

MINING POLICY DIALOG DISCUSSION PAPER

Working Conditions and Occupational Safety in the Mining Sector of Armenia

This document was prepared by the expert group of the " Human Rights Research Center" NGO (Nvard Piliposyan, Anahit Simonyan) commissioned by the AUA Center for Responsible Mining as part of the program "Mining industry Policy Dialogue, Information Platform and Youth Engagement", funded by the "Transparency International Anti-Corruption Center" and USAID.

1. Introduction (brief description of the document)

This document summarizes the current studies on working conditions and occupational safety in the mining industry of Armenia, introduces domestic legislative regulations and internationally accepted standards, points out the existing legal, political and practical problems and gaps in the field, and suggests possible ways to respond to them. The document does not address the issues of preventing industrial disasters in the mines, as a separate discussion will take place on this issue. The document will be presented at the upcoming stakeholders' meeting on April 16-17.

2. Studies on working conditions and occupational safety in the mining industry of Armenia

Research conducted in Armenia on working conditions and occupational safety in the mining industry so far can be divided into 3 parts:

- research on general regulations in the mining industry,
- research on general problems of working conditions and occupational safety,
- research on the main problems of occupational safety and working conditions in the mining industry.

However, it should be noted that a comprehensive, in-depth and detailed research on this topic has not yet been conducted.

Studies on the protection of labor rights and their mechanisms¹ have identified a number of legislative and practical gaps, such as:

- insufficient state control system,
- insufficient development of trade unions,
- lack of regulations and policies based on risk assessment and aimed at preventing the risk of occupational hazard assessment and response to it.

¹ See in particular <http://www.osf.am/wp-content/uploads/2013/12/Avetik-paper.pdf>, <https://www.osf.am/wp-content/uploads/2014/06/Labour-Inspection-in-Armenia-A.-Mejlumyan.pdf>, https://oxygen.org.am/wp-content/uploads/2020/08/3_ENG-1.pdf.

Comprehensive studies of the mining industry², in turn, revealed the problems of low wages in this area in Armenia, the risk of industrial accidents, the lack of a compulsory health insurance system, insufficient attention to the problems of managing the risks of safety and health of employees.

In terms of implementing healthy and safe working conditions in the mining industry, the following issues were identified on the conducted research³:

- inadequate control over compliance with safety rules and legal requirements and dependence on the good will of the employer,
- incomprehensibility of remuneration and the procedure for its formation for employees,
- incomplete operation of damage compensation mechanisms, especially in terms of plastic surgery,
- Inadequate provision of working conditions in the mines, especially food and recreation.

3. Armenian Legislative Regulations and International Legal Obligations on Healthy, Safe, Decent (Fair) Working Conditions

Article 82 of the Constitution of the Republic of Armenia establishes the right of every employee to healthy, safe and decent working conditions, limitation of maximum working hours, daily and weekly rest, as well as annual paid leave.

The main legal act regulating labor relations, including the conditions of ensuring the safety and health of employees, is the Labor Code of the Republic of Armenia, Chapter 23 of which (articles 242-262) contains a number of provisions concerning the safety and health of employees. In particular, it establishes:

- the employer's obligation to ensure the health and safety of employees,
- the employer's obligation to adopt internal legal acts on ensuring the safety and health of employees,
- the employer's obligation to inform employees about all issues of ensuring the safety of employees and analyzing the state of health, planning, organizing events and monitoring, and to consult with them,
- the conditions necessary for normal work of the employees are listed,
- due to occupational risk factors, the requirements for organizing mandatory medical examination of employees, the conditions for temporary termination of employment, etc. are regulated.

The main by-laws on proper, healthy and safe working conditions refer to salary supplements for hard and harmful work, the definition of reduced working hours, and the provision of extended leave and pensions on preferential terms. In addition, allowances, reductions in working hours and pensions are provided not on the basis of actual risk assessment, but due to the fact that certain positions are occupied⁴. **Thus, risk assessment, mitigation and elimination are not the basis of the above-mentioned regulations.**

According to Article 20 of the RA Law⁵ "On State Regulation of Technical Security", a person operating a particularly hazardous production facility is **obliged to insure** the risks of his liability throughout his activity, including damage

² See in particular https://mlri.org.am/media/pdfs/132_1469.pdf, https://mlri.org.am/media/pdfs/95_6804.pdf, The World Bank (2016), Armenia: Strategic Mineral Sector Sustainability Assessment, April (English), page 77:

³ See the report submitted by Armenian CSOs to the UN Committee on Economic, Social and Cultural Rights: "Realization of the right to safe and healthy working conditions in Armenia: with a focus on the Syunik region", 2019

⁴ See Government decision, <https://www.arlis.am/documentview.aspx?docid=140548>:

⁵ See the Law, <https://www.arlis.am/documentview.aspx?docID=65225>:

caused to the **lives, health and property** of his **employees**, as well as citizens not directly related to the work, but damaged as a result of the operation of the hazardous production facility. This regulation, however, does not work yet, since the Government of the Republic of Armenia has not established a list of particularly hazardous production facilities subject to compulsory insurance, as required by Part 2 of the same article.

Actions aimed at improving working conditions and ensuring healthy and safe working conditions of employees are also provided for in a number of policy documents. In particular, the Action Plan of the Government of the Republic of Armenia for 2019-2023 provides for the improvement of the legislation of the Republic of Armenia, which establishes requirements for the protection of health and safety of employees, as well as the development of relevant drafts legal acts, the deadline for which is May 2022.

Within the framework of the "Decent Work"⁶ program, which is implemented by the Government of the Republic of Armenia in cooperation with the ILO, it is planned to improve the national policy on ensuring safe and healthy working conditions.

4. Institutional framework for ensuring healthy, safe and decent (fair) working conditions

In terms of ensuring working conditions and occupational safety, the responsible body is the **Health and Labor Inspection Body of the Republic of Armenia** (hereinafter referred to as the Inspection Body). The powers of the Inspection Body in the field are stated by the RA Law "On Inspections" and the Charter of the Inspection Body⁷.

The activities of the Inspection Body involves control, including conducting inspections, as well as the implementation of awareness-raising activities, the development of guidelines, the maintenance of statistics, and, if necessary, the submission of a request to the responsible body for recognizing the license of economic entities as invalid. The audits are intended to verify the accuracy of the reports submitted by an economic entity (including the mining company) during the year, so the economic entities to be audited are selected by the Inspection Body in advance, according to the annual audit program based on risk assessment, and within the framework of the Government-approved checklist. **That is, the subject to be inspected is informed in advance about when and on what issues the audit will be conducted, which significantly reduces the possibility of identifying real risks associated with working conditions and occupational safety.**

Implementing the 73rd action of the National Strategy of Human Rights Protection 2020-2022⁸, in 2019 and 2020, the methodology of inspections of the Health and Labor Inspectorate was adopted and the criteria⁹ determining the risk and the checklist¹⁰ based on the risk carried out by the latter, with regard to monitoring the health and safety of employees in the mining industry and during the operation of open-pit mines. **At the same time, the clear tools for conducting inspections are not defined by any legal act, which is one of the most important criteria for the effectiveness of inspections.** Although there are references to documentary and visual inspection methods in the checklist, the Inspection Body does not include the possibility of using other tools (for example, private conversations with employees).

⁶See the program, <http://www.hamk.am/docs/DWCP.pdf>:

⁷ See the Charter, <https://www.hlib.am/charter/>:

⁸See the Strategy, http://e-rights.am/?app=AppEvent&page=default&event_id=247&event_tab=action:

⁹ See the Strategy, http://e-rights.am/?app=AppEvent&page=default&event_id=247&event_tab=action:

¹⁰See the Checklist, <https://www.arlis.am/DocumentView.aspx?DocID=145652>:

Thus, the legislative provisions adopted in the framework of inspections to protect business interest from administrative interference limit the ability of the Inspection Body to identify risks and assess guarantees for the protection of the health and safety of employees.

The human resources of the Inspection Body are quite small and are divided according to the administrative-territorial units. Thus, in Kapan, where the largest mining companies are located, there are only 6 inspectors¹¹.

At the institutional level, **trade unions** also play a crucial role in protecting workers' rights. The activities of the latter are regulated by the RA Law "On Trade Unions" and the RA Labor Code. Trade unions, however, can only be formed by employees of the same company, which may also receive a portion of the funding from the employer. This procedurally makes the union dependent on the employer. On the other hand, the legislation does not provide sufficient guarantees for the independence of trade union employees to ensure that the latter can go against a large employer, and demand improvement of working conditions and safety guarantees. **Thus, trade unions have a number of legislative and practical issues in terms of their order of formation, functions and activities, which do not allow to fully protect the rights of trade union members, especially in the case of large employers such as mining companies.**

5. Examples of International Standards and Best Practice for the Issue Under Discussion

International occupational safety and health standards are defined by a number of International Labor Organization (ILO) conventions. The Republic of Armenia has ratified ILO C176 Convention¹² on Safety and Health in Mines, C174 Convention¹³ on the Prevention of Industrial Accidents and C81 Convention¹⁴ on Labor Inspection.

The Republic of Armenia, however, has not ratified the C155 Convention¹⁵ on Occupational Safety and Health.

The rights to healthy, safe and decent (fair) working conditions are stated in Article 7¹⁶ of the United Nations International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the Covenant) and the Revised European Social Charter (Charter) 2-4- in articles¹⁷, ratified by the Republic of Armenia.

The existence of a national policy in the field of the working environment, occupational safety and health is both a requirement of the ILO and a crucial expectation of states by the Covenant Committee¹⁸. The UN Covenant Committee, in its General Comment No. 23, identified the **main areas** that should be included in national policy. They also comply with the standards set out in the ILO C155 and C176 Conventions. These areas include the construction, testing, selection, replacement, installation and maintenance of workplaces, work processes, tools, machines, as well as chemical, physical, and biological materials, and the relationship between them and employees, or supervisors, adaptation of the production machines, working hours, and labor rules of organization to the physical and mental abilities of the employees, regular training of the persons involved in the safety and health of the employees, protection of the employees and their representatives from disciplinary liability in case of their immediate

¹¹ See https://www.hlib.am/confirmation_list/:

¹² See the Convention, <http://www.irtek.am/views/act.aspx?aid=47297>:

¹³ See the Convention, <http://www.irtek.am/views/act.aspx?aid=47296>:

¹⁴ See the Convention, <https://www.arlis.am/DocumentView.aspx?docid=24576>:

¹⁵ See the Convention,,

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155:

¹⁶ See the Covenant, <https://www.arlis.am/DocumentView.aspx?DocID=18501>:

¹⁷ See the Charter, <https://www.arlis.am/DocumentView.aspx?docid=24230>:

¹⁸ The Covenant was ratified by the Republic of Armenia in 1993:

danger in accordance with the national policy.¹⁹ **The policy should also include the regulation of the employer's liability for accidents and illnesses, the collection, processing and analysis of statistical data, and establish a central coordinating body, which should be responsible for monitoring the situation.** One of the most important components of the policy is the existence of proper control mechanisms and sanctions, the authority of the relevant state bodies to decide on the termination of the organization's activities in case of danger, the right to compensation of employees, access to medical and rehabilitation services.

Chilean legislation²⁰ is considered to be one of the most advanced in terms of ensuring the safety of employees. It guarantees the right of employees to free medical care in the event of an accident or illness in the workplace. The Law also creates an insurance system to implement this provision. Moreover, it requires companies with 25 or more employees to establish hygiene and safety partnership committees. High standards are set for basic workplace health regulations, many of which also correspond to the mining industry such as having an emergency response team in the mine area and having an on-site health clinic for projects with more than 50 employees.

6. The main legislative and institutional issues and gaps identified in the topic under discussion

Studying the above-mentioned legislative regulations and institutional features of the Republic of Armenia, as well as the research conducted so far, we identified those legislative and institutional issues and gaps that need a more urgent response today.

- I. The Republic of Armenia has not yet developed and adopted a **national policy** aimed at the protection of the working environment, occupational safety and health. In particular, the strategy of occupational health and safety has not been adopted so far, which, according to the information provided by the RA to the ILO²¹, has been developed by the RA Ministry of Health since 2015. The current legislative regulations of the Republic of Armenia minimize the obligations of the employer to manage the risks to the health and safety of the employee, limiting them to the monthly bonuses paid to employees and reduction of working hours for harm, and **does not include the reduction and elimination of risk as part of the regulation of the policy and legislation**. In this regard, it is noteworthy that the Republic of Armenia has not yet ratified the C155 Convention on Occupational Safety and Health, which can be the legal basis for the most important standards for the formation of national policies in this area.
- II. The activity of the **Inspection Body** has legislative and institutional problems.
 - The control structure carried out by the Inspection Body, in particular, the inspection tool does not include interviews with employees, the implementation of target groups with them, checking their readiness and other necessary methods to identify real problems related to occupational safety. Monitoring on the basis of complaints received by inspections and individuals, without the use of large-scale monitoring methods, significantly reduces the effectiveness of detecting violations.
 - The human resources provided to the Inspection Body are objectively insufficient to control safety guarantees in large mining companies.
- III. **Trade unions**, as social partnership organizations that represent workers and as the main institutions that protect the workers' rights, do not have sufficient legislative mechanisms and established structures to draw employers' attention to working conditions and occupational safety issues, and to address them. In particular,

¹⁹ See the committee's general comment, <https://www.refworld.org/docid/5550a0b14.html>:

²⁰ See https://mlri.org.am/media/pdfs/95_6804.pdf:

²¹ See the ILO Direct Request to the RA on C174 and C176 Conventions , https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3340250:

the employees of mining companies in most cases are members of the branch union of miners, metallurgists and jewelers. According to the official website of the trade union, the only case when the trade union formally appealed to the government to protect the interests of employees is the large-scale dismissal of employees from the Teghut mine and the Alaverdi copper-molybdenum combine following the closure of “Valex Group”²². Meanwhile, the same organization was fined for exceeding the amount of permissible emissions by 6-7 times, however, the union did not make calls for an assessment of the harm to health and improvement of the safety of workers.

- IV. There is no **compulsory health insurance** system for employees of mining companies in Armenia, while such a requirement can be fully justified, given that they are employers who receive large profits. Despite the fact that the legal basis for compulsory life and health insurance of employees is laid down in Article 20 of the RA Law "On State Regulation of Technical Security", the government has not yet approved the list of particularly hazardous production facilities required for the system to enter into force, which should also include mining companies. At the same time, employers have no legal obligation to take any other steps to protect and rehabilitate workers other than the regular medical check-ups that are currently routinely performed, which puts employees in a vulnerable position and, in the event of health problems, leads their families into poverty.

7. Preliminary recommendations for policy development to improve the current situation

In order to improve the current situation, taking into account the international standards and best practice, we present the following urgent, short-term and long-term recommendations.

Urgent recommendations

- ✓ Carry out a large-scale study of working conditions and occupational safety in the mining industry, identifying all the issues and gaps at the legislative, institutional and practical level.
- ✓ Ratify C155 Convention on Occupational Safety and Health
- ✓ Carry out large-scale awareness-raising activities with employees about occupational safety issues.
- ✓ Identify material and potential corruption risks of the Inspection Body's activities and the best ways to prevent them.
- ✓ Approve the list of particularly hazardous production facilities subject to compulsory insurance, including all mining facilities in this list.

Short-term recommendations

- ✓ Adopt a national occupational health and safety policy, the central objective of which will be to reduce risks and prevent occupational hazards, and it will create an effective coordination mechanism in accordance with international standards.
- ✓ Expand the tools of the Inspection Body, including private conversations with employees, the implementation of target groups with them, checking their readiness, as well as improving the mechanisms and cases of holding economic entities accountable. Increase the number of employees of the Inspection Body.
- ✓ Introduce a system of compulsory health insurance for employees in the mining industry.

²²See http://www.hamk.am/members.php?lang=arm&member_id=13&parent=2: