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Center *for*
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Summary of main reform issues in Armenian mining legislation

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About This Series and MLRI

This *Summary of main reform issues in Armenian mining legislation* is prepared within the scope of the **Mining Legislation Reform Initiative (MLRI)**, a project of the **AUA Center for Responsible Mining**. MLRI is a multi-year effort, funded by the **Tufenkian Foundation**, to improve Armenia's legislation ensuring that mining in Armenia provides sufficient benefits to the country and local communities. The initiative involves drafting and passing legislation that elevates the socio-economic benefits of mining, while reducing the negative environmental and public health impacts. A key component of the MLRI is collaborating and partnering with civil society, advocacy groups, academic institutions, and relevant national and international organizations. MLRI works with the key governmental and legislative bodies in getting the draft legislation passed into law. For more information visit http://mlri.crm.aua.am.

About the AUA Center for Responsible Mining

The American University of Armenia (AUA) Center for Responsible Mining promotes the creation and adoption of global best practices in socially, environmentally, and economically responsible Mining in Armenia and the region. To achieve this, the Center conducts research, training, and advocacy engaging all key stakeholders including industry, civil society, financial institutions, and the public sector. For more info, visit http://crm.aua.am.

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SUMMARY OF MAIN REFORM ISSUES IN ARMENIAN MINING LEGISLATION

Issue/Gap #1: Proper valuation of ecosystem services and damage resulting from economic activity

Description of current situation

There is no binding definition of "ecosystems services" in Armenia, and the methodology used to calculate environmental protection fees does not incorporate an ecosystems services approach. Currently, a number of government resolutions set out complicated methodologies for evaluating damage to water, atmosphere and land, but this approach is inadequate in two ways. Firstly, it considers each element of the environment separately, rather than considering the environment as a complex system of interacting components, and secondly, the calculations do not reflect the real value of the damage to the environment, such as would be determined through, for example, replacement or cost-benefit approaches.

Furthermore, these calculations do not reflect the far-reaching impacts of mining operations and do not include clauses on the potential impact on human health and the costs of health-care provision as arising from the health impacts borne by the population.

Legislation needs to be brought in line with Armenia's obligations under the Aarhus Convention (which defines the elements of the environment as air and atmosphere, water, soil, landscape, natural sites, biodiversity and its components, and also the interaction among these elements), as well as its commitments under the Convention on Biological Diversity. In this respect, Armenia has made some steps to recognizing the issues:

- On the basis of the concept paper, an action plan was adopted by Government on 14 November 2013. The first action point provides for the development of a draft law on ecosystem services. The deadline was 2015, however it appears that a draft has not yet been presented to government.
- Armenia's 5th national report to the Convention on Biological Diversity (September 2014) contains the following sentence: "In particular, it is suggested to introduce a system on payments for ecosystem services, which in practice will not replace the system of environmental and nature use fees, but will be applied in parallel with it."
- A national action plan for the years 2016-2020 on biodiversity conservation, protection, reproduction and use was adopted by Government on 10 December 2015. The first action point is as follows "Define a methodology on monetary valuation of ecosystem services (monetary valuation of water, soil and biodiversity resources) and test it in specially protected nature areas."

Next steps

The conceptual steps for developing an ecosystems services approach has been laid, and the government now needs to implement the obligations under the relevant action plans, including the development of a law on ecosystem services, and a methodology for monetary valuation of ecosystem services.

Issue/Gap #2: Lack of strategic, policy-based approach

Description of current situation

To some extent, the sector is being governed without clear policy, and where policies exist, sometimes the actions (or inaction) of the government contradict stated policies.

The main recommendation of the World Bank's "Armenia: strategic mineral sector sustainability assessment" report (April 2016) is that a national mining policy should be developed. Currently there is no clear policy as regards the mining sector, but the government continues to develop legislation – sometimes with very little debate[1]. In related sectors – such as ecosystems services – policy is developed through concept papers, but the timetables set out in action plans are not always observed.

The World Bank's report concludes that there are serious questions to be raised concerning economic, environmental and social sustainability of the mining sector, and that these can be tackled through comprehensive policies leading to a more sustainable sector. In many cases, as the report points out, the solution is to be found not in adopting more laws but in consistent implementation of existing legislation. Institutional development therefore has an important part to play.

Next steps

It is time to move forward on the development of a clear strategy for the mining sector, and this could be finalized over the next year or so, as envisaged by the government's draft concept paper. In the meantime, any legislative initiatives having a serious impact on the sector should be delayed until the strategy is finalized.

Issue/Gap #3: Mine closure, reclamation

Description of current situation

The application for the mining right needs to include a mine closure plan, which is made up of a physical mine closure plan, reclamation of lands, workforce social mitigation plan, program for monitoring disposal of industrial dumps, and confirmation for the preparation of the final mine closure plan two years prior to the end of operations, along with financial

[1] For example, on 30 January 2017 the Prime Minister held a discussion with mining company representatives concerning relaxing the royalty payments regime, a week later draft legislation was approved by Government, and on 28 February 2017 the drafts passed final reading in the National Assembly.

guarantees for the implementation of the said plan. The financial guarantees consist of payments to the Environmental Protection Fund. Under the Mining Code and Government resolution no. 1079 dated 23 August 2012, at the time of signing the mining contract, the costs for reclamation and mine closure are estimated, and a preliminary payment of not less than 15% is made. The balance is paid in equal annual payments spread out over the period of the mining license, unless otherwise specified in the mining contract. This means, however, that at no point before mine closure is the full amount guaranteed, and furthermore, there is no opportunity to take into account inflation.

Next steps

The requirement to have a mine closure plan from the outset, and to update it prior to expiry of the mining license, is good practice. The requirement to pay into the Environmental Protection Fund is also a commendable reform. However, consideration should be given to amending the current scheme so that the holder of a mining license is obliged to provide financial guarantees equal to the balance of payments due to the Fund, as well as to make allowance for inflation.

Issue/Gap #4: Cumulative Impact Assessment

Description of current situation

Armenian legislation does not contain explicit requirements to implement cumulative impact assessment (CIA) when undertaking environmental impact assessment (EIA). It is supposed to be an issue for state environmental expertise conducted by the RA Ministry of Nature Protection's Environmental Expertise SNCO. In particular, the law says that the expert conclusion on EIA should be issued based on the study of all negative and positive impacts of the project, as well as their interactions. Subsequently, the permits on maximum emissions and discharges are supposed to be issued to the company based on assessment of cumulative impacts, however in practice this is not observed, as is evident from a number of EIA reports[2]. The EIAs most frequently contain a section on the summary description of the environmental situation in the project area; the potential for CIA is usually handled through vague descriptions in this section. For example: "the current environmental situation could be assessed as satisfactory," "no industrial or other enterprises are operating in close vicinity and the area is free of anthropogenic and techno-genetic adverse impact," "the geographical location of the area is favorable for dispersion of general background pollution," and so forth. In some cases, the baseline data on air and water pollution taken from the database of the RA Ministry of Nature Protection's Environmental Monitoring Center SNCO are provided in the general description of the natural environment section, and the calculation of polluting

[2] E.g. Teghut copper- molybdenum mine, the Bardzradir gold mine, the Karaberd gold mine, the Tejsar nepheline syenite mine, the Dastakert copper-molybdenum mine, and the Lichq copper mine, as well as the most advanced EIA for the Amulsar gold mine.

amounts is provided in the section on probable environmental impacts. However, the maximum permissible concentration standards, the analysis of the extent to which the emissions exceed the standards, and the assessment of the probability of cumulative effects due to generation of new hazardous substances are missing.

Furthermore, the EIA law states that the method of assessment shall be approved by the Government, yet there is no corresponding Government decision on the method of assessing the impact on environment and human health. On 29 July 2016, the Government adopted a protocol resolution approving "guidelines for the preparation of CIA reports when applying for mining and exploration licenses". The guidelines have been prepared with World Bank support and reflect international best practice, however their use is not mandatory.

Next steps

In consultation with stakeholders, the Government should monitor take-up of the "guidelines for the preparation of CIA reports when applying for mining and exploration licenses", and consider setting a deadline for making the guidelines compulsory.

Issue/Gap #5: The level of environmental protection fees is low and not directed to local communities

Description of current situation

The legal framework established for payment for environmental damage caused by the mining sector governs the payments from mining companies to the state budget. Some of the funds are returned to the local communities near the mines through a series of locally defined investments for improving the environmental conditions. For the more targeted use of these payments, the Law "On the Republic of Armenia budget system" (1997) stipulates that the "total sum of budget funds earmarked for environmental programs shall be no less than the total of nature protection and nature use payments collected in the pre-preceding budget year." While this principle reflects taxation policies that return rents for nonrenewable resources to the public, there are policy uncertainties that can accelerate the rate of depletion of nonrenewable resources, thus countering the sustainability principle "that future generations are not worse-off."

Further, the Law on targeted use of environmental fees paid by companies (2001) appears to provide that, in principle, the amounts paid in environmental fees should be allocated entirely to the affected communities, but in practice this does not occur. This may be due to the fact that the fees are paid to the central budget and only thereafter distributed to the affected communities by way of subventions and based on submitted projects. Analysis of the available data shows that more than half of the resources collected for environmental protection purposes are used to finance other priorities.

Figures from the National Statistical Service annual reports show that in the period 2010-2015, environmental fee payments have increased by more than three times, growing from 9,103 million drams in 2010 to 31,256 million drams in 2015. Nevertheless, these numbers are too low as a percentage of GDP (approximately 0.6 percent in 2015) to truly reflect the rents collected for depreciation/damage of environmental resources due to economic activities. In countries with similar economic parameters as Armenia, the cost of environmental degradation is in the range of 2 to 5 percent of GDP. This means that the actual cost of the degradation of the natural environment exceeds the level of aggregate payments by as much as eight times.

Next steps

The Government should consider revision of the framework so that the level of environmental fees collected more truly reflects the damage sustained by the environment, as well as ensuring that a higher proportion of the fees is invested in the affected communities in practice.

Issue/Gap #6: Eminent domain

Description of current situation

Armenia's Constitution establishes the baseline rule that the compulsory purchase/appropriation of any property for public benefit may take place only in a legally prescribed manner. The Law "on appropriation of property for public and state needs" (2006) delegates the responsibility of making such decision to the Government, not the courts.

Furthermore, it appears as if the definition of prevailing public benefit specified in this Code needs clarification. Mining is explicitly listed as one reason to invoke eminent domain: article 4(2) (f) of the Law refers to "enabling the implementation of important *(inter alia)* exploration and mining projects". This raises two questions. Firstly: what is the basis for defining a mining project as "important", and secondly, if the rationale for appropriation of property is "public needs", whether there should be a cost-benefit analysis to understand whether the benefits to be gained from the mining project outweigh the environmental costs to the public.

In addition, the law does not have any explicit restrictions forbidding the use of eminent domain.

Next steps

Consideration should be given to clarifying in more detail the definition of "public benefit" and establishing a cost-benefit methodology to assess the benefit accruing to the public, as well as defining the meaning of "important" in relation to mining (and other) projects.

AUA Center for Responsible Mining
American University of Armenia
40 Baghramyan Ave.
Yerevan, Republic of Armenia
+374-60-612520
crm@aua.am
crm.aua.am

mlri.crm.aua.am

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