63.
[716] There is no requirement of Auditing in the RA EIA Law.

> The term environmental auditing is currently used in two main ways. Environmental impact auditing … involves comparing the impacts predicated in an EIS with those that actually occur after implementation, in order to assess whether the impact prediction performs satisfactorily … Environmental management auditing, which focuses on public and private corporate structures and programs for environmental management and the associated risks and liabilities. [717]

In the context of environmental governance system analysis of the USA the approach of Canter is considered. He explains that in the USA environmental system the 'environmental monitoring can serve as a basic component of a periodic environmental regulatory auditing program for a project.'[718]

> In this context, auditing can be defined as a systematic, documented, periodic, and objective review by regulated entities of facility operations and practices related to environmental requirements (U.S. Environmental Protection Agency 1986).The purposes of environmental auditing are to verify compliance with environmental requirements, evaluate the effectiveness of in-place, environmental management systems, and assess risks from regulated and unregulated substances and practices.[719]

Environmental auditing is not required by the legal instruments discussed in this chapter but it is one of implementation requirements provided by the managing bodies of western developed countries. Auditing differs from monitoring as it is a 'stock taking'[720] procedure. Glasson at al. list several types of auditing in the standard EIA: 'Decision point audit (draft EIS),

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[717] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26)186.

[718] Canter, *Environmental Impact Assessment* (n712) 33.

[719] Ibid.

[720] Barrow, *Environmental Management:Principles and Practice*, (n552) 65.

decision point audit (final EIS) implementation audit, performance audit, predictive techniques audit, project impacts audits, procedure audit.[721]
It is obvious that audit is also a continuous activity in the decision-making process. Post development audit will play as helpful role as monitoring in revealing the compliance of the project with legal, social, economic, health and human fields of development.

By the time of its theoretical and practical existence the EU EIA Directive performed with deficiencies in terms of assessment of polices, plans and projects; a strategic environmental assessment. It raised a necessity of a complementary directive that was thought to fill in the gaps of the EIA Directive. The Strategic Environmental Assessment was carried out in the USA from the beginning of NEPA application. Yet, it took several years to obtain its current shape in European Union. Next sub-title discusses the nature of SEA in broad context to show its relevance to the EIA process in general. Both EU Directives are referred as Environmental Impact Assessment in this study or EIA/SEA as they mostly overlap at some points and complement each other in the assessment process.

5.3. Strategic Environmental Assessment (SEA)[722]

While considering the Environmental Law in European Union from holistic approach it is clear that all directives, created in terms of environmental conservation in the EU since its foundation,[723] are closely linked with each other. Moreover, they link the international treaties and conventions at some points.[724] In this context the EIA studies will be incomplete if it is not linked

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[721] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* , (n26), 191- 192.

[722] This requirement is present in both RA EIA Law but not clearly explained and implemented yet, see 3.3.2, Chapter 3.

[723] Michael Scmidt, Elsa Joao and Eike Albrecht (eds), *Implementing Strategic Envrionmental Assessment*, vol 2 (Springer -Verlag 2005) 'Treaty of Maastricht 1992', 17.

[724] The Espoo Convention on EIA in a Transboundary Context – to which the EC has acceded - has been supplemented by the SEA Protocol. The SEA Protocol was adopted in Kiev on 21 May 2003 and subsequently signed by 36 States and the European Community.

with the SEA[725] Directive which is considered a "complementary" to EU EIA Directive[726]. It is called complementary as gained a role to assess certain plans, programs and policies that had been implemented before the start of any major development project. It is called to administer the existing documentation in details and check whether there is a necessity to conduct another EIA for that particular plan, project or program. The SEA is aimed at providing the sustainability to plans and programs by conducting regular observations on them. The endorsement of the SEA Directive is also influenced by the development of NEPA in 1969.However it was possible to implement only after 20 years of discussion between European Commission and the EU Council.[727] '…the Commission tried several times to prepare proposals for the implementation of SEA, based on 4th and 5th Environmental Action Program…Between 1989 and 1996 about six different alternatives for a proposal were discussed in the Commission.'[728] Schmidt, Joao and Albrecht refer to this point and explain that these assessment require a detailed statement on the environmental impacts as well.[729]

Riki Therivel considers that the SEA Directive is generated to regulate the 'strategic environmental assessment process that aims to integrate environmental and sustainability considerations into strategic decision-making. It has the potential to make the world greener and more livable place'[730]She also gave the definition of the SEA together with four other co-authors as a 'formalized, systematic and comprehensive process of evaluating the environmental impacts of policy, plan or program and its

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[725] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

[726] Commission of the European Communities, *Report from the Commission to the Council,the European Parliament,the European Economic and Social Committee and the Committee of the Regions On the application and effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC)* (Brussels 2009), 7.

[727] Scmidt, Joao and Albrecht (eds), *Implementing Strategic Envrionmental Assessment*, 23.

[728] Ibid.

[729] Ibid, 15.

[730] Riki Therivel, *Strategic Environmental Assessment in Action* (2 edn, Earthscan 2010), .3

alternatives, including the preparation of a written report on the findings of that evaluation, and using the findings in publicly accountable decision – making'[731]. Similar definition was given by B. D. Clyton and B. Sadler in 2005[732] and Thomas Fischer in 2007.[733]

> The SEA Directive applies to a wide range of **public** plans and programs (e.g. on land use, transport, energy, waste, agriculture, etc). The SEA Directive does not refer to policies… Plans and programs in the sense of the SEA Directive must be prepared or adopted by an **authority** (at national, regional or local level) and be **required** by legislative, regulatory or administrative provisions. An SEA is **mandatory** for plans/programs which are…Prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/ water management, telecommunications, tourism, town & country planning or land use and which **set the framework** for future development consent of projects listed in the EIA Directive. OR have been determined to require an assessment under the Habitats Directive.[734] [735]

Jane Holder compares EIA and SEA as well. She argues that these two instruments 'have different rationales, and operate on different levels, but they remain closely related and may overlap in subject matter and methodologies.'[736] It becomes clear, that although these two Directives are called to control the assessment process at various stages, their implementation or errors in the implementation might cause subject matter or methodological disputes. Holder's predictions came up recently in a court case where the plaintiff complaint against the developers to be in breach of

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[731] Riki Therivel and others, *Strategic Envoronmental Assessment* (Earthscan Publications 1992), 19-20.

[732] Barry Dalal-Clyton and Barry Sadler, *Strategic Environmental Assessment:A Sourcebook and Referebce Guide to International Experience* (Earthscan 2005), 11.

[733] Thomas B. Fischer, *The Theory and Practice of Strategic Environmental Assessment: towards a more systematic approach* (Earthscan 2007), 2.

[734] Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora OJ L 206, 22.7.1992, p. 7–50

[735] European Commission, 'Strategic Environmental Assessment' 2012) <http://ec.europa.eu/environment/eia/sea-legalcontext.htm> accessed 13/12/2013.

[736] Holder, *Environmental Assessment : The Regulation of Decision Making* (n20),63.

the SEA Directive, however the court ruled that there was an overlap of the EIA and SEA requirements and the subject matter referred more to the EIA issues.[737] The referred litigation was held in the UK Supreme Court: Walton v. Scottish Ministers.[738] '…Scottish ministers took responsibility for the construction of a city bypass, and revised a scheme to include an extra link of a road, that revision was a modification to a "project" within the scope of Directive 85/337, not a modification to a "plan" or "program" for the purposes of Directive 2001/42.

In terms of SEA the appellant argued against the Ministers' decision to construct the road alleging that:'

> [First] the regional transport strategy adopted by NESTRANS—the MTS—was a plan or program within the meaning of article 2(a) of the SEA Directive . The second proposition is that the decision to construct the Fastlink, announced by the minister on 1 December 2005 and subsequently implemented by the orders under challenge, was a modification to that plan or program: the MTS was modified by the addition of a new objective, namely the relief of congestion on the A90 between Stonehaven and Aberdeen. If so, that decision was therefore itself a plan or program within the meaning of article 2(a) and, since that plan or program was adopted after 21 July 2004, it was subject to the requirements of the Directive. The final proposition is that there was a failure to comply with those requirements: the announcement was not preceded by any consultation on the question whether there should be a Fastlink or not, and that question was not addressed in the subsequent procedures as required by the SEA Directive[739]

The judgment was dismissed; however judges of the UK Supreme Court expressed valuable opinions on issues of the case; the significant reflections

[737] *Walton v. The Scottish Ministers* [2012] UKSC 44 (The UK Supreme Court).
[738] Ibid,6.

[739] Ibid, point 57.

on EU EIA and SEA Directives were made.[740] The interpretation of Lord Reed in discussing this case is significant for this particular topic as he addresses the similarities and differences of two directives and highlights again the 'complementary' feature of the SEA Directive to the EIA Directive.

> The two Directives are to a large extent complementary: the SEA is 'Upstream' and identifies the best options at an early planning stage, and the EIA is 'downstream' and refers to the projects that are coming through at a later stage. In theory, an overlap of the two processes is unlikely to occur. However, different areas of potential overlaps in the application of the two Directives have been identified. …In relation to that passage, it should be noted that a project need not necessarily be a 'downstream' development of an option identified at an earlier 'upstream' planning stage.[741][742]

At present, in the process of developing EIA in practice and theoretically, these two instruments go in parallel with each other and strive to make the regulatory field of environmental assessment complete. One of them establishes the practical responsibility of developer and decision makers and the other one controls relevant policies and programs to maintain the sustainability of similar development projects in future.

In this concept the notion of accurate definition of sustainability and sustainable development became a task of concerned parties who develop environmental assessment in western countries. It is considered that the word 'sustainable' is used in different fields of life, therefore it loses its accurate definition at some point. The complex meaning of sustainability has been long argued by different scholars; Kidd, Moffatt, Munn, Heinen,

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[740] Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21,Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

[741] *[2012] UKSC 44* (Lord Reed).

etc.[743] Simon Bell and Stephan Morse bring different general definitions made by different people on the sustainable development concept '…The sustainability of natural ecosystems can be defined as the dynamic equilibrium between natural inputs and outputs, modified by the external events such as climatic change and natural disasters….'[744]

The authors believe that the existing 'uncertainty' over the term 'has not reduced the popularity of sustainability'[745] though. The discussions remain ongoing around the concept and definition of the sustainable development. Professor at Dundee Law School Andrea Ross refers to the purpose of sustainable development idea addressed in preamble of the Earth Charter 'The original purpose of sustainable development agenda was to bring economic development and environmental protection agenda's together'.[746] In her different works she strives to find explanation and definitions of sustainable development as it is. In their work on Windener Law School Legal Studies Research Paper Series no.13-26 Professors Ross and John C. Dernbach describe the sustainable development as 'Sustainable development is a framework integrating environmental protection and restoration into development decisions. Sustainable development is also increasing human freedom, opportunity, quality of life, and well-being, and doing so fairly and justly.' [747]

Professor Andrea Ross produced several works on defining and explaining the meaning and importance of this concept. She considers that the 'meaning remains unclear' as attempts to explain it still are 'imprecise' like it is made by the 'Brundtlant definition 'in 1987.[748] This definition is used by different organisations such as Organisation for Economic Cooperation

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[743] Simon Bell and Stephen Morse, *Sustainability indicators: Measuring the Immeasurable* (Earthscan 2000),6.

[744] Ibid.

[745] Ibid.

[746] Andrea Ross, 'Modern Interpretations of Sustainabel Development' (2009) 36 Journal of Law and Society 32,15.

[747] John C. Dernbach and Andrea Ross, 'The Sustainable Relationship: What the United States and the United Kingdom Can Teach Each Other About Climate Change and Sustainable Development at the National Level' (2013) 30 The Environmental Forum 31.

[748] Andrea Ross, 'Modern Interpretation of sustainable Ddevelopment' (2009) 36 Journal of Law and Society 32,34 (development that meets the needs of the present without compromising the ability of future generations to meet their own needs).

and Development, and the United Nations.[749] Prof. Ross challenges this definition and names it 'vague' as it misses to underline the field of sustainability whether it refers to social, economic or environmental aspects of life.[750] She differentiates two types of sustainability 'weak' and 'strong' where in one case the natural resources are used limitlessly and in the other case strong limits are established in usage of those resources which the professor names as 'ecological capital'.[751] The progress of sustainability and sustainable development is also assessed as it is defined by Tracy Strange and Anne Beyley: 'Many different assessment methodologies exist….What we need are assessments that examine economic, environmental and social impacts and also the longer term. In other words, we need sustainability impact assessments that can be applied to policies, programs or agreements; to the national, regional or international levels….'[752]

This means that the sustainability also needs multidisciplinary approach as the factors are in one chain together leading either to a weak or strong sustainable development. 'The Original Purpose of sustainable development agenda was to bring together the economic development and environmental protection agenda's together.'[753]

Prof. Ross highlights the importance of making sustainability as one of the environmental law principles as it is vital to regulate the sustainable development through legal provisions. In this sense, the environmental impact assessment and strategic environmental assessment are seen by Prof Ross among those 'useful tools' that will assist in forming complete and accurate explanation of sustainability and the ecological sustainability in particular. [754] These will help to put forward the sustainability and sustainable development as legal principles in line with other environmental principles such as precautionary principle and participation principle.

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[749]Organisation for Economic Cooperation and Development (*Organisation for Economic Cooperation and Development,* 2003) <http://stats.oecd.org/glossary/detail.asp?ID=2626> accessed 30/05/2014,

[750] Ross, 'Modern Interpretation of sustainable Ddevelopment',34 (748).

[751] Ibid, 36.

[752] Tracy Strange and Anne Beyley, *Sustainable Development: Linking economy, society, environment* (OECD Publishing 2008), 109.

[753] Ross, 'Modern Interpretation of sustainable Ddevelopment', (n739),45-46.

[754] Ibid.

In 2012 a world summit was held; Rio 20, to find out the solutions of main challenges in the world related to sustainability and sustainable development: 'The official discussions are focussed on two main themes: how to build a green economy to achieve sustainable development and lift people out of poverty; and how to improve international coordination for sustainable development'.[755]

Although the continuous steps are taken towards addressing the gaps in sustainability and sustainable development, however this issue still remains topical in the world. The same approach is demonstrated in the United States towards sustainability and sustainable growth. The United States Environmental Protection Agency defines sustainability as: 'Sustainability is based on a simple principle: Everything that we need for our survival and well-being depends, either directly or indirectly, on our natural environment. …Sustainability is important to making sure that we have and will continue to have, the water, materials, and resources to protect human health and our environment.'[756]

NEPA refers to SEA on its own sense as it represents environmental policy. Scholars consider the NEPA to be the founder of SEA as it relates to the environmental policy first of all. The Council of Environmental Quality has central role in implementing NEPA's requirements through external regulations and instructions for the agencies how to implement those requirements and as Riki Therivel addresses 'much of NEPA's strength also came from early court rulings'.[757] However, 'it does not distinguish between SEA and EIA'.[758]

The legal document that has a great influence on the growth and development of environmental conservation movement on the world presents the whole environmental assessment process in one provision; Sec

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[755] United Nations Conference on Sustainable Development Knwoledge Platform, 'What is "Rio+20"?' (*United Nations Conference on Sustainable Development Knwoledge Platform,* 2012) <http://www.un.org/en/sustainablefuture/about.shtml> accessed 21/07/2015.

[756] United States Environmental Protection Agency, 'What is Sustainability?' (*United States Environmental Protetcion Agency,* 2014) <http://www.epa.gov/sustainability/basicinfo.htm#sustainability> accessed 30/05/2014.

[757] Therivel, *Strategic Environmental Assessment in Action*, (n730) 46.

[758] Ibid,47.

102. [759] Moreover, it combines both the EIA and SEA in one single instrument. R. Therivel explains the way SEA is addressed in the USA:'... the CEQ regulations do identify certain broad federal actions (e.g. plans, programs and policies) that may be evaluated at programmatic level (40 CFR 1502.4(c)) .Thus in practice 'programmatic environmental impact assessment' (PEIS) is the generally used term for SEA in the USA.'[760]

The EIA and SEA instruments together are called the assessment procedure by scholars, practitioners and academicians [761] . In most cases the Environmental Assessment term is used in books to refer both the EIA and SEA together.[762] Holder defines the environmental assessment as a means of 'integrating environmental concerns into policy making in response to growing pressure from international organizations and the public that such concerns will be given greater prominence'[763]

So, what does the SEA Directive require and how does it complementary to the EIA? This question is answered by studying the SEA Directive's Articles. The SEA Directive is an instrument that consists of 15 articles and two annexes. It provides the Objective in Article 1;

> The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programs with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and

[759] National Environmental Policy Act of 1969.

[760] Therivel, *Strategic Environmental Assessment in Action*, (n722) 47.

[761] Holder, *Environmental Assessment : The Regulation of Decision Making* (n20),Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* (n26).

[762] Glasson, Therivel and Chadwick, *Introduction to Environemntal Impact Assessment* (n26),Christopher Wood, *Environmental Impact Assessment: a Comparative Review* (2 edn, Pearson education limited 2003),Bell and McGillivray, *Environmental Law* (7 edn, 2006).

[763] Holder, *Environmental Assessment : The Regulation of Decision Making* , (n20)65.

programs which are likely to have significant effects on the environment.[764]

Article 2 lists definitions, article 3 is a scope of the Directive, and article 5 gives general obligations of Member States and requires an Environmental Report 'pursuant to Article 1.'[765] Article 6 requires consultation of Member States with public and/or relevant authorities and specialists before undertaking any plans or programs. Article 7 provides regulations on consultations on Trans -boundary context of plans and programs.

The SEA Directive strives to settle disputes between member states if they occur in terms of legislative differences. 'The different environmental assessment systems operating within Member States should contain a set of common procedural requirements necessary to contribute to a high level of protection of the environment'. [766] The EU Member States obliged to regulate the environmental issues occurred in boundaries for what the Espoo Convention[767] was signed (to regulate the EIA process in trans-boundary context) and later on, after the promulgation of the EU SEA Directive, a SEA Protocol was adopted by the member states during Kyiv Extraordinary Meeting.[768]

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[764] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

[765] Ibid.

[766] Ibid, para.6.

[767]Convention on Environmental Impact Assessment in Transboundary Context, United Nations 1991(Espoo Convention), C104, 24/04/1992, p. 7 , The Espoo (EIA) Convention sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries. The Convention was adopted in 1991 and entered into force on 10 September 1997.

[768]Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context Kiev, 21 May 2003, ECE/MP.EIA/2003/2. The Kyiv (SEA) Protocol requires its Parties to evaluate the environmental consequences of their official draft plans and programs. Strategic environmental assessment (SEA) is undertaken much earlier in the decision-making process than project environmental impact assessment (EIA), and it is therefore seen as a key tool for sustainable development. The Protocol also provides for extensive public participation in government decision-making in numerous development sectors.

Then articles on decision-making, information on decision, monitoring, relationship with other legislations, review and implementation of the Directive follow. The document is concluded with 14 and 15 articles including entry into force and addresses of parties. Annexes provide details of articles in particular.[769]

The SEA is considered to make the assessment process complete and improve the decision-making process for governments. Thomas Fisher lists 'needs' that generate the development of SEA; ' the need for a stronger representation of strategic environmental thinking in PPP making, the need for more effective reasoning in decision-making, the need for more efficient decision-making, the need for supporting good governance and sustainable development in decision-making'.[770] The 'ultimate aim'[771] of the SEA is 'to protect the environment and promote sustainability' according to Riki Therivel.[772] The EU Member States are required to comply with the SEA Directive.

Fisher identifies two main types of SEA process; 'EIA-based SEA …process of predefined steps for plans and programs, prepared by public planning authorities and at times private bodies and second, a more flexible assessment process for policies, prepared by public planning authorities and at times private bodies, and for cabinet decision-making.'[773] The EIA-based SEA has got similar requirements of 'screening, scoping, analysis, environmental report and review, decision-making and approval, follow-up

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The Protocol was adopted by an extraordinary meeting of the Parties to the Espoo Convention, held on 21 May 2003 during the Ministerial 'Environment for Europe' Conference (Kyiv).

[769] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37.

[770] Fischer, *The Theory and Practice of Strategic Environmental Assessment: towards a more systematic approach*,8-13, PPP is used abbreviation for Policies, Plans and Projects.

[771] Therivel, *Strategic Environmental Assessment in Action*, (n732)9.

[772] Ibid.

[773] Fischer, *The Theory and Practice of Strategic Environmental Assessment: towards a more systematic approach*, (n733)28.

and monitoring as well as participation and consultation.'[774] Unlike EIA, the SEA process is office based as it deals with presented documentation and does not include in practice measurements of project development sites.

The UK Supreme Court refers to the existence of two interrelated directives; the EIA and SEA Directives, in Walton v. Scottish Ministers: '…Taken together, the directives ensure that the competent authorities take significant environmental effects into account both when preparing and adopting plans and programs and when deciding whether to give consent for individual projects.'[775]

Each key step of environmental decision-making process requires transparency in activities and accountability to parties concerned in particular decision-making process. The legal instruments include provisions with the requirements of public accountability and transparency in the EIA. The role of public is seen as one of the important factors in enforcing the legal requirements. Various enforcement mechanisms also play key role in implementation of the EIA in western developed countries. The issues on public participation in the European Union and in the USA in EIA/SEA are discussed in the following sub titles of this chapter.

5.4. Public Participation in Environmental Impact Assessment Process

The role of public in environmental decision-making is one of the central topics in this study. The public participation in environmental decision-making is a complex procedure that attracts scholars and practitioners engaged in environmental conservation and justice field. This study has come across variety of discussions on this topic and aims to provide practical knowledge on the role of public in decision-making process as one of the legal enforcement mechanisms in the EIA process based on two major jurisdictions discussed in this chapter.

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[774] Ibid, 29-31.

[775] *[2012] UKSC 44*,5(Lord Reed).

The EU EIA and SEA Directives as well as NEPA require transparency in the EIA process by making the development project ideas transparent and accountable before adopting any final decision for particular development.[776] However, the legal provisions on public participation steps are rather stingy in providing the clear procedure of public awareness raising and participation. The details of participation methods, timings and procedures as well as legal standing are provided by other regulatory documents generated based on the discussed major laws in this chapter. These instruments call upon transparency, democracy and equality, and consequently, the focus on the public involvement in decision-making processes becomes a necessity. This is, so called, a theoretical approach to the decision-making process. These instruments place the burden of implementation on member states in the EU and Federal Agencies in the USA. Accordingly, in practice the public involvement procedure is far away from being a democratic in the world even in western developed countries.[777] It is apparent that the development of democratic decision-making tendencies is different from country to country. 'Democracy is increasingly seen as a continuous and dynamic process in which governments carry ultimate responsibility but only with the most careful public scrutiny.'[778]

Judith Petts tries to give the definition of public participation concept from different viewpoints, considers that it brings people 'closer to driving the democratic machine' and states that it can be viewed as a challenge to professional performance…it can help the professionals to do their job better… participation expresses a concern for the community of which you

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[776]Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21, Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment OJ L 197, 21.7.2001, p. 30–37,National Environmental Policy Act of 1969.

[777] The discussions in this sub-title will refer to the legal instruments separately for the jurisdictions; however the works of scholars and practitioners will be considered together in terms of holistic/general approach to the public participation issues in both jurisdictions.

[778] Gilpin, *Envrionmental Impact Assessment: Cutting Edge for the twenty-first century*, (n648) 63.

are a part and provides an opportunity for learning social responsibility and citizenship '[779]

Two major jurisdictions discussed in this chapter refer to the issue of public being informed and involved in the decision-making process of the EIA. In both jurisdictions the growth of environmental activity of interested parties was referred as 'Environmentalism as democratic reform.'[780] It is believed that comparative review of these jurisdictions as well as relevant literature on public participation procedure will open up the important enforcement role of public in environmental decision-making process in the European Union and United States of America.

5.4.1. Comparative Review of Public Participation in the EU Directives and in the USA NEPA

Earlier in this chapter there is mentioned that the EIA Directive has been amended three times and the documents are codified under one title. The initial document 85/337/EEC Directive refers to the public participation in the EIA process. 'The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided…'[781]

It also defines the meanings of public and public concerned

> '[P]ublic' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
> 'Public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition,

[779] Petts (ed), *Handbook of Environmental Impact Assessment:Process, Methods and Potential* , (n64) 146.

[780] Holder, *Environmental Assessment : The Regulation of Decision Making* , (n20)184.

[781] 85/337/EEC Directive on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985, Article 6.

> non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest; [782]

The EU EIA Directive developed its requirements of public participation procedures by the time and its amendments clearly show the evolution of importance of transparent decision-making process for member states. The amended version of the EU EIA Directive paragraph 16 refers to the effective public participation and gives explanation on its impact to decision-making process. 'Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.'[783]

The following paragraph of the Directive requires fostering of public involvement upon raising the awareness through education.[784] In further paragraphs of the Directive public participation procedure is more precise and affirmed with the requirements of Aarhus Convention[785] which was ratified by the European Community in 2005.[786]

The EU EIA Directive requires from member states to be accountable to the public concerned and take all possible measures to lead the decision-making process transparently. The same requirements are embodied in EU SEA Directive in terms of examining and consulting the plans and programs not

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[782] Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21.

[783] Ibid,para.16.

[784] Ibid,para.17.

[785] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999).

[786] Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21, para.18.

only within member states but also between neighbouring states upon having an issue of trans-boundary project developments. Five paragraphs of Article 6 of the SEA Directive refer to Consultation procedure in assessing certain plans and programs whereas Article 7 refers to the trans-boundary consultations. The serious and responsible approach of the European Commission to the public participation procedures demonstrated by the issued and amended Directives speak about good results that European Union government encountered during its experience.

Unlike the EU EIA and SEA Directives, NEPA has not got explicit referral to public participation procedure in its body text. However, federal regulations prepared for the implementation of NEPA in the USA consider this step as one of the important ones and provide detailed requirements on public participation for environmental decision-making process in the frames of each particular infrastructure. [787] 'Public participation requirements can be found throughout the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508), and DOE's NEPA Implementing Procedures (10 CFR Part 1021).'[788] The definition of public is given in the same regulation

> The "public" includes: interested or affected private citizens; state, local, and tribal governments; environmental groups; civic and community organizations; business and labour groups; and independent experts from the scientific, technical, and academic communities. Keep in mind as well that seeking comments of Federal agencies with

[787] The Codes of Federal regulations are prepared for each area of the economy separately. This citation is made from Department of Energy. Land, water and other sectors have separate Codes of Regulations as NEPA gives mainly the Environmental Policy statement leaving the interpretation and implementation process on Federal Agencies. The Council of Environmental Quality issues and regulates federal codes. Council on Environmental Quality, *Memorandum for Heads of Federal Departments and Agencies*.

[788] Office of NEPA Policy and Compliance, 'Effective Public Participation Under The National Environmental Policy Act Second Edition' (*U.S. Department of Energy,* 2014) <http://energy.gov/nepa/public-participation> accessed 07/02/2014.

> jurisdiction by law or special expertise is an important aspect of the NEPA process.[789]

The study unveiled that both jurisdictions demonstrate high interest in promoting public participation in environmental decision-making in their sub-divisions.[790] The scoping step needs involvement of interested parties, stakeholders, concerned public, experts and specialists to share the ideas on development project, express concerns, raise questions and challenge the activity that might have a significant impact on the environment. This is the start of the public hearing procedure in EIA process and continues as the development project keeps the direction of transparency and publicity throughout the process.

Christopher Wood identifies public participation principles and types. He lists the principles as 'a) participate in the evaluation of proposals…b) become involved at an early stage as that is the most effective and efficient time to raise concerns…c) become informed and involved in the administration outcomes of the environmental impact assessment process…d) take a responsible approach to opportunities for public participation in the EIA process, including seeking out of objective information about issues of concern.'[791] The types of public participation can be different depending on the 'nature of relationship between public and the decision-making body… [R]elationship rang from the provision of information, through a range of types of consultation, to direct public control.'[792]

By the time the benefits of public hearings were evident and participation became a significant assistance for major development projects in terms of obtaining reasonable advice, expressing opinions, finding alternatives and consultations on how to better protect the environment during project implementations. It can be assumed that involving people with variety of skills and knowledge will lead to new discoveries about the particular site

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[789] Ibid.

[790] EU Member States and USA states.

[791] Wood, *Environmental Impact Assessment: a Comparative Review*(n565),276.

[792] Ibid,277.

that is planned to develop. Especially people who are indigenous to that particular area can make significant inputs while expressing their ideas and sharing knowledge with involved specialists and experts. Despite its positive effect on the decision-making process the participation still considers to be a weak requirement as neither of legal instruments discussed in this chapter provide directions on how to implement it. 'While some scholars do indicate that public participation can in certain circumstances have negative consequences (Cooper and Elliott, 2000, p. 342; Lawrence, 2003, p. 270–71), the overwhelming view is that it is highly desirable and that the key issue for scholars and practitioners is to find ways of making it more effective.'[793]

Judith Petts discusses the differences between participation and consultation. She brings the example of Arnstein's ladder of participation[794] and concludes that participation is relevant to general public 'engagement' in the decision-making process and consultation 'refers to the process of asking for information and comments about proposals.'[795]She argues that developers and decision makers prefer to apply for the consultations of specialists and experts more than to common people as they think that non specialist people, even indigenous ones, will make difficulties in the process and be less effective. From the public perspective the participation is one way process as the participants will never know whether their opinions have been taken into account.[796]

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[793] Ciaran O'Faircheallaigh, 'Public Participation in Environmental Impact Assessment: Purposes, implications, and lessons for public policy making' (2009) 30 Elsevier

Environmental Impact Assessment review 19.

[794] Sherry R. Arnstein, 'A Ladder of Citizen Participation' 11/2007) <http://www.tandfonline.com/doi/abs/10.1080/01944366908977225> accessed 11/02/2014, This document will be discussed in more details in the Conclusion of this work, see fig.1.1.

[795] Petts (ed), *Handbook of Environmental Impact Assessment:Process, Methods and Potential* , (n64)146-147.

[796] Ibid,145-152.

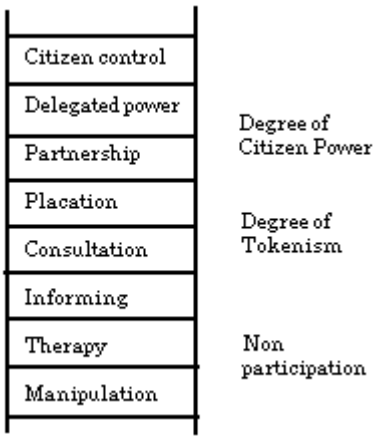

Fig.5.1[797]

D. Lawrence has the same discussions and expresses similar ideas. He argues that in most cases the specialists and experts' opinions are most valuable during the assessment process for any developing project as the majority of presented documents are technical and much easier to discuss with knowledgeable people. In such cases, the voice of common people or stakeholders could be neglected at some point or their presence at the discussions or consultations will be escaped. David Lawrence considers that this creates rationality in decision-making process, as 'it is difficult for rational EIA process to be highly collaborative.'[798] 'Rational EIA processes tend to favor technical and analytical knowledge and methods. Specialists are generally treated as the chief (if not the only) source of knowledge and insight. Consequently, stakeholders tend to be pushed to one side in such processes.'[799]

Despite this assumption, the role of public in environmental decision-making grows by the time together with improvements of legal requirements. The EU EIA Directive requires the developer to prepare a non-technical summary of the proposed project for non-specialist public or stakeholders to become aware of ongoing project[800].

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[797] Sherry R. Arnstein, 'A Ladder of Citizen Participation' (1969) Volume 35 Journal of the American Institute of Planners 216.

[798] Lawrence, *Environmental Impact Assessment:Practical Solutions to Recurrent Problems*(n630),151.

[799] Ibid.

[800] Directive 2011/92/EU of The European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment,OJ L 26, 28.1.2012, 1–21, Article 5, para.3 (e).

After studying few cases in his book David P. Lawrence concludes that the public can have significant role in decision-making process when it takes large initiative in preventing significant effects of proposed development projects.

> …an active and engaged public can both improve the EIA process and contribute to substantive environmental improvements. It points to an important link between process and substance. A more conventional, more technical EIA process is unlikely to result in substantive environmental improvements beyond those required by the regulators. A more democratic EIA process, where the public strongly influences decision-making, can often contribute to and enhanced level of environmental quality.[801]

Criteria of effective participation are discussed by Petts. She discusses that incorporation of evaluation of effectiveness of EIA will provide the better picture and better results on how to implement an effective public participation. Accordingly she discusses few criteria and suggests ideas on them taking into account that each country might have specific needs and approaches to this issue.[802] For instance, Australia 'recognized the need for accountability criteria …addresses this in relation to four 'rights'(i) to know; (ii) to be informed;(iii) to be heard; and (iv) to object… '[803] Another criteria suggested by Petts are 'fairness and competence'[804] embodied in the complete process of the EIA. She discusses that these criteria can make the participation procedure more effective by building 'two way communications'.[805] 'The criteria relate to all participants in the process: decision makers, experts and the public. They focus on process, although with an implicit understanding that has a significant impact on outcome.

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[801] Lawrence, *Environmental Impact Assessment:Practical Solutions to Recurrent Problems*, (n630)160.

[802] Petts (ed), *Handbook of Environmental Impact Assessment:Process, Methods and Potential* ,(n64)159.

[803] Ibid.

[804] Ibid, 160.

[805] Ibid, 161.

Decision outcome criteria have been more common to EIA discussions, e.g. ensuring that all relevant issues are scoped into the EIA …' [806]

Each scholar has their own approach to the public participation issues, however not all of them suggest model of methods and techniques for the implementation of this procedure. Interesting suggestions on methods and techniques are found in Petts' work. She suggests methods of informing public and techniques of gathering feedback from them. [807] The issues discussed by Judith Petts in 1999 seem still in force as the participation issues have not been completely solved yet.

There came up an interesting suggestion of four principles in terms of evaluation the public participation procedure to improve public hearings and participation in EIA process in the future.

1. Equal opportunity to participate
2. Equal access to the information
3. Genuine deliberation
4. Shared commitment[808]

Explanation to this argument follows '…Equal opportunity to participate is most important when agency decisions will have broad and long-term environmental effects…' [809] '[Equal access] …is crucial in situations in which the possession of certain types of knowledge confers significant power…'. [810] '…public involvement improves decisions as well as the conviction … Communication, consideration, and respect are key elements of [shared] commitment.'[811]

The shared commitment principle highlights the most important role of two parties: i.e. the decision-making body and the public, which can either reach

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[806] Ibid.

[807] Ibid, 163, table 5.1.

[808] Marion Hourdequin and others, 'Ethical implications of democratic theory for U.S. public participation in environmental impact assessment' (2012) 35 Elsevier Environmental Impact Assessment Review 37.

[809] Ibid.

[810] Ibid.

[811] Ibid, 38-39.

to the better implementation of an EIA process by an open and mutual collaborative decision-making procedure or fail to produce an effective result by creating obstacles for each other. In case if a decision-making body views the public involvements as a challenge or an obstacle and escapes from creating dialogue bridge for any of the proposed development project, there is a high risk of reciprocity in receiving challenging feedback from the public in the face of legal disputes. The non-compliance of Member states to local and the EU regulations is challenged in the courts which are responsible to interpret the laws, find the gaps in them and guarantee justice in the environmental governance.[812]

5.5. Findings of Chapter 5

The discussion of this chapter based on world leading legislations on environmental governance revealed the common terminology used in the environmental law and environmental assessment process in particular. Revealed the process of development of the EIA implementation in the EU countries and in the USA. Broadly discussed the necessary key steps of the EIA process and highlighted important measures on achieving the EIA good implementation and performance upon setting the goal of a good governance in Environmental Protection affairs locally and internationally. The analysis of legal instruments unveiled the necessity of studying western EIA legislation in depth before the case law will be analyzed in future and the difference of this legislation still needs to be comprehensive and clear to apply the knowledge in the further discussion of case law in future research works. More details of this findings are discussed in Chapter 6 concluding the results of this research work.

[812] European Commission, 'European Commission at Work:Monitoring the application of Union law' (*European Commission,* 08/06/2015) <http://ec.europa.eu/atwork/applying-eu-law/index_en.htm> accessed 15/07/2015.

Chapter 6: Conclusion

6.1. Introduction: Instituting Environmental Justice through the Environmental Impact Assessment Process in Armenia

This chapter aims to provide findings of the research work and analysis by providing answers to the research questions brought forward in Chapter 1 of this thesis. It concludes the initial phase of the comparative research on environmental impact assessment process in discussed jurisdictions and suggests best practices for the future development of the EIA law and enforcement in Armenia. As the trials on environmental cases are not that much developed in the country the discussion of the thesis is based on the analysis of the existing laws and regulations in the country by comparing them with similar laws and policies in the EU and the USA jurisdictions. The research work aims to show how the relatively developed part of the world manages nature conservation through law and policy making and what institutions are involved in implementing the regulations.

The research takes into account that Armenia was not an independent and sovereign country almost 30 years ago when the shift of changes in environmental protection approach occurred in the western part of the world. The legislation of the country was not independent and was dictated from the central government in Moscow, the former USSR. During that period, the Environmental Regulations were developed and imposed in 15 republics of the Soviet Union.[813] Accordingly, the new steps and developments of Armenia in making domestic laws and signing international environmental agreements are considered. However, it is worth to mention that environmental movements started in Armenia during Soviet period[814] and continue in our days.[815] It is believed that the detailed study of western laws

[813] Oleg Kolbasov, 'Environmental Law Administration and the Policy in USSR' (1988) 5 Pace Environmental Law Review 439, 441.
[814] Glenn E. Curtis, *Armenia: A Country Study* (Washington: GPO for the Library of Congress, 1995)
[815] Ishkanian and others, *Civil Society, Development And Environmental Activism in Armenia* (n154), 18-19.

and regulations as well as their comparison with the exiting legislation in Armenia will result the improvements in legal drafting mechanisms and contribute in the process of creating more up to date working instruments for the developing legal system of Armenia.

The thesis comprises introduction on the existing problems and practices of the EIA in the world and its reflections in the academic literature. In Chapter 1 of this thesis the problems, thesis questions, literature review and the research methodology used within this research work are discussed. Chapter 2 presents the RA EIA Law adopted in 1995 few years after the collapse of the former Soviet Union. It discusses the law in details. This particular law was suspended in 2014 and the new law on EIA was adopted in Armenia, which is presented together with the Law of 1995 in the same chapter. Chapter 3 is the critical analysis of the RA EIA Law of 1995 and later on, the analysis of the Law of 2014 is adjoined in the process of the thesis writing. The compliance to the Aarhus and Espoo Conventions requirements of the RA EIA Law is discussed in this chapter as well. Chapter 4 presents the field research in details and its results based on the quantitative data analysis. Chapter 5 discusses the EU EIA Directive and USA NEPA for the further comparison of the discussed laws and finding good practices based on the aim of this research.

The major changes occurred in the fields discussed in the process of writing this thesis. Firstly, the new law on Environmental Impact Assessment and Expertise was adopted in Armenia, May 2014.[816] However, the cases and issues raised in this thesis occurred during the activity of the RA EIA Law of 1995. Moreover, the decisions were made based on that law, so the analysis of the old law remain in force and the changes made in the new law will be discussed in the context of improvements achieved by the RA government in environmental decision-making process.

[816] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին ՀՕ-110-Ն, ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

The next change was the EU EIA Directive amended and finalised in 2014.[817] Accordingly, the Conclusion will address significant changes in the laws discussed in the thesis, differences, similarities and gaps in the RA Law on EIA will be presented and further recommendations for the future research works will be made.

The skeleton of this research is composed of the questions that are raised in the research proposal and are elaborated in the introductory part of Chapter 1 of this thesis. The relevant detailed research, discussions and comparative analysis aimed to find the answers and develop the concept of improvement of the EIA law and its implementation in Armenia. Five main objectives of the thesis will be discussed in the frames of question analysis as well.

6.1.1. Objectives of the Research Work Which Formulate the Dissertation

The Environmental Law is becoming a popular source for environmental management and justice in the world rapidly. There is an interest to compare the way different countries practice this law and if Armenia is capable to catch up the development process and establish sustainable environmental management in the country. The research questions and objectives put forward the task of detailed study in the field of Environmental Impact Assessment process and the corresponding Law in particular. The following subtitles present the answers to the questions whereas this subtitle speaks about the objectives of this particular research work.

1. To consider whether there is a need for greater transparency in the operation of EIA Law in Armenia, and if so how to achieve this.

2. To consider whether the EIA Law is effective and whether enforcement of legal mechanisms for EIA in Armenia complies with rule of law standards of transparency and fairness.

[817] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

3. What are the key elements of the best practice in EIA that are applied in other legal jurisdictions, especially within the EU and International Law?

4. To consider measures to facilitate wider public participation in EIA decision-making, and in particular to give standing to NGOs to participate effectively in the process. To ensure that the law implements the standards established by the Aarhus Convention provisions of which Armenia is a signatory.

5. To consider the need for new draft regulations for Environmental Justice and Legal Enforcement in Armenia.

To ensure whether the research objectives are met there is a need to answer the main research questions raised in the context of the research proposal. It is believed that answering the questions will open up the broad picture of the EIA process in Armenia both in drafting and implementing levels which will help to meet the research objectives as well. The last subtitle of this chapter strives to uncover the details on whether the objectives were met and how the current situation in the environmental governance can be improved in Armenia.

6.2. Answers to the Thesis Questions Revealed in the Scope of this Study

6.2.1. What are the main Laws and Regulations on Environmental Impact Assessment in Armenia?

The research proposal and this particular dissertation presented the RA Law on Environmental Impact Assessment /Expertise/. By the time of this research work, several attempts had been made to amend the existing law which was adopted in 1995,[818] but the new final Law was adopted in June 2014.[819] However, the analysis of the RA EIA Law of 1995 had already

[818] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995.

[819] Հայաստանի Հանրապետության Օրենքը «Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննության Մասին» Հայաստանի Հանրապետության Օրենքում Փոփոխություններ Եվ Լրացումներ Կատարելու Մասին(On Ammedning the Law of Environmental Impact Expertise of the Republic of Armenia) 2011, Հայաստանի

been completed by that time. Accordingly, RA EIA Law of 1995 still remains the core topic of this research as the RA EIA Law of 2014 provides that the development projects that are not finished yet, decided by the previous laws and orders will be examined based on the previous laws and orders even after the new law is in force.[820] The Environmental Protection legislation is composed of many laws in Armenia. The hierarchy of legal instruments in Armenian jurisdiction is explained in the RA Law on Legal Acts.[821]

Article 4 of the RA Law on Legal Acts presents the system of Legal Acts in Armenia.[822] It lists all possible documents that can have the power of legal acts in Armenia and verifies that the supreme law of the country is the Constitution, which provides the rights of RA citizens to live in a healthy environment.[823] Article 33.2 of the RA Constitution provides 'Everyone shall have the right to live in an environment favorable to his/her health and well-being and shall be obliged to protect and improve it in person or jointly with others.'[824]The Declaration of Independence of the Republic of Armenia had affirmed the same. [825] 'The national wealth of the Republic of Armenia - the land, the earth's crust, airspace, water, and other natural resources, as well as economic and intellectual, cultural capabilities are the property of its people. The regulation of their governance, usage, and possession is determined by the laws of the Republic of Armenia.'[826]Article 6 of the Constitution provides 'the normative legal acts shall be adopted based on

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Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[820] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.33.

[821] Law of the Republic of Armenia on Legal Acts Adopted on 3 April 2002 ,ՀՕ320.

[822] Ibid, Art.4.

[823] Ibid, Art.8.

[824] The Constitution of the Republic of Armenia (With Amendments) Adopted by the Referendum of 27 November, 2005, Art.33.

[825] The Government of the Republic of Armenia, 'Armenian Declaration of Independence'1990.

[826] Declaration of Independence The Supreme Council of the Armenian Soviet Socialist Republic, point 7.

the Constitution and laws and for the ensuring their implementation.'[827] Accordingly, it is assumed that the laws of the Republic of Armenia should be imposed, as the Supreme Law of the country requires it. The detailed discussion on the RA EIA Law is in Chapter 3 which provides the knowledge on the legal regulations in environmental decision-making process.

The amendment of the law became a necessity by the time as Armenia became signatory of International Treaties, which required changes in domestic legislation, and in particular, the compliance with the Aarhus and Espoo Conventions, the amendments of the RA EIA Law became priority.[828] There were several attempts to amend the law since 2001 when the government signed the Aarhus Convention. The amended law varies from the old one of course and includes more details on the EIA procedure. Unlike the old law, the new one embodies thresholds for development projects, steps of the EIA process and human health expertise in the process. However, the new law will require amendments as well as it still lacks the requirement of auditing, the key steps of the environmental impact assessment process requirements are not clear, the classification of impacts are not clearly defined, the environmental impact statement has no particular name in the law, on-technical environmental summary is still missing as well as many other requirements regarding the effective environmental assessment.

Article 2 of the new RA EIA Law of 2014 provides the laws that regulate the field. 'The law on impact assessment and expertise encompasses the RA Constitution, the International treaties and agreements that Armenia is participant, this particular Law and other Legal acts.'[829]

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[827] The Constitution of the Republic of Armenia (With Amendments) Adopted by the Referendum of 27 November, 2005, Art.6.

[828] Նախագիծ Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին (Draft project on the Law of the Envrionmental Impact Assessment and Expertise of the Republic of Armenia).

[829] Հայաստանի Հանրապետության Օ ր ե ն ք ը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊԵ

> In the process of decision-making, the shortcomings and gaps of the laws are filled in through the orders or decrees issued by the government such as Ministries and/ or other state authorities. These are considered as legal acts as well and obtain the force of law as soon as they are issued.[830] Also there is a provision of the RA EIA Law of 2014 which states that the development projects which received the approval of implementation under the RA EIA Law of 1995 will be regulated by the same law. This point brings up serious confusion in terms of the lists of the development projects as far as there is no appendices enclosed to the RA EIA Law of 2014.[831]

The Authorities that are engaged in environmental decision-making process in Armenia are listed in next sub-title to answer the second thesis question.

6.2.2. What institutions are involved in environmental decision-making process in Armenia?

In the process of observation of the environmental impact assessment from the holistic approach in Armenia, there encountered all those institutions that are involved in the process starting from legislative drafting and ending with the process of implementation and enforcement.

The legislation can be drafted by both the ministries and the members and commissions of the Parliament in Armenia. However, the role of the Parliament members in the process of making legislative decisions is very weak and underdeveloped. They have not enough competence to impose their opinion or make changes on the proposed draft legislations. There is a lack of strong scrutiny of the draft laws by the parliament members. So the

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2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Article 3.

[830] Law of the Republic of Armenia on Legal Acts Adopted on 3 April 2002 ,ՀՕ320, 4) Article 4.

[831] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Article 33.

main role of final legal drafting takes the Government of the Republic of Armenia.[832]

The decision-making process in Armenia is divided into legislative and executive branches. The RA National Assembly is the legislative body and the Government is an executive body.

The President in general and in particular in environmental decision-making process leads the final decision-making. The president verifies the final copy of drafted laws approved by the RA National Assembly. This is the end of the legislative process and the law enters into force as soon as the president is ratifying it. In the executive part, the process ends with the final decision received from the Minister of Nature Protection or the Minister of Energy of Natural Resources. The decision-making bodies vary from ministry to ministry in relation to the environmental development projects. The Ministry of Energy and Natural Resources deals with power station and mining industry. The Ministry of Nature Protection is responsible for the assessment and monitoring of the impacts of developing projects. The EIA process is conducted by the EIA expertise center, which is a subsidiary body at the Ministry of Nature Protection.[833] The local communities and impacted communities participate in the process of the EIA as well. However, their role is not significant in decision-making process. The RA EIA Law of 2014 aims to highlight the role of the local government; however, there is a need to harmonize the requirements in all relevant laws and regulations. By the Law of 2014, the local community leaders are required[834] to organize public hearings based on the EIA process whereas the RA Law on Local self-Government has no similar requirement.[835]

> Two ministries are of special importance for RA's mining industry. The Department of Mineral Resources within the Ministry of Energy and Natural

[832] OSCE Office for Democratic Institutions and Human Rights, *Assessment of the Legislative Process in the Republic of Armenia*,(n43)8.

[833] Ministry of Nature Protection in Armenia, 'Expertise'

[834] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին ՀՕ-110-Ն, ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Article 13.

[835] The Law of the Republic of Armenia on Local Self-Government, Article 45.

> Resources issues licenses for the exploration of mining sites and the extraction of mineral resources. It also monitors the operation of mining companies in the RA. The Ministry of Nature Protection is responsible for assessing and monitoring the potential and actual environmental impact of mining operations in the country. In the unofficial hierarchy of ministries, the Ministry of Nature Protection ranks very low, which is reflected by the lack of funding the ministry receives; it is notoriously understaffed and underequipped.[836]

The State Environmental Inspectorate acts under the supervision of the Ministry of Nature Protection as a separated subdivision of the staff. This subdivision controls the operations of developers and enforces sanctions upon finding violations of environmental regulations and requirements.[837] As the recent study by the Asian Development Bank reports about the Inspectorate 'Unfortunately, there does not appear to be any legal or practical mechanism in place for monitoring of either the expert examination conclusion or the EMP [environmental Management plan][838] requirements of the EIA. The role of Inspectorate with respect to new requirements for an environmental impact monitoring plan needs to be clarified.' [839] The role of the Inspectorate is regulated by the Law of Environmental Inspection (Oversight) ;[840] however nor this law neither the EIA Law of 1995 and 2014 clearly define the fields and functions of this body.

Other departments, sub divisions, state non-profit organizations and institutions operate under the supervision of the Ministry of Nature Protection of Armenia as well. They all are engaged in the environmental

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[836] Christoph H. Stefes and Katherine Weingartner, *Envrionmental Crime in Armenia: A case study on mining* (European Union Action to fight Environmental Crime, 2015), 12.

[837] Ministry of Nature Protection of the Republic of Armenia, 'State Environmental Inspectorate'

[838] Asian Development Bank, *Improving the Implementation of Environmental Safeguards in Central and West Asia:Country Assessment of Environmental Safegourd Capacity Republic of Armenia*, (n372) 12.

[839] Ibid V

[840] Հայաստանի Հանրապետության Օրենքը Բնապահպանական Վերահսկողության Մասին(The Law of the Republic of Armenia on the Environmental Inspection, 2005). The word Oversight is used by the Armenian Development Bank in its report cited above.

impact assessment process: 'Department on monitoring of environmental strategic program, Environmental Impact Monitoring Center SNCO, "Environmental project implementation unit" SA.'[841] Current Minister of the Ministry of Nature protection is Aramayis Grigoryan who took the position on 30 April 2014 and made significant changes in the field of environmental protection in Armenia. Nevertheless, many developments and improvements are necessary to be done in the field of environmental protection in the country. The department of the Monitoring monitors the quality of air, water and soil from time to time in different areas of the country and it has no particular responsibility of monitoring development projects.

6.2.3. Does the RA EIA Law give adequate definitions on key terms of the Law and accurate descriptions on the roles of interested parties?

2.1. Subtitle of this thesis in Chapter 2 presents the concepts that are addressed in the RA EIA Law of 1995. There is a difference in the terminology presented in the RA EIA Law of 1995 and 2014. In The RA EIA Law of 1995 only 12 main terms were defined in particular; '*intended activities*', '*concept'*, '*authorized body'*, '*Presenter'*, '*Admissible Concentration level'*, '*Initiator'*, '*Documents'*, '*Authorized person'*, '*Affected community'*, '*Public hearings'*, '*expert conclusion'* and '*assessment conclusion*' [842] . However, the Law of 2014 addresses definitions more seriously by explaining[843] terms like '*the surrounding environment'*, '*environmental impact'*, '*the transboundary impact'*, '*impacted state (Affected Party)'*, '*Party of origin'*, '*baseline documents'*, '*development project'*, '*project documents'*, '*strategic assessment'*, '*assessment, expertise'*, '*the preliminary stage of the environmental impact expertise'*, '*the main stage of environmental expertise'*, '*the environmental*

[841] Information Analytical Center of the Ministry of Nature Protection of the Republic of Armenia, 'Structure' (*Ministry of Nature Protection of the Republic of Armenia,* 2015) <http://www.mnp.am/?p=165> accessed 18/02/2015.

[842] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Chapter 1 General Provisions.

[843] The original document is in Armenian. Gayane Atoyan translates concepts.

impact expertise center', '*state expertise conclusion'*, '*authorized body'*, '*initiator(developer*)', '*expert'*, '*public'*, '*impacted community'*, '*stakeholders'*, '*process participants'*, '*application'*, '*technical assignment'*, '*report'*, '*plan on environmental impact assessment monitoring by the initiator'*.[844] This question is raised in the context of this research work to find out the level of involvement and understanding of the international terms and concepts of the EIA process by legislative drafters in Armenia. Although the new law was drafted with more competence than the previous one, however the requirements on environmental impact assessment process is still not complete in the new instrument. The previously discussed terms of the EIA process in 5.1. Chapter five of this thesis demonstrates steps that are elaborated in developed part of the world for implementing almost ideal process of the environmental impact assessment.

- Screening
- Scoping
- Baseline Study
- Impact prediction
- Impact assessment
- Mitigation
- Produce Environmental Statement ("ES")[845]
- Review of ES
- Monitoring
- Post Development Audit[846]

The requirement on baseline studies and impact prediction are not clearly stated in both instruments of RA EIA process. The RA EIA Law of 2014 refers to the review of Environmental Statement made by the developer and presentation of alternatives, but this is missing in the Law of 1995. The

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[844] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԽՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.4.

[845] ES or EIS refer to the same form of report in the EIA process.

[846] See Chapter 5.

requirement of monitoring is present in the Law of 2014; however, it refers mostly to post-development audit than to a continuous monitoring of the development project. The UNECE experts notice the inconsistencies of the terminology used in the text of the law.[847] They argue that the definition of strategic environmental impact assessment and environmental impact assessment do not correspond to the requirements of the SEA Protocols and Espoo Convention which pinpoints that the requirements are not achieved fully by the legislative drafters of the EIA law in Armenia in 2014.[848]The study of the terms used in the existing legal instrument in Armenia, shows that the incorrect usage of terms misinforms the implementation as well and there can occur inconsistencies in comparing the law with the international treaties and agreements Armenia is a signatory with.

The screening and scoping steps both are called expertise or expert examination in the law. They are different by the stage mainly. It is inferred that Screening and Scoping procedures common in international law correspond to main expertise and preliminary expertise accordingly required by the RA EIA Law. So, terms used in the both RA EIA Law are different and do not correspond to those widely used in western legislation which play the basic role in the international law as well... This can make difficulties in the process of harmonizing the domestic legislation with the international law that has advantage in the hierarchy of legal documents according to the RA Constitution.[849] Moreover, in the process of translating the legal documents from Armenian into English the terminology is changing widely causing changes in the meaning of the texts and giving different picture of the instruments to the foreign agencies who try to assist in changes and development of the field. This also affects the process of the implementation in its turn and creates confusion both for local and foreign

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[847] United Nations Economic Commission for Europe, *Assessment of the draft Law of the Republic of Armenia "On the environmental impact assessment and expertise", Opinion Paper*, 2014.

[848] United Nations Economic Commission for Europe, *Assessment of the draft Law of the Republic of Armenia "On the environmental impact assessment and expertise" Summary, ECE/MP.EIA/2014/L.3.*

[849] The Constitution of the Republic of Armenia , Art.6.

parties concerned in developing the good environmental governance in Armenia.

Regarding the classification of impacts, there was not such approach in the RA EIA Law of 1995. The attempt to classify the significance of the impacts was made in the RA EIA Law of 2014 although the definition of classifications is missing completely. Hence, the development projects are classified into categories A, B and C but their differences and level of significance are not highlighted or explained.

The roles of interested parties are not defined either by the RA EIA Law of 1995 or by the Law of 2014. The general definitions of the terms are given whereas the specific roles of competent authorities are not identified. There is no definition for the Environmental Statement as such in both instruments. The new law requires the assessment of 'baseline documents' which is defined in the Article 4 of the Law of 2014 as 'draft document (policy; strategy; concept; outline; scheme for approval and use of natural resources, plan, program, urban development planning and zoning document, design or any amendment thereto) adopted by legal acts, which may cause environmental impact.'[850] It is clear that the baseline documents are not the Environmental Impact Statement as it is. Moreover, there is another requirement of 'Application' for project developer, which means 'a notification package about the development of the concept document prepared by or as ordered by the developer and/or about the initiation of the proposed activity'[851]and then there is another document named 'Report' which means 'a document summarizing the results of the environmental impact exercises.'[852]

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[850] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԶՕ-110-Ն/ հիմ.աղբ. ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Article 4.

[851] Ibid.

[852] Ibid.

6.2.4. What are the criteria or thresholds for EIA projects established by the Law? Are they sufficiently specific and adequate?

Interestingly, in the RA Law of 1995 Article 4 presents the fields of economy where the environmental impact assessment process should be implemented and on what basis. However, it did not provide the level of significant impact of the projects and was not categorized at all. It had something common with the annexes provided by the EU EIA Directive,[853] Chapter 2 of this dissertation discusses the details provided in the RA EIA Law of 1995.[854] In the context of providing specific thresholds to the development projects, there is a separate governmental order numbered 193, 30 March,1999 'Decree on Thresholds for Development Projects Subject to Environmental Impact Assessment'.[855] This decree is not in force since 04/10/2014 as soon as the RA EIA Law of 2014 was adopted, but it is in force for the projects started before that date. The thresholds are considered differently in western jurisdictions as it was revealed in the process of this research. The significance of impact of the development projects is viewed from the perspective of the severity of impact and the detailed definitions are given in the legal documents.

The EU Directive explains and defines the thresholds and locations of development projects in details by the help of Annexes,[856] the NEPA is the policy, which makes the ground for the acting bodies to establish criteria for development projects, and the Council on Environmental Quality develops the determination of various thresholds by highlighting cumulative impacts

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[853] See 5.1.1.Screening in Chapter 5.

[854] See Chapter 2 (n220).

[855] See n106,Հայաստանի Հանրապետության Կառավարություն Ո ր ո շ ու մ Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննության Ենթակա Նախատեսվող Գործունեությունների Սահմանային Չափերի Մասին (The Decree of the Government of the Republic of Armenia on Thresholds of Development Projects Subject to the Environmental Impact Expertise/Assessment).

[856] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

on the environment.[857] The UK Environmental Assessment Law defines the nature of impact and gives detailed definitions on thresholds as well.[858] The determination of thresholds and their continuous examination during different development project implementation obtain vital importance for the better environmental impact assessment. It can be inferred from the urge to change the RA EIA Law of 1995. The Law on the change of the RA EIA Law highlights the importance of thresholds to be included in the new RA EIA Law.[859] It establishes the new approach in environmental affairs by categorizing the development project based on the level of reduction of the significance of impacts.[860] However, this step forward needs to be more detailed and accurate, identified based on the practical measurements.

This list of thresholds is considered as starting point of each environmental impact assessment process which makes the screening procedure easier for western part of the world in case if the measurements for a particular development project are the same with previously implemented projects. RA EIA Law of 2014 presents the list of projects subject to the environmental impact assessment together with the thresholds. The legislative drafters merged the previously existing information in the Governmental Order[861] in this instrument. Point three of Article 14 in the RA EIA Law of 2014 provides the development projects divided in three categories based on the significance of the environmental impact as

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[857] National Environmental Policy Act of 1969,Office of Federal Activities (2252A) U.S. Environmental Protection Agency, *Consideration Of Cumulative Impacts In EPA Review of NEPA Documents U.S. Environmental Protection* (US Environmental Protection Agency, Office of Federal Activities (2252A), 1999),1.

[858]Gov.UK, *Environmental impact assessment: circular 02/1999*, 48.

[859] Հայաստանի Հանրապետության Օրենքը «Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին» Հայաստանի Հանրապետության Օրենքում Փոփոխություններ Կատարելու Մասին (The Law of The Republic of Armenia on Amending in the Environmental Impact Assessment and Expertise Law of the Republic of Armenia 11.09.2014), Art.2.

[860] Ibid, point 3.

[861] n855.

perceived by the drafters of new 2014 Law.[862] The categories are a, b and c.[863] Point 4 of the same Article lists all those projects that have significant impact on the environment and are subject to assessment. This article covers all possible development projects including projects undertaken in green parts of the country as well as in special preserved areas. However, listed categories are not defined and the thresholds are incomplete and do not refer to all the projects in details.[864]

By presenting an incomplete list of thresholds the possibility of violations of the requirements still remains actual. For example, in some cases measurements are identified and the threshold is defined although briefly, there are projects in the lists that have no measurements identified at all. There is a requirement of screening opinion from the authorities to determine whether the proposed projects should become a subject of detailed assessment or it can be suspended after the preliminary assessment of the development project application in the Law of 2014.[865] The deficiency of Article 14 of the RA EIA Law of 2014 is noticed by the experts of the Asian Development Bank in their recent assessment of the Law of 2014.[866] '…while this [thresholds in categories] will broadly address issues it would be better to undertake a rigorous scoping exercise to assess the possible impacts and evaluate the risks of the project and use these to allocate the category level.'[867]

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[862] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին ՀՕ-110-Ն, ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[863] Ibid, Article 14.

[864] Ibid.

[865] Ibid,point 4, Art.16.

[866] Asian Development Bank, *Improving the Implementation of Environmental Safeguards in Central and West Asia:Country Assessment of Environmental Safegourd Capacity Republic of Armenia* (n372).

[867] Ibid, 12.

In the UK legislation, the relevant government Circular suggests that each individual development project has to undergo an assessment somehow based on the application presented by the developer.[868]

> However, in judging whether the effects of a development are likely to be significant, local planning authorities should always have regard to the possible cumulative effects with any existing or approved development. There are occasions where the existence of other development may be particularly relevant in determining whether significant effects are likely,
>
> Or even where more than one application for development should be considered together to determine whether or not EIA is required.[869]

In the RA EIA Law of 1995 failed to address this issue in details. The Law of 2014 is providing more ground on thresholds; however, the implementation and enforcement of these requirements are not defined yet. It is believed that accurate identification and definition of thresholds results effective EIA process as the similar development projects will be assessed based on the existing measurements and time will be saved not only for experts in the process of expertise but also for the developer and interested public who could be informed regarding the category and further assessment process of particular development project. Accordingly, there is a need to develop sufficiently specific and adequate thresholds for further implementation of the EIA process on higher note in Armenia.

6.2.5. What is the required documentation to be submitted for EIA project required by the RA EIA Law?

The analysis in Chapter 2 of this dissertation revealed that there was no specific name or title assigned to the project development documents based on the RA EIA Law of 1995. The RA EIA Law of 2014 refers to documents called the baseline (concept) documents or development/application

[868] Cicular 02/99 on EIA,45.

[869] Ibid.46.

documents.[870] In this instrument two stages (phases as translated in the draft) of impact assessment process are provided: preliminary expertise/examination phase of application and the main expertise/examination phase of the development project. The first stage examines the preliminary application and the second stage examines the assessment report as it is stated in Article 15 of the RA EIA Law of 2014.[871]

Article 16 provides the steps of the first stage preliminary assessment. It requires the developer to present the application to the licensed competent authority who will assess the application in not more than 30 days after receiving it. In this stage of the impact assessment the authority checks the completeness of the presented pack of documents, identifies the possible significant impact of the proposed project, establishes the content of the assessment report and relevant requirements, decides the scope of participants, and prepares the summary of technical assignment for the developer.

Based on this article the preliminary application contains the list of documents: 1) name and address of the developer, 2) the name of the baseline document and/or the name of the proposed activity and purpose, 3) the location of the proposed development project including the summary of the environment and scheme of situation, 4) the characteristics of the baseline documents and/or proposed project (production capacity, natural resources and materials that will be used, technical and technological solutions), 5) the program on activities directed to the elimination, limitation or exclusion of the harmful environmental impacts and the compensation of the harm. 6) Information on the public awareness, participation and the preliminary consent of the local community if nothing else is required by the law.[872]

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[870] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԺՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Art.16.

[871] Ibid,Art.15.

[872] Ibid, Article 16, translated by Gayane Atoyan.

There is no another list of documents in any other article of the RA EIA Law of 2014 as well as there is no specific name given to the project development documents that a developer has to prepare for the environmental impact assessment process. In the western jurisdictions the Environmental Impact Statement (EIS) is the name of project development documents.[873] This is required both by the EU EIA Directive and NEPA as discussed earlier in this thesis. The UK Law follows the EU legislations and mostly complies with the requirements of the Directive. The UK legislation is prepared with detailed explanations for developers and gives utmost assistance for arranging the required documentation, although the Environmental Statement is a document fully prepared by the developer.[874] The competent authorities prepare guidelines and other instructions to assist the developer. There are consultation bodies too that help the developers to organize the application documents which is called the Environmental Statement in some cases.[875]

> It will normally also be helpful to a developer preparing an ES to obtain information from the consultation bodies. Where a developer has formally notified the planning authority that an ES is being prepared the local planning authority will inform each of the consultation bodies of the details of the proposed development and that they may be requested to provide relevant, non-confidential, information. Non-statutory bodies also have a wide range of information and may be consulted by the developer.[876]

In the Republic of Armenia, the main stage of assessment of expertise starts at the moment a developer submits the technical assignment report together with the enclosed documents to the licensed authority. This is required by Article 18 of the RA EIA Law of 2014. The authority is entitled to involve

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[873] Chapter 5, 5.1.7 sub-section.

[874] Gov.UK, *Environmental impact assessment: circular 02/1999*,80-88.

[875] Environmental Impact Statement and Environmental Statement have the same meaning.

[876] Gov.UK, *Environmental impact assessment: circular 02/1999*,88.

the participants in the process and prepare the expert conclusion based on the analysis of assessment of the following criteria: 1) the completeness of the report, the veracity, satisfactory quality, fresh information, validity, wholeness,2) the alternative approaches and solutions of the baseline documents or development project, 3) the compliance with the regulations and limitations with the RA laws,4) the effectiveness of the activities related to the environmental conservation and impact monitoring, 5) to insure the effectiveness of public awareness and discussion as well as opinion consideration and justification.[877] The Article provides that non-compliance with these requirements will result the negative conclusion of the development project proposal/application. [878] The RA EIA Law of 1995 required the entitled authority to provide the list of documents that were necessary for the EIA process.[879]

Thus, no other documents are required from the developer. There is no explanation, direction or requirement of non-technical statement as well in both laws so far.

6.2.6. Are the EIA decision-making procedures transparent in Armenia?

The laws and regulations in Armenia speak up on the efforts of the RA government on establishing good environmental governance in the country. However, the implementation of regulations varies from the written ones as this study shows. The answer to this question is based on the fieldwork implemented in the context of this research work. The results of the fieldwork are analyzed in Chapter 4 of this thesis and reveal a different picture of the implementation of the law.

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[877] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), Article 19, Translated by Gayane Atoyan .

[878] Ibid.

[879] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995, Article 7

As it is referred at the beginning of this chapter, the environmental movement in Armenia started in early 1980s.However, with the changes of social and economic structures the movement changed its pace. The second wave of the environmental movement in Armenia raised in 2006-07 with the development project called Teghut Depository Mine. Since then the active environmentalists, NGO members and people in Armenia fight for the transparency in environmental decision-making process. The transparent decision-making is vital in all fields of society in Armenia. Starting from the law making to the implementation process there is a need of open and transparent governance to reach the goal of democracy, which is also declared by the RA Constitution.[880] This has been implicitly referred in the recent study made by the OSCE/ODIHR.[881] The Ministry of Justice in Armenia asked the international experts to monitor and evaluate the legislative process in the country.

> Throughout the current legislative process, there is a lack of adequate and sufficient stakeholder consultation, which already begins at the pre-legislative stage. In principle, draft laws become accessible to relevant stakeholders once they are submitted to the National Assembly. The executive branch publicizes certain draft laws in order to obtain external feedback before these drafts are officially finalized. The Armenian legislation requires all draft laws and Government decisions prescribed by the annual action plan of the Government to be publicized. However, according to a number of interlocutors, initiators of draft laws appear to follow an approach that is more formalistic than pragmatic: there is not always sufficient outreach to all key stakeholders, nor are they provided with sufficient time and information to provide constructive input. The contents and impact of the provided contributions are also not.[882]

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[880] The Constitution of the Republic of Armenia (With Amendments) Adopted by the Referendum of 27 November, 2005, Article 1.

[881] OSCE Office for Democratic Institutions and Human Rights, *Assessment of the Legislative Process in the Republic of Armenia*(n43).

[882] Ibid, 7.

The legislative process discussed by the OSCE/ODIHR experts is common for all the legal instruments drafted in Armenia. The field research and the survey among stakeholders revealed the existing gap in the environmental decision-making process as well, which relates to the environmental impact assessment process with its most important requirement of public participation. The majority of the respondents answered that they had never participated in public hearings although all of them were related to the environmental decision-making process being either members of impacted communities or NGO's or lawyers in particular field. Those who participated in the decision-making process and were present at public hearings complained on insufficient approach or formal approach of authorities to this procedure. [883] Moreover, they witnessed that the documents they asked from the developers or authorities were not provided in most cases.[884]

Another procedure of interacting with government officials in Armenia is asking for any information from them officially or asking for a meeting with any of governmental representatives. A request should be sent to the relevant ministry through e-mail by enclosing the copy of the original letter to it. The officials from the ministries reply to the request; however in most times their replies are negative. They explain that the requested information is not the subject of publicizing and refer to the particular provisions of law that covers the field. There are many examples of refusals from the ministries addressed to the NGO members or active environmentalists. Therefore, it is proper to present two examples of such correspondence between concerned citizens and government authorities in this research work to make the picture clear in this context. [885]

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[883] Chapter 4.

[884] Ibid.

[885] The copies of letters can be provided on request together with translated versions. One request letter sent from the Pan-Armenian Environmental Network and one from the Ombudsman of the Republic of Armenia to the Ministry of Energy and Natural Resources of the RA with the same context and two replies of the Ministry have been translated by the candidate for this dissertation.

1. The letter[886] was sent to the Ministry of Energy and Natural Resources by the staff members of Par-Armenian Environmental Front asking to present information on the mining operations of the following mining companies: Akhtala enriching factory, 'Ler-eks', 'Dandy Precious Metals Kapan', 'Mego Gold', 'GeoPro Mining Gold,' 'Zangezur' copper-molybdenum factory, Agarak CPF, 'Teghut', 'Armenia Copper Program,' 'Marjan Mining,' 'Tatstone,' 'Meghradzor Gold.' There requested an information on 1) annual extraction of ore and metal volume depleted reserves annually for years 2002-2014, 2) the volume of deposits balances written off associated components for the same period of time,3)the inspections conducted by the Ministry of Energy and Natural Resources within these companies in the same period of time.[887]

   The Ministry replied[888] explaining that this information is confidential and can be provided only by the consent of the referred companies. They referred to the Articles 3, 13 and 31 of the RA Mining Code. Also the Ministry refused to provide information on inspections made in these companies arguing that the obtained information in the process of inspections is confidential and cannot be provided without the consent of the companies. This activity covers the Article 8 of the Law on the Initiation and Implementation of Inspections in the Republic of Armenia. The representative of the Ministry who made the reply letter suggested the PAEF members to refer to the web sites of the Ministry and National Statistics of the Republic of Armenia to find out the requested information that is subject for publicizing.[889]

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[886] Pan-Armenian Environmental Front, *ՀՀ էներգետիկայի և բնական պաշարների նախարար Երվանդ Զախարյանին հարցում (Enquiry to Yervand Zakharyan, Minsiter of Energy and Natural Resources of the Republic of Armenia)* (2014)

[887] Ibid.

[888] the Ministry of Energy and Natural Resources of Armenia, *To the Members of the Pan-Armenian Envrionmental Front* (2014).

[889] Ibid.

2. The second example of letter[890] is PAEF's letter sent to the RA Ministry of Nature Protection. They requested an information on water consumption allowance by the 'Zangezur CMF', 'Ler-Eks', 'Megaenergy', 'GAHA Energy' companies. The group requested to post the copies of certificates of allowances on the web site for the years 2012-2014. This same request has been sent twice as the Minister was changed and there was no reply to their first letter. The group members were hopping to receive requested information from new appointed Minister as the previous one rejected the request. The first time request was sent in 2013. Second time in 2014. The PAEF members thought that their request has been rejected unlawfully.[891] They continued fight for their rights, applied to the RA Ombudsman, and informed the mass media regarding the violations of their rights in receiving the requested information that has to be open and free for the public. However, the request of the Ombudsman received the same reply about the confidentiality of information based on the Article 141, part one of the Civil Code of the Republic of Armenia.[892]Article provides the following in particular: '**Article 141.Information Constituting an Employment, Commercial, or Banking Secret:** 1.Information constitutes an employment, commercial, or banking secret in case when the information has an actual or potential commercial value by virtue of its being unknown to third persons, there is not free access to it on a legal basis, and the holder of the information takes measures for the defense of its confidentiality.'[893]

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[890] Pan-Armenian Environmental Front, *Request on Water Consumption* (2014).

[891] The activists alleged that the reply was sent to them after 14 days whereas the maximum days of the answer is 5 days provided in the Article 9 of the Law on Freedom of Information of the Republic of Armenia. Տեղեկատվության ազատության մասին ՀՀ Օրենք (The Law of the Republic of Armenia on Freedom of Information) ՀՕ-11-Ն,ՀՀՊՏ 2003.11.05/55(290) Հոդ.1016.

[892] Ministry of Nature Protection in Armenia, *To the Ombudsman of the Republic of Armenia* (2014).

[893] Հայաստանի Հանրապետության Քաղաքացիական Օրենսգիրք Ընդունված Ազգային ժողովի Կողմից1998 թվականի մայիսի 5-ին, ՀՕ-239,ՀՀՊՏ1998.08.10/17(50).(Civil Code of the Republic of Armenia adopted by the RA Parliament on 5th May 1998).

Another interesting case occurred during drafting process of the RA EIA Law of 2014. A small step of progress in legislative drafting was noticed last year in the process of making the Law. Many specialists, lawyers, ecologists, environmental activists were involved in the process of legal drafting. However, the result of the real document was a shock for most of them as they claimed that many ideas of provisions were missing in the final adopted instrument. For that reason, the participants of drafting procedure composed an open letter of complaint to the World Bank head quarter which is considered as one of the interested parties in this process.[894] The World Bank requested the RA EIA Law to be adopted in a fast mode for further development projects such as Amulsar Gold Mining Project to be undertaken in the country.[895] The experts refer in particular:

> In addition to the hastiness and manifestation of negligence of public opinion, the formal process of adoption of the bill was accompanied with fraud, which is proved by the history of the bill posted on the website of the National Assembly. Thus, in reality, the bill put to discussion in the special session on July 21, 2014 drastically differed from the one submitted by the government to the parliament, discussed and approved by the National Assembly's Standing Committee on Agriculture and Environment. The new version of the document was not publicized in advance and was not made subject to public discussion, as prescribed by RA Law on Legal Acts article 27.1.[896]

The history of the bill referred by the experts is a short document providing few points that should be changed in the RA EIA Law of 1995.[897] Also it

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[894] Arthur Grigoryan and Sona Ayvazyan, *Civil society representatives' Open Letter to the World Bank* (2014).

[895] Parlamentarians, 'Armenia - Discussing the Draft Law on Environmental Impact Assessment' (*World Bank,* 2013) <http://go.worldbank.org/53JR398C10> accessed 19/02/2015.

[896] Grigoryan and Ayvazyan, *Civil society representatives' Open Letter to the World Bank*(n894).

[897] Հայաստանի Հանրապետության Օրենքը «Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին» Հայաստանի Հանրապետության Օրենքում Փոփոխություններ Կատարելու Մասին (The Law of

stated the importance of the change in the RA EIA Law in accordance with the international treaties signed by Armenia.[898] The legislative drafters consider that new requirements on impact assessment on the environment and human health are making the Law of 2014 more transparent.[899]

The efforts of the legislative and executive bodies towards changing the approach in environmental governance are apparent granting an expectation of the relevant implementation in practice. The correspondence referred in Chapter 4 of this thesis shows that there is still lack of accuracy in transparent environmental governance in Armenia.[900] Taking into account that the number of laws and regulations could be involved to cover the same field of activity, it is substantial to pay attention that the replies create confusion in regards of government activities.

The example of correspondence between Pan-Armenian-Environmental Network and the RA Ministries provide facts that different laws were cited to demonstrate how the government refrain from providing the requested information for the same matter.[901] This approach provides non transparency in decision-making activities of the government apparently. The same way it took one year to receive an allowance from the Human Resources department of the Ministry of Nature Protection to meet with the members of legislative drafting department within the Ministry in the context of the fieldwork.[902]

The European Union Action of Fighting the Environmental Crime prepared a report on Armenia examining the situation as a whole considers that the

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The Republic of Armenia on Amending in the Environmental Impact Assessment and Expertise Law of the Republic of Armenia 11.09.2014).

[898] Նախագիծ Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին (Draft project on the Law of the Envrionmental Impact Assessment and Expertise of the Republic of Armenia).

[899] Ibid.

[900] Chapter 4.

[901] This information is available on request. The copies of letters are published by the Pan-Armenian Environmental Front which has authorised Gayane Atoyan to use the information based on the official authorisation letter.

[902] Chapter 4.

law-making procedure also can be seen as an environmental crime in case of Armenia as the governmental officials 'hinder[s] the adequate allocation of resources to public or private agencies charged with protecting the environment, and/or harms the environment.'[903]

Moreover, Article 33.2 point 2 of the RA Constitution declares 'Officials shall be liable for concealing or refusing to provide environmental information.' [904] The RA Law on Freedom Information also provides grounds on obtaining information and in Article 8 point 11 provides the following 'If the information holder does not possess all the data on the inquired information, than it gives the applicant the part of the data, that it possesses and in case of possibility also points out in the written answer the information on the place and body, including archive that holds that information.'[905] In the provided example we see that the feedback received from the authority lacks the required information.[906] Despite shortcomings in the field both Ministries make continuous changes in their official web sites by uploading more and more information on their ongoing works and achievements. The process of this research work revealed a slow progress relating to the more transparent governance.

6.2.7. What are the law enforcement mechanisms that make a developer to be accountable against public and government?

In the list of the main laws and regulations of the first question there are all relevant laws that refer to the environmental decision-making process in Armenia.[907] It is considered that each of them has to provide a legal background on enforcing the laws and regulating the field equally for all

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[903] United Nations Interregional Crime and Justice Research Institute, 'Environmental Crime'(n53).

[904] The Constitution of the Republic of Armenia (With Amendments) Adopted by the Referendum of 27 November, 2005, Article 33.2.

[905] Տեղեկատվության ազատության մասին ՀՀ Օրենք (The Law of the Republic of Armenia on Freedom of Information) ՀՕ-11-Ն,ՀՀՊՏ 2003.11.05/55(290) Հոդ.1016 .

[906] Chapter 4.

[907] Sub-section 6.2.1, Chapter 6.

stakeholders and participating parties. The supreme law of Armenia the RA Constitution declares everyone has the right to live in a healthy environment, to request the information in the context of the freedom of information as they live in a democratic country.[908] The Law on Legal Acts verifies the role of legal hierarchy,[909] the law on Environmental Impact Assessment provides the grounds on implementation[910] and the Law on Environmental Inspection entitles the relevant authority to impose penalties and control the field. Besides these laws there are few more providing control in the process of environmental management: 'RA Law on Nature Protection Control, RA Law on Compensation Payments for Damages to Flora and Fauna due to Environmental Offences, RA Law on Rates of Environmental Charges.'[911]There are penalties and charges provided by law in Armenia as well. 'Armenia was the first country in the EECCA region to introduce charges on environmentally harmful products and to simplify the pollution charge system in a reform of 1998.'[912] The gaps in the laws are filled in by the corresponding governmental decisions so far. 'Any relation not regulated by law shall be subject to regulation by decisions of the Government of the Republic of Armenia, unless the relation concerned must, under the Constitution of the Republic of Armenia and laws of the Republic

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[908] The Constitution of the Republic of Armenia (With Amendments) Adopted by the Referendum of 27 November, 2005, Articles 1, 33.2.

[909] Law of the Republic of Armenia on Legal Acts Adopted on 3 April 2002 ,ՀՕ320, Chapter 2.

[910] The Law of the Republic of Armenia on Environmental Impact Assessment of 1995,Հայաստանի Հանրապետության Օ ր ե ն ք ը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[911] EcoLur: New Inofrmational Policy in Ecology (*"EcoLur Network" web-site has been created by CEPF / WWF support Ecolur Network* 2015) <http://ecolur.org/en/ra-national-legislation/74/> accessed 23/02/2015.

[912] Schucht and Mazur, *Environmental Pollution and Product Charges in Armenia:Assessment of Reform Progress and Directions for Further Improvement OECD*(n 380),

of Armenia or under a decree or executive order of the President of the Republic of Armenia, be regulated by other legal acts.'[913]

All these seem a well-organized way of managing and controlling the environmental conservation field. However, the competent and well informed specialists of the field allege the violations of enforcement constantly. The continuous complaints on errors in environmental decision-making process in Armenia pictures different reality from what is being said in legal instruments.

Armenia strives to comply with the requirements of international laws as well. It is a signatory of 19 International agreements, it follows and implements the UN Millennium Development Goals and Rio Declaration requirements, strive to establish sustainable development in the country despite facing transitional difficulties. The International Agreements concerned in this particular study are Aarhus Convention and Espoo Convention. Both of them relate to the environmental decision-making process and direct the signatory states towards compliance with the international high standards in local environmental management. However, the current penalties are irrelevant to the damage caused to the nature in Armenia. 'Compensations received from the current level of nature use and environmental payments are 32-40 times lower than the actual caused damage. In particular, the future application of zero or low tariff privileges defined for environmental fees and nature use fees in some sectors for economic development purposes is very risky.'[914]

The development of environmental governance in Armenia brought forward the Law on Environmental Inspection [915] and the inspectorate was established. 'The State Environmental Inspectorate was established by the

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[913] Law of the Republic of Armenia on Legal Acts Adopted on 3 April 2002 ,ՀՕ320, point 3, Article 14

[914] Ministry of Finance of the Republic of Armenia, *Armenia Development Strategy for 2014-2025* (Ministry of Finance of the Republic of Armenia: Porspective Development Strategic Programme, 2014), point 4, 131

[915] Հայաստանի Հանրապետության Օրենքը Բնապահպանական Վերահսկողության Մասին(The Law of the Republic of Armenia on the Environmental Inspection, 2005).

government order No.1149-N, dated July 2002… the law defines the authority of inspectorate to check the environmental expertise conclusion and the implementation of environmental requirements and documents subject to expertise. In practice, the inspectorate mainly monitors the compliance with emission permits.' [916] The research unveiled poor enforcement of the laws and regulations. The sanctions and penalties imposed for non-compliance are low, the Law on Environmental Inspection has no requirements on obligatory implementation of responsibilities, accordingly the enforcement mechanisms are null or weak that raise the concern of the local and international experts as well. [917] The non-compliance fee is the lowest in Armenia among all post-soviet countries.[918]

The law enforcement mechanisms are less developed in Armenia than legal drafting mechanisms, which hinder the progress of the implementation of legal requirements. These deficiencies are referred by the RA government in the Armenia Strategic Development Plan for 2014-2015.[919] This plan misses the point of addressing the lack of reporting mechanisms and accountability between the public and implementation bodies, though the Plan schedules to strengthen the Public Administration.[920] The RA government is engaged in variety of activities to establish a good governance in the country; however

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[916] Asian Development Bank, *Improving the Implementation of Environmental Safeguards in Central and West Asia:Country Assessment of Environmental Safegourd Capacity Republic of Armenia*(n372).

[917] Ibid,The Government of the Republic of Armenia, *Armenia Development Strategy for 2014-2015* (Annex to RA Government Decree No442-N on 27th of March 2014, 2014).Christoph H. Stefes and Weingartner, *Envrionmental Crime in Armenia: A case study on mining*, (n831), World Bank, *Armenia.First Thematic Paper: Sustainable and Strategic Decision Making in Mining*,(n252), Darbinyan and Ashikyan, *The Role of Envrionmental Enforcement in the Republic of Armenia- Steps Towards Sustainable Development*, (n406), Ministry of Nature Protection of the Republic of Armenia, *The Second National Environmental Action Programme of the Republic of Armenia*(n316).

[918] Andrew Farmer, *Handbook of Environmental Protection and Enforcement : Principles and Practice* (Taylor and Francis 2012), 145.

[919] Ministry of Finance of the Republic of Armenia, *Armenia Development Strategy for 2014-2025*,(n901) 131.

[920] Ibid.

the lack of prepared specialists, the transparent and accountable approach towards the taken responsibilities hinder the rapid progress in this field.[921]

As to the possible public engagement as a democratic source of law enforcement mechanism the research work has found out that the public learns about the development projects only after the decision is being made and the implementation consent is granted by the authorities in Armenia. Moreover, the public gets involved only after the business investors have made significant amount of expenses on the proposed development projects. The below sub-title which is also an answer to the question number eight gives more up to date explanation of this issue in Armenia.

6.2.8. Do the public participate in environmental decision-making and to what extent the voice of the public is considered?

In the process of legal analysis of this thesis the study shows that RA EIA laws both the old and the new one require public participation and provide some requirements for that. The RA EIA Law of 1995 provided better background for the participation which can be seen in Fig.1 of Chapter 1 of this dissertation. The fieldwork and the cases presented in this dissertation were implemented during the activity of the RA EIA Law of 1995. The study of cases and the fieldwork opened up the practical side of the EIA process in Armenia. The ongoing complaints of interested and competent parties draw the reality of Armenia in the context of public participation. It is believed that in the most serious and major cases where public appeals the attention of authorities, asks them to be careful in the process of decision-making, the voice of public is neglected mostly.[922] The introduction of this thesis speaks about the business plans of the RA government which is focused on making business as a state priority by amending relevant laws

[921] Artak Kyurumyan, *Independent Reporting Mechanism Armenia: Progress Report 2012-13* (Open Government Partnership Executive Summary: Armenia, 2012).

[922] Chapter 4.

and regulations for that purpose.[923] The process of prioritizing business more than the natural environment hinders the balance of sustainable development in the country. Concerned and interested public speaks up against this and strives to achieve the improvement of decision-making process.

One of the core ideas of this research work is participation, which is considered to be one of the applicable enforcement mechanisms in environmental decision-making process in the world. This concept became more tangible in Armenia during last years as the active environmental groups achieved few changes in decisions of authorities.[924]

The environmental activist groups, public concerned strive to find details on the development projects proposed in every region of Armenia and check the compliance of the projects with the legal requirements of the country. Moreover, they examine each project from multidisciplinary approach and challenge the errors revealed in the projects. However, the number of competent citizens is small. Their work is poorly coordinated, there are several different groups of activists working on the projects separately. There is as lack of consolidation among these citizens.

The rural citizens living in affected communities in Armenia mainly do not possess enough knowledge and competence in environmental decision-making processes. They are not aware of their rights and most of the time are negligent towards the developments that might have serious impact on their surrounding environment and their lives. People live in poverty in most of the villages, so it is easy for developers to buy their attitude through a little care and financial support. For example, the Lydian International which is the developer of Amulsar Gold Mining Project has four impacted

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[923] The justification enclosed to the amended RA EIA Law mentions that the law is being changed for improving the business environment three times in different sentences. Նախագիծ Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին (Draft project on the Law of the Envrionmental Impact Assessment and Expertise of the Republic of Armenia), Chapter 1.

[924] Ishkanian and others, *Civil Society, Development And Environmental Activism in Armenia* (n154), 24.

communities in the area of the project. The representative of the Lydian International is Geoteam LLC in Armenia. This developer has started community development projects, assisted to the development of some infrastructures and declares that it has invested almost 400.000 US dollars in developments.[925]

Despite the hazards of the project, which is called a 'reasonable mining' by the developer, some part of community members agreed with it. The other part realized the possible dangerous outcomes of the project. This led to serious controversies among community members. The opposing party argues: 'We conclude that the extraction of gold through the use of cyanide is not effective for mankind, and to permit the construction of cyanide heap leach in the immediate vicinity of rivers and settlements is simply insane, and the resulting effects on the environment and mankind is not possible to predict nor to manage, not to mention the daily environmental pollution occurring as a result of the gold extraction.'[926]

More studies on the same issue come out every day. Specialists who are concerned with this matter make independent survey on the development project and try to speak up about the dangers of this project. Dr. Anahit Shirinian-Orlando, an environmental scientist-engineer living in Los Angeles has studied the development project documents on Amulsar Gold Mining. She raises question on the missing information such as '…absence of any hydrological study, zero discharge into environment, much tax Lydian will pay to the local government, clear how much money will be allocated to reclamation after the mining ends… even "responsible" mining is destructive (even though it's less destructive compared to previous methods).'[927]

However, the objections and concerns were not taken into account both by the developer and state authorities. The consent of the development project was declared in October 2014. The developer published almost all relevant

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[925] Geoteam, 'Social Development Programmes in 2012'(n307).

[926] , *Hidden dangers of Lydian International's gold mine. Cyanide* (Pan-Armenian Environmental Front, 2014) .

[927] Anahit Shirinian-Orlando, *Amulsar: even "responsible" mining is destructive* (Pan-Armenian Environmental Network 2015) .

information on its web site; however, the information lacks of details concerning public opinion [928]

The same problem occurs in case of Teghut Mining[929] as well as in case of hydropower stations building. Not all the objections and opinions are considered and the reasonable voice of public remains unheard. For this reason the desperate activists dare to apply to the international relevant institutions for getting help and support in their causes.[930] Hence, the answer to this question has two parts. One is saying 'yes' public participates and improves the activity in decision-making process, and the second part answers 'no' as the results are weak and the public opinion is not used wisely as one of enforcing and decision-making tools.

6.2.9. Are there requirements for further auditing and monitoring of the approved project?

Chapters two and three of this thesis are discussing the previous RA EIA Law and its provisions. A detailed analysis of the law shows that there is no requirement on auditing and monitoring of proposed and approved development projects. As a whole, the RA EIA Law of 1995 had many gaps which faced a little amendment and the RA EIA Law of 2014 was drafted. During the discussion of the previous text of the law it became evident that the Environmental Impact Assessment Law in Armenia didn't comply with the international law requirements and there was a need of serious amendments in the law. The international organizations in face of Aarhus Compliance Committee, OECD and the World Bank were curious in making the required changes for the future sustainable development of Armenia in environmental decision-making process.

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[928] Geoteam, 'Amulsar:responsible mining, sustainable development' (*Geoteam,* 2015) <http://www.geoteam.am/en/reports/environmental_and_social.html> accessed 23/02/2015.

[929] In this case, we have the court decision that NGO's have no legal standing. *Environmental Non-Governmental Organization "EKODAR" vs. Government of the Republic of Armenia,the Energy and Natural Resources Ministry of the Republic of Armenia and "Armenia Copper Program" Closed Joint-Stock Company*.

[930] Save Teghut Civic Initiative* and others, 'Letter: Amoulsar, A Mining Disaster in Armenia' The Armenian Weekly <http://armenianweekly.com/2014/11/07/letter-amoulsar/> accessed 06/05/2015, Grigoryan and Ayvazyan, *Civil society representatives' Open Letter to the World Bank*.

In the text of the new RA EIA law term monitoring is elaborated and even has got its definition. Point 26 of Article 4 defines a plan on environmental impact assessment monitoring: 'the ensemble of activities directed to the observation of environmental impact, post-project analysis, compliance with the requirements of experts conclusion or production control (self -control) in the process of implementation of the baseline documents requirements and/ or the proposed project and after that.'[931] This is the first step towards follow up of the development projects. However, it does not speak about the mitigation measures and auditing.

A good job is done in terms of definitions. As it relates to the implementation and follow up process the question comes up in terms of the state body which is involved in this process. A body or bodies to carry on the process of monitoring in Armenia are not clear. The Law does not provide the body who will be in charge for monitoring. The Ministry of Nature Protection includes a Monitoring department in its structure as a State-Non Commercial Organization. However, the activities are directed mainly towards the laboratory analysis of air, soil and water. They do not have function on monitoring developing projects and they never did.[932] 'Determination and assessment of the pollution level of the natural environment in the Republic of Armenia, namely surface waters, atmospheric air and precipitation is carried out by the Environmental Impact Monitoring Center… '[933]

It is important that state carry out monitoring and ensure that they follow up and control the environmental harms caused by the development project. It is necessary to implement as the effects of the project can be revealed and

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[931] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինԶՕ-110-Ն/ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636), point 26) Article 4.

[932] I had a short meeting with the head of this department, who verbally confirmed that they have nothing common with the environmental impact assessment process in Armenia. The meeting was held in summer 2013.

[933] Ministerial Report 2007-2011, 25.

the compensation for the loss or harm can be charged. As it is stated in the EU Directive

> Member States should ensure that mitigation and compensation measures are implemented, and that appropriate procedures are determined regarding the monitoring of significant adverse effects on the environment resulting from the construction and operation of a project, inter alia, to identify unforeseen significant adverse effects, in order to be able to undertake appropriate remedial action. Such monitoring should not duplicate or add to monitoring required pursuant to Union legislation other than this Directive and to national legislation.[934]

The monitoring measures include components that play a significant role in the process of environmental impact assessment. It allows the decision makers to follow up the development project and identify the impact in the process of operations, undertake mitigation measures and ensure that the caused damages are not severe and significant for that particular area. This is a procedure in environmental impact assessment process that can result tangible information and experience for the future similar activities. As a very important step in the EIA process the monitoring required be undertaken during, pre- and post-implementation of the projects. Monitoring of development projects helps to find out cumulative impacts and generate the screening results by the end of the work. As long as every development project is monitored honestly and transparently from the beginning of the project, it will make easier to develop sustainability in the environmental impact assessment process for future development projects. Accordingly, it will result positive achievements in legislative, implementation and enforcement fields. The answer of this question is that this process is still developing in the country.

[934] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment,OJ L 124, 25.4.2014/1–18 .

6.2.10. To what extent does the RA EIA Law comply with the standards established by the Aarhus Convention, Espoo Convention, USA NEPA and EU Directive in General?[935]

This thesis discusses Armenian Legislation in environmental protection and governance context; pin points the Constitution of the Republic of Armenia, which provides all social, economic and political background regulations for the country. The Constitution speaks about the hierarchy of laws and explicitly requires the ruling authority follow the international law and harmonize domestic one to the international legal requirements: 'The international treaties shall come into force only after being ratified or approved. The international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty specifies norms other than those stipulated in the laws, the norms of the treaty shall prevail. The international treaties not complying with the Constitution cannot be ratified.'[936] Following to this obligation imposed by the Constitution, the RA government signed many important Agreements and Conventions within international community.[937] The Chapter 3 of this thesis discusses two of these Conventions relevant to the topic of the thesis.[938]

The process of legislative drafting has changed dramatically since 1995 when the specialists of independent Armenia drafted the first EIA Law. Later on, the examination of the EIA process brought forward a social demand to make laws complying with the international law requirements, and keep them flexible enough for accepting modern changes and amendments in parallel with the changes of life and political-economic structures in the country.

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[935] The Directive was amended in May 2014 and the name is changed since then. The International Environmental Law requirements are common to almost all jurisdictions. It is necessary to assess how much environmental law in Armenia complies with them. Ibid.

[936] The Constitution of the Republic of Armenia (With Amendments) Adopted by the Referendum of 27 November, 2005.

[937] Ministry of Nature Protection in Armenia, 'Participation of the Republic of Armenia in the International Environmental Agreements '

[938] Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999), Convention on Environmental Impact Assessment in Transboundary Context, United Nations 1991(Espoo Convention), C104, 24/04/1992, p. 7.

As it is stated earlier in this Chapter, the RA Constitution provides the ground for the international treaties to play a significant role in decision-making process.[939] The Aarhus and Espoo Conventions discussed in comparison with the RA EIA Law in Chapter 3 of this thesis give background understanding on how the RA executive and legislative bodies endeavor to change and harmonize the national law and implementation steps with the international treaties. It is revealed that the Aarhus Convention received welcoming attitude in the society and was promoted widely by the specialists. The government officials still develop infrastructures to comply with the requirements of the Convention. One of significant achievements in this topic is the creation of Aarhus centers throughout the country. The website informs 'the activity of the Armenian Aarhus Centers and this website is currently conducted by "Blejan" environmental, social, business NGO with the support of the OSCE Office in Yerevan.' There is no more information published about this NGO and the centers.[940] However, it cannot be confirmed that three main pillars of the Convention '1. **Public access to information about the environment,** 2. **Public participation** in certain environmentally relevant decisions, 3. Access to courts of law / tribunals in environmental matters' are very well controlled and implemented as the reports from the Compliance Committee.[941] The environmental activists, NGOs and other concerned parties make efforts to achieve the targets assigned by the Compliance Committee in terms of these pillars.

The implementation and harmonization of the requirements of the Espoo Convention and its Kyiv Protocol require more efforts and knowledge development of the field. Both Conventions are reflected in the RA EIA Law more or less, whereas the implementation part of the requirements still needs to be developed.

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[939] n936.

[940] Armenian Aarhus Centers, 'Armenian Aarhus Centers'(n 287).

[941] Chapter 3, Convention on Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters,2161 UNTS 447; 38 ILM 517 (1999).

The Second National Environmental Action Program of Armenia confirms that Armenia strives to 'approximate its environmental legislation to the European Union Legislation.'[942] Therefore, the research work compares the RA EIA Law with the Aarhus Convention, Espoo Convention, EU EIA Directive and NEPA Policy requirements. The latter played a significant role for drafting the RA EIA Law in 1995.[943] Therefore it is necessary to discuss whether the subject matter law has been approximated to the EU legislation as it is declared by the RA government in the Second National Environmental Action Program. Later on the same approach is declared in the justification text of the newly amended RA EIA Law of 2014.[944]

According to the details of discussed legal instruments in previous chapters of the thesis, it is considered appropriate to address main points of differences in this sub title, which will help to find the answer to the research question. It is believed that the EIA process obtains a final shape with its steps of implementation requirements. In the EU EIA Directive, the provision of steps is complete with the annexes that provide lists of development projects and address them in separate groups based on their level of significant impacts or likely significant impacts on the environment. There is a list of development projects that can be exempted of the assessment too. The main steps of a good EIA practice are discussed in Chapter 5 of this thesis.[945]

In the same chapter of the thesis, the analysis of the EU EIA Directive highlighted prompt reflections of life on the legal instrument,[946] which has

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[942] Second National Environmental Action Program handbook, 17.

[943] Ter-Nikoghosyan, 'Development and Enforcement of New Armenian Environmental Protection Legislation: Problems and Solutions'(n151).

[944] Նախագիծ Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վիա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին (Draft project on the Law of the Envrionmental Impact Assessment and Expertise of the Republic of Armenia).

[945] Chapter 5.

[946] The role of public participation and court decisions resulted in findings of gaps and changes in the Law.

resulted several amendments of the Directive so far.[947] The European Commission in detail explains the necessary changes required in the Directive. They have explained the objective of the last amendment in particular:

> General objective: adjust the EIA Directive in order to
>
> - Correct identified and persisting shortcomings.
> - Reflect ongoing environmental and socio-economic priorities and challenges.
> - Align with the principles of smart regulation.
> - Reflect the ECJ case law. [948]

In the process of amending the RA EIA Law, the drafters justify the importance of the change introducing that there was a need to make amendments to improve the conditions for business.[949] In addition, they highlight the importance of compliance of the RA EIA law with principles of Espoo Conventions and Kyiv Protocols, EU EIA Directive and Aarhus Convention.[950] The bill enclosed to the law lists points for the change in the Articles of the previous law.[951] No explanation on implementation errors of the previous RA EIA Law exists. The drafters highlighted the gaps existing in the legislation; they encountered the absence of the Strategic Environmental Assessment requirement in the previous law, the EIA steps, the implementation of public hearings and the regulating governmental acts

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[947]European Comission, 'Amending Directive 2011/92/EU on the assessment of the effects of certain public and private provects on the environment'

[948] Ibid.

[949] Նախագիծ Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին (Draft project on the Law of the Envrionmental Impact Assessment and Expertise of the Republic of Armenia), translated by Gayane Atoyan.

[950] Ibid.

[951] *Հայաստանի Հանրապետության Օրենքը «Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին» Հայաստանի Հանրապետության Օրենքում Փոփոխություններ Կատարելու Մասին (The Law of The Republic of Armenia on Amending in the Environmental Impact Assessment and Expertise Law of the Republic of Armenia 11.09.2014).*

were missing, the list of environmental impact statement documents were not presented, the duration of the assessment process was the same for all types of development projects and the development projects were not categorized.[952]

All versions of the EU Directive embody main steps of the good EIA process requirements and faced several amendments by the time as this instrument appeared to be a living instrument for the EU Members States and in the process of regulations is challenged and impacted by the practical life and court decisions. The requirements on important steps in the EIA process, thresholds and their presentation in the document, Environmental Impact Statement, Non-Technical Statements, Monitoring, Auditing and Mitigating Measures are considered major differences in these two discussed documents. The RA EIA Law both the old version and the new one deliver incomplete information on EIA process implementation, although the new version varies from the old one with many new terms and procedure requirements. It embodies detailed provisions on transboundary environmental assessment, public health impact assessment Chapters 4 and 5 accordingly provide regulations on these issues. Chapter 6 provides requirements on public participation. In this version, the arrangement of participations is foreseen; however, it is not clear how many times the participations should be held for any development project assessment. There is no requirement on non-technical environmental statement, as well as the monitoring and auditing procedure requirements are vague.[953]

It is considered appropriate to present the findings based on the analysis in previous chapters on the RA EIA Law, discussed Conventions, the EU EIA Directive and NEPA as the understanding of well-established process of the environmental impact assessment in the western part of the world is

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[952] Նախագիծ Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության Մասին (Draft project on the Law of the Envrionmental Impact Assessment and Expertise of the Republic of Armenia).

[953] Հայաստանի Հանրապետության Օրենքը Շրջակամիջավայրի Վրահնդեցության Գնահատման Եվ Փորձաքննության Մասինհո-110-,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

believed to achieve a good result of legal drafting and EIA practice in Armenia.

6.3. Comparing the RA EIA Law with International Law Signed by Armenia

The years of post-soviet period for Armenia have their significant impact on the transitional development of the country. On one hand they brought serious issues in the foreign policy field on the other hand they gave the country a chance to make sovereign decisions and start a new life as an independent state. Armenia entered a new phase of relationships with the world and expressed its willingness towards democratic changes both inside the country and in foreign relations. Armenia is one of the first countries that signed Aarhus Convention in 2001 and Espoo Convention in 1997.[954] Since then these Conventions have been declared enforced for the Republic of Armenia. The compliance to the legal requirements is a necessary obligation imposed by the RA Constitution as well, and should be followed by all means in case the sustainable development is the target point of the country. In addition, there is a decision of the Constitutional Court in Armenia, which explains the compliance of the RA Constitution with the Aarhus Convention.[955]

By signing the conventions, Armenia agrees to recognize the requirements on the international treaties, to comply and implement all steps listed in the Preamble of Conventions.[956]

Accordingly, the implementation of the environmental impact assessment process in the country can only reveal the gaps in the domestic legislation

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[954] Ministry of Nature Protection in Armenia, 'Participation of the Republic of Armenia in the International Environmental Agreements '

[955] *Determination of the Issue Regarding The Conformity of the Obligations Stipulated by the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, usually known as the Aarhus Convention with the Constitution of the Republic of Armenia , 26.12.2000* (The Constitutional Court of the Republic of Armenia).

[956] Andriy Andrusevych, Thomas Alge and C. Konrad (eds), *Case Law of the AarhusConvention Compliance Committee* (Second edition edn, RACSE, Lviv 2011 2004-2011),9-10.

and the major tool in between these two sides is the public that bridges the theory and implementation through observation and control. All these circles together build a chain of sustainability in the western part of the world as this study shows, so it can be the best practice of Armenia as well. The same way it works for the world community, accordingly each country of the world bears a responsibility to ensure local sustainable development in environmental protection field. The global and local interests of humankind coincide in this field and require localization and harmonization of similar legal requirements.

In the process of following the world tendencies on combating the climate change through environmental governance and good management, Armenia strives to face the challenges together with the world community. The country took responsibility of combating the environmental disasters together with the international community by signing conventions and treaties; however, lacks of proper implementation of requirements so far.

This research has revealed that in the process of implementation of the legislative requirements of signed international law the RA EIA Law has been amended, though with major difficulties and with still existing deficiencies. The Aarhus and Espoo Conventions have significant role for the amendment of the RA EIA Law of 1995. Also, the recent developments in the executive field of the environmental decision-making process the shortcomings of decision makers triggered the public interest and activity in controlling the steps of decision makers and requesting the existing law be changed and complied with the international conventions signed by Armenia.

As it is stated above, the three main pillars of the Aarhus Convention have to be complied by making the relevant laws and regulations and by implementation of the requirements. As the previous subtitles show the participation, awareness rising and access to justice still are major issues in Armenia despite the tangible achievements in the field.[957]

[957] Chapter 3, subtitle 3.3.

Regarding the Espoo Convention, the RA EIA Law of 1995 and 2014 both refer to the EIA on transboundary context, however there is no relevant practice and experience of implementation of legal requirements in the country yet. In addition, the legal provisions regulating the field in compliance with this convention are found out to be incomplete and vague based on the reports made by the UN experts engaged in the process in Armenia. They suggest their assistance in training the specialists in Armenia to the requirements of the Convention and try to implement them in the transboundary EIA process. The situation becomes especially vulnerable in case of Armenia, which is surrounded by the neighbors with whom there are no diplomatic relations.[958] There is a complaint from Azerbaijan on Armenia received by the Espoo Implementation Committee in regards of the nuclear power plant construction. This is the only dispute in the context of the Espoo Convention and these two countries are signatories of it. The Implementation Committee has taken the responsibility of the Intermediary role between these countries to assist them in the process of solving the dispute.[959]

The Espoo Implementation Committee and the Aarhus Compliance Committee follow up the implementation process of the requirements of conventions in Armenia. The Compliance Committee has referred to the errors in the Law of 2014 in its report, mentioned the weaknesses of the legal text and verifies that the progress in the country is very slow.[960] In the meantime, the Aarhus centers in Armenia work hard in favor of compliance and take the responsibility to implement the requirements of the

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[958] United Nations Economic and Social Council, *Report of the Implementation Committee on its twenty-sixth session* (Economic Commission for Europe Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context Implementation Committee Twenty-sixth session Geneva, 26–28 November 2012, 2012),7.

[959] United Nations Economic Commission for Europe, *Proposals to assist Armenia and Azerbaijan with implementation of the Convention*.

[960]United Nations Economic and Social Council, *Excerpt from the addendum to the report of the fifth session of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1)* Decision V/9a on compliance by Armenia with its obligations under the Convention Adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its fifth session*.

international law as it is highlighted in their recent report to the Compliance Committee:

> Dissemination of information through the local and republican network of the Aarhus Centers
>
> - Studying international practices to prevent dangerous threats to the environment, dissemination and localization of best practices and positive examples.
>
> - Promoting the development and evaluation of strategies to prevent dangerous threats of possible risks to the environment.
>
> - Formation of public opinion about the most dangerous threats to the environment
>
> - Assistance to state authorities, local government and civil society in the design and implementation of projects aimed at preventing dangerous threats to the environment
>
> - And support the development of social opportunities to take measures in difficult, complex situations caused by environmental threats.[961]

Another change derived from the Compliance Committee reports is the amendment of the RA Law on NGOs.[962] This is still in the process and strives to give NGOs the right of standing at the court. This can be viewed as one of very few responses made by the RA authorities to Compliance Committee reports.

The study of recent developments in the country in the context of environmental decision-making progress shows the raised awareness and understanding among the specialists and government officials in frames of

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[961] Lianna Asoyan, 'Responding to Environmental Challenges with a View to Promoting Cooperation and Security in the OSCE Area' (22nd OSCE Economic and Environmental Forum , First Preparatory Meeting Vienna, 27-28 January 2014 Session V).

[962] Ախտափիծ Հայ աստանի Հանրապետու թյ ան Օրենքը Հասարակական Կազմակերպու թյ ունների Մասին (Draft Law on Non-Governmental Organization of the Republic of Armenia)2015, Gayane Mirzoyan, *New Law Could Boost Fortunes of Armenian NGOs*, 2015).

modern decision-making tendencies in the world. This is confirmed by the changes in recently adopted law on EIA where the provisions on transboundary EIA requirements are more detailed and precise in comparison the Law of 1995. Articles 22-25 of Chapter 5 of the RA EIA Law of 2014 are dedicated to the transboundary EIA process.[963] The articles on assessment of human health in the RA EIA Law of 2014 as well speak about the progress in the legal drafting field.[964] As the non-compliance of legislation is common to many countries like Armenia, the international organizations are willing to help in the process of developing laws and implementation regulations in the country. Since the independence of Armenia and its involvement in international community as a sovereign unit the international organizations like OECD, ADB, UNDP, World Bank, USAID as well as many others are disposed in promoting the compliance of Armenia to the international requirements.[965]However, the progress is slow and the results are poor for the country.

6.4. Recommendations on Improvements and a Vision for Further Research Work

6.4.1. Research Proposal Objectives

The answers of the research questions developed the picture regarding the objectives of this research. The research objectives referred at the beginning of this chapter are presented in the table below.[966] This is supposed to demonstrate the broad picture of the current situation on environmental decision-making process in Armenia more precisely and answer to the

[963] Հայաստանի Հանրապետության Օրենքը Շրջակա Միջավայրի Վրա Ազդեցության Գնահատման Եվ Փորձաքննության ՄասինՀՕ-110-Ն,ՀՀՊՏ 2014.07.30/41(1054) Հոդ.636 (RA Law on Environmental Impact Assessment and Expertise 2014/HO-110-N/ main source ՀՀՊՏ 2014.07.30/41(1054) Art.636).

[964] Ibid, Chapter 4, Articles 15-18.

[965] The reports of all these organizations on environmental performance of Armenia are referred in this dissertation.

question whether the assigned objectives have been met in the process of this research work.

Objectives	Findings	Recommendations
1. RA EIA Process Transparency	• Lack of publicizing documents • Lack of awareness raising mechanisms • Hiding project information at the beginning of a development application • Country reports to the international organization hide difficulties and errors country faces • Lack of open communication between decision-making bodies and public • Reluctance of the government in providing required information to the public • Lack of encouragement of judicial review • Legal standing issues	1. The RA government needs to make efforts in creating an accountable and transparent decision-making process 2. The public needs to become more aware of its rights 3. The NGOs and other groups need to mitigate and assist both the government and public in creating a transparent decision-making process 4. The developers have to present all possible information in their statement both for the gains and harms of the project. Non-technical statement has to be prepared for wider public information
2. RA EIA Law Compliance	Aarhus Convention three pillars require more work to do Transboundary EIA and SEA need more specialists and scrutiny	1. The RA Government and legislative bodies have to compare RA laws and implementation with the Aarhus Convention. Scrutiny Compliance Committee reports. Ask for help in training specialists and implementation guidelines. Operate judicial reviews wisely and widely to find out errors. Provide opportunity to wider public to get involved in decision-making process and entitle standing rights to public representatives. Scrutinize the meanings of key environmental impact assessment steps common in western jurisdictions.

3. Key Elements of EIA best practices	•Political will of government towards environmental protection •Well trained specialists in the field •Continuous monitoring of every single development project and recoding of process for the further screening step of the EIA process •Identification of cumulative impacts and classification of development projects •Classification of significant and likely significant impacts •Clear and transparent decision-making process •Accountability and responsibility of competent authorities towards concerned and wider public •Engaging the courts into social and administrative procedures to gain the judicial reviews for further improvement of legislation •Public awareness raising through education at all levels of schooling. •Campaigns and organized events by the government towards combating climate change, keeping up with recycling waste, reasonable water consumption management, reasonable management of forests and soil. •Preparing guidelines for each	1. Maximum transparency in decision-making process and good communication with public should be followed by the RA government. 2. The RA government have to make the developer to be accountable for possible cause of harm or harms caused already and file legal suit against them for any harmful violations of law. 3.The public representatives have to gain the right for legal standing 4.The key assessment steps common in western countries have to become a usual practice in Armenia as well 5.Government have to take measures to raise the credibility and involvement of courts into the decision-making process

	law and regulations to make them accessible for every layman. •Conducting reasonable EIA process by preparing EIS and controlling the development project process throughout the implementation. •Preparing non-technical environmental statements to communicate wider public •Informing the public about details of the development project process and communicate transparently on harms and benefits of the projects before the start of project implementation.	
4. Public Participation and Compliance	Public participation is provided by Law The methods of participation awareness raising are underdeveloped There is a lack of credibility of courts and decision-making bodies which make public reluctant to participate in decision-making process	1. RA government have to elaborate practical approach in public awareness raising and require developers to keep public aware about the project as soon as it is being planned. 2. The impacted communities have to be informed about the details of development project both benefits and harms should be transparently declared together with mitigating measures and alternatives. 3.The environmental non-governmental organizations need to work hard in educating people about their rights in environmental decision-making process 4. The developer has to be interested in engaging public into to assessment process to escape from further challenges raised by interested parties
5. New approach in legal	The RA EIA Law faced serious amendments and the new law was adopted in 2014. However, the new law still lacks of	1. The legislative drafters have to scrutinize the international law, EU EIA Directive, guidelines prepared by the international and EU specialists,

drafting	important steps necessary for the EIA process. Key EIA steps discussed in chapter 5 are vaguely addressed by the RA EIA Law of 2014.	relevant court cases and the process of judicial review which positively impacts the development of the law. 2. The executive decision-making bodies need to control every single development project, monitor the steps of implementation both in documents and in the field and keep the reporting transparent for the legislative bodies to make better regulations of the process.

Table 6.1

6.4.2. Recommendations on Improvement of the RA EIA Law

The achievement of a greater transparency in the country in environmental governance field is a two sided road for the government and the public. The transparent comportment of the government, development and public, accountability and timely reporting will be of benefit for all parties in the EIA process. I.e. the developers have to inform about every step of the development project from the beginning up to the end of the operations to the authorities and public concerned, the competent authorities have to follow up and control the implementation of the project and the public have to demand the developer and competent authorities to take the responsibility of sharing the complete and open information. The great mechanism of enforcing the transparent decision-making process is the educated and well aware public. In the meantime, the process of transparent governance is facing a problem of reporting too. In the process of this study it was impossible to find any reasonable reporting activity by the government to the National Assembly of Armenia.

There are National Reports prepared by the Ministries. In particular, the Ministry of Nature Protection prepares the reports and highlights the implemented projects and progress versus the existing problems. However, the existing problems still prevail in the field. There is no proper public participation tradition, no legal standing to NGOs as it was missing from the beginning of the process, no encouragement of public to solve the raised issues in the court, no attempt to keep on reporting on implementation. A

little progress made so far is the updated web site of the Ministry of Nature Protection where the documents on development projects are still being uploaded. Not all development project documents can be found in the web site and not with all required details such as starting from the application of the project and ending with the Expert conclusions and consent.[967] This had been noticed by the Aarhus Compliance Committee in their last report on Armenia. [968]

The previous chapters of the research demonstrate the deficiencies of the EIA law drafted and accepted twice in Armenia for the benefit of nature protection; however, the drafters never mention that it has been done to protect the nature, but mention that the amendment has been required to improve the business environment in the country. The legal text of the RA EIA Law of 2014 fails to cover the field in details. The law of 1995 has been drafted taking into account the National Environmental Policy Act of the USA whereas there is a lack of own national environmental policy for Armenia. Creating a law without drafting the policy for the country leaves an empty basis for the implementation. This gap still exists and the RA EIA Law of 2014 was adopted in the absence of environmental policy in the country. The business and environmental protection priorities for the country have to be elaborated in the well drafted policy which can result in the firm and detailed law both on environmental protection and business management. At present, the decision-making in environmental management is mostly in favor of business which causes a chaos in the field.[969]

On the continuous allegations of the environmental activists, the World Bank organized a Conference on reasonable mining in Armenia in

[967] Ministry of Nature Protection in Armenia, 'Conclusion' (*Ministry of Nature Protection in Armenia,* 2015) <http://www.mnp.am/?p=341> accessed 01/07/2015.

[968] United Nations Economic and Social Council, *Draft decision V/9a concerning compliance by Armenia with its obligations under the Convention*(n297).

[969] Simon Pow, 'How can Environmental Governance in Armenia's Mining Sector be Strengthened?' (n 49).

2014.[970]This was an attempt to promote the Amulsar Gold Mine project and to show the public that a mining can be harmless and reasonable if it would be done based on correct regulations and in compliance with the requirements of domestic and international legislation. However, this particular project has many unclear points and is under the scrutiny of knowledgeable public. The specialists found out that the development project documents were not complete and did not represent the level of exact harm the project can cause.[971] They tried to raise their voice against the usage of cyanide in the mining process that is considered harmful for the environment.

Environmental activists allege that the information about harmful effects of cyanide is hidden in the development project documents. [972] This development project has violated provisions of different RA laws and cannot be considered as reasonable mining.[973] All cases discussed in this thesis have made a wave of protests in public; however people are reluctant to seek the judicial review as they have lost their confidence towards the courts and this process is in embryonic state in Armenia.[974]

Among the cases discussed in this dissertation, only Teghut Mine case has been discussed in the Administrative Court of Armenia.[975] The Court ruled that the NGOs are not entitled for the legal standing, whereas the Aarhus

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[970] The World Bank News, 'Responsible Mining in Armenia: Opportunities and Challenges' World bank Group <http://www.worldbank.org/en/news/press-release/2014/03/25/responsible-mining-in-armenia> accessed 01/07/2015.

[971] Shirinian-Orlando, *Amulsar: even "responsible" mining is destructive* (n927).

[972] , *Hidden dangers of Lydian International's gold mine. Cyanide*.(n926)

[973] Nazeli Vardanyan, *Legal Opinion on Amulsar Gold Mining Project* (Ecolour New Informational Policy in Ecology 2015).

[974] Mari Chakryan, 'Steps Taken or Revelation of the most Important Legislative Provisions Aimed at the Fulfillment of the Principle Access to Justice of the Aarhus Convention' Armenian Aarhus Centers <http://aarhus.am/?page_id=8118&lang=en> accessed 01/07/2015,Mary Chakryan, 'Discussion of issues of access to justice within the framework of the Aarhus Convention' Armenian Aarhus Centers <http://aarhus.am/?page_id=10769&lang=en> accessed 01/07/2015.

[975] The Administrative Court of Armenia lacks of online information. The web site of the court operates improperly and it was impossible to register and check whether the information on court cases could be retrieved from there. The information on this court case was obtained from the Teghut Group web site and UNECE web site.

Compliance Committee found the court decision wrong.[976] However, the opinion of the committee does not result any positive change in the country and the NGOs are reluctant to apply to the courts in Armenia so far. Instead, they keep on writing complaint letters to international organizations. Although the Teghut Group environmental activists continue their battle and applied to the court again in July 2015.[977] They have changed the basis of their claim; however, the court has suspended it 'Today, on 25 August, a court ruling was reached at the court hearing presided by Judge Samvel Hovakimyan in Administrative Court, which suspended the Teghut case considering exhaustion of dispute on the merits.'[978]

One of the recent complaint letters in regards to Amulsar Gold Mining project had been addressed to the Office of the Compliance Advisor Ombudsman of the International Finance Corporation and the report received accordingly.[979] The CAO concludes that

> . the complaint raises substantial concerns about a range of potential or actual E&S impacts of the project. In reaching this conclusion CAO notes that IFC has, to date, only funded activities that are preparatory to the construction of the mine, and that no decision on whether to fund construction of the mine has been made. …On the balance of considerations, CAO thus decides to conduct a compliance investigation of IFC's E&S performance in relation to this project. Terms of Reference for

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[976] United Nations Economic and Social Council, *Findings and recommendations with regard to communication ACCC/C/2011/62 concerning compliance by Armenia*Adopted by the Compliance Committee on 28 June 2013* (Economic Commission for EuropeMeeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Compliance Committee Forty-third meeting Geneva, 17–20 December 2013 Item 7 (a) of the provisional agenda Communications from members of the public, 2013), 7.

[977] Teghut Civic Initiative, *Press release Film and New Administrative Case on Teghut*, Jul 15, 2015).

[978] Ecolour, *Court Decided to Suspend Teghut Case* (Ecolur New Informational Policy in Ecology 2015).There is no primary source information published on this decision.

[979] Compliance Advisor Ombudsman, *Complaint regarding IFC Investment in Lydian Intl 3 (Project #27657) Gndevaz and Jermuk, Armenia* (Office of the Compliance Advisor Ombudsman International Finance Corporation/ Multilateral Investment Guarantee Agency, 2014).

> this compliance investigation will be issued in accordance with CAO's Operational Guidelines.[980]

The impacted community applied to all possible institutions seeking help to stop the development project that has potential significant harm on the environment in Armenia.[981]This case shows a progress in public activity and involvement in the decision-making process. However, the environmental governance still needs reforms to comply with the requirements of Aarhus Convention.

The ideas and suggestions on recommendations and improvements of the RA EIA Law and its implementation are related to the RA EIA Law of 2014. The below recommendations have been generated in the process of discussions in the chapters of this dissertation, the gaps and deficiencies are found in the environmental decision-making process both in legislative and executive fields of Armenia. It is believed that better understanding of western laws and regulations and examination of performance in relevantly developed part of the world will support positive changes of the legislation and implementation process in Armenia. The following list of recommendations for the improvement is prepared

1. Understanding of western approach v. Eurasian Union to the environmental law and governance.
2. Clarifying and formally establishing national policy on environmental impact assessment by establishing national policy on environmental impact assessment.
3. Using the terms for the EIA process used in the western legislation for keeping the meaning of words and implementation in the same way. It is important to use the terminology common in the international law in case there are no other appropriate alternatives in

[980] Compliance Advisor Ombudsman, *Compliance Appraisal Report IFC Investment in Lydian International Ltd. (Project #27657), Armenia Complaint 01* (Office of the Compliance Advisor Ombudsman, 2015),13.

[981] European Bank for Reconstruction and Development, *Project Complaint Mechanism Eligibility Assessment Report* (Complaint: DIF Lydian (Amulsar Gold Mine) Request Numbers: 2014/02 and 2014/3, 2014).

the Armenian language, more over each term has to have the exact definition not only theoretically explained but also practically implemented. Which is why it is suggested to start from the implementation, which will help to find the correct word for describing the procedures in the context of EIA process.

4. To clarify if the Law of 2014 includes complete package of government orders such as administrative law, criminal law, specially protected areas law… whether there is a time limit of the government to adopt and apply the orders. Changes to these laws are needed to implement a full clarification of the operation of the 2014 EIA law and to integrate the legal provision fully with the EIA law.
5. Creating precise and quantifiable thresholds and providing them in the right classification for their level of significant and likely significant impacts in legal texts.
6. Including the assessment of the significance of cumulative impacts in the legal provisions.
7. Establishing scoping and screening as formal requirement s to be carried out in all cases where EIA may be required, using the model established in, for example, the EU's EIA Directive.
8. Non-technical Summary of the Environmental Statement submitted by the developer for wider public.
9. Requirement from the developer and experts to inform in details in open and transparent manner the steps of planned development projects, their harmful and beneficial sides.
10. Law requires implementation of public hearings accurately. Draft Government orders or Guidelines that will instruct in details the procedure of public hearings.
11. Baseline monitoring prior to development, and auditing of development projects periodically following completion of development, using baseline estimates of key environmental features as a template for assessment of the success or failure of conditions and features of development following EIA Public awareness and information spreading methods improvement for the government.

12. Activity of courts and court dispute encouragement, widening locus standi, access to justice has to be implemented for the continuous and sustainable improvement of the EIA process implementation and legal drafting, as well as creating a good environmental statement at the end.
13. Clarification of the legal standing of interested parties through legal provisions.
14. Preparation of legal guidelines for developers and support in implementation of legal requirements.

6.4.3. The Vision on Further Research Work

Due to the limitation of word count, the thesis faced a challenge in introducing cases of western legislation and detailed discussion of the cases. Therefore, the further analysis of case law, more detailed research in legal drafting, litigation process on EIA matters as well as public participation implementation need to be scrutinized in further relevant research works to cover all details of experience existing in developed part of the world as a good practice to enhance the sustainable development challenges in third world countries like Armenia. The possibility of post-doc research is foreseen to affirm the knowledge obtained in the process of this PhD research.

APPENDICES

Appendix 1

Translated by Gayane Atoyan

The Decision of the Government of the Republic of Armenia on the Thresholds of Environmental Impact Assessment of the Intended Activities

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«I Confirm»
The president of the Republic of Armenia
R. Kocharyan
30 March, 1999

The Government of the Republic of Armenia

Decision

30 March 1999 N 193
Yerevan

On the Thresholds of Environmental Impact Assessment of Intended Activities

According to the point 2 of Article 4 of the Environmental Impact Assessment Law of the Republic of Armenia the government decides: approve the activities subject to environmental impact assessment marginal rates (Thresholds) (enclosed))

Vice President of the Republic of Armenia Darbinyan

Confirmed by
the Decision # 193 on 30 March
1999 of the RA Government

Marginal Rates (Thresholds)

For the Environmental Impact Assessment of Intended Activities

According to the point 2 of Article 4 of the Environmental Impact Assessment Law, the intended activities exceeding the provided marginal rates are subject to the environmental impact assessment

1. Chemical industry sector

Washing, cleaning chemicals and other materials production of 50 tons.

2. Metallurgy Sector

Develop a metal surface of 2000 square meters per year

3 Electric and radio production

Annual production of generators 500 pieces

Annual production of electric motors 3000p.

Annual production of power transformers 1000p.

Portable power production to 300 units per year

Battery production year 1000p

Electrical devices (relays, starters, etc.) the annual production of 5,000 units

Annual production of semiconductor devices 1000p

Electrical lighting production per year 3000p

Fluorescent lamps production per year 1000p

Cables production per year 1 linear kilometre

Production of lighting equipment 1500 pieces per year

Production of special technological equipment 1000 pieces per year

Blocks of units and spare parts production 3000 pieces per year

4. The wood and paper industry sector

Plywood production 10 cubic meters per year

Construction carpentry products (door, window, etc.) 1,000 square meters per year

furniture production 20 cubic metres per year

Annual cardboard paper production 20 tonnes

Annual production of paper 1 ton.

5. Light industry sector

fabric and knitwear industry 3000 square meters' monthly

socks production 5000 pairs monthly

Leather production of 0.5 tons per month

Artificial leather (including synthetic) production of 15,000 square decimetre monthly

Fur production (raw materials) 1000 sq. m.

Carpet production 3000 square meters' monthly

Clothing (including furriers) finished products to 3,000 units per month

Silk production 1000 square meters per month

6. In the food industry, fisheries sector

Confectionery products (ready product), 0.5 tons per day.

Pasta products (ready product), 15 tons a day.

Bread and bakery products (ready product), 10 tons a day.

Flour production 10 tons daily.

Combined fodder production5 tons per day

Meat and meat products (ready product) 1 ton. per day

Canned fruits and vegetables production of 2,000 boxes per day

Dairy products (processed milk) 10 ton. Per day.

cheese production processing 10 tons of milk daily

Animal and vegetable oils and fats production of 0.5 tons per day.

Margarine production of 1 ton per day.

Sugar production 1 ton. per day

Soft drinks production 1,000 dekalitres per day

Mineral water production 1,000 dekalitres per day

Beer production 500 dekalitres per day

Wine Production (grape processing) - 50 tons. per day

Champagne and wine production 500 dekalitres per day

Vodka and liquor production 1,000 dekalitres per day

Brandy production 250 dekalitres per day

Fish reproduction, fish roe average of 10,000 per day

Processed fish production per 1 ton. per day

Estimated daily production of 2,000 boxes of canned fish

Natural detergents (soap) production 1 ton per day

tobacco production of 0.5 tonnes per day

7. Urban Sector

Buildings, structures, buildings, etc. 1,500 sq. km. meters of construction area.

(7-point amended. 09.12.10 N 1617-N)

8. Agriculture sector

Improvement of saline soils, irrigation and drainage systems, drainage of bogs, prevention of fertile soils from erosion, salinization and degradation 100 hectares.

Improvement of saline soils (by chemical methods) NO Thresholds

9. Infrastructure Sector

Road construction (reconstruction) starting form 1 kilometre

oil, gas, steam and water pipes, sewer collectors ` 300 millimetres in diameter.

transmission lines with voltage 35 kilovolt

fuels (including natural and other gases) surface and underground depositories 20 tons.

chemicals depositories 5-ton capacity

of mineral fertilizers' depositories 10 tons' capacity

pesticides depositories 1-ton capacity

10. The service sector

Shopping centres and fairs. 5,000 square meters of construction area.

hotels and tourist complexes with 500 rooms

Public catering establishments (restaurants, cafes, canteens, etc.) with 500 seats

*Համարը*N 193	*Տեսակը*Ինկորպորացիա
*Տիպը*Որոշում	*Կարգավիճակը*Գործում է
*Սկզբնաղբյուրը*ՀՀՊՏ 1999.04.15/9(75)	*Ընդունման վայրը*Երևան
*Ընդունող մարմինը*ՀՀ կառավարություն	*Ընդունման ամսաթիվը*30.03.1999
*Ստորագրող մարմինը*ՀՀ Վարչապետ	*Ստորագրման ամսաթիվը*30.03.1999
*Վավերացնող մարմինը*ՀՀ Նախագահ	*Վավերացման ամսաթիվը*30.03.1999
*Ուժի մեջ մտնելու ամսաթիվը*25.04.1999	*Ուժը կորցնելու ամսաթիվը*

Կապեր այլ փաստաթղթերի հետ

13.04.2012 N 1 ՀՀ ԲՆԱՊԱՀՊԱՆՈՒԹՅԱՆ ՆԱԽԱՐԱՐԻ ՊԱՇՏՈՆԱԿԱՆ ՊԱՐԶԱԲԱՆՈՒՄԸ ՀՀ ԿԱՌԱ...

Փոփոխողներ և ինկորպորացիաներ

Մայր փաստաթուղթ՝[Կառավ,30.03.1999,N 193]	
Մայր փաստաթղթին փոփոխող փաստաթղթերը՝	Համապատասխան ինկորպորացիան՝
Կառավ,09.12.2010,N 1617-Ն	Կառավ,30.03.1999,N 193

ՀՀ ԿԱՌԱՎԱՐՈՒԹՅԱՆ ՈՐՈՇՈՒՄԸ ՇՐՋԱԿԱ ՄԻՋԱՎԱՅՐԻ ՎՐԱ ԱԶԴԵՑՈՒԹՅԱՆ ՓՈՐՁԱՔՆՆՈՒԹՅԱՆ ԵՆԹԱԿԱ ՆԱԽԱՏԵՍՎՈՂ ԳՈՐԾՈՒՆԵՈՒԹՅՈՒՆՆԵՐԻ ՍԱՀՄԱՆԱՅԻՆ ՉԱՓԵՐԻ ՄԱՍԻՆ

«Վավերացնում եմ»
Հայաստանի Հանրապետության
Նախագահ Ռ. Քոչարյան
30 մարտի 1999 թ.

ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԿԱՌԱՎԱՐՈՒԹՅՈՒՆ

Ո Ր Ո Շ Ո Ւ Մ

30 մարտի 1999 թվականի N 193
քաղ. Երևան

ՇՐՋԱԿԱ ՄԻՋԱՎԱՅՐԻ ՎՐԱ ԱԶԴԵՑՈՒԹՅԱՆ ՓՈՐՁԱՔՆՆՈՒԹՅԱՆ ԵՆԹԱԿԱ ՆԱԽԱՏԵՍՎՈՂ ԳՈՐԾՈՒՆԵՈՒԹՅՈՒՆՆԵՐԻ ՍԱՀՄԱՆԱՅԻՆ ՉԱՓԵՐԻ ՄԱՍԻՆ

«Շրջակա միջավայրի վրա ազդեցության փորձաքննության մասին» Հայաստանի Հանրապետության օրենքի 4 հոդվածի 2-րդ կետին համապատասխան՝ Հայաստանի Հանրապետության կառավարությունը ***որոշում է.***

Հաստատել շրջակա միջավայրի ազդեցության փորձաքննության ենթակա նախատեսվող գործունեությունների

սահմանային չափերը (կցվում է):

Հայաստանի Հանրապետության վարչապետ **Ա. Դարբինյան**

Հաստատված է
ՀՀ կառավարության 1999 թ.
մարտի 30-ի N 193 որոշմամբ

Ս Ա Հ Մ Ա Ն Ա Յ Ի Ն Չ Ա Փ Ե Ր

ՇՐՋԱԿԱ ՄԻՋԱՎԱՅՐԻ ՎՐԱ ԱԶԴԵՑՈՒԹՅԱՆ ՓՈՐՁԱՔՆՆՈՒԹՅԱՆ ԵՆԹԱԿԱ ՆԱԽԱՏԵՍՎՈՂ ԳՈՐԾՈՒՆԵՈՒԹՅՈՒՆՆԵՐԻ

«Շրջակա միջավայրի վրա ազդեցության փորձաքննության մասին» Հայաստանի Հանրապետության օրենքի 4 հոդվածի 2-րդ կետին համապատասխան՝ շրջակա միջավայրի վրա ազդեցության փորձաքննության են ենթակա նախատեսվող այն գործունեությունները, որոնց ցուցանիշները գերազանցում են հետևյալ սահմանային չափերը՝

1. Քիմիական արդյունաբերության ոլորտում՝

լվացող, մաքրող և կենցաղային քիմիայի այլ նյութերի արտադրություն՝ տարեկան 50 տոննա:

2. Մետալուրգիայի ոլորտում՝

մետաղների մակերեսային մշակում՝ տարեկան 2000 քառ. մետր:

3. Էլեկտրատեխնիկական, ռադիոէլեկտրոնային արտադրության ոլորտում՝

գեներատորների արտադրություն՝ տարեկան 500 հատ.

էլեկտրաշարժիչների արտադրություն՝ տարեկան 3000 հատ.

ուժային տրանսֆորմատորների արտադրություն՝ տարեկան 1000 հատ.

շարժական էլեկտրակայանների արտադրություն՝ տարեկան 300 հատ.

մարտկոցների արտադրություն՝ տարեկան 1000 հատ.

էլեկտրական սարքերի (ռելեներ, թողարկիչներ և այլն) արտադրություն՝ տարեկան 5000 հատ.

կիսահաղորդչային սարքերի արտադրություն՝ տարեկան 1000 հատ.

լուսավորման էլեկտրալամպերի արտադրություն՝ տարեկան 3000 հատ.

լյումինեսցենտային լամպերի արտադրություն՝ տարեկան 1000 հատ.

մալուխների արտադրություն՝ տարեկան 1 գծակիլոմետր.

լուսատեխնիկական սարքերի արտադրություն՝ տարեկան 1500 հատ.

հատուկ տեխնոլոգիական սարքերի արտադրություն՝ տարեկան 1000 հատ.

բլոկների հանգույցների և պահեստամասերի արտադրություն՝ տարեկան 3000 հատ:

4. Փայտի և թղթի արդյունաբերության ոլորտում՝

նրբատախտակի արտադրություն՝ տարեկան 10 խոր. մետր.

ատաղձագործական շինարարական իրերի (դուռ, պատուհան և այլն) արտադրություն՝ տարեկան 1000 քառ. մետր.

կահույքի արտադրություն՝ տարեկան 20 խոր. մետր.

ստվարաթղթի արտադրություն՝ տարեկան 2 տոննա.

թղթի արտադրություն՝ տարեկան 1 տոննա:

5. Թեթև արդյունաբերության ոլորտում՝

գործվածքների և տրիկոտաժի արդյունաբերություն՝ ամսական 3000 քառ. մետր.

գուլպեղենի արտադրություն՝ ամսական 5000 զույգ.

կաշվի արտադրություն՝ ամսական 0,5 տոննա.

արհեստական կաշվի (այդ թվում՝ սինթետիկ) արտադրություն՝ ամսական 15000 քառ. դեցիմետր.

մորթու արտադրություն (հումքի մշակում)՝ ամսական 1000 քառ. մետր.

գորգեղենի արտադրություն՝ ամսական 3000 քառ. մետր.

կարի (ներառյալ մորթեղենի) պատրաստի արտադրանք՝ ամսական 3000 հատ.

մետաքսի արտադրություն՝ ամսական 1000 քառ. մետր:

6. Սննդի արդյունաբերության, ձկնային տնտեսության ոլորտում՝

հրուշակեղենի արտադրություն (պատրաստի արտադրանք)՝ օրական 0,5 տոննա.

մակարոնեղենի արտադրություն (պատրաստի արտադրանք)՝ օրական 15 տոննա.

հացի և հացաբուլկեղենի արտադրություն (պատրաստի արտադրանք)՝ օրական 10 տոննա.

ալյուրի արտադրություն՝ օրական 10 տոննա.

համակցված կերերի արտադրություն՝ օրական 5 տոննա.

մսի և մսամթերքի արտադրություն (պատրաստի արտադրանք)՝ օրական 1 տոննա.

պտուղ-բանջարեղենի պահածոների արտադրություն՝ օրական 2000 պայմանական տուփ.

կաթնամթերքի արտադրություն (վերամշակված կաթ) օրական 10 տոննա.

պանրի արտադրություն՝ օրական 10 տոննա կաթի վերամշակմամբ.

կենդանական և բուսական յուղերի ու ճարպի արտադրություն՝ օրական 0,5 տոննա.

մարգարինի արտադրություն՝ օրական 1 տոննա.

շաքարի ու շաքարավազի արտադրություն՝ օրական 1 տոննա.

ոչ ալկոհոլային խմիչքների արտադրություն՝ օրական 1000 դեկալիտր.

հանքային ջրերի արտադրություն՝ օրական 1000 դեկալիտր.

գարեջրի արտադրություն՝ օրական 500 դեկալիտր.

գինու արտադրություն՝ (խաղողի վերամշակում)՝ օրական 50 տոննա.

շամպայն գինիների արտադրություն՝ օրական 500 շիշ.

լիկյորի և օղու արտադրություն՝ օրական 1000 դեկալիտր.

կոնյակի արտադրություն՝ օրական 250 դեկալիտր.

ձկան վերարտադրություն՝ օրական 10000 ձկնկիթ.

ձկնամշակման արտադրություն՝ օրական 1 տոննա.

ձկան պահածոների արտադրություն՝ օրական 2000 հաշվարկային տուփ.

բնական լվացող միջոցների (օճառ) արտադրություն՝ օրական 1 տոննա.

ծխախոտի արտադրություն՝ օրական 0,5 տոննա:

7. Քաղաքաշինության ոլորտում՝

շենքեր, կառույցներ, համալիրներ և այլն՝ 1500 քառ. մետր կառուցապատման մակերեսով:

(7-րդ կետը փոփ. 09.12.10 N 1617-Ն)

8. Գյուղատնտեսության ոլորտում՝

աղակալած հողերի բարելավում, ոռոգման և չորացման ցանցերի կառուցում, ճահիճների չորացում, բերրի հողերի պահպանում էրոզիայից, աղակալումից և որակի փոփոխությունից՝ 100 հեկտար.

աղակալած հողերի բարելավում (քիմիական եղանակով)՝ առանց սահմանային չափի:

9. Ենթակառույցների ոլորտում՝

ճանապարհների կառուցում (վերակառուցում)՝ 1 կիլոմետր երկարությամբ.

գազի, նավթի, գոլորշու և ջրատար խողովակաշարեր, կոյուղու կոլեկտորներ՝ 300 միլիմետր տրամագծով.

էլեկտրահաղորդման գծեր՝ 35 կիլովոլտ լարման.

վառելանյութի (այդ թվում՝ բնական և այլ գազերի) վերգետնյա ու ստորգետնյա պահեստներ՝ 20 տոննա տարողությամբ.

քիմիկատների պահեստարաններ՝ 5 տոննա հզորությամբ.

հանքային պարարտանյութերի պահեստարաններ՝ 10 տոննա հզորությամբ.

թունաքիմիկատների պահեստարաններ՝ 1 տոննա հզորությամբ:

10. Սպասարկման ոլորտում՝

առևտրի կենտրոններ և տոնավաճառներ՝ 5000 քառ. մետր կառուցապատման մակերեսով.

հյուրանոցային և զբոսաշրջիկային համալիրներ՝ 500 տեղով.

հանրային սննդի օբյեկտներ (ռեստորաններ, սրճարաններ, ճաշարաններ և այլն)՝ 500 նստատեղով:

Appendix 2

Translated by Gayane Atoyan

The Decision of the Government of the Republic of Armenia on the Approval of Environmental Impact Authorized Body

'I ratify'

Levon Ter-Petrosyan

The President of the Republic of Armenia

30/October/1996

Government of the Republic Of Armenia

Decision of

October 30, 1996. N 345

on the Environmental Impact Assessment Authorized Body

To implement Article 16 of the Law on "Environmental Impact Assessment" of the Republic of Armenia, Armenia's government decides

1. To authorize the Ministry of Nature and Mineral Resources of the Republic of Armenia with the responsibilities of implementation the environmental impact expertise/assessment

2. The Yerevan Municipality of the Republic of Armenia shall allocate adequate space for environmental impact assessment process implementation to the Ministry of Nature and Mineral Resources of the Republic of Armenia.
3. This decision shall enter into force on 30 October 1996.

Prime Minister of the Republic of Armenia

Տիպը Որոշում	*Կարգավիճակը* Չի գործում
Սկզբնաղբյուրը	*Ընդունման վայրը* Երևան
Ընդունող մարմինը ՀՀ կառավարություն	*Ընդունման ամսաթիվը* 30.10.1996
Ստորագրող մարմինը ՀՀ վարչապետ	*Ստորագրման ամսաթիվը* 30.10.1996
Վավերացնող մարմինը ՀՀ Նախագահ	*Վավերացման ամսաթիվը* 30.10.1996
Ուժի մեջ մտնելու ամսաթիվը 30.10.1996	*Ուժը կորցնելու ամսաթիվը* 04.10.2014

Ենթարկվել է փոփոխության հետևյալ փաստաթղթերի կողմից՝	Յուրաքանչյուր փոփոխությանը համապատասխանող ինկորպորացիան՝
Կառավ,25.09.2014,N 1029-Ն	Կառավ,30.10.1996,N 345

ՀՀ ԿԱՌԱՎԱՐՈՒԹՅԱՆ ՈՐՈՇՈՒՄԸ ՇՐՋԱԿԱ ՄԻՋԱՎԱՅՐԻ ՎՐԱ ԱԶԴԵՑՈՒԹՅԱՆ ՓՈՐՁԱՔՆՆՈՒԹՅՈՒՆ ԻՐԱԿԱՆԱՑՆՈՂ ԼԻԱԶՈՐՎԱԾ ՊԵՏԱԿԱՆ ՄԱՐՄՆԻ ՄԱՍԻՆ

«ՎԱՎԵՐԱՅՆՈՒՄ
ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹ
ՆԱԽԱԳԱՀ Լ. ՏԵՐ-ՊԵՏՐՈՍ
30 ՀՈԿՏԵՄԲԵՐԻ 19

ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԿԱՌԱՎԱՐՈՒԹՅՈՒՆ

Ո Ր Ո Շ ՈՒ Մ

30 հոկտեմբերի 1996 թ. N 345

Շրջակա Միջավայրի Վրա Ազդեցության Փորձաքննություն Իրականացնող Լիազորված Պետական Մարմնի Մա

Ի կատարումն «Շրջակա միջավայրի վրա ազդեցության փորձաքննության մասին» Հայաստանի Հանրապետու օրենքի 16 հոդվածի, Հայաստանի Հանրապետության կառավարությունը *որոշում է*.

1. Շրջակա միջավայրի վրա ազդեցության փորձաքննություն իրականացնող լիազորված պետական մա լիազորությունները վերապահել՝ Հայաստանի Հանրապետության բնապահպանության և ընդերքի նախարարության

2. Երևանի քաղաքապետարանին՝ Հայաստանի Հանրապետության բնապահպանության և ընդ նախարարությանը տրամադրել համապատասխան տարածք՝ շրջակա միջավայրի վրա ազդեցության փորձաքննու աշխատանքները կազմակերպելու համար:

3. Սույն որոշումն ուժի մեջ է մտնում 1996 թվականի հոկտեմբերի 30-ից:

Appendix 3

The Armenian Law on Environmental Assessments (its improvement) and Public Participation in Environmental Decision-making

Researcher: Gayane Atoyan

Invitation: You are invited to participate in the research that is directed towards current environmental problems in Armenia. Below is provided information for you to make you aware about the objectives of research and about the importance of your participation in this research.

Information

The current situation in Armenia with full of concern in relation to Environmental Conservation and Justice calls upon a legal empirical research on improvement of existing Armenian Law on Environmental Impact Assessment and creating proper enforcement mechanisms for the country. The idea of the research is to generate (seek/find) ways of good governance in Environmental Protection, search the world best practices and compare them with Armenian reality to make a positive way of use upon necessity.

Firstly, it is crucial to find the best ways of controlling natural resources by the help of legal enforcement mechanisms and harmonizing national laws and regulations with the requirements of international treaties and regulations. The study will identify gaps in operating laws for making legislative amendments in favor of natural resources and demonstrate the notion that each citizen must be liable for nature protection and equal under the Rule of Law. Next important step is to raise awareness of environmental problems among population. National unity is required to combat the growing threats of deforestation, rapidly flourishing mining business, negligence towards accumulating wastes and production tales, indifference towards expanding percentage of pollution in air, water and land because of uneducated treatment of Armenian population in various areas of the country. Most of poor procedures can be avoided by the appropriate regulations and enforcement mechanisms.

This Research will investigate mechanisms of enforcing the environmental regulations more efficiently. Whether the business and nature protection transactions are suppose to be balanced by a strongly acting legislation and trial application. It will look at national demands by the help of environmental activists and NGOs, and second, the modern approach that might be demonstrated from the part of the RA government and relevant authorities. The final stage will be the presentation of gaps and amendments as well as best practices of proper acting infrastructures in different countries that can be utilized in Armenia as well for achieving the required results of announced Rule of Law.

The role of a participant

After being acquainted with the research aim and purpose you'd be asked to fill in a short questionnaire about your view of current environmental situation in Armenia. The questionnaire will be send to you via e-mail. It

will not take much of your time and your contacts and personality will be kept in a secret.

The use of Data

The data obtained will be used in the research material in anonymised form mainly to justify or reject the research arguments. The identity of all participants in this research project will be protected and confidential. Your identity will not be disclosed to any third party and will not be disclosed in any publications arising from the research.

Possible risks for a participant

There is no possible risk for you as this research is solely targeted at identifying legal problems and will be used to ground free public debates for future healthy and good governance to obtain an Environmental Justice in the country. Your participation is based on your will and consent, so you are entitled to choose whether to be a participant in this research or not.

You are kindly required to leave your e-mail address if you agree to be a participant in this research

Thank you

Appendix 4

CONSENT FORM

University Logo

Name of Study: Public Participation in Environmental Decision-making

Researchers:	Gayane Atoyan, PhD student, Law School, Newcastle University
	Head of School: Professor C.Rodgers
	Supervisor: Professor C.Rodgers
	Law School Administrator: Mrs Suzanne Johnson
Contact:	Postal Address: 91 Jubilee road, Newcastle upon Tyne, NE33EX, UK
	Email: g_atoyan@yahoo.com, g.atoyan@newcastle.ac.uk
	Telephone Number: +447720909209

The study has a number of aims: The aim of the research project is to identify the best models for implementing Environmental Impact Assessment Law in Armenia, assess public participation in current decisions making processes, and to suggest new planning and enforcement mechanisms to improve public participation in the Environmental decision-making process in Armenia. (see information sheet)

I [insert name] have read the participant information sheet and letter and have had an opportunity to ask questions about the study. ☐ Yes ☐No

I agree to participate in this study ☐Yes ☐ No

I understand that I may withdraw from the study without penalty at any time by advising the researchers of this decision. ☐Yes ☐ No

I understand that the project has been reviewed by, and received ethics clearance through, the University of Newcastle HASS Faculty Research

Ethics Committee. Only the named researchers will have access to the personal contact data. ☐Yes ☐ No

The data will be stored in a secure filing cabinet on university premises, will be encoded and hold on a memory stick with password access. The data will be analysed and used in the final report. The information will be treated with confidence any reference to direct quotes in the report will be referenced by role rather than name. Participants will be informed about quotes that might be used in the PhD thesis.

I understand that this research is being undertaken as PhD research at Newcastle University
☐Yes ☐ No

Should you wish to raise any concerns or make a complaint please contact Professor C.Rodgers to use the complaints procedure.

Participant Signature	Researcher Signature
Date:	Date
Print Name	Print name
Signature	Signature

Appendix 5

Questionnaire # I for Villagers	
1. Please state how long do you live in this place?	
2. What is your marital status?	Single Married Divorced Widowed
3. Have you got a job?	Yes No
4. Age	30-40 40-50 50-60 60-70
5. Gender	male female
6. Have you ever possessed a land in your village for cultivation purposes??	Yes No N/A
6a. please provide details about it if you answered yes on question 6.	
7. Have you been told that a construction project is being developed in your village?	Yes No N/A

Appendix 6

Questionnaire #2 environmental activists	
1. Age	☐30-40 ☐40-50 ☐50-60 ☐60-70
2. Gender	☐ male ☐ female
3. Please write what environmental group member are you or supporting in Armenia?	
4. Do you consider that your participation makes an impact on environmental decision-making?	☐ Yes ☐No ☐N/A
5. Have you ever participated in public hearings of environmental Impact assessment	☐ Yes ☐No ☐ N/A
6. please confirm whether the opinions and submissions made to the public hearing in the EIA were taken into the consideration by the relevant authorities if you answered yes to question	
7. Have you ever asked for any documentation/information from the authorities in	☐ Yes ☐No ☐ N/A

relevance 8. 9. to any particular environmental development?	
10. Have you been refused information on proposed development which in your opinion could have significant environmental impacts?	☐ Sometimes ☐ Never ☐ Always ☐N/A
11. If YES please give details of the project and the reasons given for refusal.	
12. do you think that public hearing procedures in environmental decision-making process in Armenia are being held appropriately	☐ Yes ☐No ☐ N/A
13. please give details if your answer is NO in pervious question	
14. Do you think Armenia needs to make legislative amendments to decision-making procedures for EIA?	☐ Yes ☐No ☐ N/A
15. Do you think that having a well drafted legislation with strict enforcement	☐ Yes ☐No

	mechanisms for regulating development will be helpful in Environmental Protection?	☐ N/A
16.	What are your recommendations for a change in the present environmental legislation in Armenia?	

Appendix 7

Questionnaire #3 for		

NGOs and Lawyers		
1. Age	☐30-40 ☐40-50 ☐50-60 ☐60-70	
2. Gender	☐ male ☐ female	
3. Do you think that existing legislation on Environmental Conservation in Armenia adequately regulates the field?	☐ YES ☐NO ☐N/A	
4. please give reasoning if you answered No to the question above		
5. Do you consider the RA EIA Law adequately implements the environmental commitments of Armenia under international environmental law?	☐ Yes ☐No ☐N/A	
6. Do you consider that secondary regulation (for example Governmental decisions) should be used to regulate	☐ Yes ☐No	

development with potentially significance environmental effects?		
7. Are you aware of State Environmental Inspection?	☐ Yes ☐No	
8. What enforcement mechanisms do they use to protect natural features		
9. Do you think public participation in decision-making on development with potentially significant environment effects is important?	☐YES ☐NO ☐N/A	
10. Are public participation arrangements for EIA in Armenia in your view adequate?	☐YES ☐No ☐N/A	
11. If No please specify the changes/improvements you would advocate, and why?		
12. Have you participated in public hearings on EIA development	☐Yes ☐No ☐N/A	

13. If YES please give details of development and nature of hearing and evidence submitted.		
14. Do you think your voice was heard?	☐Yes ☐NO ☐N/A	
15. please bring an example of the positive outcome of a public hearing if you answered yes to the pervious question		
16. Are you familiar with a new draft law on EIA and Expert Examination?	☐Yes ☐No ☐N/A	

Thank you

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