

To the UN Human Rights Council, Universal Periodic Review

From Save Teghut Civic Initiative, Ecoright NGO, Ecodar NGO (Armenia)

Shadow Report on the Right to Development and Environment

Yerevan, Armenia, June 2014

Overview

1. Public participation in decision-making on the whole and particularly in decisions impacting the environment, remain a serious problem in Armenia. Most acute is the situation with natural resource extraction which impacts not only people's rights on aspects vital for their livelihoods (clean water, health, land), but also on the overall right of the nation to development and intergenerational accumulation of wealth and prosperity. While mining continues to proliferate under special government patronage and with obvious benefit to corporate entities, the country seems to be slumping into a situation well-described by the concept of “resources curse”. The public has no adequate mechanisms for participation in the mining decision-making processes right from the start, despite its current and potential huge negative impact on affected communities. Income distribution, compensation for damage caused to the nature and local traditional economies, as well as taxation and collection of charges for mineral resources and mining waste remains inadequate. Implementation of ratified environmental Treaties continues to be of an imitational nature rather than in the true spirit of the documents.
2. The government of Armenia does demonstrate its obligation promulgated by the Constitution for the protection of public health: regular health checks are not carried out either nation-wide, nor in targeted areas where mining takes place, there is no official data on the health situation in communities nearby mines and there are no mechanisms for compensating those harmed by industrial pollution.
3. In this light, particularly worrisome is the fact that NGOs continue to be denied legal standing to bring environmental cases to court and thus are denied the opportunity to seek justice. This issue continues to manifest itself in the case of Teghut forest. The licensing process in approving mining in Teghut forest area was carried out without timely and effective public awareness and participation. To-be-affected communities were not adequately informed about the potential environmental impacts on their livelihoods. To the extent that any public participation did take place, they were perfunctory and unproductive as all the major decisions were already made before-hand. This violated Armenia’s EIA Law, as well as the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, ratified by Armenia in 2001. Interested public and NGOs are not allowed to claim against the decisions of administrative bodies in the court. The Aarhus Convention Compliance Committee found a violation of the Convention with regard to both public participation in the decision - making as well as with regard to lack of access to justice for NGOs.

Legislative Framework

4. Despite the requirements of Aarhus Convention's Compliance Committee in 2011 and 2013 to make remedial actions in order to ensure public participation to Teghut mining process, as well as to ensure access to justice for NGOs, no progress is registered up to date. In fact, the government of Armenia was supposed to amend the law on Environmental Impact Assessment (Environmental Impact Expertise), for the drafting of which a lengthy process was initiated but the amendments were not ratified by the president and the drafting process was started anew. Meanwhile, the current law does not prescribe the obligation to calculate costs and benefits and the methodological tools required for such calculations are missing. When granting mining permits, the government fails to take into account the damage inflicted to human well-being and the national economy by environmental degradation and pollution.
5. The mining industry is operating under extremely privileged conditions. The legislation does not define criteria for assessing the harm caused to the environment and does not require any compensation for such harm. This creates favorable grounds for mining companies to extract even the smallest quantities of ore, at the price of causing incomparable economic damage to the environment. After notorious amendments, the mining legislation does not recognize mining waste or tailing waste and thus there is no taxation for it. At the same time, 99.6% of the waste produced in Armenia is mining waste and the mining companies do not have any responsibility for this waste once the mining operation is over. Currently, there is approximately five tons of waste per each resident in Armenia, which is the de fact situation, after the mining legislation changes and the removal of the category of “waste” from tailings, this number will officially be presented much less. If such pollution of the environment continues without any regulation, taxation and responsibility Armenia will be soon facing not only an ecological disaster, but will suffer from the phenomenon of “resources curse.” In fact, the developmental alternatives of the country both on a national and local level are not placed on the public agenda, nor does the civil society have adequate access to bringing them to the level of public decision-making due to the overall lack of democratic processes in the country.

Impact on Health

6. Despite the expansion of mining, the government does not have a comprehensive system or policy to systematically gather information on negative impact on health and well-being of communities in the immediate vicinity of mining sites. At the same time, various research data identifies a worrying tendency of health situation deterioration among these communities. Research of the National Academy of Sciences Center for Ecological-Noospheric Studies revealed an extremely high level of heavy metals (mercury, cadmium, etc)

in the skin and hair of all children who underwent analyses in Syunik region.¹ The study conducted by American University of Armenia² shows concentration of various toxic metals (cadmium, chromium, arsenic and lead) in excess of international maximum concentration (sometimes up to 10 times more of the standard) in residential, garden and kindergarten soil. Their research findings of the Toxic site identification program³ also suggest that toxic chemicals originated from leachades get in the food chain because contaminated lands are used as pastures of cultivated land, and polluted rivers are used for irrigation. Their interviews with local people also identify sharp decline of health of population with main concerns being hypertension, cancer and congenital abnormalities, infertility, and even increase in young age mortality.

7. The population living nearby mining communities as well as the mine employees do not receive any special healthcare benefits. There are very few mining companies that ensure healthcare services for the affected community; in cases when healthcare services are provided it is not of systemic nature, but rather sporadically.
8. Despite the negative health impact of mining, Armenian government continues to give mining licenses that result in violation of human rights and constitute a major threat to the environment. Particularly, the following mining projects are of concern (a) iron mining in Hrazdan is at a stage of exploration and if started will affect Hrazdan River – the main source of irrigation water for agricultural lands of Ararat Valley where the vast majority of country's agricultural products are produced; (b) gold mining in Sotk on the shores of Lake Sevan, which is the biggest freshwater reservoir in the Caucasus region; (c) gold mining in Amulsar, near Jermuk mineral resort; (d) expanding of the copper-molybdenum mine area in Kajaran, where 6 villages will be fully destroyed and abandoned for mining and many others. Teghut's precedent is used in a number of other matters, including appeal against uranium mine exploration in Lernadzor, the southern region of Syunik in Armenia, to refuse legal standing to non-governmental organizations.

Sustainable Development

¹ "Ecologo-geo-chemical assessment of the environment near Kajaran town", Armen Saghatlyan, National Academy of Sciences of the Republic of Armenia, Yerevan, 2008

² Mining and Environmental Health in Armenia, Varduhi Petrosyan, MS, PhD, Associate Deat School of Public Health, Yerevan, April 22, 2013; http://eoh2013.aua.am/files/2013/04/Environmental-Health-in-Armenia_April_22_2013_VP.pdf

³ Toxic Site Identification Program – Armenia, School of Public Health, Acopian Center for the Environment, Blacksmith Institute, http://eoh2013.aua.am/files/2013/04/Environmental-Health-in-Armenia_April_22_2013_VP.pdf

9. The government promotes expansion of mining as a driver for economic development, job creation and infrastructure development. Despite the significant contribution of mining to GDP growth, its impact on alleviation of poverty, creation of job opportunities and for human development is controversial. Study shows⁴ that mining in Armenia increases poverty and expansion of mining has led to more jobs with very low wages, falling short of the poverty line.

10. Despite the great potential in this area for economic development, most of the population lives below the poverty line. In 2010, poverty in Yerevan as compared to 2008 increased by 7 percentage points, while in other urban areas the increase totaled 9.6 percentage points. In terms of urban-rural differences of welfare, majority of the poor (64.3 percent) were urban residents.⁵ This economic vulnerability pressures communities to make critically important decisions in a situation where there are few alternatives. In Teghut, where there are no alternative workplaces, the mine has become the only means to earn a living. At the same time, according to the Final Report on the Green Economy in the Eastern Partnership of 2011 “Armenia has opportunities for green growth especially in the field of ... agriculture (organic farming) [... and] tourism (ecotourism, eco agro tourism) could be targeted as well.” Teghut forest particularly is unique, as nearly 40 percent of the trees are fruit-bearing. The pristine nature of this area and recently discovered rich cultural heritage (about 20 historical and cultural sites from antique and middle age eras) create favorable conditions for creation of green economic development projects. At the same time, the government does not wish to implement adequate resource use policies for this area, ultimately forcing the local population to take the mining jobs for minimal pay as there are no alternatives.

Property Rights Violations

11. In most of the cases, mining results in violation of property rights and alienation of the property for miserable compensation. The property rights of community and individuals were violated in the process of decision-making of allocation of lands to the mining company in Teghut forest case. Based on the RA Government decision 1278-N of 01.11.2007⁶, the Government of Armenia allocated 1,491 ha for exploitation of the mine to the mining company – Armenian Copper Programme. Part of these lands were owned by private citizens and were taken away through eminent domain according to RA Government Decision 1279-N

⁴ Impact of Mining on GDP Growth, Income Inequality, and Poverty: Evidence from Armenia; Alexandr Grigoryan, Assistant Professor, College of Business and Economics, College of Humanities and Social Sciences, American University of Armenia, November 30, 2012

⁵ Social Snapshot and Poverty in Armenia, November 29, 2011 <http://www.worldbank.org/en/news/press-release/2011/11/29/social-snapshot-and-poverty-in-armenia>

⁶ RA Government’s decision 1278N of 01.11.2007 on Changing the Status of Lands and on Provision of Lands for Operation of the Teghut Copper-Molybdenum Mine

of 01.11.2007. The villagers received miserable compensation – about 10-20 cents per square meter of land– paid by ACP for their fertile lands and crops. Some villagers lost their property, while others’ property will be largely affected by and eventually degraded through contamination caused by mining.

12. Currently, there are 10 pending cases brought by residents of Shnogh and Teghut communities to the European Court of Human Rights complaining against violation of their right to property⁷. Three of the cases are currently in communication with ECHR.

RECOMMENDATIONS

- Stop issuing permits for new metal mines until proper environmental impact assessment methodologies are developed; include civil society’s recommendations in the new Environmental Impact Assessment law and adopt the Law and by-laws within one year
- Adopt legislation prescribing access to courts/legal standing for environmental NGOs to in matters of public interest litigation related to the environment
- Stop the unlawful operation of the Teghut Mine, in order to fulfill Armenia’s international commitments reaffirmed by the decisions of the Compliance Committee
- Ratify the Protocol on Pollutant Release and Transfer Registers and create a publicly-accessible database on the existing toxic pollutants in line with the Protocol
- Improve the legal framework for the protection of the environment, ensuring separation of functions of policymaking, resource management, resource use, and oversight, precluding conflicts between different legal acts and eliminating conflicts of interest. Promote the role of the Ministry of Nature Protection in making decisions related to the environment and in oversight, rather than the performing resource management functions.
- Streamline legal documents, ensure proper implementation of environmental legislation, and improve the enforcement of fines/penalties for violations of the law in line with the EU Directive on Environmental Liability. Improve the system of nature protection and nature use fees, especially by introducing the “polluter pays” principle in the mining sector. Use separate “command and control” tools and “market-based” mechanisms in developing environmental policy. Develop methodologies for assessing the impact of economic activities on ecosystems and human health and cost-benefit analysis methodologies, turning them into the basis for environmental impact expert assessment reports and compensation for environmental damage.

⁷ Parsadanyans case N 5444/10; Mashinyans N 65124/09; Davit Ghumashyan N67888/10; Harutyunyans N 65200/09; Mher Alikhanyan N 4413/10; Ramazyans N 54769; Levon Alikhanyan N 6818/10; Osmanyans N 71306/11; Vardanyans N 4178/10; Alikhanyan and Meliksetyan N 4168/10.