



MINING LEGISLATION REFORM INSTITUTE

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**RESPONSIBLE MINING
STAKEHOLDER CONSULTATION REPORT**

YEREVAN - 12 JULY 2019

Acknowledgments

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Executive Summary

From opportunities for economic growth and job creation to foreign investment and regional development, mining has the potential to play a significant role in the development of the Armenian economy. However, current gaps in legislation, and a poor track record of assessment, monitoring and enforcement, present many risks for Armenia.

Noting the importance of the sector to the Armenian economy and in seeking to work toward the adoption of responsible mining practices in Armenia, the MLRI embarked upon a civil society stakeholder consultation and mining policy development initiative in November 2018. The initiative was designed to be inclusive, transparent and consensus-based. It involved a series of stakeholder events and forums. It offered participants multiple opportunities to identify key issues and challenges in the mining sector and make recommendations for their rectification.

2018

The MLRI documented the issues raised during the consultations and worked with participants to set mining sector priorities. The eight-month stakeholder consultation process culminated in the publication of this paper (MLRI Responsible Mining Stakeholder Consultation Report) in July 2019. This paper is not an academic paper. It is a stakeholder consultation paper which documents the key mining sector issues and challenges raised by participants during an extensive stakeholder consultation process. It represents the aggregate of views expressed in round table discussions, individual meetings and written submissions on the subject matter by stakeholders. It does not describe the views of any single participating group or the MLRI.

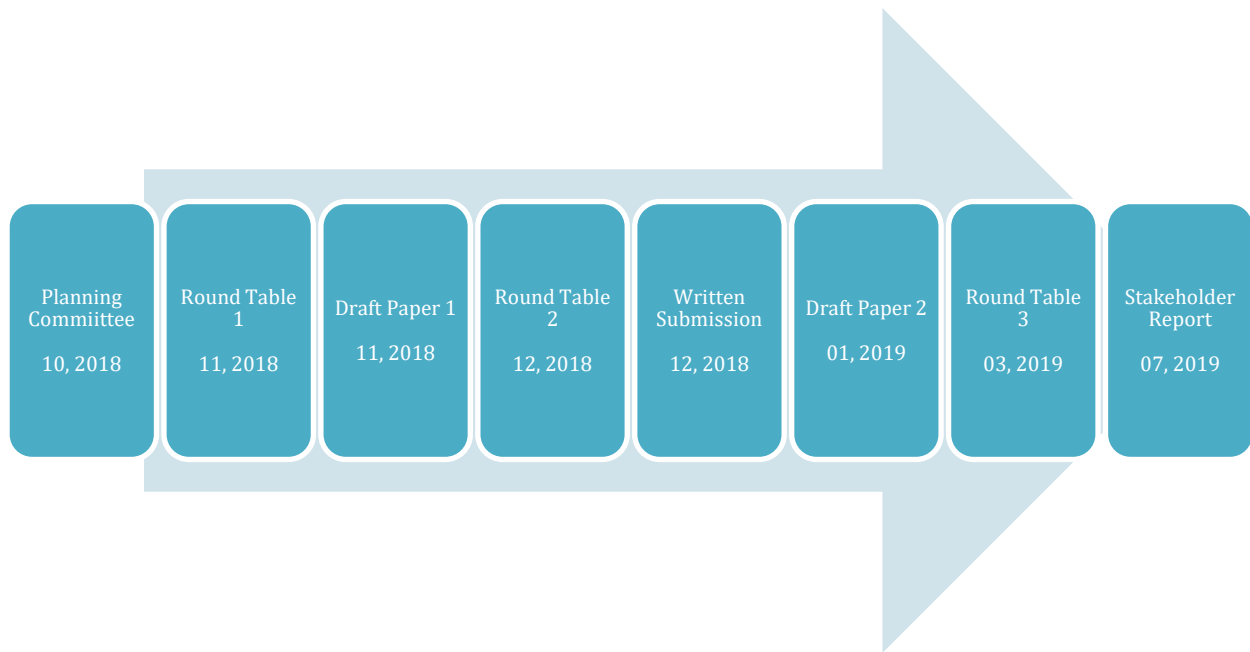
The issues documented in this Paper are categorized into the four broad primary impacts of mining: environmental; economic; social; and workers' rights. The issues identified and listed cover the full spectrum of mining operations including exploration; exploitation; and closure.

Where scientific and academic references support the issues and challenges raised by stakeholders, the relevant academic/research papers have been cited. The issues documented in the Paper are designed to lead toward the reform of legislation in Armenia's mining sector.

Methodology and Process

The methodology of stakeholder engagement undertaken by MLRI was based on the principles of transparency, inclusiveness and consensus development. The process involved a number of stages and afforded stakeholders' multiple opportunities to contribute and share their views in both public and private settings.

The stakeholder consultation process map:



Each of the three round table discussions was held with different formats to ensure high levels of engagement and participation throughout the entire consultation process.

Round Table 1

A workshop was held with stakeholders separating into groups, identifying key issues and developing a priority order. Each of the groups then presented their key finding to the entire collective.

Round Table 2

A series of presentations were delivered focusing on the key mining sector challenges by academics from Armenia and overseas. The benefits of the mining sector were discussed alongside the key challenges facing the sector. A brief presentation was delivered on the EITI standard and how it can improve the Armenian mining sector and a lecture was delivered on the development of cost-benefit analyses.

Round Table 3

A panel discussion involving key civil society and academic groups was held over three hours allowing groups such as the Armenian Environmental Front, Civil Voice and others to join academics and to share their opinions on the environmental, social, economic and workers' rights issues in the mining sector. Participants were invited to ask questions and deliver commentary on the mining sector.

Pictures from three MLRI roundtables with stakeholders—civil society organizations:



Issues and Impacts

Environmental

1. Due to inconsistencies in geographic information system (GIS) measuring techniques, in some instances, mining license holders lay claim to land that is dually reserved as Armenian national parkland.
2. Currently, the guidelines for preparing Environmental Impact Assessments (EIAs) are not sufficiently detailed. There is no obligation to utilize the guidelines in order to prepare an EIA. EIAs are undertaken by mining companies¹ rather than by other parties (independently, by government or the National Academy of Sciences). These factors may lead to bias or the perception of bias. Furthermore, inconsistencies in environmental legislation create confusion.
3. There is no binding definition of ‘ecosystems services’ in Armenia which inhibits the proper assessment of environmental impact. Also, the methodology used to calculate environmental protection fees is flawed as it does not consider the impact of mining operations on the environmental system as a whole. This is inconsistent with Armenia’s obligations under the Aarhus Convention which require an assessment of the various elements of the environment including the air, water, soil, landscape, natural sites, biodiversity and importantly, the interaction among these elements of the environment.²
4. Cumulative Impact Assessments (CIAs) allow for a more accurate assessment of the stresses placed on the environment by a mining operation as they take into account existing burdens on the ecosystem resulting from other mining, industrial, and other human activities in the

¹ Vivoda, V. & Fulcher, J. (2017). Environmental and Social Impact Assessment (Series on International Best Practice, Working Paper No. 4, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p4

² Summary of main reform issues in Armenian mining legislation, Mining Legislation Reform Initiative, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia, 2016). Retrieved from <http://mlri.crm.aua.am>, p3

immediate vicinity. CIAs are not properly undertaken in many instances.³ While a guideline methodology exists it is not mandated.

5. Current laws on the evaluation of environmental performance are weak.⁴ While laws on waste management and classification are present, concerns remain around the environmental assessment of mining operations.
6. Tailings dams in Armenia may be inadequately constructed, the rules for designing, approving, building and assessing the dams are unclear and the risk they pose to the environment is substantial.^{5, 6}
7. Acid mine drainage, saline or sodic drainage or leaching and mobilization of metallic substances arising from mining operations may cause impacts to the environment in Armenia. Appropriate standard setting and assessment systems are required to monitor these types of pollution.⁷
8. There is an increased risk to the environment caused by high levels of toxicity in the air, water and soil caused by mining⁸ and the Inspectorates for Health and Nature Protection are not fully equipped or resourced to deal with the challenges.

³ Ibid, p3

⁴ Vivoda, V. & Fulcher, J. (2017). Mine Waste Classification and Management (Series on International Best Practice, Working Paper No. 1, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p4

⁵ Vivoda, V. & Fulcher, J. (2017). Mine Waste Classification and Management (Series on International Best Practice, Working Paper No. 1, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p4

⁶ The World Bank (2016), Armenia: Strategic Mineral Sector Sustainability Assessment, April

⁷ Vivoda, V. & Fulcher, J. (2017). Mine Waste Classification and Management (Series on International Best Practice, Working Paper No. 1, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p6-8

⁸ Vivoda, V. & Fulcher, J. (2017). Environmental and Social Impact Assessment (Series on International Best Practice, Working Paper No. 4, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p2

9. Mine closure plans in Armenia are basic and do not cover all aspects of remediation, reclamation, restoration and rehabilitation in order to support a future self-sustaining ecosystem.⁹ While guidelines exist they are not mandated and as such not frequently utilized.
10. Existing closed and former mine sites are not properly rehabilitated. Nor is there sufficient funding allocated by the government to support the rehabilitation of these sites.¹⁰
11. Given the size of Armenia's land area, the impacts of mining on the environment can spread beyond Armenia's borders.

⁹ Vivoda, V. & Fulcher, J. (2017). Remediation, Rehabilitation and Mine Closure (Series on International Best Practice, Working Paper No. 2, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p4

¹⁰ Vivoda, V. & Fulcher, J. (2017). Compensation for Environmental Damage (Series on International Best Practice, Working Paper No. 3, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p3

Economic

1. The economic impacts of mining on the demise of other industries such as agriculture and tourism are not appropriately assessed prior to the commencement of mining operations.¹¹ Moreover, there is no economic assessment of the alternative uses of land designated for mining.
2. There is currently no sovereign wealth fund in Armenia for state revenues generated through mining operations. Given that natural resources are limited, there is a future economic impact to intensively mining natural resources without creating future income streams.
3. The tax code covering mining operations in Armenia is comparable to other similar-sized economies. However, mining companies have the opportunity to deviate from London Metal Exchange prices by 20%, thus creating the circumstances for a reduction in state revenues generated from mining royalties.¹²
4. Armenian mining companies are not mandated to utilize the most advanced metal extraction techniques, thus the revenue from royalties is limited by the technologies used.
5. Compensation currently received for environmental damages caused by mining operations in Armenia is insufficient.¹³

¹¹ Vivoda, V. & Fulcher, J. (2017). Environmental and Social Impact Assessment (Series on International Best Practice, Working Paper No. 4, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p2

¹² EITI Legislative and Institutional Review, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia, 2018), p7

¹³ Vivoda, V. & Fulcher, J. (2017). Compensation for Environmental Damage (Series on International Best Practice, Working Paper No. 3, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p3

6. Compensation is approved in the annual state budget and subsequently distributed to the affected communities. However, much of the funds are spent on other priorities or in different regions.^{14, 15}
7. Mining companies have an economic vulnerability to global commodity prices. In Armenia as in other parts of the world, they may be susceptible to becoming insolvent and, in some instances, unable to pay the full costs of closure and rehabilitation.¹⁶
8. Revenue accountability and laws on the transparency of ownership of mines historically have not been clear in Armenia.¹⁷
9. Mining companies in Armenia are financially responsible for the impacts of mining. However, unlike in other jurisdictions, persons/individuals are not necessarily personally held responsible.¹⁸
10. There are no provisions to ensure that funds provided by mining companies to support mine closure processes in Armenia are sufficient for complete reclamation and rehabilitation of the land.¹⁹
11. Mine closure and reclamation costs are insufficiently calculated. Only a small portion of the closure cost is paid up-front. The remainder is paid in installments throughout the period of the mining license. The payments do not take account of inflation or the increasing cost of rehabilitation. Moreover, no financial guarantees are provided by mining companies to pay

¹⁴ Ibid, p3

¹⁵ Summary of main reform issues in Armenian mining legislation, Mining Legislation Reform Initiative, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia, 2016). Retrieved from <http://mlri.crm.aua.am>, p3

¹⁶ The World Bank (2016), Armenia: Strategic Mineral Sector Sustainability Assessment, April, p 35

¹⁷ Vivoda, V. & Fulcher, J. (2017). Monitoring, Enforcement and Compliance (Series on International Best Practice, Working Paper No. 5, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p9

¹⁸ Environmental Protection (Chain of Responsibility) Amendment Act 2016 (Qld), p13

¹⁹ Vivoda, V. & Fulcher, J. (2017). Remediation, Rehabilitation and Mine Closure (Series on International Best Practice, Working Paper No. 2, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p13

the full amount in the event that the mine ceases operations prior to the completion of the period of the license.^{20, 21}

Social

1. Mining can be explicitly listed as a reason to invoke eminent domain in Armenia on the basis of 'public benefit'. However, there is currently no method to determine if a future proposed mining operation would provide a net benefit to the Armenian public.²²
2. Social aspects including health impacts borne by mining operations are not assessed as part of the Environmental Impact Assessment (EIA) in Armenia. This may in part be due to insufficient numbers of qualified staff at the Ministry of Nature Protection to assess the social implications of mining.²³
3. While it is a requirement under the law, Health Impact Assessments (HIA) are not undertaken by mining companies in Armenia as there are no implementation guidelines.²⁴
4. Communities affected by mine operations are identified by mining operators and assessed by the Armenian government.²⁵ A clear set of criteria for determining which communities are

²⁰ The World Bank (2016), Armenia: Strategic Mineral Sector Sustainability Assessment, April, p 35

²¹ Summary of main reform issues in Armenian mining legislation, Mining Legislation Reform Initiative, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia, 2016). Retrieved from <http://mlri.crm.aua.am>, p3

²² Summary of main reform issues in Armenian mining legislation, Mining Legislation Reform Initiative, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia, 2016). Retrieved from <http://mlri.crm.aua.am>, p7

²³ Vivoda, V. & Fulcher, J. (2017). Monitoring, Enforcement and Compliance (Series on International Best Practice, Working Paper No. 5, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p4

²⁴ Vivoda, V. & Fulcher, J. (2017). Environmental and Social Impact Assessment (Series on International Best Practice, Working Paper No. 4, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p4

²⁵ Vivoda, V. & Fulcher, J. (2017). Monitoring, Enforcement and Compliance (Series on International Best Practice, Working Paper No. 5, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p4

affected is absent.²⁶ This has the potential to result in disputes amongst mining operators, government and local communities about which communities are impacted by the mine.

5. Agreements on resettlement and compensation during mine development are decided by the authorities and the mine companies without sufficient input from affected communities.^{27, 28} As such in many instances the greatest impact is upon the poor, who are unable to change their predicament by their own means.
6. Mining causes the displacement of other industries.²⁹ In Armenia, this may be the case, particularly for the regional agricultural and tourism industries.
7. Mining in Armenia causes the displacement of peoples and communities³⁰ as they move directly as a result of mining operations or due to the subsequent decline in job opportunities and industry.
8. Mines often do not have social acceptance. In order to achieve this, a real rather than peripheral investment in the local community is required.³¹
9. Historically, in Armenia, there has been little or no sufficient public disclosure of mining contracts.³² This further reduces the possibility of social acceptance.

²⁶ EITI Legislative and Institutional Review, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia, 2018), p18

²⁷ Vivoda, V. & Fulcher, J. (2017). Mine Waste Classification and Management (Series on International Best Practice, Working Paper No. 1, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p4

²⁸ The World Bank (2016), Armenia: Strategic Mineral Sector Sustainability Assessment, April, p77

²⁹ Vivoda, V. & Fulcher, J. (2017). Environmental and Social Impact Assessment (Series on International Best Practice, Working Paper No. 4, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p2

³⁰ Ibid, p2

³¹ Blowfield, Michael and Murray, Alan 2008, Corporate Social Responsibility: A Critical Introduction, Oxford University Press (Oxford, United Kingdom)

³² EITI Legislative and Institutional Review, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia, 2018), p8

10. Historically, laws on the disclosure of mining company financial reports and tax payments made by mining companies have been unclear.³³ This lack of transparency has contributed to public distrust. Mitigation of these issues through participation in the 'EITI process' is yet to be proven.
11. There is an increased risk to public health caused by heavy metals and high levels of toxicity in the air, soil, water and agricultural products.³⁴ Appropriate systems to assess, measure and reduce heavy metals in Armenia have not been implemented.³⁵
12. Tailings dams may be inadequately constructed, and the risk they pose to public health in Armenia is substantial.³⁶
13. Armenia has obligations under various international treaties including the Aarhus convention.³⁷ Adherence to these treaties may prevent the disclosure of information relevant to the public on the basis of public security.

³³ Ibid, p12

³⁴ Vivoda, V. & Fulcher, J. (2017). Environmental and Social Impact Assessment (Series on International Best Practice, Working Paper No. 4, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p2

³⁵ EITI Legislative and Institutional Review, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia, 2018), p29

³⁶ The World Bank (2016), Armenia: Strategic Mineral Sector Sustainability Assessment, April

³⁷ Summary of main reform issues in Armenian mining legislation, Mining Legislation Reform Initiative, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia, 2016). Retrieved from <http://mlri.crm.aua.am>, p3

Workers' Rights

1. The remuneration paid to locally sourced staff in the Armenian mining industry is lower than that paid to overseas staff in Armenia.³⁸
2. Local staff have fewer senior positions in Armenian mining companies and are less frequently promoted to managerial positions.³⁹
3. There is an increased risk of accidents and injuries in industrial work environments such as mining.⁴⁰ Workplace injuries in Armenia are substantially more frequent in areas and regions which have significant mine sites.⁴¹
4. Training of employees about safety may be a contributor to workplace injuries.⁴² The burden of responsibility for training and safety compliance falls with the employer including the directors and officers of the mining company.
5. Health insurance for mine workers is not mandated by the Armenian government and thus is not universally provided. Beyond the issues of safety, this adds a financial burden to mine workers and their families.
6. Where mining companies close sooner than the term of the mining license, employees are adversely affected and their employment term is reduced. This is also the case when mining operations are interrupted for assessment. There are no funds or programs in place to support employees during interruptions or after the cessation of operations.

³⁸ Vivoda, V. & Fulcher, J. (2017). Environmental and Social Impact Assessment (Series on International Best Practice, Working Paper No. 4, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p2

³⁹ The World Bank (2016), Armenia: Strategic Mineral Sector Sustainability Assessment, April, p77

⁴⁰ Vivoda, V. & Fulcher, J. (2017). Environmental and Social Impact Assessment (Series on International Best Practice, Working Paper No. 4, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p2

⁴¹ Vivoda, V. & Fulcher, J. (2017). Occupational Health and Safety (Series on International Best Practice, Working Paper No. 6, Mining Legislation Reform Initiative), AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>, p3

⁴² Ibid, p4

7. Duty of care, safety and risk management are often not given the importance they should⁴³, rather the focus is placed on job security. There are few appropriate workforce representative bodies in Armenia supporting the rights of mine workers.

⁴³ Ibid, p4

Conclusion

This Paper is a stakeholder consultation paper which documents the key mining sector issues and challenges raised by participants during MLRI's Stakeholder Consultations. The Paper highlights and categorizes mining issues into four broad areas: Environmental; Economic; Social; and Workers' Rights.

The Paper is an important input into the development of policies to reform Armenia's mining sector.

Participants

Numerous civil society groups, International NGOs academics, workers' rights groups and local government representatives participated in the MLRI consultations. Some of the participants are listed below:

Armenian Young Lawyers Association, Kapan
Anahit NGO/ Women support center
Association of Young Environmental Lawyers and Economists
Armenian Environmental Front (AEF)
Armenian Lawyers' Association
Armenian Helsinki Committee
Armenian Relief Society
Armenian State University of Economics
American University of Armenia Center for Responsible Mining
American University of Armenia Acopian Center for the Environment
Bird lovers Center NGO
Civil Voice
Ecoright NGO
EcoLur Informational NGO
EITI MSG Civil Society Representatives
International Union (Commonwealth) of Advocates
Kapan Civic Youth Center
Save Teghut Civic Initiative
Trade Union of Miners, Metallurgists and Jewelers of Republic of Armenia
Yerevan State University