



ԹԵԴՈՒՏԻ ՊԱՇՏՊԱՆՈՒԹՅԱՆ ՔԱՂԱՔԱՑԻԱԿԱՆ
ՆԱԽԱԶԵՌՆՈՒԹՅՈՒՆ
SAVE TEGHUT CIVIC INITIATIVE

Background

Transparency and accountability in environmental decision-making remains a serious problem in Armenia. 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 forest¹. Interested public and NGOs are not allowed to claim against the decisions of administrative bodies in the court. The Decision of the Administrative Court dated 24 March 2010 stated: “The Administrative Court interpreted the law in such manner, which does not provide access to justice for the public organizations, even if their statutory goals include protection of the environment.”² The same legal position is held by the Court of Cassation³ (the supreme court of Armenia). Thus, the judicial authority rejected to provide access to justice of the environmental NGOs as public concerned in line with Article 9 of the Aarhus Convention. A complaint of NGOs on rejecting the access to justice for the public is now under the review of Aarhus Convention Compliance Committee.⁴

Mining sector is of particular concern. There are no true guarantees for public’s participation in the decision-making process and the licensing process lacks transparency, compensation for damages to nature and collection of charges for mining waste remains inadequate. Implementation of ratified environmental Treaties continues to be of formal nature rather than in the true spirit of the documents.

¹ 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.

² Available on http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2011-62/Correspondence_with_the_communicant/Decision_of_the_Admin_Court_24.03.2010_eng.pdf

³ Available on http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2011-62/Correspondence_with_the_communicant/Decision_of_the_Court_of_Cassation_01.04.2011_eng.pdf

⁴ Available on <http://www.unece.org/env/pp/compliance/compliancecommittee/62tablearm.html>

Priority area 2: *Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN);*

Specific Action: Ensure protection of the right to individual property

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 01.11.2007⁵, 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 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.

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 property⁶.

Priority area 3: *Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long term objective of sustainable development, including the protection of the environment;*

Specific Action : Continue reforms of the health sector

The South of Armenia, region of Syunik, is polluted from decades of molybdenum mining in Kajaran, Kapan, Agarak towns. The land and waters are contaminated, high rate of cancer and birth defects are recorded. 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 region⁷. According to 2005 report of World Health Organization (WHO), Armenia has the second highest rate of birth defects in the post soviet area⁸.

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,

⁵ 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

⁶ Parsadanyans case N 5444/10; Mashinyans N 65124/09; Davit Ghumashyan N67888/10; Harutyunyans N 65200/09; Mher Alikhanyan N 4413/10; Ramazanyans N 54769; Levon Alikhanyan N 6818/10; Osmanyans N 71306/11; Vardanyans N 4178/10; Alikhanyan and Meliksetyan N 4168/10.

⁷ "Ecologo-geo-chemical assessment of the environment near Kajaran town", Armen Saghatelyan, National Academy of Sciences of the Republic of Armenia, Yerevan, 2008

⁸ Annual report of the Human Rights Defender of the Republic of Armenia, 2011

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 (villagers have been resisting this decision for months already), 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.

The decisions related to Teghut mining violate provisions of the RA Constitution and a number of national laws, including RA Land Code, RA Water Code, RA Mineral Code, RA Law on Environmental Impact Expertise, RA Law on Allocation of Mineral Resources for Exploration and Exploitation (RA Law on Concession), RA Law on Flora, and RA Law on Fauna. Given that the mining will pollute water resources, land and air in the area, people's **right to health** and **right to water** will be violated.

Our research shows that in cases comparable to Teghut where there is mining, pollution of water, toxic waste and health issues, the European Court of Human Rights (ECHR) has extended Article 2 (Right to life) and Article 8 (Right to respect of private life and family life) of the European Convention on Human Rights: [Dubetska and Others v. Ukraine \(application no. 30499/03\)](#), [Lopez Ostra v. Spain \(application no. 16798/90\)](#), [Fadeyeva v. Russia \(application no. 55723/00\)](#), [Tatar v. Romania \(application no. 657021/01\)](#), etc.⁹

4. GENERAL OBJECTIVES AND ACTIONS

4.3 Economic and social reform, poverty reduction and sustainable development

Enhance agricultural development and production

- Further implement the reform strategy for the agricultural sector providing for the structural, institutional, legal and administrative support necessary to foster rural development and the development of quality production (local products, organic products, geographical indications, etc.), to encourage diversification of activities and to ease access to export markets and also to reduce poverty

Despite the great potential in this area for economic development, most of the population lives below the poverty line. In general, Armenia's poverty rate increased significantly in 2009 due to the economic crisis, having a particularly devastating effect on populations outside of the capital city.¹⁰ 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 2011¹¹, "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

⁹ See European Court of Human Rights, Factsheet-Environment related cases in the Court's case law, January 2012

¹⁰ Poverty rising in Armenia after economic crisis <http://www.cacianalyst.org/?q=node/5480>

¹¹ http://ec.europa.eu/environment/international_issues/pdf/report_green_economy_en.pdf

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 as mentioned in the Eastern Partnership report. 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.

4.6.4 Environment

Specific Action: Take action for prevention of deterioration of the environment, protection of human health, and achievement of rational use of natural resources in line with the commitments of Johannesburg Summit

- Develop legislation and basic procedures and ensure planning for key environmental sectors, including in particular as specified in the national environmental action plan (air quality, water quality, waste management and nature protection):

The criteria for the economic assessment of losses to the environment as a consequence of economic activity (based on market value) are not defined. As a result, calculations of resultant economic losses are conducted on arbitrary basis. In the current legal-economic system, sustainable natural resources allocated for exploitation are handed over to mine operators not at market value but at their cadastre (real estate registry) value. Thus, the payments are at ridiculously low amounts. For example, the Shnogh River adjacent to the Teghout mine, a project of the Armenian Copper Programme company, was appraised at a mere 175,000 AMD. The appraisal for the forest ecosystem being destroyed was only based on the value of the wood itself, according to penalties that would have been paid if the trees were illegally cut down.

The law does not envisage the obligation of compensation for economic damage to the environment caused by economic activity. Thus, it becomes conducive for mining companies to extract even small quantities of ore, at the price of causing incomparable economic damage to the environment.

A rate of 0 is defined for waste materials caused by mining operations. The fact that companies are freed from paying fines for wastes makes mining even more attractive. In Armenia today, there is approximately five tons of waste per each resident. If such pollution of the environment, a huge chunk of Armenia's small territory might just turn into "dead zones", forcing the local populace to emigrate.

Tailings dams have been removed from the parameters of the mining complex and, under the name of "man-made mines", have been placed under the jurisdiction of the state. According to Article 14 of the RA Underground Resources Code, man-made mines are the exclusive property of the Republic of Armenia. Large annual costs must be expended to guarantee the safety of a tailing dam, for which the government receives nothing in return.

Under the term "industrial waste dump" barren rock graveyards are also removed from the mining complex (Article 3 of the Underground Resources Code). According to Article 14 of the same Code – After the

termination of mining rights, the ownership right of industrial wastes passes at no cost to the Republic of Armenia, which can allocate them for usage as man-made mines

Specific Action: Take steps to ensure that conditions for good environmental governance are set and start implementing them

- Reinforce structures and procedures to carry out environmental impact assessments:

Despite the requirement of Aarhus Convention Compliance Committee, Armenian legislation does not envisage any regulation of Environment Impact Assessment (EIA)¹². Thus, the government evidently ignores the decision and recommendations of Aarhus Convention Compliance Committee (http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Armenia/toARM_IV9a_CC36_01.pdf);

http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Armenia/toARM_IV9a_CC37.pdf;
http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Armenia/toARM_IV9a_CC38.pdf).

The absence of regulation of environmental impact assessment stimulates irresponsibility and willfulness among administrative bodies and business sector especially in the sphere of mining industry and cause unequal and irreplaceable damage to the environment and the economy of the country.

Pursuant to the decision the Party (Armenia) concerned to: “Draw up an action plan for implementing the above recommendations with a view to submitting an initial progress report to the Committee by 1 December 2011, and the action plan by 1 April 2012”. No action plan was implementing and no progress report was submitted to the Compliance Committee so far.

In addition to a thorough legal settlement EIA development and approval procedures should also have a high legal force (at least, a law passed by the Parliament) and legal act status. In accordance with article 83.5 of the Constitution and article 9 of RoA law on Legal acts, the implementation and protection of the rights of physical and legal entities, the restrictions of their rights and freedoms, as well as their obligations and the order to exercise control over the activities of these persons are prescribed by the law (passed by the Parliament). Therefore, taking into account that impact assessment creates rights and obligations for physical and legal entities, the whole procedure of EIA should be displayed in the form of a law, not in the form of other legal acts (sub-legislative acts).

¹² It's necessary to distinguish two basic legal terms “environmental impact assessment” and “environmental impact expertise”. In this context it's important to understand one starting point, that is, assessment is a professional activity based on scientifically designed standard booking methods and criteria, and the expertise is an administrative act which is made by an administrative authority, which approves or doesn't approve the EIA of the planned project activity. Environmental impact assessment can be carried out based on impact rating, ie after receiving the impact rating by the established order. It is also important to legally establish that the **environmental impact assessment (EIA)** is a valuable document of an expertise importance and the **environmental impact expertise (EIE)** is an administrative act which is subject to protest by the established order including judicial appeal.

4.4.5 Other key areas

Public Internal Financial Control and related issues

Sound management and control of public finances

- Promote the development of appropriate administrative capacity to prevent and fight effectively fraud and other irregularities affecting national and international funds, including the establishment of well-functioning structures involving all relevant national entities

Bodies in charge of external financial control (audit) and performance of the state budget in Armenia include: the RA Control Chamber, an independent body by law; the RA Ministry of Finance; the Control Services of the President and the Control Services of the Prime Minister, and the Monetary and Budgetary Standing Committee of the Parliament. Mechanisms for internal financial control of public finances are virtually non-existent.

The fact that control over public finances is inefficient, repetitive by various bodies, does not follow a single and harmonized methodology and does not result in better management of public finances and increased accountability, is regularly reported by media. Interestingly, this is also acknowledged by the Government itself. A strategic document yet adopted by the RA Government in 2010 on Internal Control over Public Finances, and its Action Plan for 2011-2013 (later on amended as 2011-2014) confirm that due to the vast irregularities and inefficiency of the existing policy and mechanisms of public financial control, the area needs fundamental changes.

Evidence supporting implementation or will to implement this strategy is, however, lacking. Fraud and transactions leading to misuse of public finances that were revealed by the Control Chamber remain unattended by the prosecutor's office, while the revelations of the President's Control services on misuse of public funds and flawed public procurement are widely covered by pro-governmental media in a presidential pre-election period literally taking place nowadays. In fact, the electoral "show-off" has started.

The supreme body in charge of public finance audit as an independent structure is the Control Chamber. According the Global Integrity Report 2011, the Control Chamber does not demonstrate sufficient independence and professionalism in its operations. In practice, it has low capacity or willingness to initiate its own investigations and ensure that the government act on them. According to Artsvi Minasyan, an oppositional parliamentarian, the 2011 report of the Control Chamber featuring 14 pages only, referred to misuses of funds here and there, but did not provide specifics, such as amounts of misused funds, companies contracted for public services, officials responsible for transactions and quality of services, thus it was practically impossible to act upon them. A similar opinion is expressed in various media reports, including 168 Zham newspaper.¹³

The role of the Parliament's Standing Committee on Monetary and Budgetary Affairs is miniature due its structure that features predominantly the ruling party, and has only few members from the opposition who have no influence on the activities and decisions of the committee. The Global Integrity Report of 2011, specifies that oversight by the Parliamentarian Committee over expenditure of public funds is very weak (33 points out of

¹³ Available on <http://168.am/2012/09/13/126083.html>

100 on a scorecard). Overall, the businessmen representing the majority of the ruling party are not interested in monitoring the state budget, and the oppositional MPs do not have sufficient resources to affect the process. Internal financial reporting from department heads of state structures to the Parliamentary Committee is non-existent.

Control over international donor funding is also dubious and does not seem to result in improvement of donor money management. A scandalous embezzlement in one of World Bank's projects in Armenia yet in 2006, did not result in penalization of corrupt officials, World Bank representatives and the private company involved in corrupt transactions.¹⁴

Another evidence that there is no willingness to effectively address internal transparency and control over public finances, is the lack of any step toward adopting legislation insuring the protection of "whistle-blowers." The situation remains unchanged despite reports and advocacy for ensuring both legal and practical grounds for protection of civil servants who report corruption, graft, abuse of power and resources (for example, Transparency International's efforts in its European Neighborhood Policy: Monitoring Armenia's Anti-corruption Commitments 2010 Report).

Lack of transparency and proof of effective use of funds is also related to the area of international aid financing. Normally, actions, data and reports are not harmonized, do not contain sufficient detail, if at all, they are publically available, and no public financial audit is conducted in oversight of these funds (aside from the independent actions of the respective donor). A recent media report related to the abundance and ambiguity of international aid projects within a single Ministry (the RA Ministry of Nature Protection) demonstrates how information is underpresented, scattered and lacks narrative reporting in just this sector (see: "Who are the Real "Grant-Eaters"?"¹⁵

In reality, the only genuinely public oversight over government spending is conducted by media within its capacity to retrieve information as endorsed by the Freedom of Information Law. Nonetheless, its capacity is limited both in terms of power and scale and does not normally lead to prosecutor investigations.

Given all the above-mentioned, as well as assessments on the level of transparency and corruption in public administration by esteemed international NGOs, such as Transparency International, Global Integrity Report, Freedom House, we want to emphasize that the current Armenian authorities demonstrate no progress towards ensuring a proper, independent and effective internal public financial control, nor do they demonstrate progress towards implementation of the pledged actions aimed at alignment of Public Internal Financial Control policies to the policy and practice in the EU.

¹⁴ Available on <http://www.whistleblower.org/storage/documents/PlunderingtheYerevanWaterUtility.pdf>

¹⁵ Available on <http://www.lragir.am/index.php/arm/0/country/view/73128>

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168 Zham Newspaper, “Supreme, Controlling and Ineffective” 13.09.2012.²⁰

Lragir Online Newspaper, “Who are the Real “Grant-Eaters”? 17.10.2012.²¹

¹⁶ Available on <http://www.banks.am/am/news/interviews/7367/>

¹⁷ Available on <http://www.globalintegrity.org/node/898>

¹⁸ Available on <http://www.whistleblower.org/storage/documents/PlunderingtheYerevanWaterUtility.pdf>

¹⁹ Available on <http://www.aysor.am/am/news/2012/09/12/artsvik-minasyan/>

²⁰ Available on <http://168.am/2012/09/13/126083.html>

²¹ Available on <http://www.lragir.am/index.php/arm/0/country/view/73128>