**The Aarhus Convention Index**

**INTRODUCTION AND INDICATORS FOR PILOT TESTING**

**September 2016**

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**THE AARHUS CONVENTION PILOT INDICATORS**

The Aarhus Convention[[1]](#footnote-2) Indicators (ACI) are being created by the Access Initiative and World Resources Institute, in collaboration with regional experts, to allow civil society, governments, academics, and the private sector to assess how well a country/Party protects the rights enshrined in the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereafter “the Aarhus Convention”). These rights have been recognised by the United Nations as fundamental to sustainable development and help promote fair and equitable decision-making by improving transparency, stakeholder engagement, and accountability.

The ACI will enable researchers to benchmark the quality of a country’s laws and practices against the Aarhus Convention, an internationally recognised and legally binding standard. The information ACI produces can be used to pinpoint gaps in laws and practices, prioritise reforms and provide models, through international comparison, of good laws and practices. Together with complementary resources such as the Aarhus Convention Implementation Guide (2014),[[2]](#footnote-3) it is our intention and hope that ACI will encourage and facilitate the improvement of laws and practices to secure the critical rights enshrined in the Aarhus Convention.

The ACI is composed of two discrete sets of indicators—a legal set consisting of 86 indicators responding to eight articles of the Aarhus Convention (Articles 2 to 9), and a practice set consisting of 69 indicators responding to the same eight articles of the Convention plus the ‘regular reporting’ obligation in Article 10(2). The legal indicators seek to measure how well national laws enact[[3]](#footnote-4) obligations under the Aarhus Convention. These indicators measure enactment of Aarhus Convention obligations by way of ***national*** laws in the case of countries, or ***EU laws*** in the case of the European Union’s enactment, since the EU is a Party to the Aarhus Convention in its own right.Neitherlegal nor practice indicators have been developed in respect of Article 1, or Article 10 onwards (with the exception of the practice indicator for Article 10(2) mentioned above) of the Aarhus Convention, as these provisions do not appear to impose obligations that require enactment.

***Note on legal systems and scoring:*** The legal indicators test if the relevant law measures up to the Aarhus Convention. A high score indicates that that law conforms to the Aarhus Convention. That however does not necessarily mean that the law is strong within the context of the legal system of that country. In some countries, other laws or even policies may trump, or be more authoritative, than the relevant law. In others, the law may receive a high score but because the rule of law is weak, laws in that country may not be respected. Nevertheless, the ACI assumes that for the public to have enforceable rights to transparency, participation and access to justice, a good starting point is to ensure that those rights are recognised and clearly written down in the legal framework.

Instead of measuring the quality of enacting laws, the practice indicators assess discrete aspects of how the Aarhus Convention is being implemented in practice. Besides that main difference, the authors wish to emphasise that the practice indicators will provide a snapshot of a national level assessment (or regional level in the case of the EU), based on desktop research and the experiences and knowledge of the researcher and reviewer. In other words, scoring the practice indicators does not include extensive surveys, data analysis, or field research, though it may involve a few interviews depending on the experience of the researcher (see p.23). However, the scores given by researchers/reviewers in respect of the practice indicators will be duly explained and the explanations will be subject to multiple reviews.

# METHODOLOGY AND SCORING SYSTEM

## Legal Indicator Scoring

With one exception,[[4]](#footnote-5) each legal indicator is scored on a four-point scale, from 0 to 3, with 3 as the highest score. Each choice is guided by criteria that are required to merit that score, such that subjectivity is limited as much as possible. In developing these criteria we have drawn on “Guidelines for conformity checking (2009),”[[5]](#footnote-6) which guidelines were developed in the context of assessing the conformity of countries’ laws with instruments of EU environmental law. In general, a “0” represents complete absence of the conditions, or legal coverage referred to in the indicator. “1” represents a low level of conditions or coverage. “2” represents a medium level and “3” a high level of presence of conditions or coverage referred to in the indicator. In respect of certain indicators we have provided more than one factual permutation for a given indicator score (e.g. there could be two different factual scenarios which would merit the same score of 1, say). In such cases, researchers are to identify the relevant factual scenario and score accordingly, indicating in their comment which of the scenarios was relevant in the case of the Party in question. The scores of the indicators for each relevant provision of the Aarhus Convention will be averaged to produce a score for each assessed article. The articles for each pillar (i.e. General (incl. definitions); Access to information; Public participation; and Access to justice) will then be averaged to produce pillar scores. Finally, the average of the pillars will be used to produce the overall country/Party score.

Ultimately, if ACI moves beyond the pilot phase into a full roll-out to all Aarhus Convention Parties, the intention would be that these scores will be displayed on an interactive map on a website as well as being made available, along with sources, comments and dialogue between researchers and reviewer(s), on each country/Party page. This would represent the Aarhus Convention Index.

***Note on the scoring averages:*** ACI uses arithmetic averages a) for all articles of the Convention and b) from the values of the articles for the pillars and finally, c) for the whole Convention in all cases both for the legal and practical indicators. We note that the scores of certain indicators (e.g. in respect of definitions) will necessarily impact the range of scores that may be selected in subsequent indicators which test the enactment of provisions which rely on those definitions (e.g. once a definition determines the scope of a term too narrowly, this narrows the scope of all rules that use the same definition).

***Note on scoring ranges:*** The range of four possible scores (0 – 3) is used as a general matter because it provides a standard scoring range and captures most of the nuance in range of different possibilities for that indicator.

In addition to the scores, the researchers are required to provide the legal provisions that support the score. Finally, researchers use the comment box to provide rationales, explanations, or other clarifications which can help justify the score.

**RESPONDENT: In your view, if a Party maintains or introduces measures providing for broader access to information, more extensive public participation, and/or wider access to justice rights than the Convention requires (see Art. 3(5)), should it receive additional points by way of a dedicated indicator (as below) or it is enough to allocate the highest score in respect of each relevant indicator where this is the situation?**

*Heghine:* conviction is that in case a Party has introduced legal framework or other measures to ensure broader access to information, more extensive public participation, and/or wider access to justice than required under the Convention, that Party should receive additional points in a way which would not impact the average arithmetic result, i.e. these additional points should be displayed separately to indicate directly the measures undertaken according to the Art. 3(5). Such a model if applied on an interactive map in the future may encourage and motivate other Parties to enter into dialogue and initiate steps towards achieving higher standards.

## Practice Indicator Scoring

The practice indicators follow the same scoring system as the legal indicators.[[6]](#footnote-7) These indicators check for evidence of the existence and quality of a practice that is required by law. For most indicators (with a small number of exceptions which are scored on a presence/absence basis (i.e. only two options: 0 or 3)), the researcher/reviewer may choose one of four responses (which vary depending on the provision being tested): e.g. Excellent (scored 3), Good (2), Fair (1), Poor (0). Again, in respect of certain indicators we have provided more than one factual permutation for a given indicator score (e.g. there could be two different factual scenarios which would merit the same score of 1, say). Again, in such cases researchers are to identify the relevant factual scenario and score accordingly, indicating in their comment which of the scenarios was relevant in the case of the Party in question.

In respect of the practice indicators certain scenarios have been provided (see the tables of indicators below) as a ‘prompt’ or catalyst to get the researcher/reviewer thinking about potentially relevant situations (and other scenarios that such considerations might prompt); these scenarios may or may not be relevant, or may or may not have arisen, in the relevant national context – e.g. [situations which have been considered previously by the Aarhus Convention Compliance Committee](http://www.unece.org/env/pp/pubcom.html); in [Parties’ 2014 National Implementation Reports](http://www.unece.org/env/pp/reports_trc_implementation_2014.html); in the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf); or by the [Court of Justice of the European Union](http://curia.europa.eu/juris/recherche.jsf).

Researchers are asked to provide a justification for their score and to explain the factors they considered. Researchers and reviewers are encouraged to draw on as broad a range of sources (such as case studies, other sources of professional literature, interviews etc.) as possible in providing their suggested scores. When using such sources a balance should be carefully maintained between official, governmental sources, peer-reviewed sources, and NGO sources.

## Weighting of the Legal Indicators and Practice Indicators

The authors anticipate the creation of an Aarhus Convention Index in 2017, following the revision of the pilot indicators. Separate average scores will be calculated for each Party in respect of the Legal Indicators and Practice Indicators. These averages will then be amalgamated to give the overall score for that Party for the Aarhus Convention Index.

In doing this, a relative weighting will be given to each of the two parts of the Index (i.e. Legal and Practice) to create the final score. The relative weighting is being discussed and will be determined following the pilots.

**RESPONDENT: In your view, in amalgamating the average scores for the Legal Indicators and Practice Indicators to give an overall score for a Party, what should be the relative weighting of the Legal Indicators vs. the Practice Indicators?**

*Heghine:* In my view, the relative weighting of average scores for the Legal Indicators and Practice Indicators in amalgamation should be respectively 60% vs. 40%.

## Research and Review

There are four stages to the research and review in this pilot phase of the project, to provide adequate checks and balances that ensure accuracy, credibility and verification to the index:

1. **National Researcher:** This role is held by an environmental lawyer who is well-versed in laws and practices relating to environmental democracy in the Party being assessed. The researcher is responsible for scoring the indicators, providing the sources to justify the scores and providing relevant comments to explain the score.
2. **National Reviewer**: This role is held by an environmental lawyer who is well-versed in laws and practices relating to environmental democracy in the Party being assessed. This person critically evaluates the scores of the researcher. S/he may agree, agree and comment, or disagree with the score. Rationale must be provided.
3. **Steering Committee Reviewer**: The Steering Committee reviewer (within EMLA, UCD or WRI) reviews the researcher’s scores and comments as well as the national reviewer’s comments. In the case of a disagreement between the researcher and national reviewer, the Steering Committee reviewer may send a question back to one or both. If the disagreement persists, the Steering Committee reviewer will decide the issue with a clearly reasoned decision. The Steering Committee also provides a second review of the scores, sources, and rationale, and may raise her/his own questions to the researcher.
4. **Final Approval**: The Steering Committee reviewers will also fill this role, although the final reviewer will never be the same person as the Steering Committee reviewer for any given Party. The final reviewer checks scoring and reviews for consistency and sends any final questions back to other parties (researcher, reviewer, etc.).

**Respondent: What is your view on this method of research and review? Are there alternatives to consider?**

*Heghine:* The methodology and the rationale behind this index bring me to the conclusion that it can well be an effective, dynamic and objective tool to assess the level of implementation of the Aarhus convention in different Parties. In addition, it might be helpful to facilitate comparative research and development of new legal and practical solutions.

With regard to the second question about alternatives, my suggestion would be preparation of a supplementary index to assess the key features of legal regulatory measures provided under each legal indicator. This might require elaboration of a specific methodology with the view to show possible relevance of legal solutions applied and corresponding practice.

## 

## 2015 Expert Workshop and 2016 ACI Pilot Testing

In autumn 2016, the pilot legal and practice indicators will be tested in 5 Parties to the Aarhus Convention. Potential parties for the pilot process were discussed at a workshop of experts in Dublin in July 2015, which workshop also helped to develop and refine the draft indicators here. Written comments were kindly provided subsequently by the Aarhus Secretariat and others on an earlier draft of this indicator document, which comments greatly improved the text. Any errors or inaccuracies, and the final choices re indicator design, are the Steering Committee’s (EMLA, UCD, WRI), which takes full responsibility for the text here. The final selection of Parties for pilot testing was carried out by the Steering Committee based on the availability of researchers/reviewers, amongst other factors. Pilot testing is to be carried out in the Czech Republic, Armenia, Serbia, the UK, and Ukraine. As the indicators are currently in pilot form, the scores/results obtained for these countries whilst testing the pilot indicators will not be used as the basis for a published index.

# SUMMARY OF COVERAGE BY INDICATORS

| **Provision of Aarhus Convention** | **Section, Indicator** | **Comment** |
| --- | --- | --- |
| **I. General (incl. definitions):**  **(a) Definitions** | | |
| Article 1 (Objective) | - | Not an independently enactable obligation |
| Article 2(1)  Definition of “Party” | - | Not assessed |
| Article 2(2)  Definition of “Public authority” | I(a), Legal indicator 1, Practice indicator 1 |  |
| Article 2(3)  Definition of “Environmental information” | I(a), Legal indicator 2, Practice indicator 2 |  |
| Article 2(4)  Definition of “The public” | I(a), Legal indicator 3,  Practice indicator 3 |  |
| Article 2(5)  Definition of “The public concerned” | I(a), Legal indicators 4-6, Practice indicator 4 |  |
| **(b) General** | | |
| Article 3(1) | I(b), Practice indicators 8-10 (see very end of this table) | Assessed right at the end of process, as it is an overall assessment |
| Article 3(2) | I(b), Legal indicator 1, Practice indicator 1 |  |
| Article 3(3) | I(b), Legal indicator 2, Practice indicators 1 and 2 |  |
| Article 3(4) | I(b), Legal indicator 3, Practice indicator 3 |  |
| Article 3(5) | I(b), Legal indicator 4,  Practice indicator 4 | Please note the question for respondents above regarding this provision |
| Article 3(6) | - | Not really an enactable obligation |
| Article 3(7) | I(b), Legal indicator 5, Practice indicator 5 |  |
| Article 3(8) | I(b), Legal indicator 6, Practice indicator 6 |  |
| Article 3(9) | I(b), Legal indicator 7, Practice indicator 7 |  |
| **II: Access to information:**  **(a) information on request** | | |
| Article 4(1) | II(a), Legal indicator 1-2, Practice indicator 1 |  |
| Article 4(2) | II(a), Legal indicator 3, Practice indicator 2-3 |  |
| Article 4(3) | II(a), Legal indicators 4-6, Practice indicator 4-5 |  |
| Article 4(4) | II(a), Legal indicators 7-14, Practice indicator 6 |  |
| N/A | II(a), Legal indicator 15, Practice indicator 7 | Tests whether Parties have provided any exemptions from the right to obtain environmental information on request which are not envisaged by the Aarhus Convention |
| Article 4(5) | II(a), Legal indicator 4 (assessed together with Art. 4(3)(a)), Practice indicator 4 (assessed together with Art. 4(3)(a)) |  |
| Article 4(6) | II(a), Legal indicator 16, Practice indicator 8 |  |
| Article 4(7) | II(a), Legal indicators 17-19, Practice indicator 9 |  |
| Article 4(8) | II(a), Legal indicator 20, Practice indicator 10 |  |
| **(b) collection and active dissemination of information** | | |
| Art. 5(1) | II(b), Legal indicators 1-3, Practice indicators 1-2 |  |
| Art. 5(2) | II(b), Legal indicators 4-5, Practice indicator 3 |  |
| Art. 5(3) | II(b), Legal indicator 6, Practice indicator 4 |  |
| Art. 5(4) | II(b), Legal indicator 7, Practice indicator 5-6 |  |
| Art. 5(5) | II(b), Legal indicator 8, Practice indicator 7 |  |
| Art. 5(6) | II(b), Legal indicator 9, Practice indicator 8 |  |
| Art. 5(7) | II(b), Legal indicators 10-12, Practice indicator 9-11 |  |
| Art. 5(8) | II(b), Legal indicator 13, Practice indicator 12 |  |
| Art. 5(9) | II(b), Legal indicator 14, Practice indicator 13 |  |
| Art. 5(10) | - | Not assessed |
| **III. Public participation pillar**  **(a) Public participation in decisions on specific activities** | | |
| Art. 6(1) | III(a), Legal indicators 1-3, Practice indicators 1-2 |  |
| Art. 6(2) | III(a), Legal indicator 4, Practice indicator 3 |  |
| Art. 6(3) | III(a), Legal indicator 5, Practice indicator 4 |  |
| Art. 6(4) | III(a), Legal indicator 6, Practice indicator 5 |  |
| Art. 6(5) | III(a), Legal indicator 7 | No practice indicator |
| Art. 6(6) | III(a), Legal indicator 8, Practice indicator 6 |  |
| Art. 6(7) | III(a), Legal indicator 9, Practice indicator 7 |  |
| Art. 6(8) | III(a), Legal indicator 10, Practice indicator 8 |  |
| Art. 6(9) | III(a), Legal indicator 11, Practice indicator 9 |  |
| Art. 6(10) | III(a), Legal indicator 12, Practice indicator 10 |  |
| Art. 6(11) | III(a), Legal indicator 13, Practice indicator 11 |  |
| **(b) Public participation concerning plans, programmes and policies relating to the environment** | | |
| Art. 7 | III(b), Legal indicators 1-5, Practice indicators 1-4 |  |
| **(c) Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments** | | |
| Art. 8 | III(c), Legal indicators 1-5, Practice indicators 1-2 |  |
| **IV. Access to justice pillar** | | |
| Art. 9(1) | IV, Legal indicators 1-4, Practice indicators 1-3 |  |
| Art. 9(2) | IV, Legal indicators 5-6, Practice indicators 4-6 |  |
| Art. 9(3) | IV, Legal indicator 7-8, Practice indicator 7 |  |
| Art. 9(4) | IV, Legal indicators 9-14, Practice indicators 8-12 |  |
| Art. 9(5) | IV, Legal indicator 15-16, Practice indicators 13-14 |  |
| **I. General (incl. definitions) (cont.): (b) General**  **National reporting and overall framework** | | |
| Art. 3(1) | I(b), Practice indicators 8-10 | No legal indicators (these ‘practice indicators’ are in fact more like a hybrid between legal and practice, but we have classified them as practice for the purpose of calculation) |
| Art. 10(2) | I(b), Practice indicator 11 | No legal indicator |
| **Remainder of convention** | | |
| Art. 10 onwards (with exception of national reporting in Art. 10(2) – see above) | - | These articles do not appear to impose obligations that require enactment into national law, and with the exception of the national reporting requirement in article 10(2) are not tested by practice indicators |

# AARHUS CONVENTION INDICATORS

With a view to ensuring consistency, for the purposes of both the legal indicators and the practice indicators, researchers and reviewers should consider the following in scoring the indicators: environmental protection laws as well as sectoral laws governing air and water quality, forests, biodiversity, extractive industries and environmental impact assessments,[[7]](#footnote-8) as well as the general freedom of information law(s) or the law(s) that provide for access to environmental information at national level as well as the laws concerning administrative and judicial review procedures, including costs, remedies and injunctive relief. Where they have not considered all of these laws in respect of any indicator, the researcher/reviewer should say so and explain the reason.

## Guidelines for assessing legal indicators

In respect of each legal indicator, the researcher should include **in the first line of the comments box** a general assessment of enactment at the Party level, using the following typology:

* Literal enactment

No enactment error(s)

* Effective enactment
* Enactment which goes further than required
* Not enacted at all
* Incomplete enactment
* Incorrect enactment Enactment error(s)
* Incomplete and incorrect enactment
* Ambiguous enactment
* Contradictory enactment

Use **“literal”** where the enacting provision uses exactly the same (or almost exactly the same) language as the relevant provision of the Convention. In cases of “almost exactly the same” (e.g. where the enacting legislation cross-refers to provisions of the enacting legislation rather than to provisions of the Convention, or when the enacting legislation specifies a public authority in a particular context where the Convention refers to “the public authority”), researchers should quote the Convention text and the language from the enacting legislation in the notes column in providing their reasoning for the indicator score. Use **“effective”** where the enacting provision achieves the objective of the relevant provision of the Convention but does not use the same (or almost exactly the same) language. Again, in cases of “effective” enactment researchers should quote the Convention text and the language from the enacting legislation in the notes column in providing their reasoning for the indicator score. Use **“Not enacted at all”** where there is simply a gap in enactment. Use **“incomplete”** where the relevant provision of the Convention has been only partially enacted, even if the enactment is accurate insofar as it goes. In such cases please explain which part(s) of the provision have been enacted and which have not. Use **“incorrect”** where the relevant provision of the Convention has been incorrectly enacted, and please provide an explanation of your conclusion. Use **“incomplete and incorrect”** where the enactment is both incomplete and incorrect, and please provide an explanation of your conclusion in respect of the different parts of the relevant provision of the Convention. Use **“ambiguous”** where the enacting provision is open to interpretation that could comply or not comply with the relevant provision of the Convention. Again, please explain your conclusion in this regard. Use **“contradictory”** where the Party in question has enacted legislation which contradicts the relevant provision of the Convention, i.e. where there may be a possible intention to go directly against Aarhus obligations. “Contradictory” might therefore arise in combination with other descriptions, since a Party might for example have made specific legislation, but erred, in seeking to enact a Convention obligation and *in addition* might have contradictory national legislation (this could be indicated by “Incorrect enactment” **and** “Contradictory enactment”).

In respect of certain indicators, researchers are asked to indicate whether an enactment error is **“minor”** or **“more than minor”**. “Minor” errors are those which are not very serious and would not impede (or would impede only in a very limited way) the effective implementation of the relevant provision of the Convention. The threshold for “minor” errors should be considered to be very low, since any error is likely to impede effective implementation to some extent. Researchers should in each case use their judgment to decide whether an error is minor or more than minor, and should justify their conclusion in the comments box.

Where an enactment error relates to a definition, please note in your comments which other provision(s) of the Convention are affected by this error. In the comments box for the relevant definition, please note “Articles [X, Y, Z, etc.], paragraphs [X, Y, Z, etc.] of the Convention are affected by this error” and in the comments boxes of the affected provisions please record “The enactment of this provision of the Convention is affected by an error in the enactment of definition [X]”. In such cases you should take account of the error in enacting the definition in scoring enactment of the affected provision(s). Wherever it seems obvious, the instructions will contain a reference to this interrelationship between a faulty definition and a substantial provision.

The Aarhus Convention requires Parties, as a general matter (Art. 3(1)), to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Aarhus Convention. Please note that we have included dedicated indicators to test the extent to which legal enactment has served to achieve this. As such, in assessing the *other* legal indicators it is not necessary to ask yourself each time whether the enacting measure in question forms part of a clear, transparent and consistent framework to implement the provisions of the Aarhus Convention, and your scores for such other indicators should not be affected by this question.

Please also provide in the comments boxes:

* Reference to the relevant national provision(s) (i.e. name of law, article, paragraph, sub-paragraph, URL to the law if available, etc.). If there are various enacting measures, the first legal act to be cited should be the most relevant instrument enacting the Convention, but please cite all relevant provisions.
* Complete text of relevant national provision(s), in language of Party.
* Translation into English of relevant national provision(s), if available.
* In addition to referring to enacting legislation, you should where relevant base your analysis and scores on relevant decisions of judicial and administrative bodies. You should draw on these, where relevant, plus decisions of any other national, regional or international judicial or administrative bodies that are relevant to your analysis. Please cite in full in the relevant comment boxes any such decisions which you have relied upon in reaching your scores.
* Other sources to which you should refer in carrying out your research include the Aarhus Convention Implementation Guide (2014),[[8]](#footnote-9) Case Law of the Aarhus Convention Compliance Committee (2004-2011),[[9]](#footnote-10) the latest country report of your country issued to the Aarhus Secretariat before the most recent Meeting of the Parties,[[10]](#footnote-11) relevant peer-reviewed journal articles, governmental sources, and NGO sources.

**RESPONDENT: Are the above guidelines on legal indicators clear? Is terminology well defined?**

The guidelines above are clear. The terminology is well defined.

## 

## Guidelines for assessing practice indicators

As mentioned above, in respect of each practice indicator certain scenarios have been provided to act as a ‘prompt’ or catalyst to begin the process of considering relevant issues in settling on an appropriate score – such scenarios are taken, for example, from [Aarhus Convention Compliance Committee findings](http://www.unece.org/env/pp/pubcom.html); from [Parties’ 2014 National Implementation Reports](http://www.unece.org/env/pp/reports_trc_implementation_2014.html); from the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf); and from decisions of the [Court of Justice of the European Union](http://curia.europa.eu/juris/recherche.jsf).[[11]](#footnote-12) Whilst these scenarios may or may not be relevant, or may or may not have arisen in the relevant national context, they are intended to get researchers and reviewers thinking, and researchers/reviewers should please consider all the provided examples, amongst other things, as part of their work.

Researchers should check if there is an ACCC communication concerning their country/Party and take account of the outcome before the ACCC, if applicable. Researchers should do the same concerning relevant cases before the European Court of Human Rights, the CJEU and national courts/tribunals, if applicable.

Other ready sources of information which should be taken into account by researchers include decisions and annual reports of any relevant information officials (e.g. freedom of information bodies, access to information on the environment bodies) and those of ombudsmen with (usually amongst several others) an environmental portfolio.

Researchers/reviewers are asked to provide a justification for their score and to explain the factors they considered. Researchers and reviewers are encouraged to draw on as broad a range of sources as possible – as above in respect of the legal indicators - in providing their suggested scores.

Researchers should draw on their own personal experience in scoring; where this experience is insufficient to provide a score to a particular indicator, researchers should seek to interview two others with the requisite experience, and should base their score on these interview data, recording the fact of the interviews, the names/affiliations of interviewees,[[12]](#footnote-13) and the justification for the score.

RESPONDENTS: Are the above guidelines on practice indicators clear? Is terminology well defined?

The guidelines above on practice indicators are clear. The terminology is well defined.

## I. General pillar (incl. definitions)

### (a) Definitions - Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 2(2) | 1. How well has the definition of “Public authority” been enacted?   Art. 2(2) provides:  ““Public authority” means:  (a) Government at national, regional and other level;  (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;  (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;  (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.  This definition does not include bodies or institutions acting in a judicial or legislative capacity;” | **Scoring Guide:**  **2 = Minor errors**  The Constitution of the republic of Armenia (adopted in 1995) provides the system of governance based on the full separation of powers (legislative, executive and judicial). The Government operates on the basis of Constitution, Law and the Decree of the President N 174-N[[13]](#footnote-14) that provides the scope of republican executive bodies that execute the tasks of government in respective fields. That system incudes ministries and authorities adjacent to the ministries. Except its framework there are also State non-profit organizations that are created within the system of ministries and are considered to be carrying out activities for which the Ministry is held responsible.  The Law of RA “On Freedom of Information”[[14]](#footnote-15) (23 September 2003) provides the following definition of “Information holder”: “state bodies, local self-government bodies, state offices, state budget sponsored organizations as well as organizations of public importance and their officials”. While this definition is applicable only in terms of access to information (including environmental information), it involves most of the elements in the Article 2 para. 2 of the Aarhus Convention. (Article 3)  The Armenian legislation provides no encompassing definition of “public authority” that includes also “any other natural or legal persons having public responsibilities or functions, or providing public services”. This is considered to be a minor error since it will not impede the overall implementation, but would have reached better legal precision if the status of those organizations was defined. |
| Art. 2(3) | 1. How well has the definition of “Environmental information” been enacted?   Art. 2(3) provides:  “Environmental information” means any information in written, visual, aural, electronic or any other material form on:  (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;  (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental  agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in  environmental decision-making;  (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;” | **Scoring Guide:**  **0 = Has not been enacted at all**  There is no definition of environmental information in the legislation of Armenia. Throughout these years the “consumers” of legal texts were largely relying on the definition in the respective article of the Aarhus Convention under various circumstances when any information needs to be clarified as environmental. Currently, there is an initiative by the Environmental Law Research Centre of Yerevan State University to develop a separate legal framework for the access to environmental information which is supposed, naturally, to give the definition of environmental information. |
| Art. 2(4) | 1. How well has the definition of “The public” been enacted?   Art. 2(4) provides:  “”The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;” | **Scoring Guide:**  **2 = Minor errors**  “The public” is defined in the Law of the Republic of Armenia “On environmental impact assessment and expertiza” (hence, EIA Law)[[15]](#footnote-16). This definition is applied only in the meaning of that EIA Law, hence can be invoked only with respect to EIA. However, having in regard that the activities subject to EIA are those with significant impact on the environment and that the EIA procedure is the only significant channel for public participation (this is a specificity of Armenian legislation which has not yet incorporated the system of integrated permitting) the existing definition is sufficient to allow effective transposition of the Aarhus Convention provisions. Given that the definition lacks reference to the “their associations, organizations or groups”[[16]](#footnote-17) and that it is given only in the meaning of EIA I score it 2-minor errors.  *“19) Public – one or more natural or legal entities .” (Article 4, paragraph 1, subparagraph 19), EIA Law)* |
| Art. 2(5)  Indicator 1 | 1. Does the definition of “The public concerned” include the public affected or likely to be affected by the environmental decision-making?   Art. 2(5) provides:  ““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**  **2 = Minor errors**  “The public concerned” is defined in the Law of the Republic of Armenia “On environmental impact assessment and expertiza”. It is given through two separate definitions –“public concerned” and “affected community”. The definition of “public concerned” in the EIA law stands for the “public having an interest in, the environmental decision-making”, whereas the definition of “affected community” holds for the “public affected or likely to be affected”. These definitions are applied only in the meaning of that EIA Law, hence can be invoked only with respect to EIA. However, having in regard that the activities subject to EIA are those with significant impact on the environment and that the EIA procedure is the only significant channel for public participation (this is a specificity of Armenian legislation which has not yet incorporated the system of integrated permitting) the existing definitions are sufficient to allow effective transposition of the Aarhus Convention provisions, though they have minor errors in terms of strict textual consistency with the definition given in the Aarhus Convention, Article 2; therefore I score it 2-minor errors.  *“20) “Affected community ” –population –natural and(or) legal entities of the community the environment of which is to be likely affected by the proposed activity or fundamental document*  *21) “Public concerned” – legal and natural entities expressing interest in the adoption of a fundamental document or implementation of a proposed activity”.*  *(Article 4, paragraph 1., subparagraphs 20), 21), EIA Law)* |
| Art. 2(5)  Indicator 2 | 1. Does the definition of “The public concerned” include the public having an interest in the environmental decision-making?   Art. 2(5) provides:  ““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**  **3 = Literal enactment and/or enactment specifies that any natural or legal person who asks to take part has an interest (i.e. a factual interest).**  See the explanation under the Art. 2(5), Indicator 1, particularly the definition of “21) public concerned”. |
| Art. 2(5)  Indicator 3 | Does the definition of “The public concerned” include NGOs promoting environmental protection and if so, are there any additional requirements under national law in order for an NGO to be deemed to have an interest?  Art. 2(5) provides:  ““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**  **3 = NGOs are included (or deemed included) and there are no additional requirements.**  The definitions of “Public”, “Public concerned” and “Affected community” all have reference to “legal entities”, which under the Civil Code of Armenia[[17]](#footnote-18) includes also “non-governmental organizations” (referred as non-commercial organizations in the Section 5, Chapter 4). There are no other additional requirements to be classified as a public concerned except being registered through a very simplified procedure.  Having in regard the above I score it 3. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 2 legal indicators?

No additional comments.

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### Definitions – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 2(2) | 1. Breadth of interpretation of the definition of “public authority”:[[18]](#footnote-19)   Art. 2(2) provides:  ““Public authority” means:  (a) Government at national, regional and other level;  (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;  (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;  (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.  This definition does not include bodies or institutions acting in a judicial or legislative capacity;” | **Scoring Guide:**  **2 = Medium**  The interpretation of the definition of “public authority” is scored 2 = medium since in practice, as in legislation, there is an issue with considering the public utility companies, and private companies dealing with provision of publicly consumed services as public authorities. All the remaining authorities a) Government, (b) Natural or legal persons performing public administrative functions (state public officials or State non-profit-making organizations) in practice are fully interpreted in practice as public authorities.  Such evaluation is given also having in regard the progressive interpretation of CJEU in the Case C-279/12. In practice the public utility companies and private companies providing publicly consumed services are identified as “public authority” (“information holder” in national law) only with respect to access to information pillar.  Additionally, the legislative bodies are not actively engaged, if at all, on making decisions concerning the individual cases in “hybrid bill procedures” in order to approve major developments and exclude public participation.  . |
| Art. 2(3) | 1. Breadth of interpretation of the definition of “environmental information”[[19]](#footnote-20)   Art. 2(3) provides:  “Environmental information” means any information in written, visual, aural, electronic or any other material form on:  (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;  (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental  agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in  environmental decision-making;  (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;” | **Scoring Guide:**  **1 = Narrow**  The interpretation of “environmental information” in practice is scored narrow taking into consideration the following factors;  1) Because of the absence in the legislation of the definition “environmental information”, in practice it receives interpretation which is very voluntaristic. In other words, many factors that considered being environmental information under the Aarhus Convention do not receive such status in practice of legal interpretation of national public authorities. A similar situation is present with respect to non-environmental authorities holding environmental information, and with respect to consideration of financial decisions as environmental information  2) Additionally, there is a considerable issue in practice with the access to raw data, since public authorities do not necessary process the data and in the practice of non-governmental organizations there has been cases when the public authority had offered them to process the raw data by themselves and take the information they consider necessary (this information is derived form an interview conducted with three NGOs in Armenia-the details of NGOs in the questions of interview are given below, in the section “Information on request-practice indicators”). In this respect, it is important to note that public authorities are not concerned whether the information is classified as environmental or not, since they perform under the general duty of making governance information available to public.  There have been no judicial cases identified of higher instances concerning the specific issue of defining “environmental information”. |
| Art. 2(4) | 1. Breadth of interpretation of the definition of “The public”   Art. 2(4) provides:  “”The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;” | **Scoring Guide:**  **2 = Medium**  Though the definition of public given in the EIA Law, Article 4, as already mentioned, lacks reference to the “their associations, organizations or groups” and that it is given only in the meaning of EIA, in practice it has not hindered public to exercise its rights under the Aarhus Convention in general, and the right to participation in the decision-making concerning the types of proposed activities, in particular. However, definition of “the public” is still unclear for the meanings of the right to participate in the decision-making concerning plans, policies, programs, adoption of generally applicable legally binding rules, as well as in the meaning of accessing to justice in environmental matters. There are other issues on the way of proper exercise of the rights of the public to be evaluated further under different indicators; preconditioned by different, other reasons than how “the public” is defined in the EIA Law and in practice.  Additionally, the right of the public is not narrowed down to citizens of and legal entities registered in Armenia, and in practice the right is reserved for natural and legal entities irrespective of their domicile.  Since the moderate standards are met in terms of how the public is defined in practice and scope of rights it is given under the Aarhus Convention, I score this indicator as 2 = Medium. |
| Art. 2(5) | 1. Breadth of interpretation of the definition of “The public concerned”   Art. 2(5) provides:  ““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**  **2 = Medium**  As it has been mentioned under the legal indicator “the public concerned” is defined in Armenian legislation through two separate definitions –“public concerned” and “affected community”.  There are no specific qualifications attached to the definition or applied in practice. The right of foreigners and non-governmental organisations to participate is fully respected in practice. No obscure categories, subdivisions of definitions etc. with nebulous meanings are applied.  However, the nature and the size of the activity is not a separate category recognized by the law. Even though the right of participation is reserved after all the members of the public, the affected community, which is one of the ways the definition of “the public concerned” is implemented in the national law of Armenia, in practice is defined very narrowly and includes those communities (cities and rural communities) that are in a direct vicinity of the proposed activity (physical proximity). Never in practice are in rem rights, social rights or other rights given special consideration.  Based on the above I score this indicator as 2 = Medium. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 2 practice indicators?

Comparing Article 2(5) (practice indicator) and Article 2(5) (legal indicator), which approach do you think is better? Three separate legal indicators were created for Article 2(5), separating out aspects of the provision; in contrast, all three elements were dealt with in a single practice indicator. Which works better in your view? Are different approaches justified for the legal and practice indicators?

It is very challenging to evaluate the definitions practice indicators separate from the legal indicators, since it requires evaluation of application of such definitions under each pillar (i.e. public concerned Article 6, Article 9) and within a certain context. Therefore the level of precision of the evaluations of practice indicators is slightly relative and requires more in depth analysis.

*Heghine:* I share the view expressed by the researcher.

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### (b) General provisions – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 3(2)[[20]](#footnote-21) | 1. To what extent does the law oblige officials and authorities to assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters?   Art. 3(2) provides:  “Each Party shall endeavor to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.” | **Scoring Guide:**  **1 =** there are no legal provisions obliging officials and authorities to assist and provide guidance to the public in the areas of public participation and access to justice. However, in terms of access to information the Law of RA “On Freedom of Information” (23 September 2003) (<http://www.arlis.am/DocumentView.aspx?DocID=1372>) contains one provisions which, in my view, to some extent amounts to “assisting and providing guidance to the public”.  *Article 13. Person Responsible for Information Freedom*  2. Person responsible for the Freedom of information according to the law:  b) explains thoroughly the procedures, conditions and forms of providing information to the person seeking information;  The respective legal acts falling under the two pillars of the Aarhus Convention do not explicitly oblige officials and authorities to assist and provide guidance to publicRespectively I score this indicator 0. |
| Art. 3(3) | 1. To what extent does the law oblige the Party in question to promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.   Art. 3(3) provides:  “Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.” | **Scoring Guide:**  **2 = The law obliges the government to promote environmental education and environmental awareness generally among the public as well as on one or two of the following: how to (a) obtain access to information, (b) participate in decision-making and (c) obtain access to justice in environmental matters**.  Since 2001 the Republic of Armenia enacted the Law “On Ecological education and upbringing of people of Armenia”, which, among others, considers access to information, and in general information systems as part of the field of ecological education (Article 5).[[21]](#footnote-22) |
| Art. 3(4) | 1. To what extent does the law provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection, and is the national legal system consistent with this obligation?   Art. 3(4) provides:  “Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.” | **Scoring Guide:**  **2 = The law provides for appropriate recognition or support (not both).**  It is important to note that Armenia has enacted very liberal legal framework for the operation of non-governmental organizations; there are not administrative barriers on the way of registration, a single person can register an NGO and operate under a very light tax regime. Moreover, the registration of a non-governmental organization is possible through an [online system](https://www.e-register.am/am/), and receive all the registration documentation by post. However, the legal framework is very weak when it comes to the access to legal aid and support by the government. It is only the Article 5 of the Law “On non-governmental organizations”[[22]](#footnote-23) that declaratively states about support and help the government is supposed to provide to non-governmental organizations, and that it is forbidden for the public and local self-governance to intervene to the activities of NGOs. There is no indication in the law about issuing support to specific types of organizations, and to NGOS in general.  Having in regard the law provides appropriate recognition but not support to NGOs, I score this indicator 2 = The law provides for appropriate recognition or support (not both). |
| Art. 3(5) | 1. Has the Party maintained or introduced measures providing 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?   Article 3(5) provides:  “5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.” | **Scoring Guide:**  1 = Incomplete enactment  In terms of access to information the Law of RA “On Freedom of Information” (23 September 2003) (<http://www.arlis.am/DocumentView.aspx?DocID=1372>) sets up rather short time-frame (5 days) for the public authorities to provide information upon request than envisaged in the Aarhus Convention. While this condition is not literally relevant to “broader access to information” in terms of its scope, it still well fits the philosophy and rationale behind Art. 3(5) of the Convention: “The Aarhus Convention is the floor, not the ceiling”. While recognizing that the provision mentioned is very fragmental, I would score this Indicator 1 since the provision below makes some difference between “nothing at all” and “at least something”.  ***Article 9. Procedures of Information Inquiry Application and Discussion***  7. The answer to written inquiry is given in the following deadlines:  a) If the information required by the written inquiry is not publicized, than the copy of that information is given tot the applicant within 5 days after the application is filed.  b) If the information required by the written inquiry is publicized, than information on the means, place and time framework of that publication is given within 5 days after the application is filed.  c) If additional work is needed to provide the information required, than the information is given to the applicant within 30 days after the application is filed, about which a written notice is being provided within 5 days after the application submission, highlighting the reasons for delay and the final deadline when the information will be provided.  Having in regard the fact that Armenia is in the process of building an environmental governance system and that it is encountering certain socio-economic development issues, the country currently is striving to meet the standards of the Aarhus Convention and, in general, no wider or broader measures are observable yet.  Having in regard the above I score this indicator 0 = No such measures have been maintained or introduced |
| Art. 3(7) | 1. To what extent does the law oblige the government to promote the application of the principles of the Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment?   Art. 3(7) provides:  “Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.” | **Scoring Guide:**  0 = Has not been enacted at all  There is no legal framework that puts on the government such obligation, therefore I score this indicator 0 = Has not been enacted at all. |
| Art. 3(8) | 1. To what extent does the law ensure that persons exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed in any way for their involvement   Art. 3(8) provides:  “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.” | **Scoring Guide:**  1 = The law contains general provision(s) aimed at ensuring that persons are not unlawfully penalized, persecuted or harassed, and these provisions would likely cover most situations of a person involved in exercising their rights under [articles 4, 6, 7, 8 and 9] of the Convention.  According to Article 27 of the Constitution, everyone is entitled to freedom of speech, including the freedom to seek, receive and disseminate information and ideas through any medium of information, regardless of State borders.  (a) The Law on Freedom of Information (art. 4) defines the main principles of securing information freedom as: definition of unified procedure to record, classify and maintain information; insurance of freedom to seek and get information; insurance of information access; publicity.  There is no specific provision ensuring that the members of the public will not be penalized, persecuted or harassed as a consequence of their participation and expression of sometimes “radically” different opinion.  The Code of Civil Procedure, Code of Criminal Procedure and the Code of Administrative Procedure of the Republic of Armenia provide the legal background for the exercise of the rights and obligations in the course of litigation, as well as protection of the rights of litigants.  Having in regard the above I score this indicator 1 = The law contains general provision(s).  Additionally, the Law of RA “On Human Rights Defender” (21 Oct 2003)[[23]](#footnote-24) and the Law of RA “On Fundamentals of Administration and Administrative Proceedings” (18 Feb 2004)[[24]](#footnote-25) mechanisms under which amount to access to justice in the meaning of the Aarhus Convention, establish provisions in line with Art.9 (3) of the Aarhus Convention.  *Law of RA “On Human Rights Defender”*  *Article 8. The Right to Appeal to the Defender*  *1. Any individual regardless of his/her nationality, citizenship, place of residence, sex, race, age, political and other views, and capabilities can appeal to the Defender.*  *Law of RA “On Fundamentals of Administration and Administrative Proceedings”*  *Article 69. Right to Appeal*  *For the purpose of protection of their rights, persons shall have the right to appeal the administrative acts, the action or inaction of the administrative body.*  In the second provision cited above the definition “persons” implies both natural and legal entities. Establishing a general right to appeal an administrative act, this provision does not introduce any criteria to limit the right to avail to justice, including in environmental matters. |
| Art. 3(9) | 1. To what extent does the law provide for the public to have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective center of its activities.   Art. 3(9) provides:  “Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate  in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.” | **Scoring Guide:**  **3= The law prohibits discrimination as to citizenship, nationality and domicile and, for a legal person, registered seat or effective center of its activities with respect to each of (a) access to information, (b) public participation and (c) access to justice.**  As it has already been mentioned the Article 27 of the Constitution of the Republic of Armenia reserves the right to free access to information of everyone. The Article 4 of the EIA law defines the public referring to natural and legal entities without tying it to the nationality, hence providing the right of participation to everyone.  With respect to the access to justice, the Code of Civil Procedure, Code of Criminal Procedure and the Code of Administrative Procedure of the Republic of Armenia adopt the same approach, namely they provide access to justice to everyone as guaranteed by the Article 18 of the Constitution of the Republic of Armenia. Having in regard the above I score this indicator 3= the law prohibits discrimination…  *(Constitution of the Republic of Armenia*  *“****Article 18.*** *Everyone shall be entitled to effective legal remedies to protect his/her rights and freedoms before judicial as well as other public bodies.*  *Everyone shall have a right to protect his/her rights and freedoms by any means not prohibited by the law.*  *Everyone shall be entitled to have the support of the Human Rights’ Defender for the protection of his/her rights and freedoms on the grounds and in conformity with the procedure prescribed by law.*  *Everyone shall in conformity with the international treaties of the Republic of Armenia be entitled to apply to the international institutions protecting human rights and freedoms with a request to protect his/her rights and freedoms.”)* |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 3 legal indicators?

What do you think of the approach to the legal indicator for Article 3(5), which asks you to consider the *number* of measures which have been introduced which go beyond the requirements of the Convention? Can you think of a way that an indicator could capture the fact that not every measure that goes beyond the requirements of the Convention will be of the same significance (i.e. some will have more impact than others)?

*Heghine:* The information I have added as a comment with respect to the legal indicator for Article 3(5) is a plain example highlighting the importance to give different weight to different measures based on their significance. To this end, I would recommend not to calculate at all the scores given for this indicator within the overall score of Article 3 and that for the total score of implementation of the Aarhus Convention. Rather, it might be more significant and visible to demonstrate scores describing implementation level of Article 3(5) separately. This could help to develop much targeted methodology for assessment of different elements of Article 3(5) and to classify (group) possible measures with similar weight.

### General provisions – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 3(2)[[25]](#footnote-26)  Art 3(3), second clause | 1. Level of assistance by officials and authorities to members and organisations of the public in exercising their rights under the Aarhus Convention. Governmental efforts promoting education and awareness-raising among the public specifically on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.   Art. 3(2) provides:  “Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.”  Art. 3(3), second clause, provides (underlined):  “Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.” | **Scoring Guide:**  1 = Fair  The government of the Republic of Armenia is not actively engaged in promoting the provisions of the Aarhus Convention. The capacity building activities are mainly carried out with the support of international organizations, such as OSCE, UNDP etc., and participation of public authorities in the capacity-building activities is to ensure engagement of all the stakeholders, and set up an environment of cooperation. An example of such initiative can be establishment of 15 Aarhus Centres[[26]](#footnote-27) covering all the administrative units of Armenia. They are introduced to promote implementation of and strengthen the capacity in implementing Aarhus Convention principles. The centres were established by the financial-technical support of OSCE and the offices were provided by the local administrative authorities.  Another example of units established with support of international organizations is the Environmental Law Resource Center of Yerevan State University (established in 2008) which provides trainings, professional consulting and assistance to the civil society on the three pillars of the Aarhus Convention.  However, the Ministry of nature protection and other relevant authorities are not directly engaged in the promotional activities.  Even though the web pages of ministries, including Ministry of nature protection, has been restructured recently, governmental authorities are not engaged in regular training, and do not disseminate guidance documents, circulars. Additionally, the dominant, if not the only method used to inform public about the hearings on proposed activities is the web page of the Ministry of nature protection and there is no general use of electronic mailing, phone, Facebook etc. by environmental authorities for enhancing public participation. During the recent years, except for the discussions on the National Implementation Report of the provisions of Aarhus Convention, there has been no active engagement of the Ministry of nature protection in developing guides, manuals, easy to understand descriptions of public participation available to members and organisations of the public.  Based on this I score this indicator 1 = Fair. |
| Art. 3(3), first clause | 1. Governmental efforts concerning, as a general matter, promoting environmental education and awareness raising among the public[[27]](#footnote-28)   Art. 3(3), first clause, provides (underlined):  “Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.” | **Scoring guide**  **2 = Good**  General environmental education in Armenia is provided in all the levels of education-primary schools, secondary schools, higher school, undergraduate and post-graduate studies.  Environmental education and awareness raising is supported by the Ministry of education of Armenia, by the Yerevan State University and as well as other educational institutions in the country.  Non-governmental organizations are permanently organizing environmental summer schools and clean up campaigns, open schools etc. An example of such activities can be the summer schools organized as part of the country-wide environmental educational programs of Sunchild eco-clubs[[28]](#footnote-29).  Ministry of education and environmental protection are in constant cooperation to organize and improve environmental education in secondary and primary schools. The main issue is that the environmental education campaigns are carried out by the member of civil society.  Another example of units established with support of international organizations is the Environmental Law Resource Center of Yerevan State University (established in 2008) which provides trainings, professional consulting and assistance to the civil society on the three pillars of the Aarhus Convention.  Based on the general overview of the situation I score the indicators 2 = Good. |
| Art. 3(4) | 1. Governmental efforts to provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection   Art. 3(4) provides:  “Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.” | **Scoring guide**  **1 = Fair**  As it has been mentioned in the relevant part of legal indicator, there are no legal –practical barriers in Armenia for establishing a non-governmental organization. In the state-NGO interaction there is no evidence of intervention of public authorities in the work of NGOs. The dialogue between the NGO-s and pubic authorities cannot be described as cooperative since environmental governance authorities are not always open to discuss all the issues raised by the NGO sector. Additionally, the main source of financial support of NGOs remains grants and other financial support mechanisms provided by the international organizations, banks and other foreign investment institutions. The direct financing of environmental NGOs from state budget is a rare practice. There is an issue also with a discriminatory involvement of NGOs in programs which require direct involvement also of public authorities. There are cases when the public officials of the Ministries are establishing NGOs and then through these organizations (run mostly by the family members of a public official) are applying for the projects financed by international organizations or other institutions etc. The informational advantage and the connections this organizations with governmental institutions provide them dominant position among the competitors in the pool of project proposals and hence to the acceptance of these projects by the donor organizations. Such practices are very common and they lead to a considerable decline of awareness raising and other environmental protection campaigns and programs. There is a need for a regulation of affiliations in this respect and increase of transparency of the work of governmental authorities and certain non-governmental organizations.  Having in regard the above, I score this indicator1 = Fair |
| Art. 3(5) | 1. In practice, does the Party provide for broader access to information, more extensive public participation in decision-making or wider access to justice in environmental matters than is required by the Convention?   Article 3(5) provides:  “5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.” | **Scoring Guide:**  **1 = Rarely**  See the substantiation provided under the legal indicator for this respective provision. |
| Art. 3(7) | 1. In practice, how is the government’s performance in terms of promoting the application of the principles of the Aarhus Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment?   Art. 3(7) provides:  “Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.” | **Scoring guide**  0 = Poor or non-existent  See the justification provided under the legal indicator for this respective provision. |
| Art. 3(8) | 1. The performance of the Party in terms of ensuring that persons exercising their rights in conformity with the provisions of the Aarhus Convention are not penalized, persecuted or harassed by State organisations or by third persons in any way for their involvement   Art. 3(8) provides:  “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.” | **Scoring guide**  **2 = Good**  No such cases of harassment and persecutions have been identified as a result of my research. There has been no strategic lawsuits against public participation. However, the overall situation with the exercise of the right of participation is not always smooth. There has been occasions when the public was not allowed to participate or restrictive practices were applied to create obstacles on the way of public participation (such as provisions of inadequate information, restriction of cameras and other video-audio recording tools etc.). The system of whistle-blower protection in Armenia is very weak or almost non-existent. As evidenced by an extensive research of anti-corruption expert Khachik Harutyunyan; “The legislative framework for the protection of whistleblowers is divided into two sections: public sector whistleblowers (whistleblowers who are public servants) and ordinary citizens. There is no special legislative framework for the protection of whistleblowers in the private sector. With respect to public servants, Armenian law stipulates that public servants in the course of conducting their own duties must inform respective public officials of violations and any other illegal activities, including activities, which relate to corruption. The same article stipulates that competent bodies must guarantee the security of those public servants who conscientiously informed on the activities stipulated under the law. In addition, a 2011 government decision regulates the order of guaranteeing security for those public servants who report to public officials and competent bodies regarding violations and other actions (including those which relate to corruption) of other servants. If the reported act is of a criminal nature then the public servant, as a member of the public, falls under the regime of general protection.[[29]](#footnote-30)”  Having in regard the above factors I score this indicator 2 = Good |
| Art. 3(9) | 1. Are there occurrences of discrimination against participants on the basis of citizenship, nationality or domicile or, in the case of a legal person, on the basis of where it has its registered seat or an effective centre of its activities?   Art. 3(9) provides:  “Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate  in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.” | **Scoring guide**  **3 = Never (insofar as aware)**  No cases of discrimination on the grounds of citizenship, nationality or domicile have been identified by me. The public is facing other obstacles on the way of exercising fully its procedural rights, however those obstacles augment to all the members of the public and, hence I do not include them as factors influencing this indicator.  For the above reason I score this indicator 3 = Never (insofar as aware) |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 3 practice indicators? Do you think that the “sample” approach (UNFCCC, UNEA) works well for the practice indicator for Article 3(7) or do you think that the areas of research should not be delimited in this way?

No additional comments.

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## II. Access to information pillar

### (a) Information on request – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 4(1)(a) | 1. How well has Art. 4(1)(a) been enacted?   Art. 4(1)(a) provides:  “1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:  **(a) Without an interest having to be stated;**  (b) In the form requested unless:  (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or  (ii) The information is already publicly available in another form.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  Article 9, paragraph 4 of the Law “On Freedom of information”[[30]](#footnote-31) (Law on FOI or FOI Law) states that the applicant is not requested to substantiate her request.  For this reason I score this indicator 3 = Enactment is fully in accord.  *“4. The applicant does not have to justify the inquiry.”*  *(FOI Law, Article 9, paragraph 4)* |
| Art. 4(1)(b) | 1. How well has Art. 4(1)(b) been enacted?   Art. 4(1)(b) provides:  “1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:  (a) Without an interest having to be stated;  **(b) In the form requested unless:**  **(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or**  **(ii) The information is already publicly available in another form.”** | **Scoring Guide:**  **3 = Enactment is fully in accord**  According to the Article 9, paragraph 8 of FOI Law;  “8. The answer to written inquiry is given on the material carrier mentioned in that application. If the material carrier is not mentioned and it is impossible to clarify that within the time limits foreseen by the following law, than the answer to the written inquiry is given by the material carrier that is the most suitable for the information holder.”  For this reason I score this indicator 3 = Enactment is fully in accord. |
| Art. 4(2) | 1. How well has Art. 4(2) been enacted?     “The environmental information referred to in paragraph 1 above [i.e. Art. 4(1)] shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.” | **Scoring Guide:**  3 = Enactment is fully in accord  According to the Article 9, paragraph 7 of FOI Law;  “7. The answer to written inquiry is given in the following deadlines:  a) If the information required by the written inquiry is not publicized, than the copy of that information is given to the applicant within 5 days after the application is filed.  b) If the information required by the written inquiry is publicized, than information on the means, place and time framework of that publication is given within 5 days after the application is filed.  c) If additional work is needed to provide the information required, than the information is given to the applicant within 30 days after the application is filed, about which a written notice is being provided within 5 days after the application submission, highlighting the reasons for delay and the final deadline when the information will be provided.”  For this reason I score this indicator 3 = Enactment is fully in accord. |
| Art. 4(3)(a) and 4(5) | 1. How well have Art. 4(3)(a) and 4(5) been enacted?   Art. 4(3)(a) provides:  “A request for environmental information may be refused if:   1. The public authority to which the request is addressed does not hold the environmental information requested;”   Art. 4(5) provides:  “Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.” | **Scoring Guide:**  3 = Enactment is fully in accord  According to the Article 8, paragraph 11 of FOI Law;  “11. 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.”  Though it provides only one possibility, however having in regard the wording of this paragraph, I still considered the law to be in full accord with the Convention, thus scored it 3 = Enactment is fully in accord. |
| Art. 4(3)(b) | 1. How well has Art. 4(3)(b) been enacted?   Art. 4(3)(b) provides:  “A request for environmental information may be refused if:  (b) The request is manifestly unreasonable or formulated in too general a manner;” | **Scoring Guide:**  **3 =** Enactment that goes beyond than required  The legislation of Armenia provides a framework that is consistent with this provision, even though it does not use the same language. If the request for information is formulated in too general manner then a public authority is still obliged to respond to it and provide an answer since FOI does not grant public authorities with a power of refusal based on such exception. In fact, this situation can be clarified as to be narrower exception than the convention provision. For the second part of the clause- manifestly unreasonableness- then Article 8, paragraph 10 FOI Law is applicable; “10. If the information holder does not possess the information sought…than within 5 days after the written inquiry is filed, it shall inform the applicant about that in a written form…”. In other words, the national legislation maintains narrower grounds for refusal, thus ensuring wider access to information.  Based on the above rules I score this indicator 3 = Enactment that goes beyond than required |
| Art. 4(3)(c) | 1. How well has Art. 4(3)(c) been enacted?   Art. 4(3)(c) provides:  “A request for environmental information may be refused if:  (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.” | **Scoring Guide:**  **0= No enactment**  The FOI Law has no provisions on how the authorities need to proceed if the request concerns material in the course of completion. Perhaps in practice in the current situations the public authorities refuse provision of information on the grounds on unavailability. With respect to the internal communications of public authorities, it is subject to disclosure unless it is a state secret and falls outside the scope of environmental information.  It is important to note also that neither national legislation nor case law establish a legal rule to ensure that “public interest test” is conducted before decision about disclosure or non-disclosure is made.  Having in regard the above regulatory scope I score this indicator **0= No enactment** |
| Art. 4(4)(a) | 1. How well has Art. 4(4)(a) been enacted?   Art. 4(4)(a) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  **2 = Enactment is fully in accord**    According to the Article 8, paragraph 1, subparagraph 1) of FOI Law;  “1. Information holder, with the exception of cases defined in the 3rd clause of the proceeding Article, refuses to provide information if: 1). contains state, official, bank or trade secret;”.  The ‘proceedings of public authorities” can fall either under “state” or “official” secrets. Otherwise, the information on proceedings of public authorities is subject to disclosure.  Having in regard the above regulatory scope I score this indicator 2 = Enactment is fully in accord |
| Art. 4(4)(b) | 1. How well has Art. 4(4)(b) been enacted?   Art. 4(4)(b) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (b) International relations, national defence or public security;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  **0—Errors that are more than minor**  For the current exception of the Convention the same rules of According to the Article 8, paragraph 1, subparagraph 1) of FOI Law;  “1. Information holder, with the exception of cases defined in the 3rd clause of the proceeding Article, refuses to provide information if: 1). contains state, official, bank or trade secret;”.  The data that can be classified as international relations, national defence or public security fall under the broad definition of “state secrets”. According to the Article 2 of RA Law on State and Official Secret; “Those data in the field of military, foreign affairs, economic, scientific-technical, intelligence, counter-intelligence activities qualify as state secret of the Republic of Armenia, which are protected by the state, and the spread of which can cause serious consequences for Armenia's security.”. However, the issue of public security is not very clearly detailed by the above regulatory framework”. This means that there is a certain legal uncertainty on the side of applicants since they are not clear about the possible grounds of refusal, at least of the its legal criteria.  Having in regard the above regulatory scope, I score this indicator 2 = Enactment is fully in accord. |
| Art. 4(4)(c) | 1. How well has Art. 4(4)(c) been enacted?   Art. 4(4)(c) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  1= Minor errors  According to the Article 8, paragraph, subparagraph 3) of the FOI Law; “1. Information holder, with the exception of cases defined in the 3rd clause of the proceeding Article, refuses to provide information if: 3) it contains pre-investigation data not subject to publicity;”. The protection of data in the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry is regulated by the procedural legislation of Armenia. For example the Chapter 23 of the Criminal Code stipulates all the provisions related to the protection of the privacy, commercial and other types of data protection not subject to disclosure in the course of investigation.  Having in regard the above regulatory scope, I score this indicator 1= Minor errors |
| Art. 4(4)(d) | 1. How well has Art. 4(4)(d) been enacted?   Art. 4(4)(d) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  **1= Minor errors**  According to the Article 8, paragraph, subparagraph 1) of the FOI Law; “1. Information holder, with the exception of cases defined in the 3rd clause of the proceeding Article, refuses to provide information if: 1) it contains state, official, bank or **commercial secret;”** The legislation is silent with respect to theinformation on emissions, therefore I score this indicator 1= Minor errors\*.  1=Minor errors  While the FOI Law does not mention literally that information on emissions cannot be exempted from disclosure, Article 8, paragraph 3 envisages 2 provisions which for a majority of cases might be interpreted to include information on emissions, thus making it subject to disclosure regardless of it being classified information. However, there is no evidence of such an interpretation in case law. As for the information supplied by the public authority, whenever the requested information is disclosed, it is not accompanied with an explanatory note about “public interest test” conducted. Hence, it is difficult to bring any evidence.  Article 8. Limitations on Freedom of Information  3. Information request cannot be declined, if:  a. it concerns urgent cases threatening public security and health, as well as natural disasters (including officially forecasted ones) and their aftermaths;  b. it presents the overall economic situation of the Republic of Armenia, as well as the real situation in the spheres of nature and environment protection, health, education, agriculture, trade and culture.  \*Important to note that while evaluating the legal indicators, I have not taken into consideration Article 6 of the Constitution of Armenia that recognizes the international treaties, in this particular case Aarhus Convention, as part of national legal system. This simply means that public can invoke the provisions of the Aarhus Convention directly when formulating their requests or challenging the decisions of public authorities. However, relying on the practice of direct enactment of the provisions of international treaties in the legal system of Armenia, I conclude that incorporation of the provisions of international treaties into national legislation has a strong influence on whether the objectives of the former ones will be achieved by the national legal system.  Having in regard the above regulatory scope, I score this indicator 1= Minor errors. |
| W  Art. 4(4)(e) | 1. How well has Art. 4(4)(e) been enacted?   Art. 4(4)(e) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (e) Intellectual property rights;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  **2 = Enactment is fully in accord**  According to the Article 8, paragraph, subparagraph 5) of the FOI Law; “1. Information holder, with the exception of cases defined in the 3rd clause of the proceeding Article, refuses to provide information if: 5) it infringes copy right and associated rights (*together qualify as intellectual property rights-clarification Gor Movses*).”  Having in regard the above regulatory scope, I score this indicator 2 = Enactment is fully in accord. |
| Art. 4(4)(f) | 1. How well has Art. 4(4)(f) been enacted?   Art. 4(4)(f) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  **2 = Enactment is fully in accord**  According to the Article 8, paragraph, subparagraph 2) of the FOI Law; “1. Information holder, with the exception of cases defined in the 3rd clause of the proceeding Article, refuses to provide information if: 2) infringes the privacy of a person and his family, including the privacy of correspondence, telephone conversations, post, telegraph and other transmissions;”.  Having in regard the above regulatory scope, I score this indicator 2 = Enactment is fully in accord. |
| Art. 4(4)(g) | 1. How well has Art. 4(4)(g) been enacted?   Art. 4(4)(g) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal  obligation to do so, and where that party does not consent to the release of the material;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  **0 = Errors that are more than minor**  I have not been able to identify such clause in the relevant legislation of Armenia. |
| Art. 4(4)(h) | 1. How well has Art. 4(4)(h) been enacted?   Art. 4(4)(h) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (h) The environment to which the information relates, such as the breeding sites of rare species.  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  0 = Errors that are more than minor  I have not been able to identify such clause in the relevant legislation of Armenia. |
| N/A | 1. Does the law provide for any situations in which a request for environmental information may be refused which are not contemplated by Art. 4(3) or 4(4) of the Aarhus Convention? | **Scoring Guide:**  0 = Yes  According to the Article 8, paragraph, and subparagraph 4) of the FOI Law; “1. Information holder, with the exception of cases defined in the 3rd clause of the proceeding Article, refuses to provide information if: 4) discloses data that require accessibility limitation, conditioned by professional activity (medical, notary, attorney secrets). |
| Art. 4(6) | 1. How well has Art. 4(6) been enacted?   Art. 4(6) provides:  “Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above [i.e. Art. 4(3)(c) and 4(4)] can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  According to the Article 8, paragraph 2; “2. If a part of the information required contains data, the disclosure of which is subject to denial, than information is provided concerning the other part.”.  Having in regard this I score this indicator 3 = Enactment is fully in accord. |
| Art. 4(7), first sentence | 1. How well has the first sentence of Art. 4(7) been enacted?   The first sentence of Art. 4(7) provides:  “A refusal of a request shall be in writing if the request was in writing or the applicant so requests.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  According to the Article 11, paragraph 3; 3. “In case of declining a written information request, information holder inform the applicant about it within 5 days **in a written form**, by mentioning the ground for the refusal (relevant norm of the law), time frame within which the decision of refusal was made, as well as the relevant appealing procedure.”  Having in regard this I score this indicator 3 = Enactment is fully in accord. |
| Art. 4(7), second sentence | 1. How well has the second sentence of Art. 4(7) been enacted?   The second sentence of Art. 4(7) provides:  “A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9.” | **Scoring Guide:**  3 = Enactment is fully in accord  According to the Article 11, paragraph 3; 3. “In case of declining a written information request, information holder inform the applicant about it within 5 days in a written form, by mentioning the **ground for the refusal** (relevant norm of the law), time frame within which the decision of refusal was made, as well as the relevant appealing procedure.”  Having in regard this I score this indicator 3 = Enactment is fully in accord. |
| Art. 4(7), third and fourth sentences | 1. How well have the third and fourth sentences of Art. 4(7) been enacted?   The third and fourth sentences of Art. 4(7) provide:  “The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it. | **Scoring Guide:**  3 = Enactment is fully in accord  According to the Article 11, paragraph 3; 3. “In case of declining a written information request, information holder inform the applicant about it **within 5 days** in a written form, by mentioning the ground for the refusal (relevant norm of the law), time frame within which the decision of refusal was made, as well as the relevant appealing procedure.”  Having in regard this I score this indicator 3 = Enactment is fully in accord. |
| Art. 4(8) | 1. How well has Art. 4(8) been enacted?   Art. 4(8) provides:  “Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount.  Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.” | **Scoring Guide:**  1 = Errors that are more than minor  According to the Article 10 of FOI Law; “1. Providing information or its copy by public authorities and local self-government bodies, as well as state organizations and institutions is shall be provided according to the Government Regulation of the Republic of Armenia.  2. A payment for the release of information by the authorities defined in the 1st clause of the current Article is not paid in the following cases:  a) response to oral inquiries;  b) for up to 10 pages of printed or copied information;  c) for information via e-mail (internet);  d) responding the written information inquiries  mentioned in the 2nd clause of the Article 7;  e) providing information about the changes of the deadline in the cases foreseen by the 7c sub clause and 10th clause of the Article 9;  f) declining the information request.  3. The organizations of public importance decide themselves the cost to be paid for information, which cannot exceed the costs of providing that information.  4. Body or organization that has provided untruthful or incomplete information shall provide corrected information free of charge, as defined by this law, upon the written inquiry of the receiving party.” The legal framework has a gap since it doesn’t require making a schedule of charges available to the applicant.  In addition to the fully compliant regulation under the FOI law described by the researcher, Article 73 of the Law of RA “On State Registration of Rights on Property” (<http://www.arlis.am/DocumentView.aspx?DocID=107121>) establishes rather high costs for supplying maps and sketches in vector format held by State Committee of Real Estate Cadaster Committee would cost 2000AMD and 1000AMD per 1 hectare respectively for cities and villages (1000AMD≈2EUR). There are no discounts applied for environmental NGOs or other non-profit organizations. These rates are established in This information is of particular interest for NGOs in terms of land allocated for construction as well as green massive within the settlements.  Having in regard this I score this indicator 1 = Errors that are more than minor |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 4 legal indicators? Do you agree with our approach to Art. 4(3)(a)-(c) and 4(4)(a)-(h) where we have provided that the highest score of 3 should be obtained by Parties which have enacted an exception that is narrower than the Convention provision? If you agree with this approach in general, do you agree with it in respect of all of the exceptions in question (e.g. including Art. 4(4)(h) which relates to disclosures which would adversely affect the environment to which the information relates)? Finally, what score do you think should be obtained by a Party in respect of the exceptions mentioned in Art. 4(3)(a)-(c) and 4(4)(a)-(h) where the country has not enacted the exception *at all*? Again, does your answer differ according to the exception in question (e.g. Art. 4(4)(h) may again be considered an interesting case in point, amongst others)?

It is very much welcomed that the index takes a step further and somehow “appreciates” the effort of those parties who went beyond the minimum standard of the Convention. However, such approach very much depends on the purpose this exercise aims at. If the index has the purpose to inspire the Parties to strive for better performance, then approach of assigning highest score of 3 to the Parties which have enacted an exception that is narrower than the Convention provision seems to be justified. Otherwise, it may perhaps require additional clarification why the standards has been put over the minimum threshold of the Aarhus Convention, hence how such threshold delivers a right message in terms of the interplay between the performance of certain countries and the provisions of Aarhus Convention.

It is important to note that Environmental Law Research Centre of Yerevan State University is currently implementing a project aimed to develop a separate legal framework concerning the implementation of the pillar of access to information. Among others a legislative act will be developed solely devoted to the access to environmental information.

### Information on request – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 4(1) | 1. As a general matter, how good has the Party’s performance been in practice in terms of ensuring access to environmental information in accordance with Art. 4(1)?   Art. 4(1) provides:  “1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:  (a) Without an interest having to be stated;  (b) In the form requested unless:  (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or  (ii) The information is already publicly available in another form.” | **Scoring guide**  **1 = Fair**  The evaluation of the practice indicators in this section are based on the overview of the all major sources of environmental information of Armenia, available statistical data, as well as interview of the non-governmental organizations in Armenia (one in Capital Yerevan, and the other two in the regions) concerning their experience of accessing environmental information.  When evaluating this general provisions implementation in Armenia I have taken into consideration the following factors;  1) Limited capacity of the Ministry of nature protection and other relevant authorities to generate environmental information (mostly through monitoring of water resources and atmospheric air)[[31]](#footnote-32), because of the insufficient technical capacity of the Ministry of nature protection, the ongoing rehabilitation of the system of environmental monitoring collapsed after the Soviet Union.  2) Availability of general information on the overall requests submitted to the Ministry of nature protection but not the availability of statistics on information requests and servicing, including research and analyses and measures taken based on them;  3) In fact the main source of information for the Ministry of nature protection are the quarterly and half –year administrative statistical reports submitted by the polluters or users of natural resources, which casts doubt on the reliability of such information since in majority of cases ministry of nature protection is not cross-checking the available data.  4) The statistical data provide information on very limited indicators. For example in case of emissions to air, information available covers the total amount of emissions and the types of pollutant emitted. No information is available on the facility level-which facilities emit what type of pollutants, methodologies applied for the calculations of emissions (though they can be found separately as a guidance for submission of statistical data or administrative statistical reports). The same applies to water resources: available statistical data cover only emission of hazardous substances, captured hazardous substances, water abstraction and water consumption[[32]](#footnote-33).  5) There are not that many efforts put forward to make emission data user-friendly or explain the meaning of those data in a publicly attainable way.  6) Within the system of Ministry of nature protection an information-analytical centre operates in charge for processing and disseminating via web page information generated by different agencies. There is also an administrative unit named “Information and public relation department” that is in charge of mostly for the public relations of the Ministry.  7) As evidenced by the experience of non-governmental organizations, in some cases different branches of the public authorities are not aware about the availability of certain information since the flow of the information within the public authorities is not smooth and well established. There are no information systems, databases, except for the ones used for administrative purposes.  Having in regard the above I score this indicator 1 = Fair. |
| Art. 4(2)  First sentence | 1. In practice, how good is the Party’s performance in terms of complying with the first sentence of Art. 4(2)     “**The environmental information referred to in paragraph 1 above [i.e. Art. 4(1)] shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request.** The applicant shall be informed of any extension and of the reasons justifying it.” | **Scoring guide**  **3 = Excellent (provision of information either immediately or in considerably less than one month is typical)**  There is no statistical data available on the number of environmental information request submitted to the Ministry of nature protection (MNP) and other ministries. As the web page of MNP states for example; “In the year of 2015 natural and legal entities submitted to the MNP 3402 applications (including various types of applications for permits or licenses), of which in written form 2546, and 856 in electronic form or 25.2% of the total number.” However based on the experience of NGOs who within last 4 years have been actively seeking environmental information, the MNP very strictly followed the deadlines set by the law, and if the they were not able to provide information within 5 days then the NGOs were informed about the delay, the reasons behind and the final answer was provided within 30 days.  According to the “Freedom of Information Centre” NGO analytics during 2015 the Ministry of nature protection had no requests that were left unanswered[[33]](#footnote-34).  Having in regard the above I score this indicator 3 = Excellent |
| Art. 4(2)  Second sentence | 1. In practice, how good is the Party’s performance in terms of complying with the second sentence of Art. 4(2)     “The environmental information referred to in paragraph 1 above [i.e. Art. 4(1)] shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. **The applicant shall be informed of any extension and of the reasons justifying it.”** | **Scoring guide**  **3 = Excellent (applicants always or almost always informed of the extension and reasons, and the reasons cited always or almost always fall within those permissible under Art. 4(2))**  I score this indicator 3 = Excellent based on the justification provided above. |
| Art. 4(3)(a) and 4(5) | 1. Where a public authority does not hold the environmental information requested, do public authorities inform the requester promptly about the believed correct location of the information, or forward the request to the authority that may have the information, informing the applicant accordingly?   Art. 4(3)(a) provides:  “A request for environmental information may be refused if:   1. The public authority to which the request is addressed does not hold the environmental information requested;”   Art. 4(5) provides:  “Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.” | **Scoring Guide:**  **3 = Yes, always**  The practice when public authority informs the applicant (usually maximum in 5 days) of the public authority to which it believes it is possible to apply for the information requested is widespread, however the public authorities rarely transfer the request to that authority that they believe owes such information. The latter is not an obligation under the FOI law, as stated in the relevant legal indicator by the law.  However, based on the experience of NGOs interviewed and my observations the ministries do inform the applicants always about the public authority to which it believes it is possible to apply for the information requested.  Having in regard the above I score this indicator 3 = Excellent |
| Art. 4(3)(b) and (c) | 1. In practice, how are these exemptions from the right to information on request typically interpreted?   Article 4(3) provides:  “(3) A request for environmental information may be refused if:  (b) The request is manifestly unreasonable or formulated in too general a manner;  (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.” | **Scoring Guide:**  **1 = Article 4(3)(b) and (c) are not interpreted restrictively in practice but in the case of Art. 4(3)(c)) the public interest served by disclosure is typically taken into account.**  As stated under the legal indicators there is no such exemption in law for the materials in the course of preparation, however there is an exemption for the internal communication though not explicitly stated in law but widely applied in practice. Art. 4(3)(b) and (c) are not interpreted restrictively but the public interest is taken in some occasions into account. The external reviewer Heghine Hakhverdyan interviewed 2 NGOs and the Ministry of Nature Protection about their experience as to whether public authorities conduct weighing of public interest (public interest test) before making a decision about disclosure or non-disclosure of the information.  Both NGOs mentioned that the fact of weighing of public interest in disclosure of environmental information has never been documented in the response (containing the requested information) by the public authorities. The representative of the Ministry of Nature Protection of RA stated that while in certain cases “public interest test” is conducted, respective considerations for disclosure and the fact of the test conducted are not mentioned in the response.  Based on the limited information available I practice about these grounds of refusal, mostly because of absence of clear legal regulation, I score this indicator 1=…. |
| Art. 4(4) | 1. In practice, how are these exemptions from the right to information on request typically interpreted?   Art. 4(4) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;  (b) International relations, national defence or public security;  (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;  (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;  (e) Intellectual property rights;  (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;  (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal  obligation to do so, and where that party does not consent to the release of the material;  (h) The environment to which the information relates, such as the breeding sites of rare species.  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  **1 = EITHER not restrictively, OR the authorities do not always or almost always take into account the public interest served by disclosure OR if the information requested relates to emissions into the environment.**  There is no restrictive interpretation of this provision in practice. There have been no evaluations conducted so far assessing how the public interest has been taken into consideration when making a decision on disclosure. Having in regard the objective restrictions the public authorities are facing in building systems of environmental information generation, where such information is not obtained by public authorities then it automatically leads to non-provision. No account is given also to the issue of emissions. Additionally, the economic development interests have been dominating the overall policy discussions in the country and in some circumstances private actors have received “over-protection” undermining the public interest. In overall, there has been a very textual interpretation of the respective provisions of FOI law.  Based on this I score the current indicator as 1 = EITHER not restrictively… |
| N/A | 1. In practice, are requests for environmental information refused on grounds which are not contemplated by Art. 4(3) or 4(4) of the Aarhus Convention? | **Scoring Guide:**  **3 = No**  As far as it is has been identified by me information refusals are almost always substantiated by the reference to the relevant legal provisions. Another thing is that the applicant is not satisfied with the legal substantiation which later can be appealed via administrative or judicial mechanisms. |
| Art. 4(6) | 1. In practice, do the relevant authorities separate out information exempted from disclosure from other information (known as partial disclosure or severance)?   Art. 4(6) provides:  “Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above [i.e. Art. 4(3)(c) and 4(4)] can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.” | **Scoring Guide:**  3 = Yes, always  As it is required by the legislation, and evidenced by my inquiries into various sources (i.e. various articles on the web page of www.ecolur.org), responses of the three NGOs interviews under all the cases observed where necessary relevant authorities separate out information exempted from disclosure from other information. |
| Art. 4(7) | 1. Are instances of refusal provided (i) in writing (if request was in writing or applicant requests), (ii) within the prescribed time frames, (iii) with reference to the reasons for refusal and (iv) with information on access to the review procedure provided under article 9?   Art. 4(7) provides:  “A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.” | **Scoring Guide:**  **2 = All four criteria are met in the majority of cases**  This criterion is met in the majority of cases. However, there are certain issues when the authority gives a very vague substantiation when refusing the request or there is a reference to the web pages or other sources when information is available. There has been even a case when one of the NGOs interviewed was asked to send its member to the Ministry and process the information and take whatever is available.  Having in regard that not always the objective of this provision is achieved, I score this indicator 2 = All four criteria are met in the majority of cases. |
| Art. 4(8) | 1. Are any charges that public authorities make for supplying information reasonable and is a schedule of any such charges made available to applicants in advance, indicating the circumstances in which they be levied or waived and when advance payment is required?   Art. 4(8) provides:  “Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount.  Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.” | **Scoring Guide:**  2 = In the majority of cases, authorities either do not charge or charge no more than a reasonable amount and a schedule of any such charges is made available in advance.  There has been no general public discontent with respect to the charges applied. In the majority of cases the information provided is not exceeding ten pages; hence no charge at all is applied. According to the index of FOI centre for 2016 the Ministry of nature protection scored affirmative for complying with the requirement of law to charge a reasonable amount for provisions of information (an amount that is deemed necessary for the materials used for provision of information).  It is important to mention about concerns raised by NGOs (documented in the IV NIR of Armenia – available at <http://www.unece.org/env/pp/reports_trc_implementation_2014.html>) that maps and sketches held by State Committee of Real Estate Cadaster Committee if requested in vector format would cost 2000AMD and 1000AMD per 1 hectare respectively for cities and villages (1000AMD≈2EUR). There are no discounts applied for environmental NGOs or other non-profit organizations. These rates are established in Article 73 of the Law of RA “On State Registration of Rights on Property” (<http://www.arlis.am/DocumentView.aspx?DocID=107121>). This information is of particular interest for NGOs in terms of land allocated for construction as well as green massive within the settlements.  As NGOs mention these costs exceed the actual sum required for preparation of the requested information.  Having in regard the above I score this indicator 3 =… |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 4 practice indicators? Do you think Article 4(1) should be divided into two practice indicators (one for Art. 4(1)(a) and one for 4(1)(b)), as was the case with the legal indicators?

The information provided in this section is mainly based on the index of FOI centres, interviews conducted with three NGOs, my inquiries into the various web pages of the ministries ([www.mnp.am](http://www.mnp.am), [www.moj.am](http://www.moj.am), [www.mineregy.am](http://www.mineregy.am), [www.minagro.am](http://www.minagro.am), [www.ecolur.org](http://www.ecolur.org), [www.armstat.am](http://www.armstat.am), [www.elrc.ysu](http://www.elrc.ysu)). There are no statistical data available in Armenia on the state of access to environmental information by public and collection and active dissemination of information.

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### (b) Collection and active dissemination of information – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
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| Art. 5(1)(a) | 1. How well has Art. 5(1)(a) been enacted?   Art. 5(1)(a) provides:  “1. Each Party shall ensure that:  (a) Public authorities possess and update environmental information which is relevant to their functions;” | **Scoring Guide:**  1 = Errors that are more than minor  There is no regulatory framework that specifically and directly obliges the authorities dealing with environment to possess and update information relevant to their functions. Only the Article 7, paragraph 3 of the Law on FOI requires public information “…holders at least once a year publicize the following information related to his activity and or changes to it,  a) activities and services provided (to be provided) to public;  b) budget; c) forms for written enquiries and the instructions for filling those in; d) lists of personnel, as well as name, last name, education, profession, position, salary rate, business phone numbers and e-mails of officers; e) recruitment procedures and vacancies; f) influence on environment; g) public events’ program; h) procedures, day, time and place for accepting citizens; i) policy of cost creation and costs in the sphere of work and services; j) list of held (maintained) information and the procedures of providing it; j 1. Statistical and complete data on inquiries received, including grounds for refusal to provide information; j 2. Sources of elaboration or obtainment of information mentioned in this clause; j 3. Information on person entitled to clarify the information defined in this clause.”. According to the data of the Centre of FOI the Ministry of nature protection in 2016 has not fulfilled the requirements of this provision[[34]](#footnote-35). As it has been evidenced under the legal indicators of the same pillar there are considerable issue with respect to collection of information on pollutants at the source, as well as the capacity of the Ministry of nature protection to cross-check the information submitted to it. Additionally, not always information available to the ministry is processed and made available on the web pages of relevant ministries. The annual reports issued by the Ministries sometimes are the only source for obtaining such information. Having in regard the above I score this indictor as 1 = Errors that are more than minor. |
| Art. 5(1)(b) | 1. How well has Art. 5(1)(b) been enacted?   Art. 5(1)(b) provides:  “1. Each Party shall ensure that:  (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing  activities which may significantly affect the environment;” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such mandatory system has been established. |
| Art. 5(1)(c) | 1. How well has Art. 5(1)(c) been enacted?   Art. 5(1)(c) provides:  “1. Each Party shall ensure that:    (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  The relevant provisions are stipulated in the Law “On protection of population in emergency situations”. It is the obligation of the Government and the Ministry of emergency situations to inform the public as promptly as possible about the emergency situations so the public would be able to act promptly (Articles 12, 13).  Article 7, paragraph 2 of the FOI law states the following “2. Information holder urgently publicizes or via other accessible means informs the public about the information that he has, the publication of which can prevent dangers facing state and public security, public order, public health and morals, others’ rights and freedoms, environment, person’s property.”  Additionally, the Law of RA “On Protection of the Population in Emergency Situations” (02 Dec 1998)[[35]](#footnote-36) sets up relevant functions of executive bodies at central and local levels and local self-governance bodies on notifying the public in emergency situations. In addition, certain obligations are envisaged for industrial companies (part of emergency preparedness thereof) in terms of disseminating information to the public (Articles 13, 15-17).  Having in regard the above I score this indicator 3 = Enactment is fully in accord. |
| Art. 5(2)(a) | 1. How well has Art. 5(2)(a) been enacted?   Art. 5(2)(a) provides:  2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental  information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:  (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities,  the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;” | **Scoring Guide:**  3 = Enactment is fully in accord  According to the Article 7, paragraph 1 of the FOI Law “1. Information holder works out and publicizes the procedures according to which information is provided on its part, as defined by legislation, which he places in his office space, available for everyone”. The procedure that the law refers to includes in practice all the conditions stipulated by the respective paragraph of the Aarhus Convention.  Having in regard the above I score this indicator 3 = Enactment is fully in accord. |
| Art. 5(2)(b) and (c) | 1. How well has Art. 5(2)(b) and (c) been enacted?   Art. 5(2)(b) and (c) provide:  “2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental  information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:  (b) 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; and  (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge.” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such requirements have been enacted under the Armenian legislation. |
| Art. 5(3) | 1. How well has Art. 5(3) been enacted?   “3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:  (a) Reports on the state of the environment, as referred to in paragraph 4 below;  (b) Texts of legislation on or relating to the environment;  (c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements;  (d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing the Convention, provided that such information is already available in electronic form.” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such requirements have been enacted under the Armenian legislation. However, in practice some parts of such information are made available. |
| Art. 5(4) | 1. How well has Art. 5(4) been enacted?   Art. 5(4) provides:  “4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such requirements have been enacted under the Armenian legislation. However, in practice some parts of such information are made available. |
| Art. 5(5) | 1. How well has Art. 5(5) been enacted?   Art. 5(5) provides:  “5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating, inter alia:  (a) Legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to the environment, and  progress reports on their implementation, prepared at various levels of government;  (b) International treaties, conventions and agreements on environmental issues; and  (c) Other significant international documents on environmental issues, as appropriate.” | **Scoring Guide:**  **2 = Minor errors**  Chapter 6 of the Law “On the legal acts” is completely devoted to the publication of the legal acts of Armenia, including international treaties. However, the law is clear only about those policy documents which are enacted in the form of governmental decision and other legally binding acts. If not, then there is no legal requirement for their publication, though it can still be done voluntarily. Also there is no legal requirement to disseminate other significant international documents on environmental issues.  Having in regard the above framework I score this indicator 2 = Minor errors. |
| Art. 5(6) | 1. How well has Art. 5(6) been enacted?   Art. 5(6) provides:  “6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such requirements have been enacted under the Armenian legislation. |
| Art. 5(7)(a) | 1. How well has Art. 5(7) been enacted?   Art. 5(7)(a) provides:  “7. Each Party shall:  (a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such requirements have been enacted under the Armenian legislation. |
| Art. 5(7)(b) | 1. How well has Art. 5(7)(b) been enacted?   Art. 5(7)(b) provides:  “7. Each Party shall:  (b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention;” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such requirements have been enacted under the Armenian legislation. |
| Art. 5(7)(c) | 1. How well has Art. 5(7)(c) been enacted?   Art. 5(7)(c) provides:  “7. Each Party shall:  (c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels.” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such requirements have been enacted under the Armenian legislation. |
| Art. 5(8) | 1. How well has Art. 5(8) been enacted?   Art. 5(8) provides:  “8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such requirements have been enacted under the Armenian legislation. |
| Art. 5(9) | 1. How well has Art. 5(9) been enacted?   Art. 5(9) provides:  “9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such requirements have been enacted under the Armenian legislation. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 5 legal indicators?

In some cases there is no legislation enacted but in practice such information is provided. Even though these are two separate indicators the evaluation on pure legal provision may not always give a very clear overview of the picture. This of course will depend on the final form the indicators will be presented in.

### Collection and active dissemination of information – Practice indicators

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| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| Art. 5(1)(a)-(b) | 1. In practice, do public authorities possess and update environmental information which is relevant to their functions, and have mandatory systems been established that ensure the adequate flow of information to them.   Art. 5(1)(a)-(b) provides:  “1. Each Party shall ensure that:  (a) Public authorities possess and update environmental information which is relevant to their functions;  (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing  activities which may significantly affect the environment;” | **Scoring Guide:**  **1 = A minority of public authorities have established mandatory systems to ensure the adequate flow of information, and/or a minority of public authorities possess and update environmental information which is relevant to their function**  I am not aware of any mandatory system within the Ministry of nature protection that allows for adequate flow of environmental information. The system of e-governance established in the ministries is a tool to administrate the flow of documentations and the paper-work of the ministry which doesn’t deal with the substantive information generated as a result of execution of the functions of the ministries. It is only the Ministry of nature protection that possesses and updates what can be classified as environmental information. If the other authorities even generate such type of information, usually the aspects of such information that is being evaluated and presented does not account for the environmental matters. For example on the web page of the Ministry of energy infrastructures and nature resources one can find policy information about the prospects of development of wind power in Armenia[[36]](#footnote-37). The discussion of the policy is mainly concentrated on energy aspect of the matter, and no debate is evolving around the environmental factors of such initiative. Neither the ministry of nature protection is reflecting on this. In overall, cooperation among various public authorities on the question at the intersection of their functions is very low.  The main sources of information dissemination are currently the web pages of the Ministries which have been developed based on the same structural template and provide mostly administrative information. Of course non-availability of analytical, processed information concerning the different medias of environment through the web pages is simply because such analytical work is not carried out by the Ministries.  If we consider other factor then;   * No proper monitoring system for all environmental modalities is in place (ref.8, ref.9, ref.15) * The role of NGOs is not fully recognized, if at all. This is because NGOs themselves do not have sufficient capacity to generate reliable environmental information, with exception of few (i.e. WWF Armenia[[37]](#footnote-38) in the field of forests and biodiversity protection in specially protected natural areas) and there is a considerable level of mistrust between NGOs and public authorities, * the role of expert organisations and individual experts in environmental information systems is not recognized and such individuals are not attracted to the work of public authorities * participation in environmental information collection and processing by authorities other than environmental ones, such as water, health, minerals and tourism, general statistical office is encouraged but as we stated these practices are conducted separately from each other and not always the data are put together and analysed. * No exchange of and coordination between different data-bases is available except for the cases when certain public authorities are referring to the other with such request-internal communication.   One of the most progressive practices of the country is the systematic availability of EIA documentation and environmental permits on the web pages of the Ministries[[38]](#footnote-39). However, not always these documents can be considered as rich sources of information because of the scarcity of analysis and data included in such documents (more obvious in case of EIA conclusions).  Based on the above considerations I score this indicator 1 = … |
| Art. 5(1)(c) | 1. How effective in practice is the system of active dissemination in ‘imminent threat’ cases?   Art. 5(1)(c) provides:  “1. Each Party shall ensure that:    (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.” | **Scoring Guide:**  **1 = Practical measures have been taken so that in the event of any imminent threat to human health or the environment, information to assist the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority should be disseminated to members of the public who may be affected**  The key source, as in the previous cases for dissemination of such information is the web page of the Ministry of emergency situations[[39]](#footnote-40). We have not been able to identify;   * Active use of social media and Internet tools (e.g. websites, emails) to disseminate information in general and in emergency situations, in particular, * That the role and responsibilities of operators (i.e. polluters) with regard to informing the public is somehow made available, though I have been informed that certain mining organizations have all the emergency preparedness available at their disposal. * No activities are carried out to disseminate information on the risk-related information before (risk preparedness, forecasts etc.) and after (conclusions, liability etc.) emergency situations (ref.4)   Based on the above considerations I score this indicator 1 = … |
| Art. 5(2) | 1. In practice, has the government taken practical measures to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, in the manner envisaged by Art. 5(2)?   Art. 5(2) provides:  2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental  information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:  (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities,  the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;  (b) 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; and  (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge. | **Scoring Guide:**  **2 = Practical measures have been taken by the government which in most cases ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.**  Since there are certain limitations to what types of environmental information is generated because of the limitations discussed under the Art. 5(1)(a)-(b) and there has been no sophisticated and in-depth analysis of such information, the data provided by the statistical authorities and ministries is very limited and not always requires additional efforts to make it more accessible for the public. In other words, this provision of the Aarhus Convention is more relevant for those parties whose volume of and the level of sophistication of information, as well as variety of indicators under which such information is collected (such as under PRTR) is so broad and deep that it requires from authorities to simplify such information to make it more accessible for public.  However, by the development of web pages of and certain promotional activities by the ministries (particularly Ministry of nature protection ), as well as with participation of NGOs, Aarhus Centres, Environmental Law Research Centre of YSU the public is constantly being updated about the “hot” environmental issues and about the general state of the environment.  The situation with respect to information database is very vague, however it is possible to state the following :   * Almost non-existence of systematized national, regional or local level meta databases for environmental information, * There is growing practice use of geographic information systems in order to collect environmental information, particularly in the specially protected areas of nature, as evidenced by the Report of the Ministry of nature protection about the activities of the Ministry during the first half of the year[[40]](#footnote-41). * Non-existence of networks in connection with available environmental information sources (ref.3).   Based on the above considerations I score this indicator 2 = … |
| Art. 5(3) | 1. In practice, has the Party ensured that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks, including the information indicated in Art. 5(3)(a) to (d)?   Article 5(3) provides:  “3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:  (a) Reports on the state of the environment, as referred to in paragraph 4 below;  (b) Texts of legislation on or relating to the environment;  (c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements;  (d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law  implementing this Convention,  provided that such information is already available in electronic form.” | **Scoring Guide:**  2 = The Party has taken practical measures to ensure that the environmental information set out in Art. 5(3)(a)-(d) is progressively made available through electronic databases which are easily accessible to the public.  Within the existing objective limits, it is possible to state that the webpages of the ministries are “easily accessible”, though there can be more efforts taken to improve search tools and access to individual environmental cases. The information provided is mostly timely but not much is done to make it available with interactive support (e.g. monthly electronic newsletters, information helpdesks). As evidenced above there is electronic access to all the general type environmental documents such as plans, permits, reports and drafts of all legal acts. Some electronic access is provided to the environmental permitting and EIA data, as evidenced above.  No publicly available data is there about the number of the visitors to the relevant websites of ministries. Certain requirements of legislation, for example concerning the process of applying for environmental permitting are available in a consolidated format[[41]](#footnote-42). The problem however, is that such data is provided in a much unsystematised way.  Based on the above considerations I score this indicator 2 = … |
| Art. 5(4) | 1. Since joining the Aarhus Convention, has the Party published and disseminated a national report on the state of the environment at regular intervals not exceeding three or four years, including information on the quality of the environment and information on pressures on the environment?   Art. 5(4) provides:  “4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.” | **Scoring Guide:**  1 = Yes, every three or four years  Since the ratification of the Convention in 2001 Armenia has published three national reports on the state of environment;  1. The state of environment in Armenia (2002-available also in Russian),  2. Ministerial report 2003-2005,  3. Ministerial report 2007-2011.  Since 2011 no reports are available. |
| Art. 5(4) | 1. How would you rate the quality and breadth of dissemination of the state of environment reports? | **Scoring Guide:**  **2 = Both the quality of the report (which includes both information on the quality of, and pressures on, the environment) and the breadth of dissemination of the report are good.**  All the reports issued were quite holistic and systematized covering all environmental medias irrespective of their belongings to certain governmental authorities. On 120-130 pages such reports provided information on different medias of environment and issues of implementation of international environmental treaties of Armenia.  The reports were published in print and public discussions and presentations were organized.  Based on the above considerations I score this indicator 2 = … |
| Art. 5(5) | 1. In the past 5 years, has the government disseminated international and national environmental legislation and policy documents, as well as progress reports in respect of the implementation thereof?   Art. 5(5) provides:  “5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating, inter alia:  (a) Legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to the environment, and  progress reports on their implementation, prepared at various levels of government;  (b) International treaties, conventions and agreements on environmental issues; and  (c) Other significant international documents on environmental issues, as appropriate.” | **Scoring Guide:**  **2 = Yes, the majority of applicable international and national environmental legislation and policy documents adopted and also progress reports in respect of the implementation thereof**  Armenia has very progressive practice in terms of public availability of legal acts. All the legally binding acts –Constitution, international treaties, legislative acts, decision of government etc. – are available through [www.arlis.am](http://www.arlis.am) system, which provides tools for an easy search of legal acts. The judicial acts are available through [www.datalex.am](http://www.datalex.am) web page. The drafts of such acts, if developed by the ministers is available on the web pages of Ministries[[42]](#footnote-43). The only issue is related to the availability of policy documents such as documents on strategies, policies, programmes and action plans, if they are not adopted in the form of legally binding acts (rare practice) and availability of other significant international documents on environmental issues, as appropriate.  Having in regard the above I score this indicator 2 = |
| Art. 5(6) | 1. Has the government taken practical measures to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate?   Art. 5(6) provides:  “6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.” | **Scoring Guide:**  **0 = No, no practical measures have been taken by the Party OR operators whose activities have a significant impact on the environment rarely or never inform the public of the environmental impact of their activities and products**  I have not been able to identify such practical measures. |
| Art. 5(7)(a) | 1. Does the Party publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals?   Art. 5(7)(a) provides:  7. Each Party shall:  (a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals; | **Scoring guide:**  **0 = No, never**  No such kind of practice is applied in Armenia. |
| Art. 5(7)(b) | 1. Does the Party publish data on an annual (or more regular) basis relating to access to environmental information requests (e.g. how many were received, how many satisfied, how many refused, which exemptions were used, etc.),[[43]](#footnote-44) collected at a national level?   Art. 5(7)(b) provides:  7. Each Party shall:  (b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; | **Scoring Guide:**  0 = No such data are ever published (at the national level or otherwise). Only general information on the |
| Art. 5(7)(c) | 1. Does the Party provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels?   Art. 5(7)(c) provides:  7. Each Party shall:  (c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels. | **Scoring guide:**  2 = Yes, in the case of a majority of public functions/services relating to the environment by government at all levels  Every year Ministries issue reports about their activities which is discussed publicly, also in presence of media etc. Those reports cover all the issues falling within the functions of the ministers. They identify both the achievements and the changes of relevant fields[[44]](#footnote-45). |
| Art. 5(8) | 1. Has the Party developed mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices?   Art. 5(8) provides:  “8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.” | **Scoring Guide:**  **0 = No such mechanisms have been developed OR some mechanisms have been developed but they are not adequate to ensure that sufficient information is available in a manner which enables consumers to make informed environmental choices.**  No such mechanisms have been developed |
| Art. 5(9) | 1. Operation of a nationwide system of pollution inventories or registers   Art. 5(9) provides:  “9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.” | **Scoring Guide:**  0 = No nationwide system of pollution inventories has yet been established. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 5 practice indicators?

At the moment the practice indicator in respect of Art. 5(7)(b) tests only one specific aspect of that provision. Do you have a suggestion as to how this indicator could be reframed to cover more of Art. 5(7)(b)?

No comments

## III. Public participation pillar

### (a) Public participation in decisions on specific activities – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 6(1)(a) | 1. How well have Art. 6(1)(a) and Annex I been enacted?   “1. Each Party:  (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;” | **Scoring Guide:**  **2 = Minor errors**  The results of comparison of the list of Activities of the Aarhus Convention with the List of proposed activities in the Article 14th of the RA Law on EIA and expertiza (EIA law) reveals;  1) Almost full compliance of the article 14th activities with the list in the Annex I of the Aarhus Convention, the only fields of activities missing;  5. Installations for the extraction of asbestos and…  11. Large dams,  Two fields of activities- Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes, and hydrocarbon production -are missing because of the geographic characteristics of the country. Moreover, the list in the Article 14 introduces fields of activities not required by the Annex I (construction materials, leather production, urban development, agriculture, sanitary-technical activities (cemeteries) etc.).  Based on the above I score this indicator 2 = Minor errors |
| Art. 6(1)(b) | 1. How well has Art. 6(1)(b) been enacted?   “1. Each Party:  (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions;” | **Scoring Guide:**  **1 = The Party has enacted a specific mechanism providing for the creation of a list of activities not listed in annex I that it deems may have a significant effect on the environment and which should therefore be subject to public participation under Article 6. However, no such list has been created.**  According to the paragraph 8 of Article 14 of EIA Law; “All the other activities not included in part 32 of this article that are to be carried out in special protection areas, forest lands, within the territory of historical and culture monuments, as well as public green zones shall be subject to expertiza. In these cases the impact assessment shall be carried out according to the procedures of category B.”  In addition to the above provisions, there are provisions on public participation enshrined also in the Water Code of RA (04 Jun 2002)[[45]](#footnote-46) According to Art. 20 public participation is required in the process of decision-making about water use permits not necessarily part of activities subject to EIA.  This is not fully corresponding to the requirement of indictor but it is an additional way introduced by the legislation to have EIA for those projects which are falling out from the scope of the list.  Based on the above I score this indicator 1 = |
| Art. 6(1)(c) | 1. How well has Art. 6(1)(c) been enacted?   “1. Each Party:  (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.” | **Scoring Guide:**  **2 = Enactment is fully in accord**  According to the paragraph 7 of Article 14 of EIA Law; “7. Urgent measures aimed at ensuring state security and elimination of the consequences of emergency situations shall not be subject to expertiza.”  I score this indicator 2 = |
| Art. 6(2) | 1. How well has Art. 6(2) been enacted?   Art. 6(2) provides:  “2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:  (a) The proposed activity and the application on which a decision will be taken;  (b) The nature of possible decisions or the draft decision;  (c) The public authority responsible for making the decision;  (d) The envisaged procedure, including, as and when this information can be provided:  (i) The commencement of the procedure;  (ii) The opportunities for the public to participate;  (iii) The time and venue of any envisaged public hearing;  (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;  (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and  (vi) An indication of what environmental information relevant to the proposed activity is available; and  (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.” | **Scoring Guide:**  **1 = Errors that are more than minor**  The provisions of Article 26 of EIA Law: It is necessary to clearly define the responsibilities of initiator, the head of self-governing authorities and regional public authority in notifying the public concerning fundamental document, proposed activity and the procedures of their impact assessments.  *An example of such detailing: “The regional public authority of affected community is posting on its web page information about … 7 days before the public hearings.*  If responsibility to notify involves more than posting information on the web page, i.e. dissemination of information through state and regional printed media, then Law needs to define the responsible entity and the form of such notification.  The 7 days timeframe allocated to public to familiarize herself with the documents concerning the environmental impact assessment procedures shall be extended, if possible, up to 10 or 14 days. According to the position of the Aarhus Convention Compliance Committee concerning compliance by Lithuania 10 day prior to the public hearings on EIA report doesn’t satisfy the requirement of reasonableness set in Article 6.3 of the Aarhus Convention[[46]](#footnote-47).  Concerning the content of the notification of the public, Article 26 of EIA law does not provide for the full list of information to be provided to the public according to Art. 6(2). In particular, information to be provided under subparas. (b), (c), (iv) and (e) is missing.  There are contradictions between the entities listed in the paragraphs 2, 3, 4 and the paragraphs 30-49 of the same decision. In the meantime, it is important to clarify the responsibilities of all the entities engaged in the organization and implementation of public notifications and hearings.  *For example, the paragraphs 3rd and 4th of the decision in the fourth phase of public hearings refers to local-governance authorities, whereas the paragraph 44 of the same decision refer to the expertiza centre as organizer of public hearings (discussions) with the support of the responsible of public hearing and initiator.*  There is also a need to eliminate contradiction between the paragraphs 3, 39 of the decision and Article 26 of EIA Law. In overall there are inconsistency between the Governmental decision on public participation and RA EIA Law.  Based on the above overview of key issues I score this indicator 1 = |
| Art. 6(3) | 1. How well has Art. 6(3) been enacted?   Art. 6(3) provides:  “3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.” | **Scoring Guide:**  1 = Errors that are more than minor  Article 26 of the EIA law requires that public notice and documents relevant to decision-making be made available at least 7 working days in advance of the public hearings. While this provision does not limit the public authority in any way to notify the public about the decision-making much earlier, such cases in practice are exceptions. This regulation is especially problematic when decisions are to be made about large-scale projects often involving quite voluminous information.  This provision of the EIA law has been found by the MOP to be in non-compliance with Art. 6(3) of the Aarhus Convention[[47]](#footnote-48).  Though time is provided to the public to prepare for the hearings, it cannot be considered sufficient, especially with respect to big projects.  Based on the above I would reduce the score of this indicator to 1= Errors that are more than minor. |
| Art. 6(4) | 1. How well has Art. 6(4) been enacted?   Art. 6(4) provides:  “4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  Taking into consideration the specificities of environmental decision-making in Armenia, particularly that there is no system of integrated permitting and that EIA decision- making is only a part of the overall permitting process, one can conclude that for the EIA process the respective law provides early involvement, at the stage when the application is submitted to the Ministry of nature protection (Article 15 and 26). However, it varies for different resources at what stage of overall permitting the EIA is carried out.  To give possibly precise answer, I take as a legal basis EIA Law.  Based on the above overview of key issues I score this indicator 3 = Enactment is fully in accord |
| Art. 6(5) | 1. How well has Art. 6(5) been enacted?   Art. 6(5) provides:  “5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.” | **Scoring Guide:**  **0 = Has not been enacted at all**  No such provision exists in Armenian legislation on EIA. |
| Art. 6(6) | 1. How well has Art. 6(6) been enacted?   Art. 6(6) provides:  “6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:  (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;  (b) A description of the significant effects of the proposed activity on the environment;  (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;  (d) A non-technical summary of the above;  (e) An outline of the main alternatives studied by the applicant; and  (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.” | **Scoring Guide:**  **2 = Minor errors**  According to the paragraph 4, Article 26 of EIA Law “4. Notification, baseline (planning) document and draft documents shall be posted in the official web-page of the competent authority, at least 7 business days prior to hearings.”  The Governmental Decision No 1325-N of 19 November 2014 “On defining the procedure for public notification and holding of public consultations” states the following;  “11. The public shall be notified through mass media, e-mail and announcements.  12. The notification shall contain data regarding the initiator, the venue for implementation of the fundamental document or the proposed activity, the potential impact on the components of the environment, the venue, date and hour for getting acquainted with documents, the time limits for submission of comments and suggestions, as well as the address and phone number of the person responsible for consultations.  13. Upon receiving the documents of the corresponding stage, the person responsible for consultations shall, pursuant to Articles 12-13 and point 3 of part 2 of Article 26 of the Law, within three working days, post the notification on his or her official website, place on boards of announcements of the building of his or her seat and of public buildings, and publish it in the Official Journal of the Republic of Armenia at least seven working days prior to the consultations.  14. The electronic versions of the relevant documents for each stage shall be posted on the website of the person responsible for consultations, the print version — made available at the seat of the person responsible for consultations, in the expert examination stages — on the website and at the seat of the expert examination centre.”  Though the legal framework allows for obtaining project related information, it misses description of what type of information, certain detailed characteristics that should be made available for the public as required by the respective Aarhus provisions (i.e. a description of the measures envisaged to prevent and/or reduce the effects, including emissions; a non-technical summary, an outline of the main alternatives).  Based on the above overview, and having in regard that with stated legal errors the framework in general is consistent with the spirit of Article 6 (6) I score this indicator **2 = Minor errors.** |
| Art. 6(7) | 1. How well has Art. 6(7) been enacted?   Art. 6(7) provides:  “7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.” | **Scoring Guide:**  3 = Enactment is fully in accord  According to the Governmental Decision No 1325-N 15. “The public may submit written comments and suggestions:  (1) in the preliminary expert examination stage — within seven working days following notification;  (2) in the preliminary assessment, basic assessment and basic expert examination stages:  a. for the fundamental document and types of activity of Category A — within 15 working days following notification;  b. for Category B — within 10 working days following notification;  c. for Category C (preliminary assessment stage) — within 10 working days following notification.” Further to this the Governmental decision provides also;  18. Public consultations shall be moderated by the person responsible for consultations or a person designated by him or her, who shall ensure the proper video and audio recording and recording the minutes of the entire process of the consultations. Public consultations may be video and audio recorded by other participants and presented to the expert examination centre.  19. Specialists in the sphere may be invited to the public consultations.  20. The venue, date and hour for consultations, the composition of the participants, as well as all the comments and suggestions made during the consultations shall be indicated in the minutes of public consultations. The minutes of public consultations shall be signed by the moderator, the recorder, the person responsible for consultations and the initiator. The list of participants with their signatures shall be attached to the minutes.  21. Responses to all the verbal questions raised by the public during the consultations shall be immediately furnished by the initiator, the person responsible for consultations and an expert of the expert examination centre, and the responses to the written questions submitted within the time limits prescribed by point 15 of this Procedure shall be furnished within 10 working days.  22. The person responsible for consultations shall, within five working days following the consultations, submit to the expert examination centre the minutes and video and audio records of the public consultations.”  The MOP of the Aarhus Convention has found similar legal provision to be in non-compliance with the Aarhus Convention in its Decision V/9i Kazakhstan (para. 44(d)(ii))[[48]](#footnote-49).  Based on the above overview I score this indicator 3 = Enactment is fully in accord |
| Art. 6(8) | 1. How well has Art. 6(8) been enacted?   Art. 6(8) provides:  “8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.” | **Scoring Guide:**  **2 = Minor errors**  According to the Article 26, paragraph 8 of the EIA Law, the public authority and the initiator issuing an expertiza conclusion need to take into consideration the substantiated remarks and suggestions of the public. Such stipulation is not fully consistent with the Art. 6(8) of the Aarhus Convention because it introduces an additional, restrictive condition to the remarks and suggestions of the public; to be substantiated. It has already been suggested to the Government as part of the envisaged amendments to the EIA Law to eliminate such restrictive requirement.  Having in regard the above I score this indicator 2 = Minor errors. |
| Art. 6(9) | 1. How well has Art. 6(9) been enacted?   Art. 6(9) provides:  “9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  Within 7 days the expertiza conclusion should be made available as stated in the paragraph 5, Article 20 wording of EIA Law. Maximum of 7 days I evaluate to be reasonably prompt notification. However, the timing of such exercise could have been shortened up to maximum 3 days.  Having in regard the above I score this indicator 3 = Enactment is fully in accord. |
| Art. 6(10) | 1. How well has Art. 6(10) been enacted?   Art. 6(10) provides:  “10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.” | **Scoring Guide:**  **1=**  Incomplete enactment  The legal framework requires reconsiderations and updates of operating conditions to be subject to a public participation procedure but not a procedure meeting the requirements of paragraphs 2 to 9  EIA law does not explicitly require public participation for reconsideration or updates of operating conditions for activities but, rather, it makes those changes part of “planned activity”, thus indirectly making them subject to public participation.  The EIA Law adopts a very controversial regulation with respect to the update or reconsideration of the operating conditions of the proposed activities, to say little. The Article 4 definition of proposed activities includes exploration, production, construction, exploitation, reconstruction, expansion, technical, technological upgrade, conversion, conservation, displacement, liquidation, closure.  Certain undertakings by the initiators bolded by me in the definition can fall under the reconsideration or update activities even though not done by public authority, as referred in the Aarhus Convention. In this case the initiator undergoes the whole procedure of EIA with respective public participation phases.  The next angle one can adopt to approach respective paragraph of the Convention is the national procedure of repealing the expertiza conclusions in case of the change of the state of environment and of the requirements of the environmental protection laws and other legal provisions (EIA Law Article 21). The content of the Article 21 boils down to the power of the Ministry of nature protection to require the initiator to revise the conditions of operation to bring it under compliance with the new environmental conditions and new requirements of law, and to repeal the conclusion if its requirements are not met, or to unilaterally repeal the conclusion (which means that activity needs to be ceased), in case of occurrence of certain conditions, but again after the prior notification and negotiations to end the alleged breaches.  The intersections between paragraph 1 and paragraph 2 of Article 21 are ambiguous, and there are certain logical inconsistencies between them.  Neither EIA law nor the Governmental decision N 428-N that regulates the process of repeal of expertiza conclusion provide for public participation in the procedure of revision and repeal of the expertiza conclusion.  Having in regard the above I score this indicator 0 = … |
| Art. 6(11) | 1. How well has Art. 6(11) been enacted?   Art. 6(11) provides:  “11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.” | **Scoring Guide:**  **0 = The legal framework does not require decisions on whether to permit the deliberate release of GMOs into the environment to be subject to a public participation procedure.**  No specific provisions are enacted with respect to GMOs and the related activities are not subject to EIA. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 6 legal indicators?

No comments

### 

### Public participation in decisions on specific activities – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 6(1)(a) and (b) | 1. Breadth of activities falling under Article 6(1)(a) and (b) in practice   Article 6(1) provides:  “1. Each Party:  (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;  (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions;” | **Scoring Guide:**  **2 = All activities listed in annex I**  The national practice strictly follows the list of activities enshrined in the Article 14 of the EIA Law. The system of EIA in Armenia is specific in that it is still based on the system of expertiza common in Soviet countries and it has a very narrow reliance on such procedure as screening that determines whether any activity is having significant impacts on the environment, hence is subject to EIA.  The use of hybrid bills is not a common practice in Armenia and the activities listed in the Article 14 of EIA Law go through permitting procedure that entails also EIA. The Ministry of nature protection has a very limited discretion to exempt certain projects from EIA, as noted above it includes national defence and the activities directed towards the elimination of the consequences of emergency situations. Based on the above considerations I score this indicator 2 = All activities listed in annex I |
| Art. 6(1)(c) | 1. Use of Article 6(1)(c) in practice   Article 6(1) provides:  “1. Each Party:  (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes. | **Scoring Guide:**  **2 = The power to decide not to apply Article 6 to proposed activities serving national defence purposes which may have a significant effect on the environment is sometimes exercised in practice but only if it is established that the application would have an adverse effect on national defence.**  In assigning the current score, I only assume occurrence of such kind of situations, since it is not known to me that in practice it has been a case following the adoption of EIA law. Therefore if such situation appears, then Article 14, paragraph 7 will be directly invoked. |
| Art. 6(2) | 1. Timing, content and form of notification in practice   Art. 6(2) provides:  “2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:  (a) The proposed activity and the application on which a decision will be taken;  (b) The nature of possible decisions or the draft decision;  (c) The public authority responsible for making the decision;  (d) The envisaged procedure, including, as and when this information can be provided:  (i) The commencement of the procedure;  (ii) The opportunities for the public to participate;  (iii) The time and venue of any envisaged public hearing;  (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;  (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and  (vi) An indication of what environmental information relevant to the proposed activity is available; and  (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.” | **Scoring Guide:**  **2 = In practice, in all cases subject to article 6, the public concerned is informed, either by public notice or individually, in an adequate, timely and effective manner, though one or more of the aspects set out in subparagraphs (a)-(e) of Article 6(2) may be lacking.**  The public notification in the process of EIA and expertiza of a proposed activity is done via the web page of the Ministry of nature protection (other forms are also used-media, publications on the announcement desks of local authorities etc.)[[49]](#footnote-50), and includes information on the legal basis of such announcement,  2) date of the hearing,  3)general reference to the project,  4) information where the public can obtain the related documentation  5) deadline for submission of remarks and suggestions (sometimes in the announcement it is mentioned 5 days[[50]](#footnote-51) whereas by the Governmental Decision N 1325-N the minimum is 7 working days);  6) the physical address where the public can visit and familiarize herself with the documents (no document is made available directly on the web page of the Ministry which considerably decreases, in my opinion, the effectiveness of such notification and engagement of the public[[51]](#footnote-52)).  As it follows such announcement misses the following requirements of the Convention;  - The nature of possible decisions or the draft decision;  - An indication of what environmental information relevant to the proposed activity is available; and  - The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.”  The information on the relevant public authority or any other official body to which comments or questions can be submitted, and the public authority responsible for making the decision are not mentioned in the announcement, however they are assumed since the only decision-maker in the particular procedure is the Ministry of nature protection.  The announcements, as evidenced by the information on the web page of the MNP are posted two weeks before the public hearing, and the EIA Law Article 26 envisages minimum 7 days prior to the hearing. Therefore, in general the requirement of timing is well ensured.  To conclude, the announcements are done in timely manner and in a proper form, however certain content is missing from the announcement.  Having in regard the above I score this indicator 2 =… |
| Art. 6(3) | 1. The time frames provided for public participation are   Art. 6(3) provides:  “3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.” | **Scoring Guide:**  **2 = Across all cases, time frames are reasonable and sufficient for the majority of phases, but the time frame for one or more phase is often insufficient, taking into account the nature, complexity and size of the proposed activity.**  As it has been noted under the legal indicators, the timing for the notification about the hearings is minimum 7 days, in practice 14 days prior notification is given and the timeframe for provision of remarks and suggestions varies from 7 to 15 working days. Such timing is respected in practice in majority of cases and somehow sufficient for involvement of public, but not for its effective participation, especially when it comes to the projects which are classified as complex and multifaceted. In other words, the timeframes envisaged are inflexible, and cannot provide in practice flexibility to competent authority and the public to benefit from the participation of the public in a possibly best way.  In practice there are cases when the procedure of public hearings with respect to certain project is not carried out or is carried in a way to exclude actual participation of public as evidenced by NGOs[[52]](#footnote-53).  Based on the above and general overview of PP practice I score this indicator 2 = |
| Art. 6(4) | 1. Do the authorities, in practice, provide for early public participation, when all options are open and effective public participation can take place   Art. 6(4) provides:  “4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.” | **Scoring Guide:**  **2 = Yes, in a majority of cases**  Having in regard that EIA is the sole procedure of public participation, it is difficult to state whether the public is engaged in the process of overall decision-making at a very early stage. That very much depends on the type of the decision and when according to that procedure EIA is carried out. For example in case of the permissions of mining activities Article 52 of Mining Code of Armenia requires the applicant for the mining permission to submit the project for environmental impact expertiza (EIA) after the relevant application was delivered to the competent authority in the field of mining. This means that involvement of the public is not strictly at the outset of decision-making if one defines decision-making as a process that goes beyond EIA and includes the whole permitting procedure[[53]](#footnote-54).  Within the EIA procedure itself the public is engaged at an early stage, when still all options are open to influence the final decision-EIA conclusion. Though, almost never such involvement leads to any substantive changes of the final decision, if any at all. The hearing remains a formal procedure both because of unwillingness of the initiators to reflect on public opinion and the low quality of the public input (the capacity of NGOs currently very much restricts their ability to have a thorough input in the process of public hearings).  Based on the above considerations I score this indicator 2 = Yes, in a majority of cases. |
| Art. 6(6) | 1. In practice, the information to which the public concerned is given access pursuant to Article 6(6) generally comprises   Art. 6(6) provides:  “6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:  (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;  (b) A description of the significant effects of the proposed activity on the environment;  (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;  (d) A non-technical summary of the above;  (e) An outline of the main alternatives studied by the applicant; and  (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.” | **Scoring Guide:**  2 = Access to all information relevant to the decision-making (included, but not limited to the information listed in Art. 6(6)(a)-(f)) is always or almost always provided free of charge though the public may need to make a request for such access.    My overview of EIA documentation of 5 projects allows to conclude that all the relevant requirements of the Aarhus Convention are part of the EIA documentation prepared by the initiator and submitted to the Ministry of nature protection for expertiza. However, the documentations were lacking non-technical summaries that will be accessible for public, as well as an outline, or consideration of the main alternatives studied by the applicant. Concerns related to the latter two pieces of information are commonly recognized drawback of the whole EIA system in Armenia.  Based on this consideration I score this indicator 2=… |
| Art. 6(7) | 1. In practice, the public is enabled to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity   Art. 6(7) provides:  “7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.” | **Scoring Guide:**  **2 = In all or almost all cases, the public is entitled to submit in writing or at a public hearing if one is held, any comments, information, analyses or opinions that it considers relevant to the proposed activity.**  There have been no issues identified with respect to the entitlement of the public to submit in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions. The only concern is that the public is entitled to submit comments within certain period of time for a specific phases though such regulation is intended to somehow systematize the submission process and increase the efficiency of the work of public authorities, it should be implemented in a way not to create obstacles on the way of effective public participation.  Based on this consideration I score this indicator 2=… |
| Art. 6(8) | 1. In practice, how is due account typically taken of the outcome of the public participation?   Art. 6(8) provides:  “8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.” | **Scoring Guide:**  **0 = Public authorities very rarely or never produce such a response document**  No separate document is produced which reflects on the remarks and suggestions presented by public throughout the EIA process. In almost all the expertiza conclusions [[54]](#footnote-55)(EIA conclusions) there is no reference to the input of the public and how it has been taken into consideration in the final decision. Only in exceptional cases the public authority mentions in general terms that the opinion of the public has been taken into consideration when the developing the conclusions.  Based on the above considerations I score this indicator 0 = Public authorities very rarely or never produce such a response document. |
| Art. 6(9) | 1. In practice, is the public promptly informed and are decisions provided in writing together with reasons and considerations?   Art. 6(9) provides:  “9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.” | **Scoring Guide:**  **2= In all or almost all cases the public is promptly informed of the decision, and the full text of the decision is accessible, but frequently no explanation is provided of how the outcome of public participation was taken into account**.  As it has already been stated above the expertiza conclusion is made available to the public through the web page of the Ministry of nature protection within 7 days from the day of issuance of the conclusion. However, such notification, and in overall the final decision do not explain the reasons behind such decision, the opinions and suggestions taken into consideration. Though the means of public notification still can be widened to go beyond internet notification, however such notification can be considered prompt.  Having in regard the Compliance Committees consideration with this respect in the communication CCC/C/2006/16 (Lithuania), such time frame can be considered reasonable, also that public is given sufficient timing to appeal the decision in a judicial or administrative procedure.  Based on the above considerations I score this indicator 2 = |
| Art. 6(10) | 1. In practice, where a public authority reconsiders or updates the operating conditions for an activity referred to in Article 6(1), how frequently are the public participation provisions of the Convention applied?   Art. 6(10) provides:  “10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.” | **Scoring Guide:**  **0 = In practice, reconsiderations or updates of operating conditions are not subject to public participation procedures.**  As mentioned in my comment on the legal indicator of Art. 6(10) update and reconsiderations of the operating conditions of activities are considered as an element of “planned activity”, hence **indirectly are subject to public participation** under the law. However, there is no such practice in place. |
| Article 6(11) | 1. How well has Art. 6(11) been applied in practice?   Art. 6(11) provides:  “11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.” | **Scoring guide:**  **0 = In practice, decisions on whether to permit the deliberate release of GMOs into the environment have not been subject to a public participation procedure**  There have been such cases of permitting the deliberate release of a genetically modified organism into the environment, but no environmental permitting was applied[[55]](#footnote-56). Therefore I score this indicator 0=… |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 6 practice indicators?

The practice indicator for Article 6(7) refers in its scoring guide to the entitlement to participate. A related issue is the arrangements (if any) authorities make for public participation, including inter alia the consideration (if any) they give for traits of concerned communities (especially marginalized groups either on the basis of, for example, gender, language, ethnicity or age). Do you think these aspects should be assessed? If so, in respect of which provision (Art. 6(7), 3(2), somewhere else)?

No comment.

### (b) Public participation concerning plans, programmes and policies relating to the environment – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 7, first sentence  Indicator 1 | 1. How well has the phrase “the preparation of plans and programmes relating to the environment” been enacted?   The first sentence provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during **the preparation of plans and programmes relating to the environment**, within a transparent and fair framework, having provided the necessary information to the public.” | **Scoring Guide:**  **1 = Errors that are more than minor**  Republic of Armenia is currently undergoing considerable changes of EIA legislation with respect to introduction of SEA system. When the new Law on EIA was enacted in 2014 the first step was made to integrate the SEA procedure in the system for the law and provide public participation in the strategic assessment also. However, the implementation practice came to evidence that the way the SEA was integrated presupposed almost identical procedures for EIA of proposed activity and SEA which is not the case as evidence by the different UNECE treaty regimes and practice of progressive legal systems.  The EIA law which currently is the only media providing public participation concerning plans, programmes and policies relating to the environment is not explicitly clear about weather all plans and programmes relating to the environment are covered by this regime. Rather, it applies the same approach as in case of EIA linking these documents to the field of activity. The criteria “relating to the environment” is not defined in the law but the SEA regime for Art. 7 documents is identical to that of category “A” activities which are assumed to have significant impact on the environment. It should be noted that under the Aarhus Convention (Art. 7), in order to be subject to public participation plans and programmes are required to be **“related”**, whereas EIA law essentially narrows down the scope of such documents in terms of public participation.  For example in order to bring EIA Law Article 14th provisions, concerning the fields of application of the plans and programs, in compliance with Article 4 of the SEA Protocol, it is envisaged to revise the current wording of Article 14. Some of the fields of application concerning fundamental documents are broader than required by SEA Protocol (i.e. socio-economic development), whereas some other mandatory fields of application required by SEA Protocol are missing or are regulated partially (regional development, telecommunications, tourism, land use, town and country planning, fisheries).  With respect to public participation there is a need for considerable revisions. To summarize it is envisaged to draft a new governmental decision on SEA and to considerable revise the EIA Law.  Having in regard the above mentioned I score this indicator 1 = Errors that are more than minor. |
| Art. 7(1), first sentence  Indicator 2 | 1. How well has “having provided the necessary information to the public” been enacted for the purpose of Article 7(1)?   The first sentence provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, **having provided the necessary information to the public.**” | **Scoring guide**  **1 = Errors that are more than minor**  Current legal framework for the participation in the SEA is almost identical to the EIA. The following suggestions have been put forward by the international experts (Elena Laevskaya and Gor Movsisyan) to improve the system of public participation in the process of SEA. 1. In order to implement the provisions of the Protocol of SEA on public participation we recommend adding a paragraph 1-1 in the Article 26 of the Law: “1-1. Planning authority is obliged to provide timely and effective opportunities for public participation in strategic environmental assessment, when all options are open.  The draft of fundamental document, strategic environmental assessment report, the results of monitoring of the significant environmental effects of fundamental document should be published on the official web-site of planning authority, in the print medias, brought to the public by other appropriate means according to the procedure of strategic environmental assessment, approved by the Government of the Republic of Armenia”.  2. Experts recommend to make the following additions and changes to the Article 26 of the Law:  paragraph 2, 5, 8 - use the definition “planning authority” in relation to the fundamental documents;  paragraph 2, 4 - increase the period of time for the notification of the public  The 7 day timeframe allocated to public to familiarize herself with the documents concerning the environmental impact assessment procedures shall be extended, if possible, up to 10 or 14 days. According to the position of the Aarhus Convention Compliance Committee concerning compliance by Lithuania 10 days prior to the public hearings on EIA report doesn’t satisfy the requirement of reasonableness set in Article 6.3 of the Aarhus Convention[[56]](#footnote-57).  paragraph 3 - the words “... other information” add “... provided by the law” (see paragraph 69 of Overview);  paragraph 4 - in addition to the web page of competent authority, we recommend to specify other appropriate ways for dissemination of information (in the print media, etc.) (see paragraph 64 of Overview);  paragraph 8 - in the first sentence we recommend to remove the word «substantiated» (see paragraph 67 of Overview).  3. We suggest supplementing Article 26 of the Law with paragraph 8-1:  “Planning authority informs the public on the approval of fundamental document in the light of the reasonable alternatives considered, place of publication, together with the statement summarizing how the environmental, including health, considerations have been integrated into it, how the comments have been taken into account in the order stipulated by the procedure of strategic environmental assessment, approved by the Government of the Republic of Armenia." (see paragraph 67 of Overview).  4. It is necessary to clearly define the responsibilities of initiator (“initiator of proposed activity”, “planning authority”), the head of self-governing authorities and regional public authority in notifying the public throughout the EIA, SEA and SEE procedure.   * + - An example of such detailed regulation: “The regional public authority of affected community 7 days before the public hearings is posting its web page information about …   If responsibility to notify involves more than posting information on the web page, i.e. dissemination of information through state and regional printed media, then Law needs to define the responsible entity and the form of such notification.  5. According to the paragraph 8, Article 26 of EIA Law, initiator and public authority shall take into consideration substantiated remarks and suggestions of public. According to Article 6, paragraph 7 of the Aarhus Convention; “Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.” This means that since the remarks and suggestions pertain to the future decision relevant public authority should consider those suggestions, without striating itself whether the representatives of public have presented relevant substantiations.  6. It is important to note, that with respect to the public participation in the SEA, and depending on the choice of regulatory approaches suggested in the Part III of this paper, Armenia can stipulate specific provisions on public participation in the process of SEA either in the EIA Law or in the Governmental decision on SEA. Regardless of the approach chosen, the above suggestions shall find proper stipulation in the legislation. In the meantime, when introducing rules on the public participation in the process of SEA shall:  a). ensure use of electronic media or other appropriate means for the timely public availability of the draft of fundamental document and the environmental report.  b). provide opportunities for the participation of the public concerned in the screening of fundamental documents,  c). ensure timely public availability of the conclusions of the screening, whether by public notices or by other appropriate means, such as electronic media.  d). ensure that the public referred to in paragraph 3 has the opportunity to express its opinion on the draft of fundamental document and the environmental report within a reasonable time frame.  Having in regard the above I score this indicators 1 = Errors that are more than minor |
| Art. 7, second sentence | 1. How well the second sentence of Art. 7 been enacted?   The second sentence provides:  “Within this framework [i.e. the framework mentioned in the first sentence], article 6, paragraphs 3, 4 and 8, shall be applied.”  Article 6(3): “The public participation procedure shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.”  Article 6(4): “Each Party shall provide for early and effective public participation, when all options are open and effective public participation can take place.”  Article 6(8): “Each Party shall ensure that in the decision-making due account is taken of the outcome of the public participation.” | **Scoring Guide:**  2 = Minor errors  With respect to the timeframes the errors are minor and are of the same nature as the ones for EIA of proposed activity since the EIA law adopted identical regulation for the timeframes.  See the evaluation of the timeframes under the relevant indicator. |
| Art. 7, third sentence | 1. How well has the third sentence of Art. 7 been enacted?   The third sentence provides:  “The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention.” | **Scoring Guide:**  **0 = Has not been enacted at all**  There is no such criterion introduced in the legislation. |
| Art. 7, fourth sentence | 1. How well has the fourth sentence of Art. 7 been enacted?   “To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**  2 = Minor errors  See the factors considered for the evaluation under the Art. 7, Indicator 1 |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 7 legal indicators? The legal indicators for Article 7 (first sentence) do not address the wording “within a transparent and fair framework”. Do you think an additional legal indicator should be created to address this? Or do you think that the indicators for Article 3(1) are sufficient to cover this (NB. Art. 3(1) says “clear, transparent and consistent framework” while Art. 7 says “transparent and fair framework”)?

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### Public participation concerning plans, programmes and policies relating to the environment – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 7  Indicator 1 | 1. In practice, are all plans and programmes relating to the environment subject to public participation during their preparation?   Article 7 provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**  **0 = No, never, or rarely**  The process of strategic environmental assessment is very new for Armenia. Even though the preceding law on environmental expertiza had an article dedicated to SEA there was no legal mechanism introduced to implement the Article 7 and there is no practice of such strategic assessment.  After the adoption of the new legal framework on EIA, SEA procedure has found its first legal regulation, even with considerable errors. Following compliance cases in the Compliance Committee of the Espoo Convention and SEA protocol, Armenia with the support of the Espoo Convention secretariat is rewriting its legislation on SEA, and through pilot projects is encouraging introduction of the practice of strategic environmental assessment as a culture of governance since in contrast to EIA of proposed activity, SEA does not and cannot fall only under the mandate of the Ministry of nature protection. The latter is one of the key challenges on the way of introducing SEA.  It should be stated that SEA is almost non-existent and if it has been applied ever to certain project then only rarely and in a very formalistic way. Having in regard the above, for this and for the remaining indicators Armenia so far scores 0 =No, never, or rarely |
| Art. 7  Indicator 2 | 1. In practice, is the public able to prepare and participate effectively during the preparation of plans and programmes relating to the environment? In particular:   – is all necessary information provided to the public?  – is there early public participation when all options are open?  – are there reasonable timeframes that enable the public to prepare and participate effectively?  – is due account taken of the outcome of the public participation?  Article 7 provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**  0 = No, never, or rarely |
| Article 7  Indicator 3 | 1. In practice, are all policies relating to the environment subject to public participation during their preparation?   Article 7 provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**  0 = No, never, or rarely |
| Article 7  Indicator 4 | 1. In practice, are the opportunities for the public to participate in the preparation of policies relating to the environment effective? For example, do the opportunities meet the public participation requirements set out elsewhere in article 7 (necessary information provided to the public, reasonable timeframes, early participation when all options are open, due account taken of the outcome of participation)? | **Scoring Guide:**  0 = No, never, or rarely |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 7 practice indicators?

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### (c) Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 8, first sentence | 1. How well has the first sentence of Art. 8 been enacted?   The first sentence provides:  “Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.” | **Scoring Guide:**  **2 = Minor errors**  The only legal act regulating participation of the public in the preparation by public authorities of executive regulations and other generally applicable legally binding rules is the Governmental Decision 296-N On the procedure of organization and implementation of public discussion[[57]](#footnote-58).  The mandatory system of public discussion under this decision includes making available the legal acts mainly through the web pages of respective drafters (such as ministries) and participation of the public via submission of the comments and suggestions. Under the compulsory system of participation, the law-maker is encouraged, where necessary, to implement public discussions through hearings, round-table discussions, individual meetings with experts etc.  The Governmental Decree 296-N obliges the author of the draft legal act (an executive body) to held public hearings as form of participation in case of all draft laws and those Governmental decisions which have been planned to be prepared according to the Programme of the Government. This circle of draft legal acts constitutes an essential part of all draft legal acts prepared. Furthermore, they are of specific importance in terms of shaping general regulatory regime. As for the other drafts beyond this circle, public authority may still organize public hearings and/or other types of public participation at its discretion. Yet, such cases are exceptions.  As we can observe such legal framework is very progressive, however it doesn’t suffice for being considered as effective public participation, simply because it is very passive engagement of the public and there is no obligation for certain, “outstanding” legal drafts to pass mandatory public hearing. However, we score this indicator to have minor errors since, as it is stipulated in the Convention’s Implementation Guide; “The measurement of the extent to which Parties meet their obligations under article 8 is not based on results, but on efforts. Parties are required to make efforts towards the attainment of public participation goal”. |
| Art. 8(a) | 1. How well has Art. 8(a) been enacted?   Art. 8(a) provides:  “To this end [i.e. the end mentioned in the first sentence of Art. 8], the following steps should be taken:  (a) Time-frames sufficient for effective participation should be fixed;” | **Scoring Guide:**  **3 =**  Enactment is fully in accord    According to the paragraph 6 of the Decision 296-N the time-frame for the public discussions shall last minimum 15 days if the drafting authority (author of the draft) doesn’t envisage a longer period for discussions. I do consider that such regulation has errors simply because it might not be completely sufficient for a thorough evaluation of the draft and submission of substantive suggestion for improvements. Therefore, the flexibility in timing, provided already in the Decision, should have also mentioned the need for envisaging longer time periods for the complex legal acts. |
| Art. 8(b) | 1. How well has Art. 8(b) been enacted?   Art. 8(b) provides:  “To this end [i.e. the end mentioned in the first sentence of Art. 8], the following steps should be taken:  (b) Draft rules should be published or otherwise made publicly available;” | **Scoring Guide:**  **3 = Enactment is fully in accord**  See the reasoning under the Art. 8, first sentence. In addition to the above, the Decision requires the developer of the draft with the draft to post on the web page the substantiation of the draft, as well as other materials available (paragraph 8). |
| Art. 8(c) | 1. How well has Art. 8(c) been enacted?   Art. 8(c) provides:  “To this end [i.e. the end mentioned in the first sentence of Art. 8], the following steps should be taken:  (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  The public is given the right to send its comments directly to the author of the draft of relevant act. |
| Art. 8, final sentence | 1. How well has the final sentence of Art. 8 been enacted?   The final sentence provides:  “The result of the public participation shall be taken into account as far as possible.” | **Scoring Guide:**  3 = Enactment is fully in accord  According to the paragraph 13 of the Decision N296-N the drafter of the relevant legal act may make necessary amendments to the draft based on the analysis of the suggestions received from the public and their overview. The overview document reflecting all the changes in the legal act should be made available to the public. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 8 legal indicators?

Currently by the initiative of the Environmental Public Advocacy NGO a draft of Governmental decision has been prepared named “Public participation in the discussion of the normative legal acts in the field of environmental protection”. The draft provides a distinct legal framework for participation of the public in the process of discussion (within the state authorities) of the drafts. It defines the stages of participation, what constitutes legal binding normative acts in the field of environmental protection, adopts differentiated approach of mandatory participation depending on the legal nature of the act. For the laws to be enacted by the Parliament and some Governmental decisions (defined based on a criteria) the organization of public hearing is considered mandatory, whereas for the others it is compulsory. It provides also more detailed regulation of how the consultation process needs to be carried out etc.

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### Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 8  Indicator 1 | 1. Are **all** draft executive regulations and other generally legally binding rules that may have a significant effect on the environment, subject to public participation?   Article 8 provides:  Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.  To this end, the following steps should be taken:  (a) Time-frames sufficient for effective participation should be fixed;  (b) Draft rules should be published or otherwise made publicly available;  (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.  The result of the public participation shall be taken into account as far as possible. | **Scoring Guide:**  **2 = Yes, in most cases**  In the majority of cases the drafts of laws, governmental decision, local self-governing bodies are made available on the relevant web pages and public is given an opportunity to comment on those decisions. However, there are cases when some legal acts which are of particular importance are adopted with a fast track and without proper public notification and due consideration of public opinion.  With respect of draft regulations adopted by municipalities, public participation to some extent is provided in Yerevan (the capital) and 2-3 big cities. For all other cases such practice is non-existent. |
| Art. 8  Indicator 2 | Do the public participation procedures on executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment, meet the requirements of article 8, i.e.:   * Time-frames sufficient for effective participation; * Draft rules published or otherwise made publicly available; * The public has opportunity to comment, directly or through representative consultative bodies * Result of public participation is taken into account as far as possible   Article 8 provides:  Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.  To this end, the following steps should be taken:  (a) Time-frames sufficient for effective participation should be fixed;  (b) Draft rules should be published or otherwise made publicly available;  (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.  The result of the public participation shall be taken into account as far as possible. | **Scoring Guide:**  **2 = Yes, in most cases**  Following factors have been taken into consideration ;   * The legislative drafts are accessible on the web pages * NGOs’ or expert organisations’ play a significant role in the process of discussions. Aarhus Centres[[58]](#footnote-59) and Environmental Law Research Centre of YSU[[59]](#footnote-60) have been particularly active in initiating public hearings of almost all major environmental law drafts and drafts of governmental decisions. * There is an emerging practice of direct engagement of NGOS, experts during the drafting. For example the Law on EIA was developed by a working group including around 4 members of NGOs. * There is sufficient time for public to comment since the drafting process usually takes months and the drafts are available for commenting. * The system of regulatory impact assessment is also introduced. * An online platform <http://ecolex.am/am/projects> has been developed by EPAC NGO aiming to bridge the public with the authors of the draft to channel the comments of the former ones to the public authorities and to provide individual feedback to those who have submitted the comments.   However there is no clear understanding about the extent to which the option of the public is being taken into consideration and how much it affects the final outcome.  In practice time-frames for providing comments to the draft legal acts, especially those with high public resonance, are sufficient. However, this time-frames are shaped taking due consideration the duration and possible delays in legislative process, rather than the complexity of the legal act. To evidence this, it is worth to note that the drafts published on the official web-pages of different public authorities and open for commenting do not set a specific deadline for the comments to be submitted. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 8 practice indicators?

No comments

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## IV. Access to justice pillar

### Access to justice – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 9(1)  First para | 1. How well has the first paragraph of Art. 9(1) been enacted?   The first paragraph provides:  “1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  There are both non-judicial and judicial procedures of challenging the refusal (administrative acts) of access to environmental information. An individual or an environmental NGO may lodge a complaint for the decision to a superior administrative body or a court. The choice of a remedy is up to the individual or the Environmental NGO. The court appeals are mainly subject to First Instance Administrative Court of Armenia. More details available through the analytical studies of Aarhus TFAJ[[60]](#footnote-61)  No obstacles have been identified in this respect. |
| Art. 9(1)  Second para | 1. How well has the second paragraph of Art. 9(1) been enacted?   The second paragraph provides:  “In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.” | **Scoring Guide:**  3 = Enactment is fully in accord  Both the Code of Administrative Procedure and the Code of Civil Procedure provide for the possibility to hear cases in an expeditious manner (in this event, a case should be considered immediately after the decision on hearing a case in an expeditious manner is taken). If there are reasons to hear a case in an expeditious manner, in practice it can be resolved within 3-4 days. The decision to hear a case in an expeditious manner can be taken by the court at any stage of the proceedings. |
| Art. 9(1)  Third para, 1st sentence | 1. How well has the first sentence of the third paragraph of Art. 9(1) been enacted?   The first sentence of the third paragraph provides:  “Final decisions under this paragraph 1 shall be binding on the public authority holding the information.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  According to the Article 14 of the Code of Civil Procedure the judicial acts in force are binding for all public authorities, their officials, natural and legal entities and shall be adhered in the whole territory of Armenia.  This provision is applicable also over the administrative adjudication by virtue of the Article 2 of the Code of Administrative Procedure. |
| Art. 9(1)  Third para, 2nd sentence | 1. How well has the second sentence of the third paragraph of Art. 9(1) been enacted?   The second sentence of the third paragraph provides:  “Reasons shall be stated in writing, at least where access to information is refused under this paragraph [i.e. Art. 9(1)].” | **Scoring Guide:**  **3 = Enactment is fully in accord**  Both the Code of Administrative Procedure and the Code of Civil Procedure have a very detailed and strict requirements with respect to the structure and the form of judicial decision-making. All such decisions are issued in the written form. |
| Art. 9(2)  First para | 1. How well has the first paragraph of Art. 9(2) been enacted?   The first paragraph provides:  “2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned  (a) Having a sufficient interest  or, alternatively,  (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.” | **Scoring Guide:**  **1 = Errors that are more than minor**  Individuals or ENGOs can challenge decisions, acts or omissions in relation to Article 6 of the Aarhus Convention. Following the logic of the legislation of RA, this is only possible if this decision directly violated the rights of a particular individual or ENGO.  Non-governmental organizations are not provided standing before the courts to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6, if those decisions do not directly violate their individual rights and interest. There is no actio popularis and not even broader access to justice. The detailed analysis of case law is available in the respective TFAJ study[[61]](#footnote-62). So far no progress has been made in this respect. Currently another case is pending before the Compliance Committee of the Aarhus Convention[[62]](#footnote-63). |
| Art. 9(2)  Second para | 1. How well has the second paragraph of Art. 9(2) been enacted?   The second paragraph provides:  “What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above [i.e. Art. 9(2)(a)]. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above [i.e. Art. 9(2)(b)].” | **Scoring Guide:**  **0 = Has not been enacted at all**  Article 16.  A new Law of RA “On Non-Governmental Organizations” has been adopted which lists down certain criteria to determine sufficient interest. The Draft mentioned has been prepared to address the findings on non-compliance and respective recommendations adopted by MOP decision V/9a (para. 7(a))[[63]](#footnote-64).  With respect to definitions of “sufficient interest” and “impairment of rights” the Law is silent. However, it establishes a clear link between the statutory goal and tasks of the NGO and its legal standing, which in certain cases will be decisive in terms of identifying “sufficient interest”.  2. A non-governmental organization represents the interest of its beneficiaries in the court in the field of environmental protection.  3. A non-governmental organization may initiate a lawsuit concerning the matters indicated in the paragraph 2 of the current article, if  1) the application is within the scope of the statutory goals and tasks and is aimed at the protection of collective interest associated with the statutory gaols of the organization,  2) it has participated in the public hearings on the proposed activity or fundamental document according to the RA Law “On the environmental impact assessment and expertise” or it has been refused in the opportunity to participate in the public hearings,  3) has carried out activities in the filed indicated in the paragraph 2 of the current article minimum 2 years prior to the date of submission of the lawsuit. |
| Art. 9(3), Indicator 1 | 1. How well has Art. 9(3) been enacted?   Art. 9(3) provides:  “3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above [i.e. Art. 9(1) and (2)], each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.” | **Scoring Guide:**  **1 = Errors that are more than minor**  Since NGOs have no standing before the court in public interest cases, I shall assume that the courts will adopt the same approach towards this type of cases. In other words, the acts/omissions contravening the provisions of its national law relating to environment should result in direct violation of the rights of the NGOs in order to be actionable before the court. For example, if the NGO’s right to participate has been violated in the EIA procedure it can initiate a case before the court to remove the obstacles on the way of full enjoyment of their right to participate. However, if there has been a general procedural or substantive violations by the competent authorities not related directly to specific rights of NGOs, then, in the light of the recent case law, it is highly unexpected that the court will give a broader interpretation to NGOs right of appeal.  According to the Law on Administrative Proceedings, upon the issuance of administrative decisions, they become subject to both administrative and judicial review. There are no restrictions in terms of the types of the administrative decisions, acts and omissions (hereinafter referred as administrative decisions) that can be subject to administrative and judicial review. The only restriction applied is the direct link between the impaired rights and interests of the applicant and the administrative decisions. This overview is based on the Article 3 and 70 of the Law on Administrative proceedings and the Article 3 of the Code of Administrative procedure (the reference to English text is available on page 3).  These mean that the permits/licenses, EIA conclusions, and other decisions or actions can be reviewed by courts and administrative authorities.  Depending on the type of the decision the review proceedings can be initiated both against the administrative authority and against a public servant.  According to the article 191 of the Administrative Code, the administrative court shall consider cases where a party challenges the legality of normative legal acts of the President of the Republic of Armenia, Government of the Republic of Armenia, Prime-minister of the Republic of Armenia, different state agencies, as well as head of the community and of community council to review compliance of these normative legal acts with the normative legal acts of a higher hierarchy (excluding Constitution).  The article 192 of the Administrative Code provides the rules of standing before the court for Article 191 cases. Accordingly,  “1. The right to apply to administrative courts for the matters subject to Article 191 is reserved after each physical and legal entity, if they consider, that  1) the application of a normative legal act (by any of its provision), applied to him/her by any individual act, except judicial act, or by any other real act, violates his/her rights prescribed by the Chapter 2 of the Constitution of Armenia, norms of international law concerning human rights and freedoms, as well as laws of the Republic of Armenia,  2) the normative legal acts (by any of its provision), not applied to them, might violate the rights stipulated in the 1st point of paragraph 1st of the present article.  2. For the types of cases listed in Article 191 of the present Code, state authorities and local self-governance bodies can bring a case to the administrative court against administrative bodies, if they consider that a normative act of the mentioned authorities violates rights of state and community, the protection of which is the responsibility of the applicant, if the dispute is not subject to resolution by higher administrative instance.  3. The human rights defender, fraction of the Yerevan city council can apply for the cases listed in the article 191 of the present Code to challenge the acts of Yerevan city council.”  From the above it follows;  1) The legality of the normative legal acts of certain public authorities (including President and Government) of Armenia can be challenged before and be reviewed by the administrative courts in terms of compliance of the challenged acts with the normative legal acts of higher hierarchy,  2) the standing is provided only for those legal and physical entities whose rights have been undermined (violated) by application of an individual legal act or other real act in terms of non-compliance of the latter acts with the normative legal acts of higher hierarchy. In other words, the legality of the normative acts of certain authorities can be reviewed by the administrative court in terms of its compliance with the normative legal acts of higher hierarchy, only if the individual or real act (the definition of the latter has not been identified) issued with respect to applicant violates his/her rights (double layer).  Based on the above rules, and in the context of the Article 9 of the Aarhus Convention, the following conclusions might be of certain relevance;  First, the scope of the review is reduced down to the compliance of normative legal acts with the normative legal acts of higher hierarchy (i.e. governmental decisions with the legislation), which means that there is a review only of legality in terms of non-contradiction, non-compliance within the hierarchy of laws.  Second, review includes only the non-compliance of normative –legal acts stemming from the application of individual acts, whereas in the meaning of Article 6 and 9 of the Aarhus Convention, the individual legal acts specifically of governments concerning various projects might be of higher relevance.  Third, in order to be able to challenge the legality of the normative legal acts listed in the Article 191, it is necessary to be a direct addressee of an individual act or real act (those acts which entail factual consequences for the natural and legal entities, and have external impact –(interpretation by the Administrative Court of Armenia in the VD case/**1189/05/12)**.  When it comes to the actual application of the provision to review the normative legal acts of the above institutions, at this stage I have not been able to identify actual cases. However, I have been informed that a few cases, not related to the environmental legislation, have been initiated.  Provided the above rules, it might still be possible to interpret the provisions of the Article 191 and Article 192 in a manner so as to ensure broader review of legality to allow looking into both procedural and substantive legality.  Based on the above considerations I score this indicator 1 = Errors that are more than minor |
| Art. 9(3)  Indicator 2 | 1. The criteria, if any, enacted in national law which members of the public must meet as a precondition for the purpose of Article 9(3) provide for   Art. 9(3) provides:  “3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above [i.e. Art. 9(1) and (2)], each Party shall ensure that, **where they meet the criteria, if any, laid down in its national law,** members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.” | **Scoring Guide:**  **0 = Very restrictive or non-existent access to justice (e.g. in the sense that the enacted rules on standing and prior participation are such as to provide for very restrictive or non-existent access to justice)**  See substantiation above. |
| Art. 9(4)  1st sentence  Indicator 1 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to adequate and effective remedies, including injunctive relief?   The first sentence provides:  “In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall provide adequate and effective remedies, including injunctive relief as appropriate**, and be fair, equitable, timely and not prohibitively expensive.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  **Temporary**  The legislation of Armenia provides for a preliminary injunctive relief (for the period of a trial, as a security for a claim).  According to Article 97 of the Code of Civil Procedure the court on its own initiative or at the motion of the parties in the case takes steps to ensure a claim, if failure to take these measures can lead to failure to enforce or difficulties in enforcement of a judicial act. Measures for security of a claim are allowed at any stage of the proceedings. The motion for security of a claim is discussed and a decision is taken on the day of its submission.  According to Article 101 of the CCP, if by its decision the court rejects a claim, the measures securing the claim stay in force until the decision enters into force. If by its decision the court meets the claim, the measures securing the claim stay in force until the decision is fully executed.  Article 98 of the Code of Civil Procedure provides for the following measures of securing a claim: 1) arrest of a defendant's property or funds in the amount of a claim; 2) prohibition on certain actions by a defendant; 3) prohibition on certain actions with respect to the subject-matter in dispute by others parties; 4) prohibition to sale property (with regard to lawsuits aimed to release property from arrest); 5) prohibition on actions with regard to a plaintiff's property, which is being held by a defendant.  If necessary, the court has the right to take more than one measure. CCP provides that in case of application of the measures securing a claim in cases for money recovery a defendant is entitled to deposit the claimed by a plaintiff amount to a depository account of the Service of Judgments Enforcement. The amount of the deposit is determined by the amount of the claim for money recovery.  Preliminary injunctive relief can be granted with respect to individuals / private entities and / or public authorities/ organizations (Article 98 CCP).  **Permanent**  If an ongoing activity violates environmental rights of citizens and legal entities, enshrined in the legislation, the public has a right to go to court claiming to suspend / terminate the activity that violates environmental legislation. |
| Art. 9(4)  1st sentence  Indicator 2 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to fair and equitable procedures?   The first sentence provides:  “In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall** provide adequate and effective remedies, including injunctive relief as appropriate, and **be fair, equitable, timely and not prohibitively expensive**.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  If we take only the formal side of the matter then the legislation of Armenia introduces all preconditions for the administrative and civil trials to meet the criteria of fairness, equitability, timeliness and not prohibitively expensive.  While the criteria of equitability and fairness are in the domain of value judgments and the court system of Armenia have had considerable challenges to overcome in this respect, timeliness and not prohibitively expensive are measureable criteria.  Code of Administrative Procedure establishes time frames for challenging decisions, actions, or omissions, depending on the type of a claim that can be brought. The deadlines for appeal vary from one to three months. CCP provides for the following timeframes for consideration of cases: in the courts of first instance a case shall be resolved in a reasonable time; in the courts of appeal – in a reasonable time; in the Courts of Cassation – in a reasonable time. CAP provides that cases heard before the administrative court shall be resolved within a reasonable time. At the same time there is a requirement to resolve cases possibly in one court hearing. Time limits for consideration of cases do not differ depending on whether the participants are natural or legal persons. Both codes provide for the possibility to hear cases in an expeditious manner (in this event, a case should be considered immediately after the decision on hearing a case in an expeditious manner is taken). If there are reasons to hear a case in an expeditious manner, in practice it can be resolved within 3-4 days. The decision to hear a case in an expeditious manner can be taken by the court at any stage of the proceedings.  In practice, court proceedings can take: in the courts of first instance – from 2 to 6 months (in the administrative courts – for more than 6 months (due to workload of these courts)); in the courts of appeal – from 2 to 3 months or less (due to the fact that in practice cases are heard in one court session), in the Court of Cassation – from 5 to 8-9 months. It should be borne in mind that the length of judicial consideration depends on individual cases and the above mentioned periods are generally respected.  Judicial expenses consist of the court fee and other costs associated with litigation. The court fee is charged for lawsuits, claims of third parties, for appeals of court decisions to the courts of appeal and the Court of Cassation. Procedural codes also establish the rules for distribution of judicial expenses.  The amount of the court fee is determined by the Law of Armenia on the State Duty. According to Article 9 of the Law the following rates of the court fee are established for filing lawsuits: for claims of material nature the amount of the court fee is 2% of a claim, but not less than 150% of  a basic fee (the basic fee is 1000 drams (about 2.7 USD)); for claims of non-material nature the court fee amounts to four basic fees. Because the lawsuits in the environmental field are mainly non-material in nature (related to challenging of administrative acts), the amount of the court fee is 4,000 drams (about 11 USD). It should be noted that the established amount of the court fee is not an obstacle to access to justice in environmental matters.  The jurisprudence in this area also contains the safeguards to ensure access to justice. Taking into account the decision of the European Court of Human  Rights in the case of Paykar Yev Haghtanak Ltd against the Republic of Armenia, as well as the decision of the Council of the Court Chairmen of Armenia, judges of all courts shall not be entitled to return lawsuits for lack of a receipt for the payment of the court fee because the question of costs in all cases shall be resolved in the final judicial act.  For appeals against court decisions in cases of a non-material nature to the courts of appeal, the amount of the court fee is equal to ten basic fees. The amount of the court fee for an appeal in a case of material nature is 3% of the amount of a claim. If a court decision contains both material and non-material claims and is appealed as a whole, the amount of the court fee is 3% of the claim; for appeals against court decisions in non-material cases to the Court of Cassation, the amount of the court fee is equal to twenty basic fees. As to material cases - 3% of a disputed amount, but not more than one thousand basic fees.  According to Article 22 of the Law of Armenia on the State Duties certain categories of persons are exempt from paying the court fees. These persons include NGOs (including in cases when they seek to protect the public interest), but the cases provided by law do not directly relate to matters concerning environmental protection. For exemption from the court fee, there are two main criteria - the types of cases (cases on alimony or wages), the persons who apply to the courts (Commissioner for Human Rights, the administrator of insolvency proceedings, the prosecutors in cases for the protection of state interests, etc.) The rules exempting persons litigating in the public interest from paying the court fee are not provided in the law. |
| Art. 9(4)  1st sentence  Indicator 3 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to timely procedures?   The first sentence provides:  “In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall** provide adequate and effective remedies, including injunctive relief as appropriate, and **be** fair, equitable, **timely** and not prohibitively expensive.” | **Scoring guide**  3 = Enactment is fully in accord  See the criteria of evaluation above |
| Art. 9(4)  1st sentence  Indicator 4 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to ‘not prohibitively expensive’ procedures?   The first sentence provides:  “In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall** provide adequate and effective remedies, including injunctive relief as appropriate, and **be** fair, equitable,timelyand **not prohibitively expensive**.” | **Scoring guide**  3 = Enactment is fully in accord  See the criteria of evaluation above |
| Art. 9(4)  2nd sentence | 1. How well has the second sentence of Art. 9(4) been enacted?   The second sentence provides:  “Decisions under this article [i.e. Art. 9] shall be given or recorded in writing.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  All the judicial decision in Armenia are in a written form as required by the procedural legislation with a strict structural requirements. |
| Art 9(4)  3rd sentence | 1. How well has the third sentence of Art. 9(4) been enacted?   The third sentence provides:  “Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.” | **Scoring Guide:**  **3 = Enactment is fully in accord**  All the decisions of courts are accessible through three systems [www.datalex.am](http://www.datalex.am), [www.armlaw.am](http://www.armlaw.am) and [www.arlis.am](http://www.arlis.am). Two of the systems are official and one is a private initiative. |
| Art. 9(5)  Indicator 1 | 1. How well has Art. 9(5) been enacted insofar as it relates to the provision of information?   Art. 9(5) provides:  “5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that **information is provided to the public on access to administrative and judicial review procedures** and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.” | **Scoring Guide:**  **0 = Has not been enacted at all**  No legal provision is enacted obliging judicial system or other authorities to provide public information on access to administrative and judicial review procedures for environmental cases. |
| Art. 9(5)  Indicator 2 | 1. How well has Art. 9(5) been enacted insofar as it relates to considering the establishment of appropriate assistance mechanisms?   Art. 9(5) provides:  “5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and **shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.”** | **Scoring Guide:**  0 = Has not been enacted at all  No legal provision is known to me specifically related to environmental adjudication. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 9 legal indicators?

How do you think the legal indicators for Article 9(4) (first sentence) should deal (if at all) with the following issue? In addition to enacting specific rules to tackle fairness, equity, timeliness and prohibitive expense (e.g. specific legislation on legal costs in environmental matters), arguably Parties are obliged to enact a general obligation(s) that the procedures referred to in Art. 9(4) must be fair, equitable, timely and not prohibitively expensive. Thus, it would not be enough for a party to say that its detailed court rules in practice provide for fair and equitable procedures in circumstances where there is no general, overarching obligation that such procedures must be fair and equitable. To give an example of the issue in practice: Ireland has not enacted such a general obligation, and its High Court in [An Taisce v An Bord Pleanála [2015] IEHC 604](http://www.courts.ie/Judgments.nsf/0/66689207160EAA7F80257EE00038BC45)) was therefore legally able to pronounce (wrongly) that judicial procedures do not need to be fair and equitable (notwithstanding the Aarhus Convention and EU law purporting to implement the Convention).

There were repetitive indicators for Article 9(2). One option of representing would have been to put them as separate indicators from the beginning. It is considerable challenging to evaluate some legal indicators for such provisions as injunctive relief or remedies, in general, also costs when there is no relevant practice. Especially with respect to procedural rule distinction of legal and practice indicators becomes very relative.

### Access to justice – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 9(1), first para | 1. In practice, has the Party ensured access to a review procedure before a court of law or another independent and impartial body established by law in respect of information requests?   The first paragraph of Article 9(1) provides:  “1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.” | **Scoring Guide:**  **3 = Access to a review procedure before a court or another independent and impartial body is provided for any person making a request for information within the scope of the definition of environmental information in article 2(3)**  There are both non-judicial and judicial procedures of challenging the refusal (administrative acts) of access to environmental information. An individual or an environmental NGO may lodge a complaint for the decision to a superior administrative body or a court. The choice of a remedy is up to the individual or the Environmental NGO. The court appeals are mainly subject to First Instance Administrative Court of Armenia. More details available through the analytical studies of Aarhus TFAJ[[64]](#footnote-65)  No obstacles have been identified in this respect. (no difference has been identified between the practice and legal indicators). |
| Art. 9(1), second para  Indicator 1 | 1. Where the Party provides for such a review by a court of law, does the Party in practice ensure access to a procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law?   The second paragraph of Article 9(1) provides:  “In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is **free of charge or inexpensive** for reconsideration by a public authority or review by an independent and impartial body other than a court of law.” | **Scoring Guide:**  **1 = Access is provided to a reconsideration by the public authority that handled the request, and such access is free or inexpensive.**  The administrative appeal system of Armenia does not include access to an independent and impartial body that reviews such appeals. It is either appealed to a higher administrative body, for example the decision of a certain public official in the ministry to the minster or to the court directly.  Nothing is charged for such appeal. |
| Art. 9(1), second para  Indicator 2 | 1. Where the Party provides for such a review by a court of law, does the Party in practice ensure access to an **expeditious** procedure established by law for reconsideration by a public authority or review by an independent and impartial body other than a court of law?   The second paragraph of Article 9(1) provides:  “In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an **expeditious procedure** established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.” | **Scoring Guide:**  **1 = Access to a reconsideration by the public authority that handled the request is ensured and the procedure is expeditious, but access has not been provided to an independent and impartial review body.**  The administrative procedure can last for up to 30 days. This period can be extended twice for 10 days. Consideration of an administrative complaint regarding an administrative act also lasts for a 30-days period, with the possibility to extend the period twice for 10 days. In general, the administrative process may take (including an administrative appeal) up to 80 days, excluding the period when the right to appeal began until the date of an actual appeal.  The general principles of public administration set in the Law of RA on “Fundamentals of Administrative Action and Administrative Proceedings”[[65]](#footnote-66), include also 8) Efficiency of administrative procedures, which requires the administration to act as promptly as possible. |
| Art. 9(2)  Indicator 1 | 1. In practice, are the terms “sufficient interest” and “impairment of a right” interpreted consistently with the objective of giving members of the public concerned (other than environmental NGOs, which are assessed in the next indicator) wide access to justice within the scope of the Aarhus Convention?   Article 9(2) provides:  “2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned  (a) Having a sufficient interest  or, alternatively,  (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.  What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of  subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.  The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. | **Scoring Guide:**  **0 = No, not at all**  No practice |
| Art. 9(2), Indicator 2 | 1. In practice, are NGOs which meet the requirements referred to in article 2, paragraph 5 deemed to have a sufficient interest, and deemed to have rights capable of being impaired for the purposes of Art. 9(2)?   Article 9(2) provides:  “2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned  (a) Having a sufficient interest  or, alternatively,  (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.  What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.  The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. | **Scoring Guide:**  **0 = Rarely or never.**  NGOs are not granted access to justice |
| Art. 9(2), Indicator 3 | 1. In practice, do members of the public concerned meeting the relevant conditions specified in Art 9(2) have access to a review procedure to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 [public participation in decisions on specific activities] and, where so provided for under national law and without prejudice to Art. 9(3), of other relevant provisions of the Aarhus Convention?   Article 9(2) provides:  “2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned  (a) Having a sufficient interest  or, alternatively,  (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.  What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.  The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. | **Scoring Guide:**  **1 = Members of the public concerned meeting the relevant conditions specified in art 9(2) in practice can challenge the substantive and/or procedural legality of any decision, act or omission subject to the provisions of article 6. Under this scenario, “decision”, “act” or “omission” is not interpreted broadly.**  This right is reserved only for those natural and legal entities whose imminent rights and obligations are subject to decision, act or omission. There is no possibility of challenging such act for the purpose of public interest protection or for those who show interest in environmental decision-making without showing direct connection between their right and the act and omission. |
| Art. 9(3) | 1. In practice, has the Party ensured that members of the public meeting the relevant criteria (if any), have access to administrative and/or judicial procedures to challenge acts or omissions which contravene provisions of national law relating to the environment?   Art. 9(3) provides:  “3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above [i.e. Art. 9(1) and (2)], each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.” | **Scoring Guide:**  0 = In practice, access to such procedure(s) is not provided  I score this indicator 0 because no such cases have been initiated by individuals in practice, and NGOs are not given standing. |
| Art. 9.(4)  Indicator 1 | 1. Do procedures within the scope of article 9, paragraphs 1, 2 and 3, provide adequate and effective remedies, including injunctive relief as appropriate?   Article 9(4), first sentence provides:  “4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. | **Scoring guide**  I refrain from scoring this indicator’s application in practice since there has been no cases in the context of which I can evaluate whether the current procedural rules will find effective application. |
| Art. 9.(4)    Indicator 2 | 1. Are procedures within the scope of article 9, paragraphs 1, 2 and 3, fair and equitable?   Article 9(4), first sentence provides:  “4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.” | **Scoring guide**  I refrain from scoring this indicator’s application in practice since there has been no cases in the context of which I can evaluate whether the current procedural rules will find effective application. |
| Art. 9.(4)    Indicator 3 | 1. Are procedures within the scope of article 9, paragraphs 1, 2 and 3 timely?   Article 9(4), first sentence provides:  “4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.” | **Scoring guide**  0 = Few or no procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are timely.  The assessment is based on 2 cases litigated during 2009-2011 related to mining license. One of these cases has taken almost one year for the Court of Cassation to deliver a judgement. |
| Art. 9.(4)    Indicator 4 | 1. Are procedures within the scope of article 9, paragraphs 1, 2 and 3 not prohibitively expensive?   Article 9(4), first sentence provides:  “4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. “ | **Scoring guide**  3 = Access to justice for all or almost all procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is not prohibitively expensive  We score this on the bases of legal rules, but in those unsuccessful cases initiated by NGOs costs were not a concern to initiate the cases since they are reasonable and affordable. |
| Art. 9(4)  Indicator 3 | 1. In practice, are decisions of review bodies under Article 9 given or recorded in writing and publicly accessible?   The second and third sentences of Art. 9(4) provide:  “Decisions under this article [i.e. Art. 9] shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.” | **Scoring Guide:**  **3 = All decisions of such review bodies are given or recorded in writing and are publicly accessible, including *inter alia* interim decisions and decisions on costs, and all decisions include reasons.**  Currently there is no issue with the accessibility of judicial decision in Armenia. |
| Art. 9(5), first clause | 1. In practice, how would you rate efforts to ensure that information is provided to the public on access to administrative and judicial review procedures?   Art. 9(5) provides:  “5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.” | **Scoring Guide:**  **1 = Fair**  I score this fair because there are many web source available about the work of judicial institutions, also TV programs, about lawyers and their activities, however there is almost no activism with respect to the access to justice issues in environmental matters. All the activities concern to access to justice in general terms, but not directed to promote access to justice in environmental matters.  The situation worsened also after the consistent rejection by the judicial system to grant access to NGOs in public interest litigation. |
| Art. 9(5), second clause | 1. In practice, has the government considered the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice, and has it acted on those considerations?   Art. 9(5) provides:  “5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.” | **Scoring Guide:**  **0 = No evidence of consideration or action with respect to environmental cases** |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 9 practice indicators?

Do you think that the practice indicators for Article 9(4) should be further sub-divided such that the issues of: (i) fairness and equity; (ii) timeliness; and (iii) not prohibitively expensive are considered separately for procedures/cases within (separately) each of Article 9(1), 9(2) and 9(3)? So there would be nine practice indicators to cover Article 9(4): fairness & equity in the context of (separately) Art. 9(1), 9(2), 9(3); timeliness in the context of (separately) Art. 9(1), 9(2), 9(3); prohibitive expense in the context of (separately) Art. 9(1), 9(2), 9(3)).

## General pillar (including definitions)(cont.)

### National reporting and overall framework

Note for researchers: please assess this section last, after everything else, as it contains indicators relating to the overall framework implementing the Aarhus Convention.

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Article 10(2) | 1. Has the country/Party reported regularly on its implementation of the Aarhus Convention?[[66]](#footnote-67)   Article 10(2) provides:  “2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention on the basis of regular reporting by the Parties […]” | **Scoring Guide:**  **3 = Report(s) on implementation have been made for each relevant ordinary Meeting of the Parties since the later of: (i) The entry into force of the Convention for the Party or (ii) The second session of the MOP in 2005; such report(s) have always been submitted on time, and for reports since 2007 have complied with the guidance prepared by the Compliance Committee in terms of process and content.**  The reports are available at the below link.[[67]](#footnote-68) |
| Art. 3(1) – access to information | 1. In practice, is there a clear, transparent and consistent framework to implement the access to information pillar of the convention?   Art. 3(1) provides:  “Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” | **Scoring Guide:**  **1= in practice, the framework for implementing the access to information pillar is not very clear, transparent and not necessarily consistent.**  Since this is a general benchmark provision the factors considered for such assessment are given in details under the respective indicators. |
| Art. 3(1) – public participation | 1. In practice, is there a clear, transparent and consistent framework to implement the public participation pillar of the convention?   Art. 3(1) provides:  “Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” | **Scoring Guide:**  2= in practice, most major aspects of the framework for implementing the public participation pillar is clear, transparent and consistent (though some minor aspects may be less clear or consistent).  There is Environmental impact expertiza SNPO within the ministry in charge for overall procedure of EIA including public participation, there is a considerable legal framework to provide public participation, even though in some cases it has minor errors. The hearings in many cases are carried out at the local level, though not always with a turnover of members of local community. In overall sufficient information is available for the public to get engaged and demand for a better performance of the tasks by the public authorities  However there is no holistic approach to secure effective public participation. |
| Art. 3(1) – access to justice | 1. In practice, is there a clear, transparent and consistent framework to implement the access to justice pillar of the convention?   Art. 3(1) provides:  “Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” | **Scoring Guide:**  **0= in practice, the framework for implementing the access to justice pillar is very unclear, not transparent, not consistent - or non-existent.**  Access to justice in environmental matters is almost non-existent in the Republic of Armenia. Having in regard the nature of the environmental litigation recognition of the standing of NGOs is essential step on the way of making the third pillar of Aarhus Convention. However, almost five attempts of NGOs to initiate public interest litigations were unsuccessful because of the very restrictive reading of the Article 3 of the Code of Administrative Procedure of the Republic of Armenia by all the instances of the court system[[68]](#footnote-69). Recently NGOs initiated another claim with the involvement of the members of affected community to be able to overcome the standing restrictions; however the Court ruled that the disputed expertiza conclusion cannot be considered administrative act and on this ground did not recognize the right of the members of community to challenge it[[69]](#footnote-70). |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 10 and 3 (general pillar) practice indicators?

No comments

1. For the time being we have not dealt with the PRTR protocol or with the GMO amendment, since their status is different from the body text of the Convention and this would negatively influence the comparability of the scores. [↑](#footnote-ref-2)
2. See <http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf> [↑](#footnote-ref-3)
3. In EU terminology one might say “transpose” here (and throughout), but since the Aarhus region is much broader than the EU we have opted for the less EU-centric term “enact” (and the related terms “enacted” and “enactment”), which arguably has the benefit of being the correct term in English: see pp.63-4: <http://ec.europa.eu/translation/english/guidelines/documents/misused_english_terminology_eu_publications_en.pdf> [↑](#footnote-ref-4)
4. The exception is an indicator which tests whether Parties have provided for any exceptions from the right to obtain environmental information on request which are not envisaged by the Aarhus Convention. Here a presence (“0”) or absence (“3”) scoring system seemed most appropriate. [↑](#footnote-ref-5)
5. [Guidelines for Conformity Checking, Part II, Study Contract No 070307/2009/543947/FRA/A2 Conformity checking of measures of Member States to transpose Directives in the sector of Environment, Milieu Ltd, January 2009](https://drive.google.com/file/d/0Byc1SOzeg2lPRFM1WWF4NC03TUE4NXlDTk9oSmFNX2Z3b2VV/view?usp=sharing). [↑](#footnote-ref-6)
6. This is a key difference between the Aarhus Convention Index and the Environmental Democracy Index (EDI) – in the latter the practice indicators were not numerically scored, and the practice indicators did not impact the overall score for a country. As such, while EDI is a legal enactment index with an indication of practical implementation in certain areas, the idea here is that the ACI index scores will reflect practical experiences of environmental democracy rights on the ground. [↑](#footnote-ref-7)
7. A proper balance between environmental law in its narrower sense and the related fields of law that are not always called environmental but strongly affect the quality of the environment should be carefully maintained. Legal arrangements, institutional background and attitudes of the administrative personnel that determine the level and effectiveness of, say, public participation are often quite different in the two areas. While the ‘environmental’ branch of administration (narrowly understood) may be more supportive towards environmental democracy, other related fields of laws may show more resistance in this respect. Therefore, the results of testing the indicators may be either too positive or too negative if one or the other field of law is given a disproportionate representation in the samples examined by the country researchers. [↑](#footnote-ref-8)
8. <http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf> [↑](#footnote-ref-9)
9. <http://www.eufje.org/images/DocAarhus/Aarhus%20CC%20case-law.pdf> [↑](#footnote-ref-10)
10. [http://www.unece.org/env/pp/reports\_trc\_implementation\_2014.html](http://www.unece.org/env/pp/reports_trc_implementation_2014.html%20) [↑](#footnote-ref-11)
11. Accepting that sources must of course be treated with care. For example, the EU is itself a Party to the Aarhus Convention, and there are cases in which the jurisprudence of the EU courts has been alleged not to comply with the requirements of the Convention. As such, researchers should remain mindful throughout of the relationship between jurisprudence they cite in scoring indicators and the requirements of the Convention itself. [↑](#footnote-ref-12)
12. With the consent of such interviewees. [↑](#footnote-ref-13)
13. Available at http://www.arlis.am/DocumentView.aspx?DocID=86194 [↑](#footnote-ref-14)
14. Available at <http://www.arlis.am/DocumentView.aspx?DocID=1372> [↑](#footnote-ref-15)
15. Official text is available at <http://www.arlis.am/DocumentView.aspx?DocID=93148>. Unofficial translation can be provided upon request. [↑](#footnote-ref-16)
16. Currently Armenia is in the process of reviewing the legislation on EIA and SEA, with the support of Espoo Convention Secretariat, to bring it in compliance with the Espoo Convention and SEA Protocol and this definition shall also be reconsidered. [↑](#footnote-ref-17)
17. English text of the Civil Code is available at [https://www.cba.am/Storage/EN/regulations/**CivilCode**\_eng.pdf](https://www.cba.am/Storage/EN/regulations/CivilCode_eng.pdf) [↑](#footnote-ref-18)
18. Note that the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) states, at p.46, that the definition provides “as broad coverage as possible”. [↑](#footnote-ref-19)
19. Note that the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) states, at p.50, that “The clear intention of the drafters [...] was to craft a definition that would be as broad in scope as possible, a fact that should be taken into account in its interpretation”. [↑](#footnote-ref-20)
20. Please note that Art. 3(1) is dealt with by way of indicators at the very end of this document, since it requires, in effect, an overall assessment. [↑](#footnote-ref-21)
21. The Armenian text is available at <http://www.arlis.am/DocumentView.aspx?DocID=1006> [↑](#footnote-ref-22)
22. Armenian text is available at <http://www.arlis.am/DocumentView.aspx?DocID=91330> [↑](#footnote-ref-23)
23. Available <http://www.arlis.am/DocumentView.aspx?DocID=90940> [↑](#footnote-ref-24)
24. Available <http://www.arlis.am/DocumentView.aspx?DocID=102899> [↑](#footnote-ref-25)
25. Please note that Art. 3(1) is dealt with by way of indicators at the very end of this document, since it requires, in effect, an overall assessment. [↑](#footnote-ref-26)
26. Find out more on the Aarhus Centers here <http://aarhus.am/?page_id=429&lang=en> [↑](#footnote-ref-27)
27. That this first clause is a standalone obligation, such that the obligation to promote education and awareness raising is not limited to the matters following the word “especially”, is clear from p.64 of the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf). [↑](#footnote-ref-28)
28. More on this is available at <http://tv.sunchild.org/index.php?id=19&L=0&no_cache=0&cHash=03da036324b162dc257243d087755dbb> [↑](#footnote-ref-29)
29. More on this is available at http://www.ethic-intelligence.com/experts/8307-issue-whistleblowing-in-armenia/ [↑](#footnote-ref-30)
30. The English text is available <http://www.rti-rating.org/wp-content/themes/twentytwelve/files/pdf/Armenia.pdf> [↑](#footnote-ref-31)
31. See respectively the sources on the web page of the ministry of nature protection. [↑](#footnote-ref-32)
32. See or example <http://armstat.am/file/doc/99493638.pdf> [↑](#footnote-ref-33)
33. Data and other indicators are available at <http://www.foi.am/rating/status?organisations=23&year=2015&form_build_id=form-eNcivS7yLFclGT1frKnqjVdMIROLmY8WN9WTxxWFF-8&form_id=agnian_views_status_filter&op=%D5%96%D5%AB%D5%AC%D5%BF%D6%80> [↑](#footnote-ref-34)
34. Available at <http://www.rti-rating.org/wp-content/themes/twentytwelve/files/pdf/Armenia.pdf> [↑](#footnote-ref-35)
35. Available at <http://www.arlis.am/DocumentView.aspx?DocID=30320> [↑](#footnote-ref-36)
36. Available at <http://www.minenergy.am/page/verakang> [↑](#footnote-ref-37)
37. More information is available at <http://wwf.panda.org/who_we_are/wwf_offices/armenia/> [↑](#footnote-ref-38)
38. See for example the EIA conclusions <http://www.mnp.am/?p=341> and the forms of permits <http://www.mnp.am/?p=208> on the web page of the Ministry of nature protection. [↑](#footnote-ref-39)
39. [↑](#footnote-ref-40)
40. All the reports are available at <http://www.mnp.am/?p=168> [↑](#footnote-ref-41)
41. Available at <http://www.mnp.am/?p=208> [↑](#footnote-ref-42)
42. I.E. Ministry of nature protection drafts of legal acts are available <http://www.mnp.am/?p=306> [↑](#footnote-ref-43)
43. Cf. Page 112 of the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf). [↑](#footnote-ref-44)
44. The reports of the Ministry of nature protection are available at <http://www.mnp.am/?p=168> [↑](#footnote-ref-45)
45. Available at <http://www.arlis.am/DocumentView.aspx?DocID=107512> [↑](#footnote-ref-46)
46. Lithuania АССС/2006/16; ЕСЕ/МР.РР/2008/5/Add.6, 4 April, 2008,70, Aarhus Convention Compliance Committee, 2004-2011, pg. 48. [↑](#footnote-ref-47)
47. Available at Decision V/9a, para. 4(c)(ii) - http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post\_session\_docs/Decision\_excerpts\_in\_English/Decision\_V\_9a\_on\_compliance\_by\_Armenia.pdf [↑](#footnote-ref-48)
48. Available at <http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category_II_documents/ECE.MP.PP.2014.17.E.final.pdf> [↑](#footnote-ref-49)
49. Available at the bottom of the page <http://www.mnp.am/> under the section “Public hearing” [↑](#footnote-ref-50)
50. For example <http://www.mnp.am/?aid=5660> [↑](#footnote-ref-51)
51. An example when the public was not able to access the documentation on the web page since they were considered to be heavy in size. The only way a member of a public residing in a region other than where the public hearing was carried out could access the documentation is to travel to that regions and make copies. The project concerns Amendments to the project of Kajaran copper-molybdenum deposit <http://ecolur.org/hy/news/mining/minutes-of-public-hearings-at-zcmc-on-8-july/8411/> [↑](#footnote-ref-52)
52. See for example <http://ecolur.org/hy/news/water/recorded-show-or-public-discussion/8004/> [↑](#footnote-ref-53)
53. The Mining Code is available at <http://www.parliament.am/legislation.php?sel=show&ID=4343> [↑](#footnote-ref-54)
54. See for example the following Expertiza Conclusions issued in 2016; <http://www.mnp.am//images/files/nyuter/2016/august/17-Fioletovo%20OG.pdf>, <http://www.mnp.am//images/files/nyuter/2016/august/35-Geotim.pdf>,<http://www.mnp.am//images/files/nyuter/2016/august/22-SH.%20Mkrtchyan.pdf>, <http://www.mnp.am//images/files/nyuter/2016/august/17-Fioletovo%20OG.pdf> [↑](#footnote-ref-55)
55. See the overview of the conference of the national Academy of science where the matter is raised with respect to modified seeds and agricultural products imported to Armenia <http://www.armworld.am/detail.php?paperid=433&pageid=15381&lang>= [↑](#footnote-ref-56)
56. Lithuania АССС/2006/16; ЕСЕ/МР.РР/2008/5/Add.6, 4 April, 2008,70 paragraph//Aarhus Convention Compliance Committee , 2004-2011, pg. 48: [↑](#footnote-ref-57)
57. Armenian text is available <http://www.arlis.am/DocumentView.aspx?DocID=57300> [↑](#footnote-ref-58)
58. http://aarhus.am/ [↑](#footnote-ref-59)
59. Yerevan State University [↑](#footnote-ref-60)
60. <http://www.unece.org/env/pp/tfaj/analytical_studies.html> [↑](#footnote-ref-61)
61. Available at <http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/AnalyticalStudies/2013_EECCA_Standing/2014_EECCA_standing_Eng__062014_final.pdf>, [↑](#footnote-ref-62)
62. Available at <http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/preacccc2016138-armenia.html> [↑](#footnote-ref-63)
63. <http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9a_on_compliance_by_Armenia.pdf> [↑](#footnote-ref-64)
64. <http://www.unece.org/env/pp/tfaj/analytical_studies.html> [↑](#footnote-ref-65)
65. English text is available at;

    <http://www.foi.am/u_files/file/FUNDAMENTALS%20OF%20ADMINISTRATIVE%20ACTION%20AND.pdf> [↑](#footnote-ref-66)
66. The indicator number is 7 because this is a continuation of the general pillar from the beginning of the document, placed here at the end of the document such that the ‘overall framework’ (Art. 3(1)) is assessed right at the end of the process. [↑](#footnote-ref-67)
67. <http://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2005&wf_Countries=AM&Quer_ID=NIR8&LngIDg=EN> [↑](#footnote-ref-68)
68. More on this <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2224173> [↑](#footnote-ref-69)
69. ***Case VD/1049/05/15*** Tehimne Enokyan, Goharik Enoqyan, Derenik Enokyan, Sevak Mkrtchyan, Arthur Mkrtchyan, Armen Hambardzumyan, Vanik Hovhannisyan, Aram Hovhannisyan, Aram Hovsepyan, Arthur Mkrtchyan Aleksan Mmnatsakanyan, Gagik Grigoryan, Nairi Nersisyan, “Environmental law” NGO and “Ecodar” ENGO on 02 April 2015 applied to Administrative court of the Republic of Armenia against the Ministry of nature protection of the Republic of Armenia, Ministry of energy and natural resources of the Republic of Armenia, and the Expert Council of protection of Lake Sevan of the National Academy of Science, stating that applicants-natural entities are inhabitants of Gndevaz community, and the respondents of this case have adopted several acts concerning the deposit of gold-bearing quartzite of Amulsar in the region of Vayots Dzor, which is situated in a proximate vicinity of Gndevaz community, and that the proposed activity will have an impact on that community. Consequently, the applicants required.1. to recognize the positive conclusion of the Expert Council of protection of Lake Sevan of the National Academy of Science on the project of “Geotim” of deposit of gold-bearing quartzite of Amulsar in the region of Vayots Dzor unlawful.

    2. to revoke the BP-76 expertiza conclusion of the Ministry of nature protection of RA issued on 17 October, 2014.

    3. As a consequence to recognize null the permissions and related documents issued by different public authorities allowing implementation of the project.

    Through the analysis of the relevant provisions of the Mining Code of the Republic of Armenia, the Administrative Court advances following analysis; “…Environmental impact expertiza is appointed by the competent authority to check the thoroughness of the mining application for the purposes of extraction of minerals and to issue decision with respect to the application. Having in regard that the question of environmental impact assessment requires special knowledge, the competent authority issues a decision on provision of license taking into consideration the expert opinion”.

    Administrative court concludes; “Both the expertiza conclusions of the Expert Council for the protection of Lake Sevan, and the expertiza conclusion on the environmental impact assessment are expert conclusions (opinions) in the meaning of the Article 45 of the Law “On fundaments of administration and administrative proceedings”, which in its turn by virtue of the Article 42 of the same law qualifies as evidence. Hence, the evidence in the administrative proceedings entails no legal consequences for the respective entities… Under the current conditions, it becomes clear that there has been no interference to the rights of the applicants, because it has not determined the decision of providing the right to mining. Therefore, the applicants have no legal issue of challenging them since the question of evaluation of evidence of administrative proceedings is subject to discussion in the framework of reviewing the lawfulness of administrative acts adopted as a result of administrative proceedings…

    From the above it follows, that the application in that respect is not subject to judicial review, and by virtue of the Article 80, paragraph 1.1 this part of the application shall be rejected”.

    Since the third claim, asking to null permissions and related documents allowing the implementation of the mining project, results from the two preceding cases, and that few procedural requirements have not been followed (such as payment of application fees) the court decided to return the claim with respect to the third claim.

    There are two issues that require clarification;

    1. The court decision doesn’t touch upon the question of standing of the NGOs. One possible explanation of such choice of argumentation is the fact that the claim was brought by multiple applicants hence non-recognition of the standing of the two NGOs will still require the court to consider the case in substance. Therefore, it is difficult to conclude whether rejection of the case on grounds other than standing of NGOs is a result of recognition of their standing before the courts in public environmental litigations (though indirectly it can mean also this) or the chosen path of not considering the expertiza conclusions as administrative decisions is a lame “legal trick” used by the court to reject substantive hearing of the case. The latter seems to be the most relevant explanation because the standing of NGOs is just an instrumental issue in the face of decade lasting resistance of the courts in Armenia to consider environmental cases.

    2. By the current decision of the court the status of environmental impact expertiza conclusion is reduced down to being an expert opinion, which finds no substantiation either in the RA Law on “Environmental Impact Assessment and Expertiza” or in the Article 45 and Article 42 of the Law “On fundaments of administration and administrative proceedings”. Moreover, the interpretation by the court of the relevant articles court distorts the meaning and the objectives behind the particular and general provisions of theses legal acts. The Article 20.6 of EIA Law unequivocally states that implementation of a project without positive expertiza conclusion is forbidden. The Article 45 of the Law on administrative proceedings covers the issue of appointing experts (“can be appointed a person who has a knowledge in the respective field) for the purpose of “…investigating factual circumstances…” of a particular case.

    By virtue of these articles, and having in regard the substantive nature of the expertiza conclusion issued as a result of exercise of a key function of EIA by the Ministry of nature protection of Armenia, and as well as the role of EIA in the process of decision-making, the expertiza conclusion has all the characteristics to qualify for an administrative act subject to judicial review. [↑](#footnote-ref-70)