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## ARMENIA

# Amulsar: Human Rights Violations and Environmental Negligence in the Search for Gold



# CONTENTS

<b>Acronyms</b>	<b>4</b>
<b>Executive summary</b>	<b>5</b>
<b>Introduction</b>	<b>9</b>
<b>Chapter 1. The Armenian context: from revolution to conflict</b>	<b>10</b>
<b>Chapter 2. Mining sector development in Armenia: policy and governance gaps</b>	<b>12</b>
<b>Chapter 3. Amulsar gold mine</b>	<b>16</b>
3.1. Investments by multilateral development banks in the Amulsar project	20
3.2. Identified risks connected to the Amulsar gold mine project	22
3.2.1. Environmental risks of the Amulsar project	22
3.2.2. Human rights risks and impacts	24
3.2.3. Corruption risks related to the Amulsar project	26
<b>Chapter 4. Amulsar – a test for Armenia's democracy</b>	<b>28</b>
<b>Chapter 5. Human rights and the legal framework relevant to decision-making on the Amulsar gold mine</b>	<b>34</b>
5.1. Armenia and international human rights treaties	35
5.2. International framework on business and human rights	35
5.3. Human rights protected by international law	37
<i>BOX Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association in Armenia, May 2019</i>	39
5.4. Human rights and environmental defenders	40
<i>BOX Lydian's strategic litigation against public participation (SLAPP) and smear campaigns against human rights defenders</i>	41
5.5. Procedural environmental rights: access to information, public participation in decision-making and access to justice on environmental matters	43
<i>BOX Violations of rights to participation in decision-making and access to justice on environmental matters as per Armenia's obligations under the Aarhus Convention</i>	44
5.6. Armenia's national legislation and regulation of mining activities	46
5.7. Environmental and social safeguards of the IFC and the EBRD	48
<i>BOX Non-compliance with IFC and EBRD safeguards policies</i>	49
<b>Conclusion</b>	<b>51</b>
<b>Recommendations</b>	<b>53</b>

# Acronyms

<b>AMD</b>	Armenian dram
<b>CAD</b>	Canadian dollars
<b>CAO</b>	Compliance Advisor/Ombudsman of the International Finance Corporation
<b>CESCR</b>	United Nations Committee on Economic, Social and Cultural Rights
<b>COE</b>	Council of Europe
<b>CSI</b>	Civil Society Institute
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EIA</b>	Environmental impact assessment
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>ELARD</b>	Earth Link & Advanced Resources Development
<b>EPI</b>	Environmental Performance Index
<b>ESIA</b>	Environmental and social impact assessment
<b>EU</b>	European Union
<b>FIDH</b>	International Federation for Human Rights
<b>GDP</b>	Gross domestic product
<b>HIA</b>	Health Impact Assessment
<b>HRIA</b>	Human rights impact assessment
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IFC</b>	International Finance Corporation
<b>IPAM</b>	Independent Project Accountability Mechanism of the EBRD
<b>MBD</b>	Multilateral development bank
<b>NGO</b>	Non-governmental organisation
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>PCM</b>	Project Complaint Mechanism of the EBRD
<b>SLAPP</b>	Strategic litigation against public participation
<b>UN</b>	United Nations
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>UNGPs</b>	The United Nations Guiding Principles on Business and Human Rights
<b>USD</b>	United States dollars
<b>WWF</b>	World Wildlife Fund

# Executive summary

Around the world, the development of extractive projects has been described both as a blessing and as a curse. On one hand, mining is regularly lauded as an important driver of economic development.<sup>1</sup> On the other, it has been shown that the economic benefits of mining often fail to reach the directly impacted local communities,<sup>2</sup> who instead suffer rising inequality,<sup>3</sup> environmental pollution, health risks, pressure on public services and infrastructure, and depleted economic potential for long-term sustainable development.<sup>4</sup> What's more, the extraction of high-value natural resources has often been a factor in triggering, escalating or sustaining conflicts around the world.<sup>5</sup>

Although Armenia is rich in mineral resources, the image of the mining sector in the country has also been tarnished by a decade-long history of non-transparent governance of natural resources and a legacy of environmental pollution and unmitigated health risks. This is discussed in chapter 2, where the report describes the context of Armenia, and in chapter 3 where the challenges of developing the mining sector in the country are examined.

Chapter 4 presents the Amulsar gold mine project, its owner Lydian International Limited, and its promoters and financiers, which include two multilateral development banks (MDBs) – the European Bank for Reconstruction and Development (EBRD) and the International Finance Corporation (IFC) – as well as the environmental, social, economic, human rights and corruption risks related to the project. At the start of 2022, the Armenian government showed willingness to green-light the restart of the Amulsar project, a consequence of serious pressures both for economic reasons and from investors. Nonetheless, to date, the project remains blocked and embroiled in numerous court proceedings.

Chapter 5 presents the legal and accountability frameworks for analysing allegations of environmental impacts and human rights violations related to Amulsar, as well as evidence that confirms those allegations. It recalls that the Armenian state has an obligation to respect, protect and fulfil human rights and to ensure that they are enjoyed to the fullest extent by people in Armenia, while Lydian must respect human rights and avoid violations through robust assessment and management of impacts. The investors in the project have an obligation to conduct proper project appraisals and human rights due diligence to ensure that states and businesses develop projects in line with the above obligations under national and international law.

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1. ICMM, 2020, *Role of Mining in National Economies Mining Contribution Index* (5th edition), International Council on Mining and Metals, URL (last accessed on 16 June 2022): <https://www.icmm.com/en-gb/research/social-performance/2020/role-of-mining-in-national-economies>

2. Söderholm, P., Svahn, N., 2015, *Mining, regional development and benefit-sharing in developed countries*, Resources Policy, Vol. 45, pp. 78-91, URL (last accessed on 28 January 2022): [https://econpapers.repec.org/article/eeeejrpoli/v\\_3a45\\_3ay\\_3a2015\\_3ai\\_3ac\\_3ap\\_3a78-91.htm](https://econpapers.repec.org/article/eeeejrpoli/v_3a45_3ay_3a2015_3ai_3ac_3ap_3a78-91.htm)

3. Carvalho, F., 2017, *Mining industry and sustainable development: time for change*, Food and Energy Security, Vol. 6/2, pp. 61-77, URL (last accessed on 28 January 2022): <https://onlinelibrary.wiley.com/doi/full/10.1002/fes3.109>

4. OECD, 2019, *Enhancing Wellbeing in Mining Regions: Key Issues and Lessons For Developing Indicators*, URL (last accessed on 28 January 2022): [https://www.oecd.org/cfe/regionaldevelopment/Wellbeing\\_MiningRegions\\_3rdOECDMeeting\\_PreConference.pdf](https://www.oecd.org/cfe/regionaldevelopment/Wellbeing_MiningRegions_3rdOECDMeeting_PreConference.pdf)

5. United Nations Interagency Framework Team for Preventive Action, 2012, *Extractive Industries and Conflict. Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict*, URL (last accessed on 28 January 2022): [https://www.un.org/en/land-natural-resources-conflict/pdfs/GN\\_Extractive.pdf](https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_Extractive.pdf)

The report concludes that there is abundant evidence of serious violations of a wide range of rights in the development of the Amulsar gold mine, from substantive and procedural environmental rights to social, economic and political rights of affected individuals and communities. Moreover, there are examples of significant barriers to justice and remedy for rights holders, who have sought redress through judicial and non-judicial mechanisms without success thus far.

There is strong evidence that the Armenian state has on numerous occasions breached its obligations under international law to protect and uphold the human rights to health and to a healthy environment, to peaceful assembly, freedom of speech, information, participation in decision-making, and access to justice. Although the majority of these human rights violations were committed by the state before the Velvet Revolution of 2018, unfortunately, the new government of Prime Minister Nikol Pashinyan has not taken decisive steps to protect environmental and human rights defenders and the rights of people in local communities, nor to redress past violations.

In this regard, reports from UN Special Rapporteurs on human rights and the Aarhus Convention Compliance Committee have called on the Armenian State to ensure meaningful consultations on the Amulsar project. In addition, the UN Human Rights Committee's report on Armenia from 2020 makes recommendations to Armenia with regard to civil and political rights and anti-corruption measures, and requests that the state 'provide detailed information on allegations of corruption concerning the Amulsar gold mine'.

Lydian and investors in the Amulsar project, like the EBRD and the IFC, have obligations to respect human rights in accordance with the UN Guiding Principles on Human Rights and their own policies. These obligations have not been respected. Lydian has actively denied the rights of Armenians to participate in decision-making, to speak freely and to protest peacefully against the Amulsar project. It has initiated unprecedented legal action in Armenia against its critics from local communities, civil society and the media, aimed at silencing their voices and draining resources to protect their rights.

The EBRD has claimed that its investment in the development of the Amulsar mine was earmarked for environmental and social measures. These measures have failed, as the Bank disregarded grievances from Armenian experts and affected people. In 2014, the Bank's Project Complaint Mechanism (PCM) considered two complaints by local people and environmental groups on the Amulsar project to be ineligible. In 2020, the Bank's reformed complaint mechanism – newly named the Independent Project Accountability Mechanism (IPAM) – started a compliance investigation, which is ongoing.

As Lydian International was dissolved in 2021, the Bank lost its shares in the project, without acknowledging any responsibility for the project's impacts and its lack of due diligence – a glaring example of a 'non-responsible exit'. Despite claiming a key role in preventing harm to people and nature, the development bank refused to provide a remedy for harm in due time, which constitutes a serious breach of the UN Guiding Principles on Business and Human Rights (UNGPs) and its own policies.

As a result, the Armenian authorities, Lydian and international investors in the Amulsar project are yet to resolve the existing conflicts, provide a remedy, or ensure transparent and participatory decision-making on the Amulsar project. To that end, this report makes recommendations to the Armenian government, the EBRD and IFC, and Lydian Armenia, namely:

1. Armenia needs to uphold the rights of local communities and environmental and human rights defenders, in line with its obligations under international human rights law.

To that end, **Armenia should:**

- revoke all existing permits for the Amulsar gold mine project;
- take immediate steps to address the recommendations published by UN human rights bodies and special procedures, the Compliance Committee of the UNECE Aarhus Convention on environmental governance and the Bureau of the Standing Committee to the Bern Convention on protection of biodiversity;
- initiate an independent expert assessment of the costs and benefits of the Amulsar gold mine, thoroughly taking into consideration economic, social, health and environmental factors, then take this assessment into account to ensure that negative impacts are duly identified and prevented and that local populations and communities may directly benefit from the project if it is finally pursued;
- overhaul its environmental and mining legislation to ensure democratic and prudent governance of the mining sector and adopt regulations and enhance institutional capacity to properly assess the social and health impacts of mining;
- reinforce institutional capacity to implement and monitor the respect for legislation, improve access to information and participation, clarify methodologies for decision makers to conduct cost-benefit assessments, simplify the procedure for conducting cumulative impact assessments and implement robust anti-corruption policies and processes relating to mining;
- protect environmental and human rights defenders, specifically from strategic litigation against public participation lawsuits (SLAPPs) and retaliation from Lydian or other actors. Effective legislation against SLAPPs must contain three main elements: (1) procedural safeguards against SLAPPs, (2) measures to deter against and raise awareness of SLAPPs and (3) protective and supportive measures for SLAPP targets. The most important procedural safeguard to include is the possibility for judges to dismiss SLAPPs in the early stages of proceedings for cases that are manifestly ill-founded and aimed at preventing the defendant from exercising their right to public participation, using a broad definition of what constitutes public participation. Protective and supportive measures for SLAPP targets should include financial assistance to cover legal fees, as well as access to support services against the risk of emotional or psychological harm, and protection from further intimidation and retaliation.
- improve the impact of the Extractive Industries Transparency Initiative (EITI) process at the community level by promoting the participation of local communities in the governance of natural resources;
- ensure proper remedy for the negative impacts caused by the mine to local communities, human rights defenders and the environment throughout the previous phases of the project;
- conduct an independent and transparent investigation into the corruption surrounding the land acquisition in Gndevaz.

## **2. The EBRD and the IFC should:**

- support the Armenian government in implementing the above steps and
- update their environmental and human rights due diligence approach in view of the anticipated findings and recommendations of the banks' accountability mechanisms;
- develop human rights and environmental due diligence policies in order to better comply with the UN's guiding principles;
- acknowledge and address the existing gaps and barriers to participation and effective redress for project-affected persons and human rights defenders in their approach to disclosing information, and involve communities and stakeholders in informed and meaningful consultation;
- develop concrete policies and guidelines on human rights due diligence to ensure, prior to project risk categorisation, a thorough bank-led or bank-commissioned analysis of human

- rights risks; make its methodology and conclusions publicly accessible for each project; ensure proper assessment of the impacts via human rights impact assessments (HRIA) or other contextual analyses, if risks are identified; make these additional assessments public;
- provide meaningful public participation – which is timely, a two-way process, transparent, accessible and safe – to all rights-holders; ensure that proper procedures are in place and implement regular capacity building and evaluations of procedures to ensure they allow for safe and meaningful public participation. The banks should also develop more concrete guidance reflecting a zero-tolerance policy on reprisals.
- along with Lydian, provide remedy for the negative impacts caused by the Amulsar project to local communities, human rights defenders and the environment throughout the previous phases of the project.

### **3. Lydian Armenia should:**

- drop all legal actions against environmental and human rights defenders and avoid stigmatisation through antagonistic rhetoric or by spreading misinformation to discredit the activities of defenders;
- take immediate steps to ensure it respects all human rights and the environment, and abide by the UN Guiding Principles on Business and Human Rights;
- immediately provide remedy for the negative impacts it caused to local communities, human rights defenders and the environment throughout the previous phases of the project.

# Introduction

This report aims to shed light on the human rights impacts of the mining industry in Armenia through the case study of the Amulsar gold mine project. In doing so, it will offer recommendations to authorities navigating a context of radical political changes, conflict and intense pressure to resume mining operations. It is the result of a collaboration between the International Federation for Human Rights (FIDH), its Armenian member – the Civil Society Institute (CSI) – and CEE Bankwatch Network. The report is based on ongoing monitoring of the situation combining desk and field research. This includes a field mission conducted in April 2019 by FIDH and CSI to the Amulsar site and nearby towns, where preliminary interviews were conducted with affected individuals and other stakeholders.<sup>6</sup> Bankwatch has monitored the Amulsar project since 2011 and has conducted regular field missions, the last one in March 2020.

Since then, our organisations have continued to monitor the situation linked to the Amulsar project in the country and have raised several alerts, particularly regarding the risks faced by human rights and environmental defenders working on the issue. With this more comprehensive publication, we want to reflect broadly on the social and environmental impacts that the Amulsar project has made in Armenia and on the role and responsibilities of the public and private actors involved, particularly investors. With this analysis, we hope therefore to contribute to the public debate that is currently taking place in the country on the future of the Amulsar gold mine, particularly given the consequences of the pandemic and the war with Azerbaijan on Armenia's economy.

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6. FIDH and CSI's joint fact-finding mission took place in April 2019. The delegation interviewed individuals affected by the Amulsar project and met with relevant public institutions and local civil society organisations. The data collected during the mission contributed to the present report, as did desk research based on publicly available information on the Amulsar gold mine.



Prime Minister Nikol Pashinyan during a visit to Amulsar in 2020. © CEE Bankwatch Network

## Chapter 1

# The Armenian context: from revolution to conflict

Armenia is a landlocked country situated in Eastern Europe, in the South Caucasus region; it borders Georgia, Azerbaijan, Iran and Turkey. Its landscape is mostly mountainous, with 76.5 per cent of its territory at altitudes of 1,000 to 2,500 metres above sea level.<sup>7</sup> In 2019, Armenia had a population of approximately three million people and a GDP of USD 13.6 billion.<sup>8</sup>

7. Ministry of Nature Protection of the Republic of Armenia, *Third National Communication on Climate Change under the United Nations' Framework Convention on Climate Change*, URL (last checked on 23 Dec. 2021): <https://unfccc.int/sites/default/files/resource/armnc3.pdf>

8. World Bank, 2020, DataBank – World Development Indicators, URL: <https://databank.worldbank.org/source/world-development-indicators>

According to a 2021 country profile by the World Bank and the Asian Development Bank,<sup>9</sup> over the past decade Armenia has transitioned from an industry-dominated economy to a service-dominated one. In 2016, the service sector constituted 48.8 per cent of the country's labour force and provided 55 per cent of its GDP; agriculture followed with a labour market share of 35.3 per cent and 17 per cent of GDP. With a rate of 18 per cent in 2016, unemployment remained relatively high, and poverty affected around 29 per cent of the population in 2018.<sup>10</sup>

In 2018, wide protests by civil society and political opposition, dubbed Armenia's 'Velvet Revolution', toppled the government of Serzh Sargsyan, whose party had ruled the country since 1999.<sup>11</sup> The protests were led by member of parliament and opposition leader Nikol Pashinyan, whose My Step Alliance and Civil Contract party won the parliamentary elections in December 2018 and again in June 2021. The new government launched ambitious political, economic and judicial reforms,<sup>12</sup> but its success was thwarted by the COVID-19 pandemic and the breakout in the autumn of 2020 of the 44-Day War, an armed conflict with Azerbaijan over the region of Nagorno Karabakh.<sup>13</sup>

The conflict resulted in a military defeat and in human, moral, territorial and economic losses for Armenia.<sup>14</sup> With the territory it gained, Azerbaijan also acquired precious water and mineral resources. Notably, as a result of the peace accord, Azerbaijan took control in November 2020 of the Kelbajar region, where several mines are situated, including the Sotk mine, Armenia's most productive gold mine.<sup>15</sup> With Armenia's borders redrawn, there are a number of open questions about the future of the fragile peace-building process, persistent security risks (especially in border areas) and socio-economic development of the country and the region.<sup>16</sup> Questions around the ownership and development of mines have also gained a significant strategic importance for the country.

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9. World Bank, Asian Development Bank, 2021, *Climate Risk Country Profile: Armenia*, URL (last checked on 7 January 2022): [https://climateknowledgeportal.worldbank.org/sites/default/files/2021-06/15765-WB\\_Armenia%20Country%20Profile-WEB.pdf](https://climateknowledgeportal.worldbank.org/sites/default/files/2021-06/15765-WB_Armenia%20Country%20Profile-WEB.pdf)

10. *Ibid.*

11. Lansky, M., Suthers, E., 02/04/2019, Armenia's Velvet Revolution, *Journal of Democracy*, vol. 30, issue 2, pp. 85-99, URL (last visited on 22 February 2022): <https://www.journalofdemocracy.org/articles/armenias-velvet-revolution/>

12. Sammut, D., 02/06/2020, Armenia Commentary: Two years after the Velvet Revolution, Armenia needs the EU more than ever, European Policy Centre, URL (last checked on 23 December 2021): <https://www.epc.eu/en/Publications/Two-years-after-the-Velvet-Revolution-Armenia-needs-the-EU-more-than~33e910>

13. FIDH, 29/10/2020, Nagorno-Karabakh: FIDH Calls for Respect of Ceasefire, Denounces Use of Mercenaries, URL (last checked on 15 April 2022): <https://www.fidh.org/en/region/europe-central-asia/azerbaijan/nagorno-karabakh-fidh-calls-for-respect-of-ceasefire-denounces-use-of>

14. Associated Press in Yerevan, 05/12/2020, Armenian protesters demand prime minister quit over deal with Nagorno-Karabakh, *The Guardian*, URL (last checked on 20 May 2022): <https://www.theguardian.com/world/2020/dec/05/armenian-protesters-demand-prime-minister-quit-over-deal-with-nagorno-karabakh>

15. Mejlumyan, A., Natiqzizi, U., 27/01/2021, Following war with Armenia, Azerbaijan gains control of lucrative gold mines, *Eurasianet*, URL (last checked on 7 January 2021): <https://eurasianet.org/following-war-with-armenia-azerbaijan-gains-control-of-lucrative-gold-mines>

16. De Waal, T., 11/02/2021, Unfinished Business in the Armenia-Azerbaijan Conflict, Carnegie Europe, URL (last checked on 7 January 2021): <https://carnegieeurope.eu/2021/02/11/unfinished-business-in-armenia-azerbaijan-conflict-pub-83844>



The neighboring town of Jermuk. © Narek Aleksanyan

## Chapter 2

# Mining development in Armenia: policy and governance gaps

Armenia is endowed with significant mineral wealth. According to official data,<sup>17</sup> the state inventory of mineral resources lists more than 670 mine sites with solid mineral resources, of which 30 are metal mines. About 400 of these mines are being exploited, of which 22 extract metals, including copper-molybdenum (seven mines), copper (four), gold and gold-polymetallic (14), polymetals (two), iron ore (two) and aluminium (one).

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17. Ministry of Energy Infrastructure and Natural Resources of the Republic of Armenia, General Information section of website, URL (last checked 23 December 2021): <http://www.minenergy.am/en/page/472?fbclid=IwAR27zPYoXa0MBj8f2rPPP2tuk5Yqvz-DDojQlutQBf5b5cbPdQRm39yCyc>

The Ministry of Energy and Natural Resources states that the country's mining sector is a 'key contributor to the national economy', as ore concentrates and metals account for approximately half of Armenia's exports, solidifying their status as the country's 'most important export products'.<sup>18</sup> Nonetheless, according to Armenia's Statistical Committee in 2016 and 2017, the mining industry accounted for only about 3 per cent of the country's GDP, or AMD 130 and AMD 177 billion in each year.<sup>19</sup>

Armenia's mineral wealth is considered a curse by many in the country, who are sceptical that the extractive industry can be sustainable and compatible with other sectors, such as tourism and agriculture. The country is rich in diverse landscapes and ecosystems, rare flora and fauna, and abundant water resources.<sup>20</sup> Historically, Armenia has suffered from chronic corruption,<sup>21</sup> weak governance and wide policy gaps in natural resource management<sup>22</sup> that have resulted in severe environmental destruction,<sup>23</sup> a legacy of pollution<sup>24</sup> and high vulnerability to climate change-related risks.<sup>25</sup>

As an illustration, in 2018, Armenia was ranked 63 out of 180 countries on the Environmental Performance Index (EPI). The country ranked 142 for air quality and 109 for environmental health (a score based on air quality, water and sanitation, and heavy metal pollution as key indicators).<sup>26</sup> The report noted that 'one of the consistent lessons of the EPI is that achieving sustainability goals requires the material prosperity to invest in the infrastructure necessary to protect human health and ecosystems'.

Moreover, a country needs robust legislative and regulatory frameworks to ensure that mining brings revenues and benefits to affected communities without jeopardising long-term ecological, social and economic sustainability. Unfortunately, although Armenia's mining law provides rudimentary regulation of the sector, experts argue that 'it lacks some of the key best practice principles as it comes to environmental, social, public health, occupational safety, and economic aspects of resource governance'.<sup>27</sup>

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18. *Ibid.*

19. Statistics Committee of Armenia, *Yearbook 2018*, p. 242, URL: <https://armstat.am/file/doc/99510948.pdf>

20. USAID, 2009, *Biodiversity Analysis Update for Armenia. Final Report. Prosperity, Livelihoods and Conserving Ecosystems*, URL (last checked on 7 January): [https://pdf.usaid.gov/pdf\\_docs/Pnadp442.pdf](https://pdf.usaid.gov/pdf_docs/Pnadp442.pdf)

21. Although marked improvements have been noted since 2018: Since 2018, Armenia has recorded significant progress in fighting corruption. Its *Corruption Perception Index* score increased by 14 points in 2019 and 2020, recording the best improvement worldwide. See Transparency International Corruption Perception Index, URL (last checked on 23 December 2021): <https://www.transparency.org/en/cpi/2020/index/arm>

22. Damianova, A. J.; Kreso Beslagic, E.; Rebosio Calderon, Michelle P.; Alaverdyan, A.; Kostanyan, T.; Gyulumyan, G.; Nairian, S. S.; Nguyen, L. V.; Kida, J. A., 2014, *First thematic paper: sustainable and strategic decision making in mining* (English). Armenia sector issues paper Washington, D.C.: World Bank Group. <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/721881468005068851/first-thematic-paper-sustainable-and-strategic-decision-making-in-mining>

23. FAO, 13/09/2017, Armenia advances monitoring for sustainable forest management, URL (last seen on 7 January 2021): <https://www.fao.org/europe/news/detail-news/en/c/1036954/> and <https://unece.org/forests/forest-monitoring-caucasus-and-central-asia>

24. Babayan, G., Sakoyan, A. & Sahakyan, G., 2019, Drinking water quality and health risk analysis in the mining impact zone, Armenia, *Sustainable Water Resources Management Journal*, vol. 5, nr. 4, p. 1877-1886, URL (last checked on 7 January 2022): <https://doi.org/10.1007%2Fs40899-019-00333-2>

25. Tepanosyan, G., Sahakyan, L., Belyaeva, O., Asmaryan, S., Saghatlyan, A., 2018, *Continuous impact of mining activities on soil heavy metals levels and human health*, *Sci Total Environ* 639:900–909

26. The Environmental Performance Index (EPI), developed by Yale University and Columbia University in collaboration with the World Economic Forum and the Joint Research Center of the European Commission, ranks 180 countries on 24 performance indicators across 10 issue categories covering environmental health and ecosystem vitality. These metrics provide a gauge on a national scale of how close countries are to meeting established environmental policy goals: [https://epi.envirocenter.yale.edu/epi-country-report/ARM?fbclid=IwAR1RXWDFlhCzlyz4E\\_9KNxVmPYApM44O6CrTl3WV3iLozv\\_gmcimBdfVAIQ](https://epi.envirocenter.yale.edu/epi-country-report/ARM?fbclid=IwAR1RXWDFlhCzlyz4E_9KNxVmPYApM44O6CrTl3WV3iLozv_gmcimBdfVAIQ)

27. Amirkhanian, A., Fall/Winter 2019, On Mining, Which Way in Armenia?, American Chamber of Commentary in Armenia (AMCHAM), URL (last seen on 7 January): <https://crm.aua.am/mlri/ra-legislation-gaps/>

Therefore, a diversity of civil society experts, scientists and institutions – including the World Bank and the American University in Armenia (AUA) – have advocated for reform of Armenia’s mining legislation.<sup>28, 29</sup> They have identified a number of gaps, as secondary legislation and guidelines to serve the enforcement of laws in Armenia are missing.<sup>30</sup> For example, there are limited institutional capacities and methodologies for decision makers to conduct cost-benefit analyses, cumulative impact assessments and health impact assessments before issuing mining licences.<sup>31</sup>

Armenia has made some satisfactory progress with regards to the transparency and accountability of the mining sector since joining the EITI in 2017.<sup>32</sup> The establishment of the EITI’s online reporting portal made it possible for Armenians to access and analyse data on the mining sector, mining contracts and the beneficial owners of mining companies.<sup>33</sup> More recently, a multi-stakeholder group was created to implement the EITI’s standards. It has decided to expand its remit beyond transparency and work towards developing a new sectoral policy framework for responsible and sustainable mining.<sup>34</sup>

The multi-stakeholder group is composed of government, industry and civil society representatives, with equal voting power for each party. Within the group, civil society representatives have presented field research showing the lack of awareness of communities impacted by mining about the socio-economic obligations of the companies.<sup>35</sup> In many cases, these obligations did not meet the communities’ needs for information. Although civil society organisations have attempted to bridge the public participation gap, local people were deprived of the opportunity to engage in direct dialogue with extractive companies.<sup>36</sup> Therefore, civil society representatives have highlighted the opportunities for improving the impact of the EITI process at the community level by promoting the participation of local communities in natural resource governance.

Legislative reforms for the mining sector have been ongoing for more than five years. Yet the above-mentioned legacy of environmental pollution and associated health problems, combined with widespread mistrust in the institutions’ capacity to adequately govern and control the mining industry in Armenia, have sparked resistance from local communities and civil society against the development of new mines in the country, as the case below will illustrate.<sup>37</sup>

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28. World Bank, 2016, *Armenia: Strategic Mineral Sector Sustainability Assessment*, URL (last checked on 7 January 2022): <https://documents1.worldbank.org/curated/en/289051468186845846/pdf/106237-WP-P155900-PUBLIC.pdf>

29. AUA’s Center for Responsible Mining spin-off was registered as the Mining Legislation Reform Institute (MLRI). The MLRI collaborates with civil society, advocacy groups, academic institutions and relevant national and international organisations to introduce positive changes to the mining sector in Armenia. The MLRI works with key governmental and legislative bodies to ensure that draft responsible mining legislation is passed into law. See more info: <https://mlri.org.am/en/campaigns/mining-policy/>

30. *Ibid.*

31. Damianova, A. J. *et al.*, 2014, *op. cit.*, p. 9 and 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, URL (last accessed on 31 January 2022): <https://espace.library.uq.edu.au/view/UQ:730293>

32. EITI, 17/08/20, Armenia: On a fast track to greater transparency, URL (last checked on 7 January 2022): <https://eiti.org/news/armenia-on-fast-track-to-greater-transparency>

33. Extractive Industries Transparency Initiative, Reports, URL (last checked 22 February, 2022): <https://reports.eiti.am/hy/>

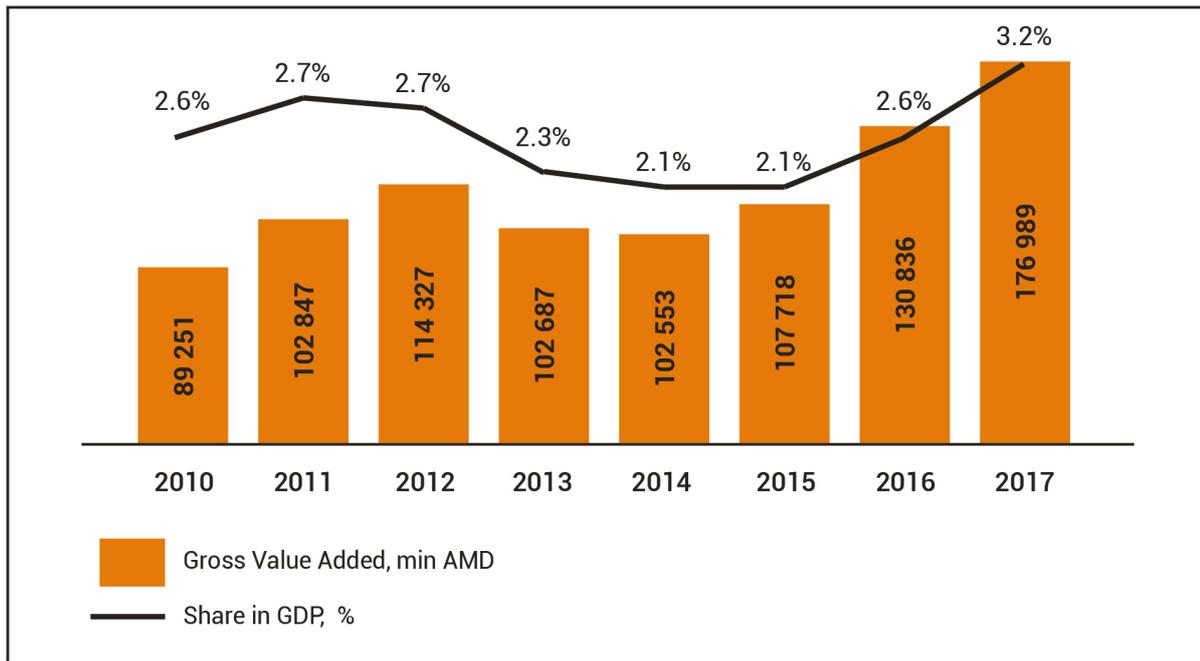
34. World Bank, 2019, Armenia’s Historic Vision for Responsible Mining. Feature Story, URL (last checked on 7 January 2022): <https://www.worldbank.org/en/news/feature/2019/06/19/armenias-historic-vision-for-responsible-mining>

35. Ecolur, 26/07/2021, EcoLur Deputy President: Data Published on EITI Website Promoted Detection of Problems, URL (last visited on 22 February 2022): <https://www.ecolur.org/en/news/mining/13340/>

36. *Ibid.*

37. See Ecolur, SOS, URL (last visited on 23 May 2022): <https://www.ecolur.org/en/news/sos/>

Graph: Share of the mining industry in the GDP of Armenia, 2010-2017



Source: 2019 Armenia EITI report



Bezoar goat captured on camera trap, Vulnerable according to IUCN Red List © Andrey Ralev, CEE Bankwatch Network

## Chapter 3

# Amulsar gold mine

The Amulsar gold deposit was discovered in 2006 at the border between Armenia's southern provinces of Vayots Dzor and Syunik, 170 kilometres from the capital city of Yerevan. In 2007, the exploration of the deposit was launched by Lydian, a private junior exploration company with 96 shareholders, of which Newmont Corporation was the biggest with a 9.4 per cent share in the company.<sup>38</sup> At the time, Newmont was known for the mercury spill disaster in its Yanacocha copper mine in Peru and a cyanide spill in Ghana, among other problematic investments around the world.<sup>39, 40</sup>

38. IFC SPI, 22/05/2007, Summary of Project Investment: Lydian Resource Company Ltd, IFC Project Information and Data Portal, URL (last seen on 24 January 2022): <https://disclosures.ifc.org/project-detail/SPI/25924/lydian-resource-company-ltd>

39. Moeyes, N., 02/04/2020, The village still suffering from Peru mercury spill fallout – after 20 years, *The Guardian*, URL (last visited on 22 February 2022): <https://www.theguardian.com/global-development/2020/apr/02/the-village-still-suffering-from-peru-mercury-spill-fallout-after-20-years>

40. BHRRC, 12/10/2019, Ghana: Newmont accused of downplaying impact of cyanide spillage, URL (last visited on 22 February 2022): <https://www.business-humanrights.org/en/latest-news/ghana-newmont-accused-of-downplaying-impact-of-cyanide-spillage/>

The Amulsar mine was expected to become the biggest operational gold and silver mine in Armenia with an estimated 73.7 tons of gold and 294.3 tons of silver.<sup>41</sup> The project was expected to extract USD 286 million worth of gold annually, which would account for around 6.5 per cent of total exports by Armenia. It would generate around USD 50 million in annual taxes for Armenia's coffers, amounting to more than 1 per cent of Armenia's GDP.<sup>42, 43</sup>

In 2009, the Armenian authorities granted a five-year prospecting licence for the exploration of the deposit to Lydian International Limited's fully owned subsidiary, Lydian Armenia CJSC (at the time Geoteam CJSC). At the time, Lydian International was a publicly held corporation registered in Jersey (UK) and the Channel Islands, and listed on the Toronto Stock Exchange.<sup>44</sup> In 2009, Lydian also received a 25-year mining licence, which required the completion of a concession agreement and an environmental impact assessment (EIA), among other conditions.<sup>45</sup> It is interesting to note that Amulsar was Lydian's first and flagship extractive project, one of the reasons it was eligible for a special loan from the IFC for starting companies.

In 2012, after completing the exploration of the Amulsar gold deposit, Lydian International received a new mining licence for the Tigranes/Artavazdes open pit of the Amulsar project (from 2012 until 2034). In spite of growing opposition to the project and several formal complaints, two multilateral development banks invested in the project. By 2015, Lydian had secured financing to start development of the mine.<sup>46</sup>

## TIMELINE

**2005** – Geoteam CJSC registers in Armenia as a daughter-company of Lydian International Limited.

**2007** – The IFC becomes a shareholder in Lydian. Nerses Karamanukyan was at that time the head of the IFC's representative office in Armenia (2001-2009).

**2009** – Armenia's Ministry of Nature Protection issues the **first positive decision on the EIA of mining gold-bearing quartzite at Amulsar's Tigranes deposit.**

**2009** – The EBRD makes its first loan to Lydian.

**2011** – Nerses Karamanukyan, former head of the IFC's national office in Armenia, becomes a general manager of Lydian.

**2012** – The mayor of Jermuk (a touristic spa town near the Amulsar gold mine) speaks out strongly against the project.

41. Lydian Armenia, 2017, *Amulsar Gold Project*, URL (last seen on 7 January 2022): [https://www.lydianarmenia.am/images/2017/Amulsar\\_Project\\_eng.pdf](https://www.lydianarmenia.am/images/2017/Amulsar_Project_eng.pdf)

42. Avag Solutions, 2015, *Social-economic contribution of the Amulsar Gold Project*, URL (last checked on 7 January 2022): <https://www.lydianarmenia.am/eng/pages/amulsar-economic-impact/92/>

43. Khulian, A., Lazarian, T., 20/08/2019, Government Cites Economic Benefits of Mining Project, RFRL – Azatutyun, URL (last seen on 7 January 2022): <https://www.azatutyun.am/a/30119848.html>

44. EBRD PSD, 19/05/2016, *Lydian (Amulsar Gold Mine) – Extension*, Project Summary Document (last updated on 06/08/2020), URL (last seen on 7 January 2022): <https://www.ebrd.com/work-with-us/projects/psd/lydian-amulsar-gold-mine-extension.html>

45. Proactive Investor, 07/05/2009, Lydian gets 25 year mining license for Amulsar gold project in Armenia, URL (last seen on 7 January 2022): <https://www.proactiveinvestors.com/companies/news/70303/lydian-gets-25-year-mining-license-for-amulsar-gold-project-in-armenia-1441.html>

46. EBRD PSD, 2016, *op. cit.*

**2012** – The Expert Commission on the Protection of Lake Sevan (a protected zone in Armenia) gives a negative assessment of the Amulsar mine project, pointing out important environmental risks linked to the high content of radioactive impurities, high seismicity, high risk of landslides and water drainage risks.

**31 July 2012** – The Centre of Environmental Impact Assessment of Armenia's Ministry of Nature Protection adopts **a second positive conclusion on the Environmental Impact Assessment** BP-65, concerning the Erato pit of the Amulsar project, without paying attention to the grounds of the Expert Commission on Protection of Lake Sevan's negative conclusion.

**2013** – Lydian donates approximately USD 150,000 to Jermuk's city development fund.

**2013** – The mayor of Jermuk expresses his support for the project.

**2013-2014** – Lydian donates almost USD 250,000 to the Luys Foundation, which belongs to the family of Serzh Sargsyan, president of Armenia from 2008 to 2018.

**2014** – Armenia's government adopts a decree allowing the relocation of endangered species to another area, from Amulsar to the Sevan botanical garden, despite this being prohibited by national environmental legislation.

**April 2014** – Local communities and civil society organisations submit a complaint to the IFC's Compliance Advisor/Ombudsman.

**July & November 2014** – Local communities and civil society organisations submit a further two complaints to the EBRD's Project Complaints Mechanism (rejected in February 2015).

**17 October 2014** – After proposing a different site for the cyanide heap leach facility outside of Lake Sevan's immediate risk zone, the Expert Commission on the Protection of Lake Sevan comes to a positive conclusion regarding the impact of the Amulsar mining project on the ecosystem of Lake Sevan.

**17 October 2014** – The Ministry of Nature Protection of the Republic of Armenia makes its **third affirmative conclusion on the Environmental Impact Assessment**, this time for the adjusted technical design of the project for the exploitation of the Amulsar open-pit mine.

**November 2014** – Lydian receives a mining permit covering the Tigranes/Artavazdes and Erato open pits, a conveyor, crushers, a cyanide heap leach facility and related mine design details. This is based on the approved EIA and technical safety assessment.

**10 March 2015** – Armenia's government adopts Decree N 51-N 'On Establishing Technical Regulation for Safe Open Pit Mining' on pit sizes, which results in the reduction of the cost of the Amulsar project by USD 100 million.

**April-July 2015** – Ten residents of the nearby town of Gndevaz and two non-governmental organisations (NGOs) initiate litigation against the positive EIA conclusions issued by the Ministry of Nature Protection. The Administrative Court, the Appeals Court and the Cassation Court would all later reject this litigation.

**February-June 2016** – NGO Ecological Right submits a communication on Armenia's non-compliance under the UNECE Aarhus Convention, which is found admissible by the Convention's Compliance Committee.

**April 2016** – The Expert Commission on the Protection of Lake Sevan gives a positive conclusion on

the latest assessment of the Amulsar project, and the Armenian Ministry of Nature Protection issues its **fourth positive decision, this time regarding the mining of gold-bearing quartzite.**

**May 2016** – Lydian discloses the latest iteration of the environmental and social impact assessment (ESIA) (version 10) of the project; an updated mining permit is issued according to the changed mining plan.

**July 2016** – The EBRD also discloses the final ESIA (version 10) and approves its second equity investments in Amulsar.

**October 2016** – Lydian announces the beginning of mine construction at Amulsar.

**July 2017** – The IFC exits the Amulsar project, stating that Lydian has succeeded in attracting funding for mine development from private sector sources.

**July 2017** – A group of independent experts from Australia, the USA and Canada – the so-called Bronozyan experts (Blue Minerals Consultancy) – publishes a new report on acid rain drainage risks from the Amulsar project.

**April-May 2018** – Armenia's Velvet Revolution takes place.

**May 2018** – Armenia's Environmental Protection and Mining Inspection Body starts inspections of Amulsar and other major mines in the country.

**June 2018** – Protesters start a blockade of the Amulsar mine site that will last over two years.

**July 2018** – The Investigative Committee of the Republic of Armenia starts a criminal case against officials from the Ministry of Nature Protection for 'willful concealing of information about environmental pollution related to the exploitation of the Amulsar gold mine'. The committee contracts Lebanese research company Earth Link & Advanced Resources Development (ELARD) to review the Amulsar project's EIAs.

**December 2018** – 3,000 residents of Jermuk and surrounding villages sign a petition for a mine-free Jermuk.

**August 2019** – The reports by ELARD and the Inspection Body are released, respectively identifying gaps in the environmental and social impact assessment and alleging legal violations in the implementation of the construction stage. Court cases follow.

**December 2019** – Lydian International becomes insolvent and starts a restructuring process after being granted protection from its creditors under the Companies' Creditors Arrangement Act by an order of the Ontario Superior Court of Justice.

**January 2020** – Lydian International is delisted from the Toronto Stock Exchange.

**13 March 2020** – The World Health Organization announces the global COVID-19 pandemic on the same day as Prime Minister Pashinyan meets protesters in Gndevaz and holds a rally in Jermuk as part of his campaign for a referendum on judiciary reforms. Armenia is hit hard by the pandemic.

**March 2020** – Four NGOs submit a complaint under the Bern Convention, resulting in a recommendation by the Convention's Secretariat to Armenia to halt any project activities that could negatively affect the habitats and species protected under the Convention.

**May 2020** – NGOs and local affected individuals from Jermuk and Gndevaz submit a complaint to the EBRD's IPAM (ongoing).

**July 2020** – The EBRD announces an exit from Lydian International following the restructuring of the company and transfer of assets from the Amulsar project to other companies where the EBRD did not hold equity shares.

**August 2020** – Clashes occur at the mine site between protesters and Lydian's security forces, who try (and fail) to open access to the mine; protests in Yerevan; police violently detain protesters and human right defenders.

**September-November 2020** – Many Amulsar defenders do not return from the Nagorno-Karabakh war; the border with Azerbaijan is moved closer to Amulsar; the blockade of the Amulsar mine stops.

**March 2021** – Lydian International is dissolved by an order of the Royal Court of Jersey. Ownership and control of Amulsar gold mine assets are transferred to Lydian Ventures of Canada.

**January 2022** – Lydian Armenia applies for new water permits, which are not granted (appeals ongoing).

### 3.1. Investments by multilateral development banks in the Amulsar project

In 2007, the first public bank to invest in the exploration of the Amulsar deposit was the IFC, the private sector lending arm of the World Bank. At the time, Lydian had a joint exploration venture with Newmont Mining Corporation in Armenia and Turkey, and separately held licences for three exploration properties in Kosovo.<sup>47</sup> Lydian's capital expenditure for 2007 and 2008 in the three countries was estimated at GBP 4 million (roughly equivalent to USD 8 million) and the IFC made an equity investment of GBP 1 million (roughly equivalent to USD 1.96 million).<sup>48</sup> In addition to exploration, the IFC investment was directed at feasibility studies and environmental and social impact assessments.

In 2009, the IFC further invested USD 1 million to support Lydian's capital expenditure of approximately USD 5 million for 2009. At the time, Lydian's major shareholders were Newmont Mining Corporation (12.9 per cent) and the IFC (12.9 per cent).<sup>49</sup> Amulsar was the junior mining company's flagship project.

IFC disclosures from 2007 and 2009 state that the IFC and Lydian agreed that the company would develop a systems-based approach to environmental, labour, social and community management, as well as stakeholder engagement.<sup>50, 51</sup> During its appraisal, the IFC stated that it was not able to fully quantify or specify the benefits from the project during the production stage because the investment predated any feasibility studies. At the time, the IFC considered 'the governance risks to realisation of project benefits to be reasonable' and predicted challenges to come regarding community relations in the future when Lydian's projects would progress to potential subsequent development.

47. IFC ESRS, 22/05/2007, *Environmental and Social Review Summary: Lydian Resource Company Ltd*, IFC Project Information and Data Portal, URL (last seen on 24 January 2022): <https://disclosures.ifc.org/project-detail/ESRS/25924/lydian-resource-company-ltd>

48. IFC SPI, 2007, *op. cit.*

49. IFC SPI, 21/01/2009, *Summary of Project Investment: Lydian Intl 3*, IFC Project Information and Data Portal, URL (last seen on 24 January 2022): <https://disclosures.ifc.org/project-detail/SPI/27657/lydian-intl-3>

50. IFC ESRA, 2007, *op. cit.*

51. IFC ESRS, 21/01/2009, *Environmental and Social Review Summary: Lydian Intl3*, IFC Project Information and Data Portal, URL (last seen on 24 January 2022): <https://disclosures.ifc.org/project-detail/ESRS/27657/lydian-intl-3>

In 2009, the EBRD in turn made its first equity investment of CAD 5.8 million (approximately USD 6.2 million) in Lydian International Limited for the exploration of the Amulsar deposit.<sup>52</sup> The EBRD disclosure from 2012 indicates that Lydian was planning future development of the Amulsar deposit, so an international consultant was commissioned to conduct an environmental and social impact assessment (ESIA). This assessment was expected to be 'completed and disclosed for public review and comment in summer 2012'.

Several draft versions of the assessment were critically reviewed by Armenian and international experts, as well as by the IFC and the EBRD. Three complaints by local communities and civil society organisations to the accountability mechanisms of the two banks were raised in 2014, adding a number of unanswered questions and assessment gaps. After several iterations, the tenth version of the ESIA was finally published by Lydian and the EBRD in July 2016.<sup>53</sup>

The EBRD invested an additional CAD 11.4 million (approximately USD 8.7 million) to purchase shares of Lydian International as part of its capital increase.<sup>54</sup> The Bank justified its support by stating that the new 'equity injection was earmarked for financing of the Environmental and Social Mitigation Measures (ESMM)', such as a biodiversity offset to ensure no net loss of biodiversity.

In 2017, the IFC sold its equity and exited the Amulsar project, stating: 'Given that Lydian has succeeded in attracting funding for mine development from private sector sources, IFC has divested its investment in Lydian, as we seek to deploy our capital where it is needed most to foster sustainable economic development. IFC is therefore no longer overseeing mine development.'<sup>55</sup>

Both the IFC and the EBRD have claimed to play proactive advisory roles to help Lydian achieve international best practice in line with the two multilateral development banks' environmental and social standards. Nonetheless, the banks' support and stamps of approval were not enough to convince local communities and Armenian civil society that the project could make a difference in the country's mining sector, which was plagued by a decade-long legacy of pollution.<sup>56</sup>

Importantly, the image of the two banks as guarantors of high standards had already been tarnished both in Armenia and globally. The EBRD had one embarrassing attempt at unsuccessfully bringing best industry practice to Armenia through its investment in another Canadian company, Dundee Precious Metals,<sup>57</sup> which operated the Deno gold mine just south of Amulsar in Kapan.<sup>58</sup> What's more, in 2015, the International Consortium of Investigative Journalists published a series of reports documenting that from 2004 to 2013, economic 'projects funded by the World Bank ha[d] physically or economically displaced an estimated 3.4 million people', nearly all in Africa, Vietnam, China or India.<sup>59</sup>

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52. EBRD PSD, 27/04/2012, *DIF – Lydian (Amulsar Gold Mine)*, EBRD Project Finder, URL (last seen on 24 January 2022): <https://www.ebrd.com/work-with-us/projects/psd/dif-lydian-amulsar-gold-mine.html>

53. EBRD, 9/05/2016, *Environmental and Social Impact Assessment: Lydian (Amulsar Gold Mine) – Extension*, EBRD Project Finder, URL (last seen on 24 January 2022): <https://www.ebrd.com/work-with-us/projects/esia/dif-lydian-amulsar-gold-mine-extension.html>

54. EBRD PSD, 2016, *op. cit.*

55. IFC, 04/12/2014, *IFC's Management Response to the CAO Assessment Report on the communities' complaint against Lydian International's Amulsar gold mine exploration project in Armenia (#27657)*, CAO Case Tracker, URL (last visited on 22 February 2022): <https://www.cao-ombudsman.org/cases/armenia-lydian-intl3-01gndevaz-and-jermuk>

56. Tepanosyan, G. *et al.*, 2018, *op. cit.*

57. Bacheva-McGrath, F., Popov, D., Zarafyan, I., Imankozhoeva, E., 2009, *Between a rock and a hard place. How local communities pay the cost of EBRD-financed gold mining projects*, Bankwatch, URL (last checked on 24 January): [https://bankwatch.org/wp-content/uploads/2011/08/btw\\_a\\_rock\\_and\\_a\\_hard\\_place\\_web.pdf](https://bankwatch.org/wp-content/uploads/2011/08/btw_a_rock_and_a_hard_place_web.pdf)

58. Zarafian, I., 10/05/2013, *Armenia gold mining problems cast doubt over renewed EBRD financing*, Bankwatch Mail, URL (last checked on 24 January): <https://bankwatch.org/publication/armenia-gold-mining-problems-cast-shadow-over-renewed-ebrd-financing>

59. ICIJ, 2015, *Evicted and Abandoned. How The World Bank Broke Its Promise To Protect The Poor*, *Huff Post*, URL (last checked on 24 January 2022): <https://projects.huffingtonpost.com/worldbank-evicted-abandoned>

## 3.2. Identified risks connected to the Amulsar gold mine project

In the next section, we will summarise both environmental and social risks connected to the Amulsar mine project, as identified by several experts, civil society activists and consultants working for the company or the government. Later in the paper, we will concentrate on a more detailed examination of how the state and the company have (or have not) addressed such risks – particularly those regarding human rights – and the related violations that have therefore occurred in the context of Amulsar’s activities.

### 3.2.1. Environmental risks of the Amulsar gold mine

The Amulsar project is a cautionary tale for extractive industry projects that rely on support from governments and investors but fail to secure social trust. Since 2011, environmentalists have raised objections to the Amulsar mining project,<sup>60</sup> outlining the serious risks that it poses to biodiversity and the precious water resources of Armenia. While civil society organisations were actively opposing the project,<sup>61</sup> many local people were discouraged from speaking up,<sup>62</sup> especially after political leaders and elected officials sided with the company and mining permits were granted by the old regime.

#### *Threats to water resources posed by the Amulsar gold mine*

Among the main concerns about the gold mine project is Amulsar’s close proximity to the renowned Jermuk health resort and the mineral water springs that supply the prominent Jermuk bottled water brand. The project’s use of cyanide leaching technology to extract gold from the ore also threatens the headwaters of big rivers, including the Arpa, Vorotan and Darb rivers, which are part of the transnational Araks and Kura river basins.

Importantly, there are two water reservoirs near Amulsar: the Ketchut and Spandaryan reservoirs, which provide water through an underground tunnel to Armenia’s main and critically important water resource, Lake Sevan. The law on Lake Sevan prohibits any activity within the catchment basins of Sevan that could have direct or indirect negative impacts on the lake.<sup>63</sup> Armenian experts have warned that the sulfidic nature of the Amulsar deposit raises the risks of acid mine drainage and acidifying the water in nearby rivers and reservoirs, and eventually the lake itself.<sup>64</sup>

In 2017 and 2018, a group of experts from Australia, the USA and Canada (the so-called Bronozyan consultants) published a report entitled *Amulsar Gold Project: Overview of Concerns with the Amulsar Gold Project, Potential Consequences, and Recommendations*. The report raised a number of serious questions regarding the risk of acid drainage, the contamination of important water resources and the absence of financial guarantees for post-closure recovery from the mining operation in the long term, among other concerns.<sup>65</sup> The report galvanised the opponents of the mine, as it reiterated some

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60. Lragir.am, 30.10.2014, Statement by S.O.S. Amulsar Initiative (in Armenian), URL (last checked on 25 January 2022): <https://www.lragir.am/2014/10/30/105981/?fbclid=IwAR0hGAjpiemV11SrPR-rlupqH8DS94Xs9RwfpsMdrPKAcQzWEExLk7AabF7c>

61. Khachatryan, N., 25/10/2017, Update: Amulsar Gold Mining Project Sees Additional Construction and Protests, Bellingcat, URL: <https://www.bellingcat.com/news/rest-of-world/2017/10/25/update-amulsar-gold-mining-project-sees-additional-construction-protests/>

62. Liakhov, P., 31/01/2017, Armenia: before the goldrush, URL (last checked on 24 January 2022): <https://www.opendemocracy.net/en/odr/armenia-before-goldrush/>

63. Vardanyan, N., 03/11/2016, Legal Opinion on Amulsar Gold Quartzite Mining, Ecolur, URL (last checked on 26 January 2022): <https://www.ecolur.org/en/news/sevan/legal-opinion-comparative-analysis-on-amulsar-gold-quartzite-mining/8648/>

64. Armecofront.net, 21/12/2017, Acid Mine Drainage in Amulsar and its Hazard. Professor Armen Saghatelyan, URL (last checked on 27 January 2022): <https://armecofront.net/en/amulsar-2/acid-mine-drainage-in-amulsar-and-its-hazard%E2%80%A4-professor-armen-saghatelyan/>

65. Blue Minerals Consultancy Buka Environmental Clear Coast Consulting, 2018, *Amulsar Gold Project: Overview of Concerns with the Amulsar Gold Project, Potential Consequences, and Recommendations*, URL (downloaded on 7 January 2022): <https://>

of the concerns that were already raised by Armenian scientists and civil society experts. Moreover, the Bronzozyan consultants' report emphasised the fact that the Armenian authorities had not commissioned any independent expert evaluation or impact assessment of Lydian's plans.

### **Threats and impacts on biodiversity**

Both Armenian and international experts have also warned against the threats to biodiversity posed by the Amulsar mine. Armenia's leading biodiversity conservation expert, the director of the World Wildlife Fund (WWF) in Armenia, Karen Manvelyan, submitted his opinion regarding the contradictions between the positive EIA decision issued by the Ministry of Nature Protection on the Amulsar gold mine project and Armenia's legislation.<sup>66</sup> He pointed out that numerous red-listed species had been detected in the planned mine area and that the open-pit extraction and mine facilities would lead to the loss, or at least deterioration, of the habitat of these species, thus reducing their numbers.

As both Manvelyan and prominent environmental lawyer Nazeli Vardanyan have pointed out, the destruction and deterioration of habitats of protected species is a breach of Armenia's Mining Code, its Laws on Fauna and Flora, and the provisions of the Bern Convention on the Conservation of European Wildlife and Natural Habitats and the Convention on Biological Diversity, ratified by Armenia in 2008.<sup>67, 68</sup>

A report published in 2018 by experts from the Balkani Wildlife Society further revealed that the EIA and the ESIA of the Amulsar gold mine project were missing an impact assessment for several Emerald sites in the project area.<sup>69</sup> Thus, the report concluded, Lydian's project jeopardised the Bern Convention's aims to ensure the conservation of the habitats of wild flora and fauna species, and of endangered natural habitats in Emerald sites.

The Balkani experts also highlighted that the methodology used for the Amulsar mine's ESIA did not comply with the requirements of the Bern Convention and the European Union Habitats Directive that the EBRD is required to respect. The ESIA provided no analysis or evidence that Lydian's project deserved any exceptions to Armenia's obligations, in line with Article 9 of the convention. Meanwhile, Lydian made plans to establish a new protected area, Jermuk National Park, as a biodiversity offset, acknowledging that biodiversity loss was inevitable and needed to be compensated for. The offset plan never came to fruition, in spite of the EBRD's equity investment being earmarked to achieve no net loss of biodiversity, while irreversible harm to wildlife and habitats occurred during exploration and mine construction.

Based on the WWF's and Balkani Wildlife Society's findings, in 2020, environmental groups launched a complaint to the Bern Convention.<sup>70</sup> The Bureau of the Standing Committee to the Convention replied

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[slidelegend.com/amulsar-gold-project-overview-of-concerns-with-the-amulsar-gold-5ae433187f8b9a2e9e8b4595.html](https://slidelegend.com/amulsar-gold-project-overview-of-concerns-with-the-amulsar-gold-5ae433187f8b9a2e9e8b4595.html)

66. Manvelyan, K., 30/08/2018, *Expert Opinion on Biodiversity, Its Conservation and Biodiversity Offset in EIA and Appendixes of Amulsar Gold Quartzite Deposit in the Republic of Armenia*, URL: <https://www.ecolur.org/files/uploads/2018/Amulsar%20expers%20opinions%202018/karenmanvelyansxpertpinioneng.pdf>

67. Vardanyan, K., 30/08/2018, *Expert Opinion on Biodiversity, Its Conservation and Biodiversity Offset in EIA and Appendixes of Amulsar Gold Quartzite Deposit in the Republic of Armenia*, URL (last checked on 27 January 2022): <https://www.ecolur.org/files/uploads/2018/Amulsar%20expers%20opinions%202018/karenmanvelyansxpertpinioneng.pdf>

68. Eclex, *Convention on the Conservation of European Wildlife and Natural Habitats*, URL (last visited on 31 January 2022): <https://www.ecolur.org/details/treaty/convention-on-the-conservation-of-european-wildlife-and-natural-habitats-tre-000473/>

69. Kovatchev, A., Tsingarska-Sedefcheva, E., Ralev, A., 2018, *Report on New Circumstances Related to the Environmental and Social Impact Assessment (ESIA) of the Amulsar Gold Project in Armenia*, Balkani Wildlife Society, URL (last checked on 26 January 2022): <https://www.ecolur.org/files/uploads/2018/Amulsar%20Andrey%20Ralef/amulsarreportfinalandreyralev.pdf>

70. CEE Bankwatch Network, 30/03/2020, Armenia breaks international agreement on biodiversity over gold mine funding, alleges complaint, URL (last checked on 28 January 2022): [https://bankwatch.org/press\\_release/armenia-breaks-international-agreement-on-biodiversity-over-gold-mine-funding-alleges-complaint](https://bankwatch.org/press_release/armenia-breaks-international-agreement-on-biodiversity-over-gold-mine-funding-alleges-complaint)

with a recommendation to Armenia's government to halt any developments that could negatively affect the habitats and species protected under the Convention.<sup>71</sup> Currently, the Amulsar dossier is being assessed by the Standing Committee and remains unresolved until Armenia takes adequate measures to ensure the conservation of wildlife and habitats within Emerald sites.

### 3.2.2. Human rights risks and impacts

Before the Velvet Revolution, the concerns of local people and independent experts about the risks that the Amulsar project posed on the environment, economy and human health had been sidestepped by Armenian authorities. As early as 2007, the IFC acknowledged there was a 'reasonable level of governance risks linked to the project'.<sup>72</sup> A World Bank report from 2014 underscored that 'the key challenges that Armenia needs to address before scaling up development of mines concern sector governance with regard to environmental and social impacts... as well as reforming the legal oversight practice, transparency, and enforcement mechanisms'.<sup>73</sup> In this regard, the IFC team conducting due diligence on the Amulsar project predicted that Lydian could expect challenges in community relations in the future, when the Amulsar project would progress to the mine development stage.

The Amulsar mine project presented a number of considerable health and social risks to local communities, as well as economic risks to the tourism potential of the nearby Jermuk spa resort and the surrounding villages' orchards, pastures and water supplies. These risks were identified by several experts and to a certain extent also included in Lydian's social impact assessment (part of the 2016 ESIA), which was of relatively good quality compared to other impact assessments in Armenia. However, it had some serious gaps and inadequate mitigation measures that were tested during the construction stage of the project, as evidenced by water supply disruptions and air pollution during construction.<sup>74</sup>

Local communities were particularly concerned that a cyanide leaching facility had been planned to be built on pasture lands used for livestock grazing by farmers of the villages of Gndevaz and Saravan,<sup>75</sup> and in close proximity to Gndevaz's apricot orchards. The nearby rivers of Darb, Arpa and Vorotan are also used to water the vineyards and agricultural lands, and feed the fish farms downstream, including the area along the Arpa river. The ESIA noted that '[l]ocal employment generation at Amulsar could trigger a shift away from traditional livelihoods, leading to a loss of cultural identity' and suggested as a mitigation measure that 'community development programmes supporting the agricultural sector and development of small and medium scale businesses w[ould] be implemented by Lydian'. However, during the construction stage, villagers from Gndevaz reported that their apricots had become very unpopular on the market because people, concerned about health risks, were turning away from food products from the Amulsar region.

Some of the Amulsar mine project's key social and economic risks threatened the nearby town of Jermuk. Jermuk is a renowned hot springs spa in Armenia, as well as the source of the Jermuk bottled mineral water brand. The town has two distinct zones: the residential area (that now includes the village of Ketchut) and the resort area. Jermuk has been a favourite recreational destination for

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71. Ecolur.org, 06/05/2021, Berne Secretariat Raised Status of Complaint on Amulsar, URL (last checked on 25 January 2022): <https://www.ecolur.org/en/news/amulsar/13171/>

72. IFC SPI, 2007, *op. cit.*

73. Damianova, A. J. *et al.*, 2014, *op. cit.*

74. Amulsar Independent Advisory Panel, 2018, *Annual Report 2017-2018*, URL (last visited on 22 February 2022): <https://www.lydianarmenia.am/img/uploadFiles/2d08074978e06bb0db97AmulsarIndependentAdvisoryPanel-AnnualReport2017-2018.pdf>

75. Armecofront.net, 29/05/2018, Grounds for stopping the Amulsar project. Letter to the RA Government (in Armenian), URL (last checked on 26 January 2022): <https://armecofront.net/amulsar/grounds-for-stopping-project-in-amulsar/>

generations of Armenians, both locally raised and from the Armenian diaspora, as well as foreign tourists, especially from Russia. People visit the city seeking peace and quiet, beautiful scenery, fresh air and the 'healing power' of Jermuk's water. Any plans for development of tourism in this part of the country naturally gravitate around Jermuk, also known as the 'pearl of Vayots Dzor'.

The Amulsar project site is located only 7 kilometres away (12 kilometres by road) from Jermuk. Before mine construction started in 2015, Lydian claimed that the adverse impacts on Jermuk could be mitigated and therefore were not significant.<sup>76</sup> Once construction started, however, the visions of Jermuk as a quiet spa resort and a muddy, rowdy mining town collided.<sup>77</sup> People working at the spa complained that medical tourism and mine development were incompatible. In a sociological study commissioned by Bankwatch in 2018, 85.7 per cent of respondents in Jermuk observed negative impacts on their health, including psychological, since the construction of the Amulsar mine had started.<sup>78</sup> Local people reported health concerns including increasing asthma attacks, lung diseases, dry skin, headaches and insomnia.

Sources threatening the health of local people not only include water pollution, but also the cyanide heap leach facility near the village,<sup>79</sup> as well as the dust from the mine project area. Considering the strong winds in the area, impacts have been felt mainly by the inhabitants of Gndevaz, but dust has also reached the town of Jermuk.<sup>80</sup> Another cause of health concerns is the elevated amount of uranium, thorium and radon in the area. These surpass the gold reserves in Amulsar, according to Soviet-era scientific papers and more recent expert assessments.<sup>81</sup>

In this regard, it is important to note that the scope of the EIA and the public consultations on the EIA for the Amulsar mine were designed by Armenian authorities to exclude important stakeholders, not least the inhabitants of Jermuk.<sup>82</sup> Although Lydian International claims to regularly engage with local stakeholders in Jermuk,<sup>83</sup> these meetings are not public hearings on the EIA organised by the Ministry of Nature Protection. Therefore, the meetings with narrow community liaison groups could not be characterised as formal public hearings of the kind required for public participation in the EIA procedure.

Moreover, no public hearing protocols for Jermuk can be found on the website of Armenia's Ministry of Nature Protection, unlike for the other communities formally consulted on the Amulsar project EIA.<sup>84</sup>

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76. Lydian Armenia, *14 Questions and Answers About Amulsar*, URL (last visited on 22 February 2022): [https://www.lydianarmenia.am/img/uploadFiles/bbfa0e9af97cfe6c5f9eQ&A\\_eng.pdf](https://www.lydianarmenia.am/img/uploadFiles/bbfa0e9af97cfe6c5f9eQ&A_eng.pdf)

77. Mkrtchyan, G., 26/01/2019, Jermuk: a resort or a mining town?, *Urbanista*, URL (last checked on 28 January 2022): <https://urbanista.am/jermuk-eng>

78. Mkrtchyan, A., 2018, *Assessing the social impacts of the preparatory and development phases at Lydian International's Amulsar mine in Armenia through surveys of neighbouring communities*, Community Mutual Assistance and CEE Bankwatch Network, URL (last visited on 31 January 2022): <https://bankwatch.org/wp-content/uploads/2019/01/Amulsar-Report-1-Social-min.pdf>

79. Cyanide heap leaching is a process for recovering gold and silver by trickling cyanide solutions through low-grade ore that has been stacked on open-air pads.

80. Gevorgyan, M., 15/11/2019, Amulsar Uncertainty Continues: A Local Activist and Diaspora Armenians Share their Concerns, *Hetq Investigative Journalists*, URL (last checked on 25 January 2022): <https://hetq.am/en/article/109849>

81. Sanasaryan, H., 19/04/2019, Expert Opinion on Radioactivity in Amulsar area (in Armenian), *Hetq investigative journalists*, URL (last checked on 25 January 2022): <https://hetq.am/hy/article/108680>

82. Datalex.am, 13/05/2013, Court Case against Prime Minister and Ministry of Nature Protection of Armenia obliging to recognize the plaintiff and Jermuk community as affected by Amulsar gold mine project (in Armenian), URL (last checked 27 January 2022): [http://www.datalex.am/?app=AppCaseSearch&case\\_id=38562071809711850](http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809711850)

83. Geoteam, 30/01/2016, *Update V12: Stakeholder Engagement Plan*, URL: <https://www.lydianarmenia.am/eng/pages/amulsar-stakeholders/101/>

84. Ministry of Environment, 26/10/2018, Protocols of Public Hearings regarding Amulsar mine project (in Armenian), URL (last checked on 27 January 2022): <http://www.mnp.am/shrjaka-mijavayr/hanrayin-qnnarkman-ardzanagrutyunner>

Notably, in December 2018, residents of the Jermuk community – including the town of Jermuk and the villages of Ketchut, Gndevaz, Her-Her and Karmrashen – collected 3,000 signatures petitioning Armenia’s government. They demanded a ban on metal mining and proposed their vision for mine-free, green economic developments in their area.<sup>85</sup>

### 3.2.3. Corruption risks related to the Amulsar project

In 2017, the Transparency International Anti-corruption Center published its report *Assessment of Corruption Risks in Granting Subsoil Use Permits*, which aimed to analyse the gaps and corruption risks in the process of granting mineral mine permits in Armenia.<sup>86</sup> The report found that the process of granting permits for subsoil use, including mining, has significant transparency gaps. It summarised previous reports by Armenian civil society organisations about corruption risks in the mining sector in the country, including ones related to Amulsar.<sup>87</sup>

For example, in the case of the exploration of the Amulsar deposit, data regarding the gold reserves changed at least four times within a few years. This raised doubts, as the data could not be verified. Moreover, the number of announcements raising estimates of the resources in the deposit could have been used to benefit shareholders by causing a steady increase in the value of the company’s assets and share price on the Toronto Stock Exchange.

Another gap identified by the Transparency International report was the absence of proper regulations and publicly known standards for conducting environmental expertise, reviewing EIA reports and confirming their accuracy and reliability. A project promoter in the country is required by law to provide a comprehensive EIA. However, Armenia’s Ministry of Nature Protection has no guidelines or procedures for a critical quality review. The controversy surrounding the authorities’ changing position on the potential impact of the Amulsar project on Lake Sevan was a case in point.

The report also pointed out that in Armenia, there is no state body to prepare or verify an independent cost-benefit analysis for a proposed mine project. So, although Lydian presented an estimate of the expected economic benefits of the Amulsar project,<sup>88</sup> the costs of damage to tourism potential and human health, as well as those of biodiversity loss and water pollution, were not estimated to justify a balanced decision on the project by Armenian authorities.

Another gap mentioned in the report was the opportunity for mining companies to influence decision makers and heads of communities by making large donations to foundations linked to them. For example, according to the 2014 annual report from the Luys Foundation, Lydian subsidiary Geoteam donated AMD 121 925 000 (approximately USD 256 000) to the foundation. Among the founders of the Luys Foundation were Armenia’s then-president and then-prime minister, Serzh Sargsyan and Tigran Sargsyan. According to the 2013-2014 report of another foundation, the Socio-economic Development Support to Jermuk Town, it has received around AMD 56 359 123 (approximately USD 120 000) from Geoteam. The head of this foundation at the time was Gevorg Hovahannisyan, the son of Jermuk’s mayor, Vardan Hovhannisyan.

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85. Armecofront.net, 06.12.2018, With 3000 signatures Jermuk community members petition the central and local government to ban metal mining in their territory and boost ecologically-friendly economy, URL (last checked on 27 January 2022): <https://armecofront.net/en/amulsar-2/with-3000-signatures-jermuk-community-members-petition-the-central-and-local-government-to-ban-metal-mining-in-their-territory-and-boost-ecologically-friendly-economy/>

86. Grigoryan, A., Movsisyan, H., Amirkhanyan, A., 2017, *Assessment of Corruption Risks in Granting Subsoil Use Permits* (in Armenian), Transparency International Anticorruption Center NGO, URL (last checked 30 January 2022): <https://transparency.am/files/publications/1512041692-0-785589.pdf?v=4>

87. Grigoryan, A., 2017, *The Amulsar Goldmine: Legal Issues and Biodiversity Offsets*, Ecological Right (URL no longer working)

88. Avag Solutions, 2015, *op. cit.*

Finally, the Transparency International report pointed out the risk of mining companies possibly exerting undue influence on legislation and regulatory acts. In this regard, it is worth mentioning that a single change of Armenia's regulation on ramp gradients for mine haul roads in 2015 resulted in savings of USD 100 million for the Amulsar project and a rise in Lydian's shares on the Toronto Stock Exchange.<sup>89</sup>

### **Gndevaz land acquisition**

One of the most significant economic impacts on the village of Gndevaz was the loss of apricot orchards for the construction of the project's cyanide heap leach facility. In 2020, after the Velvet Revolution, Armenian civil society organisations sent information requests regarding the details of the Amulsar project's land acquisition in Gndevaz. Their requests were backed-up by official inquiries by members of the Armenian parliament. After official information was provided by Armenia's cadastre committee on land sales and auctions in the Gndevaz community from 2006 to 2018, new details emerged about the privatisation and land acquisition for the Amulsar project.<sup>90</sup>

Investigative journalists from Armenian newspaper Hetq analysed the cadastre data and found that Lydian acquired 278 plots of land (150 hectares) from 145 landowners for the needs of the Amulsar project and spent over USD 2.8 million for it.<sup>91</sup> However, it turns out that a significant portion of the money went to the family of the former head of Gndevaz village, members of the council of elders, employees of the village administration and their relatives, and other local officials. Hetq found that the officials had acquired land in the area through an auction for a low price, then resold it to Lydian for a much higher price.

According to calculations made by the Armenian Environmental Front,<sup>92</sup> 22 people received USD 2.1 million of the company's budget by selling land they had previously acquired through auctions. This means that during the land acquisition by Lydian, 22 out of 145 landowners received about 75 per cent of the budget spent by the company for land in Gndevaz.

The family of the former head of Gndevaz village alone received about USD 880 000. In June 2014, Hayrapet Mkrtchyan, the head of the Gndevaz community, privatised 10 hectares of community land through an auction to his son, Layert Mkrtchyan, for AMD 410 000 (around USD 800). Just one year later, in June 2015, he sold this land to Lydian for AMD 147 300 000 (around USD 295 000). As a result of the Mkrtchyans' actions, 'Gndevaz Community suffered property damage of AMD 146 million (USD around 294 000), the community budget was deprived of cash inflows, community funds were used for personal interests, the good reputation of the local self-government body was discredited, community service principles and goals were devalued'.<sup>93</sup>

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89. Els, F., 09/04/2015, Lydian's shares pop after Armenia's \$100 million gift, URL (last visited on 31 January 2022): <https://www.mining.com/lydian-shares-pop-armenias-100m-gift/>

90. Hetq Investigative journalists, 30/01/2021, Who Privatized and Sold the Lands of Gndevaz (in Armenian), URL (last checked on 20 January 2022): <https://hetq.am/hy/article/126824> (English translation is available here: <https://armecofront.net/en/news/who-privatized-and-sold-gndevaz-land-areas/>)

91. *Ibid.*

92. Armenian Environmental Front, 03/03/2021 (FB post in Armenian), URL (last checked on 26 January 2022): <https://www.facebook.com/576753159031419/posts/5447195965320423/>

93. Datalex.am, 21/02/2020, Indictment for Layert and Hayrapet Mkrtchyans (in Armenian), URL (last checked 26 January 2022): [http://datalex.am/?app=AppCaseSearch&case\\_id=27303072741052046](http://datalex.am/?app=AppCaseSearch&case_id=27303072741052046)



Nikol Pashinyan visits the Amulsar blockade, 2020. © CEE Bankwatch Network

## Chapter 4

# Amulsar – a test for Armenia's democracy

The Velvet Revolution of 2018 spelled an end to Lydian International's cosy relationship with the Armenian government and the start of a three-year-long blockade of the project. Inspired by Nikol Pashinyan's revolutionary movement, local protesters in 2018 blocked access to Lydian's project site and stopped the Amulsar mine's construction. Four years down the road, the Amulsar project is still on hold, and it has become a test for the new government's ability to successfully balance democratic and participatory decision-making with urgent economic needs (especially after heavy diplomatic and investor pressure and the military conflict of 2020).<sup>94, 95</sup>

94. Angel, J., 13/08/2019, Corporate courts: the latest threat to democracy in Armenia, Open Democracy, URL (last accessed on 28 January 2022): <https://www.opendemocracy.net/en/odr/corporate-courts-latest-threat-democracy-armenia/>

95. Rowley, T., 13/07/2021, Britain's behind-the-scenes quest for Armenian Gold, Open Democracy, URL (last checked on 28 January 2022): <https://www.opendemocracy.net/en/odr/britains-behind-the-scenes-quest-for-armenian-gold/>

As a result of the blockade by local protesters and the new government's reluctance to back the project, Lydian International's stock price crashed and the company became insolvent in 2019.<sup>96</sup> The company subsequently applied for delisting from the Toronto Stock Exchange and to a Canadian court for protection from its creditors,<sup>97</sup> and consequently restructured its business and financial affairs. According to the EBRD,<sup>98</sup> a corporate restructuring plan was adopted as part of the insolvency proceedings that resulted in the company's existing senior lenders in Lydian Canada, Lydian UK and Lydian Armenia taking ownership and control of the assets, while Lydian International became subject to closure proceedings before a court in Jersey.

### **The ELARD review of the Amulsar project's ESIA**

After the Velvet Revolution, the Amulsar gold mine project became the subject of a number of investigations by state bodies and independent experts commissioned by the government. Immediately after becoming prime minister in May 2018, Nikol Pashinyan ordered the Environmental Protection and Mining Inspection Body to investigate the operations of mining companies in the country. Amulsar was one of the priority sites for inspection.<sup>99</sup>

As the Inspection Body was preparing its report on Amulsar, the Investigative Committee of the Republic of Armenia started a criminal case in July 2018 against officials from the Ministry of Nature Protection for 'willful concealing of information about environmental pollution related to the exploitation of the Amulsar gold mine'.<sup>100</sup>

In the framework of the investigation, the committee contracted the Lebanese research company ELARD to review the Amulsar mine project's ESIA.<sup>101</sup> ELARD provided its final report to the Investigative Committee in August 2019.<sup>102</sup> The report's findings highlighted a number of data omissions in Lydian Armenia's ESIA.<sup>103</sup> Nonetheless, the Investigative Committee stated that the risks of the Amulsar project were manageable.<sup>104</sup>

Based on the Investigative Committee's interpretation of the report – that since the risks linked to the Amulsar gold mine were 'manageable', no justification existed for further blocking of the project – Prime Minister Pashinyan announced that the Amulsar project would resume. This position caused public outcry among Amulsar's critics, whose views differed from the Investigative Committee's interpretation of the report. Civil society started putting pressure on the government to backtrack.

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96. *Simply Wall Street*, 2019, Some Lydian International (TSE:LYD) Shareholders Have Taken A Painful 87% Share Price Drop, Yahoo! News, URL (last accessed on 16 June 2022): [https://ph.news.yahoo.com/lydian-international-tse-lyd-shareholders-113915262.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly9kdWNrZHVja2dvlmNvbS8&guce\\_referrer\\_sig=AQAAADN6ACBGs0APyG40lgTpujtyLGPq6hayM-C3gxgwfaww4NB0k42w3P2RDhBP5PPRKR8a32nzj5DCmWWtwf7M62wsRPXhjEqJm1ozsli90RcGHjK5BeU3PE81SsZymOICunajKHXPJTlQT1flRPMvv9T9G5jrlhMon9UqIMqBPU7](https://ph.news.yahoo.com/lydian-international-tse-lyd-shareholders-113915262.html?guccounter=1&guce_referrer=aHR0cHM6Ly9kdWNrZHVja2dvlmNvbS8&guce_referrer_sig=AQAAADN6ACBGs0APyG40lgTpujtyLGPq6hayM-C3gxgwfaww4NB0k42w3P2RDhBP5PPRKR8a32nzj5DCmWWtwf7M62wsRPXhjEqJm1ozsli90RcGHjK5BeU3PE81SsZymOICunajKHXPJTlQT1flRPMvv9T9G5jrlhMon9UqIMqBPU7)

97. Lydian Armenia, 30/01/2020, Restructuring Q&A, URL (last checked on 7 January 2022): <https://www.lydianarmenia.am/eng/pages/restructuring-q&a/94/>

98. EBRD PSD, 2016, *op. cit.*

99. Environmental Protection and Mining Inspection Body, 24/08/2018, Act 30 on Inspections at "Lydian Armenia CJSC" (in Armenian), URL (last checked 26 January 2022): <https://hetq.am/static/content/pdf/Amulsar-stugman-akt.pdf>

100. Ecolur, 20/07/2018, Criminal Case: Official Concealed Information about Environmental Pollution in Amulsar Project Documentation, URL (last checked on 26 January 2022): <https://www.ecolur.org/en/news/amulsar/criminal-case-official-concealed-information-about-environmental-pollution-in-amulsar-project-documentation/10287/>

101. Martirosyan, S., 20/08/2019, Pashinyan meets with Amulsar opponents; Police arrest seven demonstrators, Hetq investigative journalists, URL (last checked 27 January 2022): <https://hetq.am/en/article/106558>

102. Investigative Committee of the Republic of Armenia, 14/08/2019, *Report on Complex Examination within Criminal Case on Willful Concealing of Information about Pollution of Environment Related to Exploitation of Amulsar Gold Mine*, URL (last checked on 26 January 2022): <http://investigative.am/en/news/view/amulsar-porcaqnnutyun-ezrakacutyun.html>

103. Investigative Committee of the Republic of Armenia, 22/07/2019, *ESIA Review*, ELARD & TRC, URL (last checked on 27 January 2022): <http://investigative.am/images/2019/lidian/porcaqnnutyun/amulsar11.pdf>

104. Badalian, S., 26/08/2019, Amulsar Mining Risks "Manageable", Insists Top Investigator, URL (last checked on 27 January 2022): <https://www.azatutyun.am/a/30130026.html>

After protests in Yerevan, where police used force to disperse protesters,<sup>105</sup> Prime Minister Pashinyan initiated a public Skype call with ELARD experts, where members of his cabinet, the Investigative Committee and representatives of Lydian Armenia discussed the discrepancies in interpretations of the ELARD report.<sup>106</sup>

### ***Findings by the Environmental and Mining Inspection Body on Amulsar***

A week after the ELARD review of Amulsar's ESIA was published, the government's Environmental and Natural Resources Inspection Body, headed by prominent environmental lawyer Artur Grigoryan, published its report on the Amulsar mine.<sup>107</sup> The Inspection Body's report revealed a number of violations and illegal activities during the construction of the Amulsar mine.<sup>108</sup> For example, the report listed, among other things, Lydian's failure to follow the conditions of the mine permit, illegal extraction of clay for lining the cyanide facility pad, improper use of land for purposes other than mentioned in the permit, the release of 187.9 tons of dust into the air and the absence of monitoring of dust emissions resulting from construction.

In addition, during a visit to the Amulsar site by the working group of independent experts commissioned to support the work of the Inspection Body, two new plants and five new animal species from Armenia's Red Book were discovered; they had not been identified in the Amulsar EIAs.<sup>109</sup>

The Inspection Body's report, first of all, recommended that the Ministry of Nature Protection annul the state expert assessment on the Amulsar EIA approved by the ministry in 2016, based on the newly emerged circumstances.<sup>110</sup> Second, the report instructed Lydian to refrain from any activity in the Amulsar area until the Ministry of Nature Protection had further studied these new circumstances. Third, the Inspection Body also submitted documents to the General Prosecutor's Office, which in turn launched a criminal case against Lydian and assigned the case to the Investigative Committee.<sup>111</sup>

At that point, Prime Minister Pashinyan ordered the Ministry of Nature Protection to give a conclusive statement on whether a new ESIA was needed for the Amulsar gold mine project by 4 September 2019. On 5 September, the Minister of Nature Protection at the time, Erik Grigoryan, sent a 13-point letter to the Prime Minister's office and to the Investigative Committee, including the opinions of the National Academy of Science, as well as findings by ELARD.<sup>112</sup> The letter described the omissions and errors in the data presented by Lydian Armenia, stating the need for reevaluation of the section of the ESIA on background radiation, based on a report made after the 1952-1954 uranium exploration in Amulsar.<sup>113</sup>

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105. Martirosyan, S., 2019, *op. cit.*

106. Panorama.am, 30/08/2019, Skype call with ELARD consultancy group raised new questions - Pashinyan, URL (last checked 28 January 2022): <https://www.panorama.am/en/news/2019/08/30/Skype-call/2159741>. Original source of the conference call at <https://www.youtube.com/watch?v=e4nhBD72UCs>

107. RA Environmental and Natural Resources Inspection Body, *Reports, Point 11, Report on Inspections in 2018* (in Armenian), URL (last checked on 28 January, 2022): <https://www.ecoinspect.am/reports/>

108. RA Environmental and Natural Resources Inspection Body, 24/08/2018, *Act-30 on Inspections at Lydian-Armenia CJSC* (in Armenian), URL (last checked on 28 January 2022): <https://hetq.am/static/content/pdf/Amulsar-stugman-akt.pdf>

109. Ecolur, 17/09/2019, WWF-Armenia Statement on Amulsar to Armenian Government Demanding to Annul EIA Issued to Amulsar, URL (last accessed on 28 January 2022): <https://www.ecolur.org/en/news/mining/11553/>

110. Ecolur.org, 27/08/2018, Press Release of the Inspection Body, URL (last checked on 28 January 2022): <https://www.ecolur.org/en/news/officials/-/10356/>

111. The Prosecutor General's Office of Armenia, Criminal case has been initiated by the company "Lidian Armenia" on the fact of possible illegal mining of minerals from Amulsar, URL (last checked on 28 January 2022): <https://www.prosecutor.am/en/mo/7225/>

112. Martirosyan, S., 18/09/2020, New Developments Around Amulsar Case: Why Is the Ministry of Environment Silent (in Armenian), Hetq Investigative Journalists, URL (last checked on 28 January 2022): <https://hetq.am/hy/article/121709>

113. Hetq Investigative Journalists, 05/09/2019, Letter by Minister of Environment Erik Grigoryan to the Staff of Prime Minister of the Republic of Armenia (in Armenian), URL (last checked on 28 January 2022): <https://bit.ly/3g223RC>

In November 2018, Lydian Armenia turned to the Administrative Court with an appeal against the Inspection Body's order halting activities at Amulsar until an assessment of the new circumstances could be made. In October 2019, the court found that the supposed new circumstances had not not been substantiated. Moreover, it found that Artur Grigoryan, who was no longer heading the Inspection Body, was biased against the Amulsar mine project, considering his public opposition to the project prior to his appointment as head of the Inspection Body.<sup>114</sup> The protocols<sup>115</sup> clearly indicate that, despite being notified about the hearings, the Inspection Body provided no documentation in support of its decision and none of its representatives attended any of the court hearings, as an indication of state authorities' reluctance to take a decisive stance on the project.

In contrast to the Inspection Body's inaction during the above court case brought by Lydian, representatives of the authorities actively attended court hearings to protect the former regime's decision-making on the Amulsar project in court cases brought by citizens in 2018. For example, residents of Jermuk and Gndevaz started legal action in October 2018 against the Minister of Nature Protection's decision on Amulsar.<sup>116</sup> The plaintiffs requested that the court oblige the minister to void the positive assessment of the amended Amulsar project and rescind his predecessor's approval from April 2016.<sup>117</sup> The court rejected this demand, so the plaintiffs appealed the decision. In July 2021, the Court of Administrative Appeal cancelled the decision of the Administrative Court, obliging it to reexamine the case, which is ongoing.<sup>118</sup>

### **Heavy diplomatic and investor pressure<sup>119, 120</sup>**

Diplomatic interest and support for the Amulsar gold mine was first demonstrated by ambassadors from the UK and the USA, who visited the project site in June 2013. At the time, British Ambassador Katherine Leach said that the 'UK-based company Lydian International represents potentially the largest British investment in Armenia' and that the backing of investors, such as the IFC and the EBRD, can guarantee the highest international standards in the mining industry.<sup>121</sup> US Ambassador John Heffern said that 'many of the company's shareholders are US-based investors' and he hoped the project would provide an example of responsible mining in line with international best practice.<sup>122</sup>

Email correspondence by the UK embassy in Yerevan, obtained by openDemocracy under the Freedom of Information Act, shows that the UK Foreign Office supported Lydian in resolving a dispute with the Armenian government in 2013.<sup>123</sup> At the time, Lydian faced delays with the Amulsar project's feasibility study and environmental permit due to the newly imposed limitations on mineral processing in the catchment area of Lake Sevan. This disclosure reveals a series of meetings between the UK embassy

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114. Datalex.am, 15/10/2019, *Case for Annulment of 27.08.2018 30-A Decision* (in Armenian), URL (last checked on 29 January 2022): [http://www.datalex.am/?app=AppCaseSearch&case\\_id=38562071809928532](http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809928532)

115. *Ibid.*

116. Datalex.am, 04/10/2018, *Demand to annul the positive opinion No BP 35 for the amended mine project in Amulsar and its approval by the Minister on April 29, 2016* (in Armenian), URL (last checked on 29 January 2020): [http://www.datalex.am/?app=AppCaseSearch&case\\_id=38562071809927036](http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809927036)

117. Ecolur, 15/01/2019, *Barrister: Nature Protection Ministry Tries to Put Court Proceedings on Amulsar in Deadlock*, URL (last visited on 31 January 2022): <https://www.ecolur.org/en/news/mining/10735/>

118. Ecolur.org, 09/07/2021, *Administrative Appeal Court Upheld Appeal Complaint on Amulsar*, URL (last checked on 29 January 2022): <https://www.ecolur.org/en/news/mining/13302/>

119. Angel, J., 13/08/2019, *Corporate courts: the latest threat to democracy in Armenia*, Open Democracy, URL (last accessed on 28 January 2022): <https://www.opendemocracy.net/en/odr/corporate-courts-latest-threat-democracy-armenia/>

120. Rowley, T., 13/07/2021, *Britain's behind-the-scenes quest for Armenian Gold*, Open Democracy, URL (last checked on 28 January 2022): <https://www.opendemocracy.net/en/odr/britains-behind-the-scenes-quest-for-armenian-gold/>

121. Ecolur, 28/07/2018, *Ambassadors of UK and US in Armenia to visit Amulsar*, URL (last checked on 15 April 2022): <https://www.ecolur.org/en/news/mining/ambassadors-of-uk-k-and-usa-in-armenia-to-visit-amulsar/5015/>

122. *Ibid.*

123. Rowley, T., 22/06/2020, *Emails underscore UK role in Armenian mining dispute*, openDemocracy, URL (last seen on 15 April 2022): <https://www.opendemocracy.net/en/odr/emails-underscore-uk-role-armenian-mining-dispute-amulsar/>

and Lydian, as well as a promise by an embassy official to discuss the issue with Armenian President Serzh Sargsyan.

In spite of rising challenges and criticism of the project, diplomatic support for the project continued with various site visits to Amulsar and responsible mining events in Yerevan. During a 2015 visit to the mine with Armenia's Prime Minister Abrahamyan and Minister of Energy Yervand Zakharyan,<sup>124</sup> US Ambassador Richard Mills remarked that the 'US greatly values its deepening economic ties with Armenia and commends the Government of Armenia for the commitments it has made to improve the business environment'.

The UK and US ambassadors were present at the groundbreaking ceremony at Amulsar in 2016, lauding it as a responsible mining project that benefits local communities and brings significant economic profits to Armenia.<sup>125</sup> In 2018, the UK disregarded Amulsar critics and environmental concerns by saying that tensions between mining and environmentalists were 'nothing new and will probably never change, but companies and countries need[ed] to progress'.<sup>126</sup>

Records obtained by openDemocracy reveal that between 2013 and 2018, UK embassy employees in Yerevan were in regular contact with Lydian International by, for example, arranging presentations, seminars, meetings, working groups and project updates.<sup>127</sup> Strikingly, the records list 55 contacts between the company and the embassy between January and July 2018, coinciding with the Velvet Revolution, when protesters started to block access to the project site and several audits and inspections of Amulsar were launched.

In response to these revelations, the UK embassy downplayed its role and rejected this characterisation of its contacts with the Armenian government about the Amulsar project as 'routine'.<sup>128</sup>

In March 2019, Lydian notified the Armenian government that it would start a dispute settlement process under two investment treaties with the UK and Canada.<sup>129</sup> This notice should initiate proceedings for an investor state dispute settlement, with Lydian claiming compensations for losses due to the Amulsar blockade. However, three years later, the company has not pressed for this option, still expecting to either sell the asset or reach an agreement with the Armenian government to resume the operation of the project.

### ***The latest developments***

In its session held in November 2021, the Armenian government approved a five-year action plan. Among the activities it envisions to ensure economic growth of 7 to 9 per cent between 2021 and 2026 is the exploitation of the Amulsar mine.<sup>130</sup> According to a media inquiry made to the Ministry of

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124. US Embassy, Ambassador Richard Mills Remarks during visit to Lydian International's Amulsar Site and Community Development Projects, URL (last visited on 15 April): <https://am.usembassy.gov/lydian-internationals-amulsar-site/>

125. Mediamax, 19/08/2016, Amulsar project launched in Armenia, URL (last seen on 15 April 2022): <https://mediamax.am/en/news/society/19565/>

126. Banks.am, 19/02/2018, Mark Pritchard: UK business presence will expand in Armenia, URL (last seen on 15 April 2022): <https://banks.am/en/news/interviews/15093>

127. Rowley, T., 02/09/2019, UK Foreign Office criticised for supporting controversial gold mine in Armenia, openDemocracy, URL (last seen on 15 April): <https://www.opendemocracy.net/en/odr/uk-foreign-office-criticised-over-controversial-gold-mine-armenia-amulsar/>

128. Rowley, T., 05/05/2020, Armenia 'under pressure' from UK and US over mining dispute, says EU report, URL (last seen on 15 April 2022): <https://www.opendemocracy.net/en/odr/armenia-under-pressure-from-uk-and-us-over-mining-dispute-says-eu-report/>

129. Angel, J., 13/08/2019, Corporate courts: the latest threat to democracy in Armenia, openDemocracy, URL (last visited on 15 April 2022): <https://www.opendemocracy.net/en/odr/corporate-courts-latest-threat-democracy-armenia/>

130. E-gov.am, 18/11/2021, Government's Decisions (in Armenian), URL (last checked on 28 January 2022): <https://www.e-gov.am>

Economy, the resumption of construction of the Amulsar mine is planned for 2022, while the mine's operational phase is planned to start at the end of 2022 or the beginning of 2023. The direct or indirect impact on GDP is estimated to be 1.4 to 2 per cent.<sup>131</sup>

On 21 December 2021, the Investigative Committee published its decision not to conduct criminal prosecutions and to terminate the proceeding of the criminal case on the basis of 'not acquiring sufficient data on the allegation that criminal acts ha[d] been committed while drawing up the report on the environmental impact assessment' of the Amulsar mine.<sup>132</sup>

In January 2022, Lydian Armenia applied to the Ministry of Nature Protection for a water use permit for the industrial use of 41.3 litres per second of water from the Arpa River for the Amulsar gold mine. The request is currently under consideration.<sup>133</sup> A similar request in 2021 was rejected by the ministry;<sup>134</sup> although in 2020 the company received a permit for the use of 11 litres per second of water from the Arpa River.

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[am.gov-decrees/item/37300/](https://www.am.gov-decrees/item/37300/)

131. Harutyunyan, G., 22/12/2021, Amulsar again on top of Agenda: New Dates for Operation are Set (in Armenian), URL (last checked on 28 January 2022): <https://ampop.am/amulsar-mine-is-in-the-spotlight-again/>

132. Investigative Committee of the Republic of Armenia, 21/12/2021, *Proceeding of Criminal Case Terminated*, URL (last checked on 28 January 2022): <https://www.investigative.am/en/news/view/amulsar-karchum.html>

133. Ministry of Nature Protection, 18/01/2022, *Public Notice on the Case of Water Permit for Lydian CJSC* (in Armenian), URL (last checked on 28 January 2022): <http://www.mnp.am/announcement/category-1/announcement-18-01-2022-lidian-pby>, Info in English: <https://www.ecolur.org/en/news/amulsar/13720/>

134. Armenpress.am, 25/03/2021, Environment Ministry Rejects Lydian Armenia's Request for More Water Use from Arpa River, URL (last checked on 28 January 2022): <https://armenpress.am/eng/news/1047133.html>



Focus group discussion, FIDH mission to Amulsar, 2019. © Narek Aleksanyan

## Chapter 5

# Human rights and the legal framework for decision-making on the Amulsar gold mine

The development of the Amulsar gold mine in Armenia raises a variety of human rights issues for affected individuals, communities and interested stakeholders. The state and promoters of the Amulsar project, including Lydian and investors like the IFC and the EBRD, have obligations to protect, respect and fulfil these rights, as well as to remedy any negative impact the project has on them. This chapter reviews the international and national legal framework relevant to the development of the Amulsar gold mine. It also presents evidence of violations of human rights by the Armenian state, both before and after the Velvet Revolution of 2018, and by Lydian. It concludes by discussing the failure of the key investors – the IFC and the EBRD – to comply with their human rights safeguards.

## 5.1. Armenia and international human rights treaties

Armenia is a member state of the Council of Europe (COE) and of the United Nations (UN). As a result of signing and ratifying a number of international human rights treaties, the country has obligations at the regional and international levels to respect, protect and fulfil human rights. For example, in 1993, Armenia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), together with the ICCPR's Optional Protocol.<sup>135</sup> In October 2020, Armenia also ratified the ICESCR's Optional Protocol,<sup>136</sup> which allows victims of human rights violations to submit complaints at the international level if they cannot access justice in Armenian courts.

With regards to the ICESCR, it is worth pointing to 'General Comment No. 24 on State Obligations under the ICESCR in the context of business activities' (GC 24) published by the United Nations Committee on Economic, Social and Cultural Rights (CESCR). GC 24 clarifies the duties of states party to the ICESCR in the context of business activities, with a view to preventing and addressing the adverse impacts of business activities on human rights. In 2001, Armenia signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and is thus subject to the jurisdiction of the European Court of Human Rights.<sup>137</sup> Its human rights policies and practices are also monitored by the Council of Europe's Commissioner for Human Rights.

Armenia has also ratified the Revised European Social Charter,<sup>138</sup> although it has not authorised the European Committee of Social Rights to receive collective complaints against it. The majority of the rights protected by the Social Charter can be characterised as labour and social welfare rights, including the right to safe and healthy working conditions, the right to freely associate in organisations to protect one's economic and social interests, and the right to bargain collectively.

Armenia's obligations under international human rights treaties are reflected in the country's national legal framework. In this regard, Article 6 of Armenia's constitution stipulates that in cases when there are international treaties regulating the norms of any legal sphere, the norms of the treaties shall prevail over national legislation.<sup>139</sup> No treaties contradicting the constitution shall be ratified.

## 5.2. International framework on business and human rights

The obligations of states and businesses, including investors, have also been reiterated by authoritative soft law instruments, most prominently the UN Guiding Principles on Business and Human Rights (UNGPs), unanimously adopted by the UN Human Rights Council in 2011.<sup>140</sup> Authored by the UN Secretary General's Special Representative, Professor John Ruggie,<sup>141</sup> these principles offer a single framework on the matter of responsibility for human rights abuses committed by economic players, which had previously been fragmented through a variety of international legal instruments, both binding and non-binding. The UNGPs rest on the three pillars constituting the 'protect, respect

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135. Armenia ratified the International Covenant on Civil, Political, Social and Cultural Rights in 1993, according to the UN Treaty Body Database: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=8&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=8&Lang=EN)

136. *Ibid.*

137. Council of Europe, Database for Signatures and Ratifications, URL: <https://www.coe.int/en/web/conventions/recent-changes-for-treaties>

138. *Ibid.*

139. Constitution of the Republic of Armenia, URL (last accessed on 28 January 2022): <http://www.parliament.am/legislation.php?sel=show&ID=1&lang=eng>

140. The *UN Guiding Principles* have been endorsed by the Human Rights Council of the UN with Resolution n. 17/4, 16 June 2011. The English text of the *UN Guiding Principles on BHR* is available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

141. UN HRC Council, Resolution n. HRC/RES/17/14.

and remedy' framework: the state's duty to protect human rights, corporate responsibility to respect human rights and the need for affected individuals and communities to receive remedy in case of negative impacts.

Under the first pillar, the UNGPs summarise and organise the existing obligations under international law that lie with states in protecting human rights from abuses committed by business enterprises. In particular, principle 1 specifies that: 'States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication'.

### **Dual obligation of the state to protect human rights**

In this context, states have a dual obligation. On one hand, there is the negative obligation to refrain from violating this right. On the other hand, as doctrine and case law have repeatedly pointed out, states have the positive obligation to adopt all reasonable measures to ensure the effective protection and fulfilment of human rights.<sup>142</sup>

The state's positive obligation is composed of two elements, one substantive and the other procedural. From the substantive point of view, the state must adopt all measures, whether regulatory, legislative or administrative, that are necessary to avoid the violation of human rights, including from the conduct of third parties. From the procedural point of view, the state has an obligation to penalise behaviour that negatively impacts the enjoyment of human rights and to offer access to effective remedy in the event of violations. Case law from the European Court of Human Rights has repeatedly explained that the duty to protect is measured in a concrete way and that the state must guarantee the effective provision of protection required by law.<sup>143</sup>

Furthermore, the Court has also noted that the positive obligation recognised by Article 2 of the ECHR applies *a fortiori* in cases involving the regulation of dangerous activities, for which the state is required to adopt particularly rigorous and appropriate measures.<sup>144</sup> Ultimately, decision-making by state institutions should aim to minimise the level of risk to human rights – for example to life and health – of those exposed to such activities, and to provide appropriate information to citizens about the risks relating to their health.

### **Respect for human rights by business**

Business enterprises have a responsibility to respect human rights, independently of the responsibility befalling government authorities. This responsibility has been reaffirmed by both the UNGPs and by the OECD Guidelines for Multinational Enterprises.<sup>145</sup>

The UNGPs affirm the independent responsibility of enterprises, including investors, to respect human rights and to act with 'due diligence'. Businesses should take all necessary measures to identify, monitor, prevent and correct the adverse impacts of their activities on human rights.<sup>146</sup> Corporate

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142. ECtHR, *LCB c. UK*, 9 June 1998.

143. Augenstein, D., 2011, *State Responsibilities to Regulate and Adjudicate Corporate Activities under the European Convention on Human Right*, URL (last checked on 15 April 2022): <https://media.business-humanrights.org/media/documents/9b7d88557de08aa2aad4d2b2428d4abcd0f1b35c.pdf>

144. ECtHR, *Oneriyildiz c. Turkey*, Section 89, 30 November 2004.

145. OECD, 2011, *The OECD Guidelines on Multinational Companies*, URL (last accessed on 28 January 2022): <http://mneguidelines.oecd.org/guidelines/>

146. UNGPs, *Principles # 11–14 (op. cit.)* and Chapter IV of the *OECD Guidelines (op. cit.)*

responsibility for human rights violations has been reaffirmed subsequently by other international soft law instruments and has precise legal consequences when recognised by national laws with criminal, civil or administrative liability provisions.

### 5.3. Human rights protected by international law

The above-mentioned international treaties catalogue a variety of human rights that should be safeguarded by states like Armenia, businesses like Lydian and investors like the EBRD. Before we dive into evidence of human rights violations in the case of the Amulsar gold mine, we should look into how certain rights are protected in international and national law.

#### ***The right to life***

The right to life is the ultimate inalienable fundamental right, without which any other right would be simply 'illusory'.<sup>147</sup> This right is protected by all international human rights treaties and by national constitutional law. The right to life is explicitly protected by Article 6 of the ICCPR, which states: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'. Furthermore, the right to life is protected by Article 2 of the European Convention on Human Rights and by Article 24 of Armenia's constitution,<sup>148</sup> which state: 'Everyone shall have the right to life. No one may be arbitrarily deprived of his or her life'.<sup>149</sup>

#### ***The right to health***

At the national level, the right to health is guaranteed by Article 32 of Armenia's constitution, as well as by the related national legislation. In the context of the Council of Europe, the right to health is not specifically mentioned by the ECHR. Nevertheless, it is protected by the Court through the interpretation of Articles 3 and 8 of the Convention (the right to be free from torture and inhuman treatment and the right to privacy, respectively).<sup>150, 151</sup>

The right to health is protected by Article 12 of the ICESCR. The CESCR has also clarified that Article 12 of the document should be considered to include factors affecting health,<sup>152</sup> i.e. 'access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health'.

It is also important to emphasise that the right to health as recognised in international law includes the obligation of the state to prevent and reduce 'the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health'.<sup>153</sup>

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147. ECtHR, *McCann and others v. the United Kingdom*, 27 September 1995, *Pretty v the United Kingdom*, 29 April 2002.

148. European Convention on Human Rights, Art. 2.

149. Constitution of the Republic of Armenia, Art. 24, URL: <https://www.president.am/en/constitution-2015/>

150. ECtHR, 2021, *Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence*, Council of Europe, URL (last accessed on 28 January): [https://www.echr.coe.int/documents/guide\\_art\\_8\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_8_eng.pdf)

151. ECtHR, 2017, *Thematic Report. Health-related issues in the case-law of the European Court of Human Rights*, Council of Europe, URL (last accessed on 28 January): [http://www.antonioacasella.eu/salute/ECHR\\_health\\_2015.pdf](http://www.antonioacasella.eu/salute/ECHR_health_2015.pdf)

152. UN ESCR Committee, General Comment n. 14.

153. *Ibid.*

## ***The right to water***<sup>154</sup>

In 2002, the CESCR adopted its General Comment No. 15 on the right to water, defined as the right of everyone 'to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses'. In 2006, the UN Sub-Commission on the Promotion and Protection of Human Rights adopted guidelines for the realisation of the right to drinking water and sanitation. Recalling the Committee's comment on the right to water, the UN General Assembly adopted in 2010 a resolution that formally '[r]ecognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights'. The European Committee of Social Rights has also addressed and developed specific work relating to the promotion and protection of the right to water, for example, looking at access to safe drinking water and sanitation in the context of the enjoyment of the right to adequate housing.<sup>155</sup>

## ***The right to a healthy environment***

The right to live in a healthy environment is closely connected to the right to health, guaranteed by Article 12 of the ICESCR. Increasingly serious environmental problems have led the UN to return frequently to this theme and, in 1990, the UN General Assembly adopted a resolution that recognised the right of all people to live in an environment that is adequate for their health and wellbeing.<sup>156</sup> Moreover, environmental protection and the regulation of polluting emissions is governed by other international regulations, such as the UN Declaration on the Human Environment and the Rio Declaration on Environment and Development.<sup>157, 158</sup>

More recently, former UN Special Rapporteur on Human Rights and Environment Professor John Knox published a report containing 16 'framework principles' concerning the interrelation of human rights and environment in international law and calling on the UN General Assembly to recognise the right to live in a healthy environment as an international human right.<sup>159</sup> In October 2021, the Human Rights Council in Resolution 48/13<sup>160</sup> recognised for the first time that having a clean, healthy and sustainable environment is a human right. The council called on states to work together and with other partners to implement this newly recognised right. The resolution has been passed on to the UN General Assembly for further consideration. The European Court of Human Rights has recognised, through its own case law, the right of citizens of Member States to live in a healthy environment, as included in and protected by Article 8 of the ECHR, which enshrines the right of individuals to respect for their private and family life.

## ***Civil and political rights***

In addition to the above, the ICCPR, ratified by Armenia in 1993,<sup>161</sup> imposes obligations on the state to protect and respect certain rights, and grants people on the country's territory and/or under its

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154. UN OHCHR, 2010, *The Right to Water. Fact Sheet No. 35*, URL (last accessed on 28 January): <https://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>

155. Complaint No. 27/2004, *European Roma Rights Centre v. Italy*.

156. UN General Assembly, *Need to ensure a healthy environment for the well-being of individuals*. Resolution n. A/RES/45/94, URL (last accessed on 28 January): <https://digitallibrary.un.org/record/105298>

157. UN, 1972, *Declaration of the United Nations Conference on the Human Environment*, URL (last accessed on 28 January): <http://www.un-documents.net/unchedec.htm>

158. UN General Assembly, 1992, *Rio Declaration on Environment and Development*. Resolution n. A/CONF.151/26.

159. UN, 2018, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, URL (last accessed on 28 January): <https://undocs.org/A/HRC/37/59>

160. UN, 2021, *The human right to a clean, healthy and sustainable environment*. Resolution 48/13, URL (last accessed on 28 January): <https://undocs.org/A/HRC/RES/48/13>

161. UN Treaty Body Database, *op. cit.*

jurisdiction the following rights, among others:

- The right to access to effective remedies and right to a fair trial (Article 2 and Article 14 respectively of the ICCPR);
- The right to liberty and security, including freedom from arbitrary arrest, detention, or exile (Article 9 of the ICCPR);
- The right to freedom of opinion, information, and expression (Article 19 of the ICCPR);
- The right to freedom of assembly (Article 21 of the ICCPR).

Civil and political rights are also broadly recognised by the European Convention on Human Rights.

### Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association in Armenia, May 2019

The problems with natural resource management in Armenia, including the Amulsar defenders' blockade, were discussed by the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association following a country visit to Armenia. The rapporteur highlighted the challenges that affected local people and civil society organisations face in exercising their rights, and called for an alignment of Armenia's approach to the Amulsar project with the UNGPs.<sup>162</sup>

#### ***Protest around natural resource exploitation***<sup>163</sup>

*An environment that allows for the robust exercise of the rights to freedom of peaceful assembly and of association is essential in ensuring that natural resource exploitation is fair, transparent and accountable and benefits communities.*

*During my meetings with environmentalist groups, I learnt of restrictions to freedom of assembly and association during previous years. I believe these limitations were counterproductive, divisive and undermined the confidence and opportunity of communities to access information, participate in public discussions and provide free, prior and informed consent when the concessions were made.*

*Through my interactions with different actors, I also learnt that there is a lot of frustration around governance of natural resources, especially within the communities in the regions who feel directly affected by some exploitations carried out not in compliance with national legislation.*

162. Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, 13/05/2019, *Visit to Armenia: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/41/41/Add.4, p. 10, URU (last accessed on 31 January 2022): <https://www.ohchr.org/en/documents/country-reports/visit-armenia-report-special-rapporteur-rights-freedom-peaceful-assembly>

163. Voule, C. N., 16/11/2018, Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi VOULE, at the conclusion of his visit to the Republic of Armenia, URL (last accessed on 31 January 2022): <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23882&LangID=E>

*In particular, I visited one of the sites related to the 'Amulsar' mining site exploitation and heard the concerns of the protesters who have blocked the access to the mine. It is important that the Government ensures that communities are genuinely consulted on the social and environmental impact of the exploitation as well as on its benefits.*

*In order to reverse this situation, I believe that one of the first steps that the government should take is to carry out genuine consultations so that these projects align with the Guiding Principles on Business and Human Rights and respect human rights.*

#### 5.4. Human rights and environmental defenders

The Declaration on Human Rights Defenders was adopted with consensus by the UN General Assembly in 1998 on the 50th anniversary of the Universal Declaration of Human Rights.<sup>164</sup> The declaration does not create new rights, but articulates principles and rights based on instruments that are legally binding, such as the ICCPR, including, inter alia, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the rights to access information and to provide legal aid.

It recalls that states bear the primary responsibility for protecting human rights defenders. Importantly, the declaration emphasises that all people have duties to be human rights defenders. It outlines responsibilities for everyone, including businesses, to promote human rights and not to violate the rights of others.

Commentary by the UN's Special Rapporteur on the situation of human rights defenders,<sup>165</sup> echoing a number of civil society reports,<sup>166</sup> raised concerns about the growing risks faced by human rights defenders. It notes, for example, that states regularly use domestic laws to seriously impair the work of human rights defenders by prosecution and criminalising their activities, as well as stigmatisation and characterisation of human rights defenders as terrorists, 'foreign agents' or 'enemies of the state'.<sup>167</sup> Widespread in many countries are media smear campaigns that often violate defenders' right to privacy. There are also gender-specific forms of violations against female defenders, from offensive language to physical violence and harassment.

The Special Rapporteur's commentary on the Declaration on Human Rights Defenders notes that all non-state actors, including business enterprises, in line with the UNGPs, should avoid actions that would result in preventing defenders from exercising their rights. In this regard, a 2021 report by a UN Working Group on the issue of human rights and transnational corporations and other business enterprises points out that defenders often face attacks as result of exposing harmful business conduct.<sup>168</sup> For example, businesses, usually in collaboration with the state, engage in economic

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164. UN General Assembly, 8/03/1999, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. A/RES/53/144, URL: <https://undocs.org/A/RES/53/144>

165. UN Special Rapporteur on the situation of human rights defenders, 2011, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, URL (last accessed on 28 January 2022): <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>

166. Global Witness, 2019, *Enemies of the State? How governments and business silence land and environmental defenders*, URL (last seen on 28 January 2022): <https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/>

167. *Ibid.*

168. UN Human Rights Council, 2021, *The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders*. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/47/39/Add.2, URL (last accessed on 28 January 2022): <https://undocs.org/A/HRC/47/39/Add.2>

activities that adversely impact the rights of communities, including the right to a clean environment and land rights. The report speaks of ‘a growing concern about the role of business in causing, contributing, or being directly linked to attacks against human rights defenders, or in failing to take action against such attacks’.

In 2016, the Special Rapporteur on the situation of human rights defenders defined environmental human rights defenders as individuals and groups who ‘in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna’<sup>169</sup> in a report highlighting the precarious situation of environmental defenders and raising alarm about the increasing violence against them. The report makes recommendations on how to protect and empower environmental defenders as key stakeholders in helping states and businesses achieve sustainable development.

### **Lydian’s strategic litigation against public participation (SLAPP) and smear campaigns against human rights defenders**

In view of the above instruments on the protection of human rights and environmental defenders, it is important to present the experience of the Amulsar defenders in Armenia. Lydian has actively attempted to stifle criticism from journalists, lawyers, civil society and local community defenders who speak out against the potential risks and actual damages wrought by the project. To this end, Lydian has filed no fewer than 20 suits (see Annex) that can be considered SLAPPs against dissenting voices.

SLAPP refers to lawsuits filed by businesses against people in retaliation for publicly disputing or organising public opposition against their business activity.<sup>170</sup> SLAPP litigation can be used by companies to intimidate and retaliate against critics for their legitimate human rights activities, to silence their right to free speech, and often to divert their limited resources from fighting for their rights to endless and often costly legal battles. SLAPPs are rarely intended to compensate project promoters for business-related damages. Those accused do not have the financial means to pay for delays or failure of projects, so the legal and staffing costs of such a lawsuit can significantly exceed the money the company collects as a result of it.

The claims raised by businesses in SLAPPs range from defamation and reputational damage to accusations of corruption and material damages amounting to thousands or millions of dollars. In the case of Amulsar, Lydian has repeatedly deployed SLAPPs using all of these claims against local and civil society defenders, media outlets and even a member of the Armenian parliament.

In May 2019, the Observatory for the Protection of Human Rights Defenders, a partnership of FIDH and the World Organisation Against Torture (OMCT), launched an urgent appeal about the ongoing judicial harassment and defamation campaign against defenders, including: Tehmine Yenoqyan, a journalist; Ani Khachatryan,

169. UN General Assembly, 3/08/2016, Situation of human rights defenders. A/71/281, URL: <https://undocs.org/A/71/281>

170. OBCT, 13/01/2020, Special dossier: SLAPP, URL (last visited on 28 January 2022): <https://www.balcanicaucaso.org/eng/ECPMF/ECPMF-news/SLAPPs-Strategic-Lawsuits-Against-Public-Participation-198695>

a member of the civil initiative Armenian Environmental Front; Nazeli Vardanyan, a lawyer and the head of local NGO Armenian Forests; Levon Galstyan, a member of the Armenian Environmental Front; Shirak Buniatyan; and Edmon Aghabekyan.<sup>171</sup> In 2019, the company also filed a lawsuit against two Armenian media sources – Lragir and Skizb – for defamation.<sup>172</sup>

In 2018, Lydian also started litigation against 28 individuals,<sup>173</sup> all Amulsar activists, and residents of Gndevaz and Jermuk, with a claim for a reimbursement to Lydian of about USD 460 million for all damages allegedly caused by protesters blocking access to the project site. The claim was not accepted by the court, since Lydian did not submit separate calculations for each person.

The attacks against defenders detailed by the Observatory are linked to activities raising public awareness about the environmental and health risks connected to Lydian's project. The allegations include spreading 'slandorous information' and defamation by actively posting information online concerning the state of the Amulsar project, or for criticising Lydian's operations in public interviews, on social media or at public meetings. Lydian requested that defenders pay AMD 1 million (approximately USD 2 000) in compensation for undermining its business reputation.

In addition, since 2018, the same defenders have also been regularly targeted by a smear campaign on social media. Fake Facebook accounts have published approximately 40 videos discrediting just one of the defenders, Levon Galstyan. Offensive and sexist posts have been published on Facebook against women defenders, describing them as 'loose women' who were 'made pregnant by activists'. As examples of gender-based abuses of women defenders, Lydian supporters and employees have circulated online videos and photos containing abusive comments, including video surveillance in violation of the right to privacy. A video aimed at discrediting prominent environmental lawyer Nazeli Vardanyan's professional skills was circulated through a fake Facebook page named 'Green and Clean', which was subsequently shut down by Facebook due to reports by users that the page was offensive and defamatory.

Last but not least, in 2016, Lydian general manager Hayk Aloyan made insinuations that critics of the Amulsar project could serve the interests of Azerbaijan and Turkey, after the representatives of these neighbouring states raised questions to the board of directors of the EBRD about the environmental risks of the project. Aloyan then remarked that he could not 'exclude the possibility that unfounded claims around the Amulsar project that continue to be disseminated serve other purposes and agendas'.<sup>174</sup> This kind of labelling of environmental and human rights defenders is widespread, as recorded by Global Witness.<sup>175</sup>

171. FIDH and OMCT, Armenia: Judicial harassment and defamation campaigns against several environmental defenders, 24/05/2019, URL (last consulted on 23 May 2022): <https://www.fidh.org/en/issues/human-rights-defenders/armenia-judicial-harassment-and-defamation-campaigns-against-several>

172. CEE Bankwatch Network, 22/06/2020, SLAPPd: the Armenian activists fighting a mining multinational's lawsuits, URL (last seen on 28 January 2022): <https://bankwatch.org/blog/slappd-the-armenian-activists-fighting-a-mining-multinational-s-lawsuits>

173. Datalex.am, 17/08/2018, *Lydian Armenia claim for damages against 28 persons* (in Armenian), URL (last checked 28 January 2022): [http://www.datalex.am/?app=AppCaseSearch&case\\_id=27303072741018992](http://www.datalex.am/?app=AppCaseSearch&case_id=27303072741018992)

174. Mediamax, 5/08/2022, Interview with Hayk Aloyan: 'Azerbaijan's and Turkey's interest is not surprising to me', URL (last visited on 31 January 2022): <https://mediamax.am/en/news/interviews/19401/>

175. Global Witness, 2019, *op. cit.*

## 5.5. Procedural environmental rights: access to information, public participation in decision-making and access to justice on environmental matters

The European Court of Human Rights has recognised, through case law,<sup>176</sup> the human right to live in a healthy environment. At a procedural level, the Court<sup>177</sup> has recognised that the ECHR – in particular its Articles 8 and 10 (freedom of expression) – encompasses the right of the population to receive the necessary information on all risks affecting human health, private life and the environment. Such a right includes the obligation on the part of state authorities to provide access to the results of studies on the environmental impact of industrial activities, so that each individual may make the best decisions for their health and that of their family.

As mentioned above, the CESCR has also clarified<sup>178</sup> that Article 12 of the ICESCR should be considered to include factors affecting health, and that a determining factor in the realisation of such a right is the participation of the population in decisions that relate to health.

### ***The Aarhus Convention***

The cornerstone of environmental justice in Europe is the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, also known as the Aarhus Convention. Part of a set of five multilateral environmental agreements (MEAs) of the UN Economic Commission for Europe (UNECE), the Convention was adopted by the UNECE Ministerial Conference in Aarhus, Denmark, in 1998. It was ratified by Armenia in 2001.<sup>179</sup>

The Aarhus Convention links government accountability and environmental protection and outlines the intersection between environmental rights and human rights. It was founded on the principles of participatory democracy, granting rights to individuals and civil society organisations and the public more broadly, while imposing obligations on parties and public authorities regarding access to information, public participation and access to justice.

In October 2021, the UN Human Rights Council adopted Resolution 48/13 that recognised the right to a clean and healthy environment, while the Meeting of the Parties to the Aarhus Convention adopted a decision establishing a rapid response mechanism for the protection of environmental defenders during its seventh session in Geneva.<sup>180</sup>

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176. ECtHR, 2021, *Guide to the case-law of the European Court of Human Rights. Environment*, Council of Europe, URL (last accessed on 28 January): [https://echr.coe.int/Documents/Guide\\_Environment\\_ENG.pdf](https://echr.coe.int/Documents/Guide_Environment_ENG.pdf)

177. *Ibid.*, and ECtHR, *Guerra v. Italy*, 19 February 1998; *Giacomelli v. Italy*, 26 March 2007; *Fadeyeva v. Russia*, 11 December 1999.

178. UN ESCR Committee, General Comment n. 14, *op. cit.*

179. UN Treaty Collection, *Convention on Access to Information, Public Participation in Decision-making and Access to Justice on Environmental Matters*.

180. UN, 2021, Resolution 48/13, *op. cit.*

## Violations of rights to participation in decision-making and access to justice on environmental matters in Armenia

Armenia's flawed decision-making in the mining sector and subsequent barriers to justice resulted in several communications from Armenian civil society organisations to the Aarhus Convention between 2004 and 2011.<sup>181</sup> Initially, relevant complaints were triggered by the decision-making process on the Teghut mine (e.g. on consultation practices and the legal standing of civil society), whereas later communications from civil society organisations related to the Amulsar project.

With regards to public participation in decisions on the Amulsar project's EIA, the spa town of Jermuk was initially excluded from the scope of the EIA, as were other communities from Lake Sevan that requested consultations. As a result, no formal consultations were conducted in the town of Jermuk or around Lake Sevan before the EIA was approved (in 2012, 2014 and 2016) and the mine permits were granted.

Jermuk was included in the scope of the Amulsar project's ESIA, which was released in 2016. However, by that time the mine permits had already been issued by the Armenian authorities, so the opinions of the people of Jermuk could not effectively influence the decision-making process with regards to the project. Communities surrounding Lake Sevan were not included in the scope of the project in its final design, as the project was adjusted in 2015 by choosing an alternative site for the cyanide leaching facility outside of the Lake Sevan no-go zone. The open pit mines and other facilities still remained on the southern limit of Lake Sevan's immediate impact zone and in close proximity to the Ketchut and Spandaryan reservoirs.

With regards to the scope of consultations, as early as 2012, residents of Jermuk and Sevan – Victoria Grigoryan, Makedon Aleksanyan and Anna Shahnazaryan – petitioned Prime Minister Tigran Sargsyan requesting a recognition of Jermuk, Martuni and Sevan as project-affected communities. The request was redirected to the Ministry of Nature Protection and rejected by the director of the state's Environmental Expertise body, Andranik Gevorgyan.<sup>182</sup>

Victoria Grigoryan then brought a lawsuit against the prime minister and the Ministry of Nature Protection with the same demand in December 2012. The Administrative Court of Vayots Dzor Province ruled that she did not have the legal standing to litigate the issue in the court because the exploitation of the mine did not directly interfere with her rights and freedoms. Both the Appeals Court and the Court of Cassation dismissed the appeals against the Administrative Court ruling and the case was closed in July 2013.<sup>183</sup>

181. Armenia ACCC/C/2004/8; Armenia ACCC/C/2009/43; Armenia ACCC/C/2011/62.

182. Ecolur.org, 12.06.2013, Armenian PM and Nature Protection Ministry Sued for Amulsar Mine, URL (last checked on 29 January 2022): <https://www.ecolur.org/en/news/mining/armenian-pm-and-nature-protection-ministry-sued-for-amulsar-mine/4959/>

183. Datalex.am, 13.05.2013, *Demand to recognize Jermuk as a project affected community by Amulsar mine project* (in Armenian), URL (last checked on 29 January 2022): [http://www.datalex.am/?app=AppCaseSearch&case\\_id=38562071809711850](http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809711850)

In addition, environmental justice organisation Ecological Rights challenged the 2014 affirmative expert conclusion on the Amulsar project's EIA by the Ministry of Nature Protection.<sup>184</sup> Armenia's Administrative Court ruled that the affirmative expert conclusion by the ministry regarding the EIA was not a 'final administrative act'. However, Armenian legislation does not foresee any other state body responsible for environmental policy and decision-making, including ensuring public participation in the EIA process. In other words, according to the court ruling, the Ministry of Nature Protection was not the state-liable public authority, and its affirmative expert conclusion was not a legally binding act but rather an opinion of specialists.

In February 2016, Ecological Rights launched a communication to the Aarhus Convention Compliance Committee denouncing Armenia's behaviour on the Amulsar mine. The committee deemed this admissible and subject for review in June 2016.<sup>185</sup>

After five years of correspondence between the Convention and Armenia, a 2021 report by the Aarhus Convention Compliance Committee to the Meeting of the Parties provides an up-to-date picture of Armenia's lack of progress on the Amulsar case.<sup>186</sup> In its conclusions, the Compliance Committee requests from Armenia:

*as a matter of urgency, to take the necessary legislative, regulatory and administrative measures to ensure that:*

*(a) Thresholds for activities subject to an environmental impact assessment procedure, including public participation, are set in a clear manner;*

*(b) Reasonable time frames that are significantly longer than those currently provided for are set for the public to consult and comment on project-related documentation;*

*(c) Its legislation, including the law on non-governmental organizations and administrative procedures, complies with article 9 (2) of the Convention with regard to standing;*

*(d) It continues its efforts to raise awareness of the judiciary to promote implementation of domestic legislation in accordance with the Convention. 76. The Committee further recommends to the Meeting of the Parties that it call upon all relevant ministries of the Party concerned, including the Ministry of Justice, to work together to ensure the successful fulfillment of the above recommendations, in particular those concerning letter (c).<sup>187</sup>*

In this regard, the Committee requests that Armenia first submit to the Committee a plan of action by July 2022, including a time schedule for the implementation of these recommendations. Secondly, Armenia should provide detailed progress reports on the measures taken and the results achieved by October 2024. Finally, the Committee recommends 'in light of the lack of engagement and concrete action' by Armenia that if no progress is made, the Meeting of the Parties issue a caution to Armenia to come into effect on 1 January 2024.

184. Grigoryan, A., 2017, *op. cit.*

185. Grigoryan, A., 2017, *The Amulsar Goldmine: Legal Issues and Biodiversity Offsets, Ecological Rights* (URL no longer working)

186. UNECE, 09/08/2021, *Report of the Compliance Committee on compliance by Armenia* to the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Seventh session, ECE/MP.PP/2021/46, URL (last accessed on 28 January): [https://unece.org/sites/default/files/2021-08/ECE.MP\\_PP\\_2021.46\\_ac\\_0.pdf](https://unece.org/sites/default/files/2021-08/ECE.MP_PP_2021.46_ac_0.pdf)

187. *Ibid.*

## ***The precautionary principle***

A central element of international environmental law is the precautionary principle, which states that 'where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation'.<sup>188</sup> This principle is referred to by numerous international instruments and is now considered part of customary international law.

The precautionary principle further defines the content of the duty of care and legal obligations imposed on states and requires them to adopt regulatory, administrative and political instruments that guarantee the adequate management of risks in situations in which, even in the absence of definitive proof, it represents a threat to the environment.

### **5.6. Armenia's national legislation and regulation of mining activities**

Armenia's mining industry is regulated by the Mining Code of Armenia (or Subsoil Code), which determines the rights to subsoil use, how to obtain it and the rights and obligations of the engaged parties and government authorities. Various aspects of the code were amended in 2020: a new set of requirements regulating geological expertise were added to the code; changes were made to the time necessary to issue subsoil use permits; and provisions regulating mine closures and related recultivation works were made more comprehensive.

The mining industry in Armenia is regulated by the Ministry of Territorial Administration and Infrastructure, the Ministry of Environment, the State Revenue Committee, the Ministry of Justice and the Environmental Protection and Mining Inspection Body.

Environmental regulation of the mining sector in the country consists of a number of laws, including the Law on Environmental Impact Assessment and Expert Examination, the Law on Wastes, the Law on Environmental Control and the Law on Targeted Use of Environmental Payments Made by Companies. Several other laws are relevant, like the Law on Specially Protected Areas of Nature, the Forest Code, the Water Code, the Land Code, the Law on Fauna and the Law on Flora. Some laws are applicable only for certain projects depending on their location, such as the Law on Lake Sevan.<sup>189</sup>

Despite the *prima facie* sophistication of the legal framework, secondary legislation and guidelines to serve the enforcement of laws in Armenia are missing.<sup>190</sup> The lack of institutional capacity and, moreover, of methodologies for decision-makers to conduct cost-benefit assessments, EIA verifications and cumulative impact assessments have been consistently criticised by civil society organisations, academic institutions and other stakeholders in Armenia,<sup>191</sup> as these gaps leave huge discretion for responsible authorities when awarding mining permits.

Similarly, Armenia lacks detailed regulations and institutional capacity to properly assess the social and health impacts of mining. Research from 2017 points out that health impact assessments (HIA) should be undertaken during the EIA process<sup>192</sup> as part of the requirements in the existing legislation.

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188. UN General Assembly, 1992, *Rio Declaration*, *op. cit.* Principle 15.

189. Grigoryan, A., 2018, *The Amulsar Gold Mine: Legal Issues and Biodiversity Offsets*, Ecological Right NGO.

190. *Ibid.*

191. Damianova, A. J. *et al.*, 2014, *op. cit.*, p. 9.

192. 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, URL (last accessed on 31 January 2022): <https://espace.library.uq.edu.au/view/UQ:730293>

However, HIAs are generally not conducted because there are no guidelines for implementing them. According to a UN Special Rapporteur report from 2018,<sup>193</sup> the Environmental Expertise Centre and the Ministry of Health do not have the theoretical and scientific knowledge, instruments or practical experience required to conduct HIAs.

Lastly, there are no regulatory mechanisms to ensure the meaningful participation of affected communities and interested stakeholders in decision-making and impact assessments, as stipulated in the EIA legislation.<sup>194</sup> Land acquisition and resettlement schemes are also developed without meaningful public participation and often result from the coercion of landowners, involuntary expropriation without clear public interest and corruption. At the same time, the existing system of environmental payments under the Law on Targeted Use of Environmental Charges Paid by Mining Companies is not able to compensate for damages caused by mining operations.<sup>195</sup>

In view of the gaps in the mining sector governance system outlined above, it is not surprising that the extractive sector has a tarnished image in Armenia. Although mining is key for Armenia's export and trade balance, there is little evidence that it brings benefits to communities and to the sustainable economic development of the country. While the sector does not make a significant contribution to employment, it threatens public health, natural resources (like water, forests and pasture) and other key sectors contributing to employment and GDP, like agriculture and tourism.

From the preliminary analysis, it appears that the relevant domestic legal framework thus far falls short of international human rights law standards. Recent developments raise even greater concern, as in February Armenia's parliament proposed amendments to the Mining Code, which seems to have been drafted specifically to address Amulsar.<sup>196</sup> The draft amendments provide for an extension of the mining rights for four years, including retroactively, in cases of *force majeure*, which can include 'civil disobedience' along with natural disasters, war and terrorism. The draft contradicts Armenia's Law on Environmental Impact Assessment and Expertise, which states in Article 20.7 that the permit shall lose its validity if the implementation of the envisaged activity does not start within one year of the expert opinion being issued.

### Rule of law, corruption and the mining sector in Armenia

There are many problems with the rule of law in Armenia, and there is a need for serious sectoral and broader judicial reforms so that the rights of people to information, fair trial and effective remedy can be upheld. The issue of corruption is increasingly discussed by UN human rights treaty bodies, as there is wide recognition that corruption undermines the realisation and enjoyment of human rights and corrodes the legitimacy of public institutions and processes.<sup>197</sup>

193. Puras, D., 2018, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health on his visit to Armenia*, UN Human Rights Council Secretariat, URL (last visited on 31 January 2022): <https://digitallibrary.un.org/record/1627460>

194. World Bank, 2016, *op. cit.*

195. Damianova, A. J. *et al.*, 2014, *op. cit.*, p. 20.

196. Ecolur, 02/04/2022, NGOs Demanding to Withdraw Draft Bill Amending and Supplementing RA Mining Code and Organize Public Discussions, URL (last visited 15 April 2022): <https://www.ecolur.org/en/news/amulsar/13877/>

197. Eeckeloo, L., 2019, *Corruption and human rights. The approach of the United Nations Treaty Bodies*, CCPR Centre, URL (last accessed 31 January 2022): [https://ccprcentre.org/files/media/Corruption\\_et\\_droits\\_lhomme\\_ENG.pdf](https://ccprcentre.org/files/media/Corruption_et_droits_lhomme_ENG.pdf)

Therefore, unsurprisingly, the problems with natural resource management in Armenia received the attention of a UN Human Rights Committee report in 2020.<sup>198</sup> In the report, the Committee makes recommendations to Armenia with regard to compliance with the ICCPR and anti-corruption measures, namely requesting that the state 'provide further information on the impact of the measures taken to prevent and combat corruption effectively' in response to reports on the lack of transparency in the mining sector. The report goes on to specifically request that Armenia 'provide detailed information on allegations of corruption concerning the Amulsar gold mine'.

Meanwhile, the corruption case on the Amulsar land acquisition in Gndevaz is still pending, as the court still needs to establish the appropriate form and level of compensation for the community's loss of land and livelihood.

## 5.7. Environmental and social safeguards of the IFC and the EBRD

In its draft report from 2019, the Office of the United Nations High Commissioner for Human Rights (OHCHR) benchmarked the safeguards and due diligence frameworks of development finance institutions). It called on these institutions to align their policies and practices with global normative standards on human rights and responsible business conduct, namely the UNGPs and the OECD Guidelines on Multinational Enterprises.<sup>199</sup>

The IFC's and the EBRD's approach to assessing and managing the environmental and human rights risks and impacts of investments is constantly evolving, though not fully aligned with the UNGPs and their emphasis on human rights due diligence. Some development finance institutions, like the EBRD, recognise their own responsibilities with regards to human rights and, separately, the responsibilities of their clients.

In its Environmental and Social Policy, the EBRD is committed to ensuring respect for human rights by the projects it finances. The Policy states:

EBRD will require clients, in their business activities, to respect human rights, avoid infringement on the human rights of others, and address adverse human rights risks and impacts caused by the business activities of clients. EBRD will continuously improve the projects it finances in accordance with good international practice and will seek to progressively strengthen processes to identify and address human rights risks during the appraisal and monitoring of projects.<sup>200</sup>

In contrast, the IFC has ring-fenced human rights as responsibilities only for its clients. According to the IFC's Sustainability Policy from 2012, the financier 'recognizes the responsibility of business to respect human rights, independently of the state duties to respect, protect, and fulfill human rights'.<sup>201</sup>

198. UN Human Rights Committee, 26 August 2020, *International Covenant on Civil and Political Rights, List of issues in relation to the third periodic report of Armenia*, CCPR/C/ARM/Q/3, URL (last seen on 28 January): [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fARM%2fO%2f3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fARM%2fO%2f3&Lang=en)

199. OHCHR, 2019, *Draft Benchmarking Study of Development Finance Institutions' Safeguards and Due Diligence Frameworks against the UN Guiding Principles on Business and Human Rights* (working document to be finalised in 2022), URL (last accessed on 31 January 2022): [https://www.ohchr.org/Documents/Issues/Development/DFI/OHCHR\\_Benchmarking%20Study\\_HRDD.pdf](https://www.ohchr.org/Documents/Issues/Development/DFI/OHCHR_Benchmarking%20Study_HRDD.pdf)

200. EBRD, 2019, *Environmental and Social Policy*, para. 2.4.

201. IFC, 2012 *Sustainability Policy*, para 12.

According to their governance policies, the EBRD and the IFC must ensure that all their investments are implemented in line with the legal requirements of the country and international human rights law. For example, in its Environmental and Social Policy from 2019, the EBRD commits that the Bank 'will not knowingly finance projects that would contravene national laws or country obligations under relevant international treaties, conventions and agreements, as identified during project appraisal'.<sup>202</sup>

In addition, the two banks' sustainability policies contain performance standards or requirements (standards for the IFC, requirements for the EBRD) for clients. These include procedural and substantive requirements for identifying and managing environmental and human rights risks of projects. These standards are organised around the following themes:

- Assessment and management of environmental and social impacts and issues
- Labour and working conditions
- Resource efficiency and pollution prevention and control
- Health and safety
- Land acquisition, involuntary resettlement and economic displacement
- Biodiversity conservation and sustainable management of living natural resources
- Indigenous peoples
- Cultural heritage
- Information disclosure and stakeholder engagement

The EBRD has committed to applying the EU's environmental standards in all of its operations, both in EU and non-EU countries.<sup>203</sup> The Bank also has a unique sustainability mandate 'to promote in the full range of its activities environmentally sound and sustainable development'.<sup>204</sup>

### Non-compliance with IFC and EBRD safeguards policies

Since 2014, a number of complaints by local people and civil society groups have been raised with the accountability mechanisms of the IFC and the EBRD. The complaints list a number of violations of human rights and environmental standards in breach of Armenian and international law that constitute non-compliance with the two banks' safeguards policies. The long list of alleged violations includes:

- inadequate project information, for example about land acquisition and resettlement plans;
- underestimated risks for water resources – including Lake Sevan and Jermuk's mineral waters – and lack of adequate assessment of potential environmental contamination from the project's cyanide leaching system;
- inadequate information about dust pollution, including potentially radioactive dust, referring to studies of uranium deposits at Amulsar;
- loss of livelihoods from impacts on orchards, pastures and tourism development;
- inadequate protection of community health and safety;
- lack of formal stakeholder consultations, especially in Jermuk in the early stages of the project's development and the national EIA process;
- lack of access to justice.

202. EBRD, 2019, *Environmental and Social Policy*, para. 2.3.

203. EBRD, 2019, *Environmental and Social Policy*, para. 7.

204. EBRD, 1991, *Basic Documents of the EBRD. Agreement Establishing the EBRD*, URL (last accessed on 31 January 2021): <https://www.ebrd.com/news/publications/institutional-documents/basic-documents-of-the-ebrd.html>

In 2014, the EBRD's accountability mechanism rejected the complaints, stating that the allegations concerned potential impacts from mine development and operation, while at the time the Bank had only invested in exploration. It was a missed opportunity for the EBRD to seek additional input for its second investment in 2016. A new complaint submitted in 2020 has resulted in a compliance investigation that is still ongoing, although its impact on the project will be negligible since the EBRD exited the Amulsar project in 2020.

The engagement of the IFC's Compliance Advisor Ombudsman (CAO) in this case is remarkably similar. The CAO did find a number of areas where Amulsar was non-compliant with the IFC's policy, but the IFC did not get to implement the CAO's recommendations as it exited the Amulsar project in 2017. Lydian and the EBRD nonetheless took the CAO's findings into account when the ESIA was finalised in 2015 and 2016 and in adapting environmental and social management plans and stakeholder engagement before the project's blockade in 2018.

Ultimately, the fate of the project demonstrated that the IFC's and EBRD's satisfaction with the so-called 'broad community support' for Amulsar was proven wrong once Armenia ousted its corrupt and repressive political regime. Setting up a model of responsible mining could not be done entirely on the basis of superficial impact assessments and generous 'corporate social responsibility' from Lydian; it also required transparent governance of the mining sector and a safe space for communities and civil society organisations to take part in decision-making. Amulsar's failure also demonstrates that the banks have a blind spot in assessing country-level risks and addressing the impact of third parties – like governments, local authorities and leaders, as well as weak judiciary systems – in protecting and upholding human rights.



Wet meadows in mountains close to Amulsar. © Andrey Ralev, CEE Bankwatch Network

## Conclusion

The Amulsar project in Armenia is a textbook example of the complex and controversial process of developing a new gold mine. Amulsar has been portrayed as a classic battleground between environmentalists and miners, although it has evolved into a much bigger and more politicised conflict encompassing wider questions about governance in the minerals sector and sustainable development in Armenia. After the 2018 Velvet Revolution, Amulsar became a test for the new Armenian government's commitment to advancing democratic values in decision-making and the state's obligations to protect human rights. As far as investors are concerned, Amulsar exposed the challenges they faced in squaring up profits and economic benefits with obligations to respect human rights and environmental protection priorities.

This report presents strong evidence that the Armenian state has breached on numerous occasions its obligations under international law to protect and uphold the human rights to health and healthy environment, peaceful assembly, freedom of speech, information, participation in decision-making

and access to justice. Although the majority of these human rights violations were committed before 2018, unfortunately, the new government of Prime Minister Nikol Pashinyan has not taken decisive steps to protect environmental and human rights defenders or the rights of local communities.

In this regard, reports from UN Special Rapporteurs on human rights and the Aarhus Convention Compliance Committee have called on the Armenian state to ensure meaningful consultations on the Amulsar project. In addition, the UN Human Rights Committee's report on Armenia from 2020 made recommendations to Armenia with regards to civil and political rights and anti-corruption measures, and requested that the state 'provide detailed information on allegations of corruption concerning the Amulsar gold mine'.

There are also indications that Lydian and investors in the Amulsar project, like the EBRD, have breached their obligations to respect human rights in accordance with the UNGPs and the EBRD's governance policies. Although the company and the EBRD have put significant effort into more than 10 years of environmental and social assessments, the flawed approach to consultations with local communities and the numerous SLAPPs against environmental defenders point to Lydian's active obstruction of the rights of Armenians to participate in decision-making, to speak freely and to protest peacefully against the Amulsar project.

The EBRD's investment in the Amulsar mine development was earmarked for environmental and social measures. In 2020, the Bank lost its shares in the project and denied all responsibility in a fashion that could by no means be seen as a 'responsible exit'. In view of the project's failure and the Bank's exit, the EBRD should learn lessons on what went wrong and why its environmental and social due diligence efforts failed. Hopefully, the EBRD accountability mechanism's compliance investigation (which started in 2020 and is still ongoing) will shine a light on how the Bank should approach such controversial projects in the future in line with the UNGPs and the EBRD's own policies.

Armenian authorities, Lydian and international investors in the Amulsar project must also adopt proper remediation plans and provide remedy and guarantees of non-repetition to those who have been affected by the mine in recent years, as well as those who have been subject to retaliation for exercising their rights and speaking up against the Amulsar project.

# Recommendations

This report makes recommendations to the Armenian government, the EBRD and IFC, and Lydian Armenia, namely:

1. Armenia needs to uphold the rights of local communities and environmental and human rights defenders, in line with its obligations under international human rights law. To that end, **Armenia should:**

- revoke all existing permits for the Amulsar gold mine project;
- take immediate steps to address the recommendations published by UN human rights bodies and special procedures, the Compliance Committee of the UNECE Aarhus Convention on environmental governance and the Bureau of the Standing Committee to the Bern Convention on protection of biodiversity;
- initiate an independent expert assessment of the costs and benefits of the Amulsar gold mine, thoroughly taking into consideration economic, social, health and environmental factors, then take this assessment into account to ensure that negative impacts are duly identified and prevented and that local populations and communities may directly benefit from the project if it is finally pursued;
- overhaul its environmental and mining legislation to ensure democratic and prudent governance of the mining sector and adopt regulations and enhance institutional capacity to properly assess the social and health impacts of mining;
- reinforce institutional capacity to implement and monitor the respect for legislation, improve access to information and participation, clarify methodologies for decision makers to conduct cost-benefit assessments, simplify the procedure for conducting cumulative impact assessments and implement robust anti-corruption policies and processes relating to mining;
- protect environmental and human rights defenders, specifically from strategic litigation against public participation lawsuits (SLAPPs) and retaliation from Lydian or other actors. Effective legislation against SLAPPs must contain three main elements: (1) procedural safeguards against SLAPPs, (2) measures to deter against and raise awareness of SLAPPs and (3) protective and supportive measures for SLAPP targets. The most important procedural safeguard to include is the possibility for judges to dismiss SLAPPs in the early stages of proceedings for cases that are manifestly ill-founded and aimed at preventing the defendant from exercising their right to public participation, using a broad definition of what constitutes public participation. Protective and supportive measures for SLAPP targets should include financial assistance to cover legal fees, as well as access to support services against the risk of emotional or psychological harm, and protection from further intimidation and retaliation.
- improve the impact of the Extractive Industries Transparency Initiative (EITI) process at the community level by promoting the participation of local communities in the governance of natural resources;

- ensure proper remedy for the negative impacts caused by the mine to local communities, human rights defenders and the environment throughout the previous phases of the project;
- conduct an independent and transparent investigation into the corruption surrounding the land acquisition in Gndevaz.

## **2. The EBRD and the IFC should:**

- support the Armenian government in implementing the above steps and
- update their environmental and human rights due diligence approach in view of the anticipated findings and recommendations of the banks' accountability mechanisms;
- develop human rights and environmental due diligence policies in order to better comply with the UN's guiding principles;
- acknowledge and address the existing gaps and barriers to participation and effective redress for project-affected persons and human rights defenders in their approach to disclosing information, and involve communities and stakeholders in informed and meaningful consultation;
- develop concrete policies and guidelines on human rights due diligence to ensure, prior to project risk categorisation, a thorough bank-led or bank-commissioned analysis of human rights risks; make its methodology and conclusions publicly accessible for each project; ensure proper assessment of the impacts via human rights impact assessments (HRIA) or other contextual analyses, if risks are identified; make these additional assessments public;
- provide meaningful public participation – which is timely, a two-way process, transparent, accessible and safe – to all rights-holders; ensure that proper procedures are in place and implement regular capacity building and evaluations of procedures to ensure they allow for safe and meaningful public participation. The banks should also develop more concrete guidance reflecting a zero-tolerance policy on reprisals.
- along with Lydian, provide remedy for the negative impacts caused by the Amulsar project to local communities, human rights defenders and the environment throughout the previous phases of the project.

## **3. Lydian Armenia should:**

- drop all legal actions against environmental and human rights defenders and avoid stigmatisation through antagonistic rhetoric or by spreading misinformation to discredit the activities of defenders;
- take immediate steps to ensure it respects all human rights and the environment, and abide by the UN Guiding Principles on Business and Human Rights;
- immediately provide remedy for the negative impacts it caused to local communities, human rights defenders and the environment throughout the previous phases of the project.





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Civil Society Institute (CSI) established in 1998 in Yerevan, Armenia.

CSI have been working on programs aimed at civil society development, penal system reform, human rights advocacy and awareness, peace building and conflict resolution, freedom of information and anti-corruption, youth empowerment, education reform and capacity building.

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## **Bankwatch Network**

### **CEE BANKWATCH NETWORK (CEE BN)**

CEE Bankwatch Network is the largest network of grassroots, environmental and human rights groups in central and eastern Europe. It monitors public finance institutions that are responsible for hundreds of billions of investments across the globe. Together with local communities and other NGOs, Bankwatch works to expose their influence and provide a counterbalance to their unchecked power.

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# Keep your eyes open

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**Supporting civil society** - Training and exchange

**Mobilizing the international community** - Advocacy before intergovernmental bodies

**Informing and reporting** - Mobilizing public opinion

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